**IN THE SUPERIOR COURT OF \_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY**

**STATE OF GEORGIA**

|  STATE OF GEORGIA  v.  NE’ER DO WELL  | Indictment No.XXXX-CR-XXXX-X |
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**PART ONE**

## **1.10.10 Indictment**

 You are considering the case of the State of Georgia XXXXXXXXX. The *grand jury has indicted/district attorney has accused* the Defendant with the offense(s) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

The indictment reads, in pertinent part, as follows: [READ INDICTMENT]

## **1.10.20 Issue and Plea of Not Guilty**

## The defendant has entered a plea of not guilty to this indictment. The indictments and the pleas form the issue that you are to decide.

## Neither the indictments nor the pleas of not guilty should be considered as evidence.

## **1.20.10 Presumption of Innocence; Burden of Proof; Reasonable Doubt**

The defendant is presumed to be innocent until proven guilty. The defendant enters upon the trial of the case with a presumption of innocence in his favor. This presumption remains with the defendant until it is overcome by the State with evidence that is sufficient to convince you beyond a reasonable doubt that the defendant is guilty of the offense charged.

No person shall be convicted of any crime unless and until each element of the crime as charged is proven beyond a reasonable doubt. The burden of proof rests upon the State to prove every material allegation of the indictment and every essential element of the crime charged beyond a reasonable doubt.

There is no burden of proof upon the defendant whatsoever, and the burden never shifts to the defendant to introduce evidence or to prove innocence. When a defense is raised by the evidence, the burden is on the State to negate or disprove it beyond a reasonable doubt.

However, the State is not required to prove the guilt of the accused beyond all doubt or to a mathematical certainty. A reasonable doubt means just what it says. A reasonable doubt is a doubt of a fair-minded, impartial juror honestly seeking the truth. A reasonable doubt is a doubt based upon common sense and reason. It does not mean a vague or arbitrary doubt but is a doubt for which a reason can be given, arising from a consideration of the evidence, a lack of evidence, or a conflict in the evidence.

After giving consideration to all of the facts and circumstances of this case, if your minds are wavering, unsettled, or unsatisfied, then that is a doubt of the law, and you must acquit the defendant. But, if that doubt does not exist in your minds as to the guilt of the accused, then you would be authorized to convict the defendant.

If the State fails to prove the defendant's guilt beyond a reasonable doubt, it would be your duty to acquit the defendant.

**1.20.20 Grave Suspicion** (*use only if requested*)

Facts and circumstances that merely place upon the defendant a grave suspicion of the crime charged or that merely raise a speculation or conjecture of the defendant's guilt are not sufficient to authorize a conviction of the defendant.

**1.20.30 Jury; Judges of Law and Facts**

Members of the jury, it is my duty and responsibility to determine the law that applies to this case and to instruct you on that law. You are bound by these instructions. It is your responsibility to determine the facts of the case from all of the evidence presented. Then you must apply the law I give you in the charge to the facts as you find them to be.

### **1.30.10 Evidence; Generally**

### Your oath requires that you will decide this case based on the evidence. Evidence is the means by which any fact that is put in issue is established or disproved. Evidence includes all of the testimony of the witnesses (or the equivalent, such as depositions) and any exhibits admitted during the trial, (stipulations of the attorneys, that is, any facts to which the attorneys have agreed with approval by the court) (matters of which the court has taken judicial notice). Evidence does not include the indictment, the plea of not guilty, opening or closing remarks of the attorneys, or questions asked by the attorneys.

## **1.30.20 Direct and Circumstantial Evidence**

## *(To be safe, give the following charge in all cases in which there is circumstantial evidence. Although there may be exceptions, the Pattern Jury Instructions Committee feels it is a safer practice to give the circumstantial evidence charge in every case.)*

## *(See 1.30.30. Do not charge on “2 theories” but give charge on circumstantial evidence.)*

## SHORT VERSION

## Evidence may be either direct or circumstantial or both. In considering the evidence, you may use reasoning and common sense to make deductions and reach conclusions. You should not be concerned about whether the evidence is direct or circumstantial. “Direct evidence” is the testimony of a person who asserts that he or she has actual knowledge of a fact (such as an eyewitness) (such as by personally observing or otherwise witnessing that fact). “Circumstantial evidence” is proof of a set of facts and circumstances that tend to prove or disprove another fact by inference (that is, by consistency with such fact or elimination of other facts). There is no legal difference in the weight you may give to either direct or circumstantial evidence.

