N.C.P.I.—Criminal 270.00
MODEL JURY INSTRUCTION
General Criminal Volume
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NOTE WELL: This is an illustration of the recommended manner to construct a charge for any criminal offense and is in conformity with Ch. 15A of the General Statutes.

MODEL JURY INSTRUCTION

(Illustrating the use of N.C.P.I.—Crim. 100.00, 101.05, 101.10, 101.15, 101.20, 270.20A, and 101.35.)

IMPAIRED DRIVING—INCLUDING CHEMICAL TEST. G.S. 20-138.1. MISDEMEANOR

Members of the jury: All of the evidence has been presented. It is now your duty to decide from this evidence what the facts are. You must then apply the law which I am about to give you to those facts. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you think it is, or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied. (N.C.P.I.—Crim. 101.05.)

The defendant has entered a plea of "not guilty." The fact that the defendant has been charged is no evidence of guilt. Under our system of justice, when a defendant pleads "not guilty" the defendant is not required to prove the defendant's innocence; the defendant is presumed to be innocent. The State must prove to you that the defendant is guilty beyond a reasonable doubt.

A reasonable doubt is a doubt based on reason and common sense, arising out of some or all of the evidence that has been presented, or lack or insufficiency of the evidence, as the case may be. Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's guilt. (N.C.P.I.—Crim. 101.10.)

You are the sole judges of the credibility of each witness. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of what a witness has said on the stand.

In deciding whether to believe a witness you should use the same tests of truthfulness

that you use in your everyday lives. Among other things, these tests may include: the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; the manner and appearance of the witness; any interest, bias, prejudice or partiality the witness may have; the apparent understanding and fairness of the witness; whether the testimony is reasonable; and whether the testimony is consistent with other believable evidence in the case. (N.C.P.I.—Crim. 101.15.)

You are the sole judges of the weight to be given any evidence. If you decide that certain evidence is believable you must then determine the importance of that evidence in light of all other believable evidence in the case. (N.C.P.I.—Crim. 101.20.)

The defendant has been charged with impaired driving. (N.C.P.I.—Crim. 270.20.)

For you to find the defendant guilty of impaired driving, the State must prove three things beyond a reasonable doubt:

First, that the defendant was driving[1] a vehicle.[2]

Second, that the defendant was driving that vehicle upon a [highway] [street] [public vehicular area][3] within the State.

And Third, that at the time the defendant was driving that vehicle the defendant:

NOTE WELL: If the evidence supports submission of the case under alternatives (A), (B), and (C), instructions on each alternative should be given.

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[1] G.S. 20-4.01 defines the driver as the operator of a vehicle.

[2] If there is any doubt, define "vehicle" under G.S. 20-4.01(49), or "motor vehicle" under G.S. 20-4.01(23). The Safe Roads Act of 1983 makes this offense applicable to drivers of vehicles owned or operated by the State or any political subdivision thereof while engaged in maintenance or construction work on the highways. G.S. 20-168(b). Effective December 1, 2006, lawnmowers and bicycles are no longer exempt. Horses remain exempt.

[3] If there is any doubt, define "highway" or "street" in accordance with G.S. 20-4.01(13). "Public vehicular area" is defined in G.S. 20-4.01(32).

a) [Was under the influence of an impairing substance. (Name substance involved) is an impairing substance.[4] The defendant is under the influence of an impairing substance when the defendant has taken (or consumed) a sufficient quantity of that impairing substance to cause the defendant to lose the normal control of his bodily or mental faculties, or both, to such an extent that thereis an appreciable impairment of either or both of these faculties.[5]]

b) [Had consumed sufficient alcohol that at any relevant time after the driving the defendant had an alcohol concentration[6] of 0.08 or more grams of alcohol [per 210 liters of breath] [per 100 milliliters of blood]. A relevant time is any time after the driving that the driver still has in his body alcohol consumed before or during the driving].[7] The results of a chemical analysis are deemed sufficient evidence to prove a person's alcohol concentration.[8]

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[4] An impairing substance includes alcohol, controlled substance under Chapter 90 of the General Statutes, or any other drug or psychoactive substance capable of impairing a person's physical or mental faculties, or any combination of these substances. G.S. 20-4.01(14a).

[5] G.S. 20-4.01(48a).

[6] G.S. 20-4.01(0.2) defines alcohol concentration as “the concentration of alcohol in a person, expressed either as (a) grams of alcohol per 100 milliliters of blood; or (b) grams of alcohol per 120 liters of breath.”

[7] G.S. 20-4.01(33a).

