Approved 10/17/88

INSANITY
(N.J.S.A. 2C:4-1)

Apart from his/her general denial of guilt, the defendant maintains that he/she is not guilty of the crime charged by reason of insanity.

If you find that the State has failed to prove beyond a reasonable doubt any essential element of the offense, or the defendant's participation in the offense, you must find the defendant not guilty and you need not consider the evidence as to the defendant's insanity.

If you find that the State has proved beyond a reasonable doubt each essential element of the offense, and the defendant's participation in the offense, you must then consider the evidence as to the defendant's insanity.

All persons are assumed capable of committing crimes. Insane persons, however, are not capable of committing crimes. It is, therefore, necessary for me to instruct you with respect to the law of insanity so far as it relates to the responsibility of a person for the commission of a crime.

First of all, the law entertains no prejudice against the defense of insanity. On the contrary, if the defense of insanity is sufficiently established, the law allows the defendant the benefit of it by an acquittal of all criminal responsibility. To consider this defense, it is necessary that you understand the law's concept of criminal responsibility. Our society and our law recognize that some people may be bad and some people may be sick. A hostile act, that is, an illegal act, may in one case spring from wickedness and in another from some infirmity or sickness of the mind which the individual did not design. It is society's moral judgment, recognized by our law, that a forbidden act should not be punished criminally unless done with a knowledge of wrongdoing.

The law, however, from considerations of public policy, the welfare of society and the safety of human life, proceeds with care, requiring that the proof of such a defense of insanity be established consistent with a standard recognized by the law. Under our law all persons are assumed to be sane and, therefore, responsible for their conduct until the contrary is established. Insanity is an affirmative defense and the burden of proving it by a preponderance of the evidence is on the defendant who asserts the defense. If there is no preponderance of evidence of insanity, the defense of insanity fails and the defendant stands in the position of a sane individual

responsible on all the evidence in the case for his/her acts, whatever you may find them to have been.

The law adopts a standard of its own as a test of criminal responsibility, a standard not always in harmony with the views of psychiatrists. If at the time of committing the act the defendant was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he/she was doing or if defendant did know it, that he/she did not know what he/she was doing was wrong, the defendant was then legally insane and, therefore, not criminally responsible for his/her conduct.

As you can see, the law regards insanity as a disease of the mind. It may be temporary or permanent in its nature, but the condition must be a mental disease.

An accused may have the most absurd and irrational notions on some subject; he/she may be unsound in mind, and be a fit subject for confinement and treatment in a mental hospital; but, if at the time of the offense(s) defendant had the mental capacity to distinguish right from wrong and to understand the nature and quality of the act done by him/her, he/she is subject to the criminal law. These principles must necessarily be the governing principles in the administration of the criminal law, or the most terrible crimes would not be punishable, for such crimes are almost always committed under the influence of an impulse which overcomes the restraint which usually prevents the commission of a crime.

Therefore, to establish insanity as a defense to the criminal charge in this case the defendant must prove, by a preponderance of the evidence, that defendant was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act, or if defendant did know it, that he/she did not know that what he/she was doing was wrong.

The term "preponderance of the evidence" means the greater weight of credible evidence in the case. It does not necessarily mean the evidence of the greater number of witnesses but means that evidence which carries the greater convincing power to your minds.

Keep in mind, however, that although the burden rests upon the defendant to establish the defense of insanity by a preponderance of the credible evidence, the burden of proving the defendant guilty of the offense charged here beyond a reasonable doubt is always on the State, and that burden never shifts.

The question is not whether the defendant, when he/she engaged in the deed, in fact actually thought or considered whether the act was right or wrong, but whether defendant had sufficient mind and understanding to have enabled him/her to comprehend that it was wrong if defendant had used his/her faculties for that purpose.

To determine whether the defendant has established by the preponderance of the evidence that, at the time of the commission of the alleged offense, defendant was laboring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he/she was doing, or if defendant did know it, that he/she did not know what he/she was doing was wrong you should consider all of the relevant and material evidence having a bearing on his/her mental condition, including his/her conduct at the time of the alleged act, his/her conduct since, any mental history, any lay and medical testimony which you have heard from witnesses who have testified for the defense and for the State, and such other evidence by the testimony of witnesses or exhibits in this case that may have a bearing upon, and assist you in your determination of the issue of his/her mental condition.