## You would be authorized to convict only if the evidence [whether direct, circumstantial, or both] excludes all reasonable theories of innocence and proves the guilt of the accused beyond a reasonable doubt.

## *Note: Old O.C.G.A. §24-1-1(3) and (4) are repealed, yet O.C.G.A. §24-14-69 retains limits or cautions about convictions based on circumstantial evidence. If a charge is still required, definitions are probably necessary. The committee has extrapolated from old code definitions, old case law, and current preliminary 11th Circuit definitions given in preliminary instructions. See 11th Cir. PJI, p. 21.*

### **1.31.10 Credibility of Witnesses**

### *Note: The committee removed “Intelligence” as a credibility factor from the criminal charge on credibility of witnesses based on McKenzie v. State, 293 Ga. App. 350(2) (2008); however, the federal rules re-codify it. O.C.G.A. §24-14-4. Query: What if the defense brings in a world-renowned DNA expert who is a certified genius, to testify versus a seeming bureaucratic “expert” for the state; and the defense requests the charge including intelligence. The cases “prohibiting the use of “intelligence” in charge area seeming egalitarian knee-jerk against correlating intelligence and honesty. But credibility also may depend on competency. The charge is neutrally drawn and can be adequately argued by either side.*

### The jury must determine the credibility of the witnesses. In deciding this, you may consider all of the facts and circumstances of the case, including the witnesses’ manner of testifying, ~~[their intelligence]~~, their means and opportunity of knowing the facts about which they testify, the nature of the facts about which they testify, the probability or improbability of their testimony, their interest or lack of interest in the outcome of the case, and their personal credibility as you observe it.

### *\*Note: In a criminal case, use caution in giving if the defendant testifies. McKenzie v. State, 293 Ga. App. 350 (2008).*

**1.31.45 Witness, Impeached**

To impeach a witness is to show that the witness is unworthy of belief. A witness may be impeached by disproving the facts to which the witness testified (O.C.G.A. § 24-6-621);

**1.31.40 Witness, Attacked (old Impeached)**

In determining the credibility of witnesses and any testimony by them in court, you may consider, where applicable, evidence offered to attack the credibility or believability of any such witness *(charge only those that apply)*. This would include evidence of:

* Character for untruthfulness. Shown by (opinion of other witnesses), (reputation) (O.C.G.A. §24-6-608 (a)); or “Bad Acts” *(cross-examination only)*—Specific instances of conduct of the witness (in question), brought out on cross-examination of (that) (another) witness that may relate to (that) witness’s (in question’s) character for untruthfulness. O.C.G.A. §24-6-608(b)(1) and (2)
* Bias toward a party. Shown by “Bad Acts” *(extrinsic evidence or cross-examination)*—Specific instances of conduct of the witness (in question) that may relate to the witness’s (in question’s) bias toward a party. O.C.G.A. §24-6-608(b)

Felony conviction—Proof that the (witness) (defendant) has been convicted of the offense of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*[Admit and charge only those offenses punishable by one year or more of imprisonment and only where the judge finds that the probative value of admitting the evidence conviction outweighs prejudicial effect to the accused. O.C.G.A. §§24-6-609(a)(1), 24-4-403;* Quiroz v. State*, 291 App. 423]*Crime of Dishonesty conviction—Proof that the witness has been convicted of a crime involving (dishonesty) or (making a false statement).

*[Note: Does not include misdemeanor theft.* Adams v. State*, 284 Ga. App. 534 (2007).]
Admissibility considerations—(Considerations below are not hard and fast, and individual facts and circumstances MAY dictate a different result than that directed by this QUICK guide. In BALANCING, judge should make EXPRESS FINDINGS.* Quiroz v. State*, 291 Ga. App. 423. Subject to balancing probative value versus prejudicial effect, WHICH TRUMPS ALL OTHER CONSIDERATIONS BELOW (O.C.G.A. §24-4-403 for ALL evidence and specifically for FELONY convictions [see* Clay v. State*, 290 Ga. 822 for FIVE BALANCING FACTORS] and “Bad Acts” O.C.G.A. §§24-9-608(b), 24-9-609 (a)(1).)
Admissible—Convictions less than 10 years from conviction or actual release from confinement (O.C.G.A. §24-6-609(a)(1) and (2)). Note:* Allen v. State*, 286 Ga. 392(2). Calculating 10 years—probation does NOT equal “confinement”—and end date is date of testimony or date conviction offered.* Clay v. State*, 290, Ga. 822.
SOME juvenile “convictions,” but not for the defendant (O.C.G.A. §24-6-609(d))
Cases on appeal, but the pendency of appeal is also admissible (O.C.G.A. §24-6-609(e))
Inadmissible—Time Barred—Over 10 years old from date of conviction or release from ACTUAL confinement, not probation (*Allen v. State*, 286 Ga. 392(2)). Calculating 10 years—probation does NOT equal “confinement”—to time of testifying, not time of offense, unless JUDGE BALANCES AND FINDS INTERESTS OF JUSTICE permit longer.* Clay v. State*, 290 Ga. 822 BALANCING FACTORS.*