[8] The term “deemed sufficient” is not defined in G.S. 20.138.1 or G.S. 20-141.4, other statutes or any appellate court decisions. Absent a specific definition, it can be presumed that the legislature intended the words to be given their ordinary meaning.

c) [Had any amount of [a Schedule I control substance] [metabolites of a Schedule I controlled substance] in the defendant's blood or urine]. (*Name substance*) is a Schedule I control substance or is a metabolite[9] of a Schedule I control substance.].[10]

(If the evidence tends to show that [a chemical test known as a(n) [intoxilizer] [breathalyzer] [blood test] [urine test][11] was offered to the defendant by a law enforcement officer and that the defendant refused to take the test] (or) [the defendant refused to perform a field sobriety test at the request of an officer], you may consider this evidence together with all other evidence in determining whether the defendant was under the influence of an impairing substance at the time the defendant (allegedly) drove a motor vehicle.)[12]

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant drove a vehicle on a [highway] [street] (or) [public vehicular area] in this state and that when doing so the defendant [was under the influence of an impairing substance] [had consumed sufficient alcohol that at any relevant time after the driving the defendant had an alcohol concentration of 0.08 or more] [had any amount of [a Schedule I controlled substance] [metabolites of a Schedule I controlled substance] in the defendant's [blood] [urine]], it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as one or more of these things, it would be your duty to return a verdict of not guilty.

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[9] A metabolite is any substance produced or used during metabolism (digestion). In drug use, the term usually refers to the end product that remains after metabolism.

[10] Driving with any Schedule I controlled substance, or its metabolites in one's blood or urine is a per se violation of impaired driving offense.

[11] Note that if the offense occurred between December 1, 2006 and June 27, 2007, there was no statutory provision during this time that required the defendant to take a urine test.

[12] G.S. 20-139.1(f).

Members of the jury, you have heard the evidence and the arguments of counsel. If your recollection of the evidence differs from that of the attorneys, you are to rely solely upon your recollection. Your duty is to remember the evidence whether called to your attention or not.

You should consider all the evidence, the arguments, contentions and positions urged by the attorney(s), and any other contention that arises from the evidence.

The law requires the presiding judge to be impartial. You should not infer from anything I have done or said that the evidence is to be believed or disbelieved, that a fact has been proved or what your findings ought to be. It is your duty to find the facts and to render a verdict reflecting the truth. All twelve of you must agree to your verdict. You cannot reach a verdict by majority vote.

When you have agreed upon a unanimous verdict(s) (as to each charge) your foreperson should so indicate on the verdict form(s).

NOTE WELL: EXCUSE THE ALTERNATE JUROR.

After reaching the jury room your first order of business is to select your foreperson. You may begin your deliberations when the bailiff delivers the verdict form(s) to you. Your foreperson should lead the deliberations. When you have unanimously agreed upon a verdict (as to each charge) and are ready to announce [it] [them] your foreperson should record your verdict(s), sign and date the verdict form(s), and notify the bailiff by knocking on the jury room door (or otherwise summoning the bailiff). You will be returned to the courtroom and your verdict will be announced.

Thank you. You may retire and select your foreperson.

*NOTE WELL: After the jury retires and before sending the verdict form(s) to the jury the judge **must** address the attorneys as follows:*

Before the jury begins deliberation the Court will consider requests for corrections and additions to the instructions and to other matters you deem appropriate.[13]

Are there any objections or specific requests for corrections or additions to the instructions?

NOTE WELL: Consider all specific requests and if appropriate recall the jury and correct or add to the charge. If request(s) for corrections or additions are rejected, attorneys must be allowed to make specific objections on the record.

After all specific requests have been submitted and rejected and the proper notation(s) recorded, hand the verdict form(s) to the bailiff and instruct the bailiff to deliver [it] [them] to the jury without comment.

If necessary to return the jury to the courtroom for corrections or additions to the charge the judge should address the jury as follows:

Members of the jury, my attention has been properly directed to instructions necessary to [correct] [supplement] my previous instructions.

I charge you that . . . .

You may retire now and begin your deliberation when you receive the written verdict form(s).

NOTE WELL: Repeat to the lawyers the question regarding objections, corrections or additions. If there are further instructions upon specific requests, follow the same procedure as before; if not, instruct the bailiff to deliver the verdict form(s) to the jury.

NOTE WELL: If the jury requests additional instructions after retiring to deliberate, the trial judge should obtain the jury requests in writing, confer with the attorneys, and further instruct the jury if necessary. S v. Privette, 317 N.C. 148 (1986) holds that it is within the trial court's discretion to determine whether instructions in addition to those requested should be given at the same time.

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[13] While G.S. 15A-1231 does not expressly require the judge to address the attorneys after the charge and before the jury begins deliberations, when applying Appellate Rule 10(b)(2) pertaining to defendant's assignment of error as to jury instructions, the North Carolina Court of Appeals has not allowed the defendant to assign error to the jury charge if given an opportunity by the trial judge to object before deliberations. *State v. Godwin*, 59 N.C. App. 662, 297 S.E.2d 623 (1982).

NOTE WELL: It is suggested that requests from the jury should be reduced to writing, marked as court exhibits, and made part of the record. In a capital case, the failure to share the jury's questions with the defendant denies the defendant the right to be present at every stage of the proceeding although the State may be able to prove the error was harmless beyond a reasonable doubt. State v. Smith, 654 S.E.2d 730 (N.C. Ct. App. 2008).