There is a conflict of medical testimony, and you will have to determine where the truth lies. As is true with all issues of fact, the issue is for you to resolve after a careful consideration, comparison and evaluation of all the evidence which is material to, or relevant on, the issue of the defendant's sanity. The assumed sanity of the defendant is not overcome until you determine that the defendant has sustained his/her burden of proving by a preponderance of the evidence that, at the time of the offense alleged, defendant was insane under the legal definition of insanity and, therefore, is absolved of criminal responsibility for conduct for which he/she would otherwise be criminally responsible under the law. The jury is the sole judge of the weight to be given to lay and psychiatric testimony. Generally speaking, no distinction is made between expert testimony and evidence of another character. The same tests that are applied in evaluating lay testimony must be used in judging the weight and sufficiency of expert testimony. You are the sole judges of the credibility of the medical witnesses, as well as all other witnesses, and the weight to be accorded to the testimony of each. You saw and you heard them. You had the opportunity to observe their attitude and demeanor on the witness stand. You had the opportunity to hear their means of obtaining knowledge of the facts, and to notice their power of

discernment, their candor or evasion, if any, and their general and special professional and expert qualifications and background. These factors, any possible bias in favor of the side for whom each testified, and any other matters which serve to illuminate the statements of each may all be considered by you in determining the credibility of the expert testimony and the weight to be accorded to it or any part of it.

The medical experts have testified that statements were made to them by the defendant which statements were part of the history they secured from the defendant. As I have previously instructed you, these statements should not be considered as substantive evidence against the defendant relating to his/her guilt or innocence of the alleged offense, but only as evidence tending to support the ultimate expert conclusion of the psychiatrist receiving the history on the test of insanity. The witness, in effect, is not saying that such history is true. The witness is merely testifying that the statements comprising the history were made to him/her. You may, in fact, determine from the evidence in the case that the facts set forth in such history are true, not true, or true in part only, and, in the light of such findings, you should decide what effect such determination has upon the weight to be given to the opinion of the expert.

However, if a medical expert has testified that his/her opinion hinges upon the truth of the matter asserted by the defendant at the time the defendant gave the history to the doctor, the probative value of the psychiatrist's opinion will depend upon whether from all of the evidence in the case, you find that those facts are true. The same is true for any other facts relied upon by the expert. If the doctor has testified that he/she accepts as true certain facts on which the doctor bases his/her opinion, your acceptance or rejection of the doctor's opinion will depend to some extent on your findings as to the truth of these facts.

VERDICTS

You may return one of three verdicts

(1) Not guilty.

(2) Guilty.

(3) Not guilty by reason of insanity.

If you find that the State has failed to prove beyond a reasonable doubt all or any one of

the essential elements of the offense, or the defendant's participation in the offense, you must find the defendant not guilty.

If you find that the State has proved beyond a reasonable doubt all the essential elements of the offense and the defendant's participation therein, and if you also find that the defendant has not established the defense of insanity to a preponderance of the credible evidence, then you must find the defendant guilty of the offense.

If you find that the State has proved all the elements of the crime and the defendant's participation therein beyond a reasonable doubt, and if you also find that the defendant has established the defense of insanity by a preponderance of the credible evidence, your verdict must be "not guilty by reason of insanity" and you shall so report and declare your verdict.

A verdict of not guilty by reason of insanity does not necessarily mean that the defendant will be freed, or that the individual will be indefinitely committed to a mental institution. Under our law, if you find the defendant not guilty by reason of insanity, it will then be for the court to conduct a further hearing and among other matters determine whether or not the defendant's insanity continues to the present and whether defendant poses a danger to the community or to himself/herself. The resolution of those issues will ultimately determine what appropriate restrictions need to be placed on the defendant. Thus, procedures exist to adequately provide for the defendant and to protect the public in the event defendant is found not guilty by reason of insanity.

VERDICTS

Again, you may return one of three verdicts:

(1) Not guilty.

(2) Guilty.

(3) Not guilty by reason of insanity.