*First offender and conditional discharge unadjudicated and pardoned offenses inadmissible (O.C.G.A. §§24-6-609(c), 24-6-622); but remember* Davis v. Alaska*. Also, present probation, even for first offender, is probably admissible against state witness as possibly illustrative of interest in testifying or state of feelings of witness. O.C.G.A. §24-6-622
Convictions based on pleas of nolo contendere and juvenile “convictions” of defendant inadmissible (O.C.G.A. §24-6-609(d))*

 *\*\*\*Limiting Instruction. See PJI Criminal 1.34.00 for a limiting instruction on the use of prior conviction to impeach a witness or defendant. Note:* Hulsey v. State*, 281 Ga. 177*

**1.31.42 Witness, Supported**

*(Evidence and charge authorized only where a witness has been attacked.)*

In determining the credibility of any witness whose credibility has been attacked as I have described above and any testimony by him or her in court, you may consider, where applicable, evidence offered to support the credibility or believability of any such witness. (Charge only those that apply.) This would include:

· Character for truthfulness. Shown by (opinion of other witnesses) or (reputation) (O.C.G.A. §24-6-608(a)); or “Truthful conduct” (cross-examination only). Specific instances of conduct of the witness (in question), brought out on cross-examination of (that) (another) witness, that may relate to (that) witness’s (in question’s) character for truthfulness; O.C.G.A. §24-6-608(b)(1) and (2)

· Lack of bias toward a party. “Truthful conduct” (extrinsic evidence or cross-examination). Specific instances of conduct of the witness (only after the witness has been attacked) that may relate to the witness’s (in question’s) lack of bias toward a party.

## **1.31.47 Prior Statements**

## You may determine whether there was evidence that a witness testified falsely about an important fact during the course of the trial as opposed to some other time before this trial. In doing so, you may make a determination whether the misstatement was because of an innocent lapse in memory or an intentional attempt to deceive. You should consider all the facts and circumstances of any prior statements.

**1.32.10 Defendant's Choice Not to Testify**

The defendant in a criminal case may take the stand and testify and be examined and cross-examined as any other witness. (You should evaluate such testimony as you would that of any other witness;

However, the defendant does not have to (present any evidence) nor (testify). If the defendant chooses not to testify, you may not consider that in any way in making your decision.

### **1.40.10 Definition of Crime**

### This defendant is charged with a crime against the laws of this state. A crime is a violation of a statute of this state in which there is a joint operation of an act and intention.

**1.41.10 Intent**

Intent is an essential element of any crime and must be proved by the State beyond a reasonable doubt.

Intent may be shown in many ways, provided you, the jury, believe that it existed from the proven facts before you. It may be inferred from the proven circumstances or by acts and conduct, or it may be, in your discretion, inferred when it is the natural and necessary consequence of the act. Whether or not you draw such an inference is a matter solely within your discretion.

*(Use the following charge with caution in cases involving ‘specific intent’)*

Criminal intent does not mean an intention to violate the law or to violate a penal statute but means simply the intention to commit the act that is prohibited by a statute.

### **1.41.11 No Presumption of Criminal Intent**

### This defendant will not be presumed to have acted with criminal intent, but you may find such intention (or the absence of it) upon a consideration of words, conduct, demeanor, motive, and other circumstances connected with the act for which the accused is being prosecuted.

#### **1.31.30 Expert Witness**

#### *(Use only if applicable.)*

#### Testimony has been given in this case by certain witnesses who are termed experts. Expert witnesses are those who because of their training and experience possess knowledge in a particular field that is not common knowledge or known to the average citizen. The law permits expert witnesses to give their opinions based upon that training and experience.

#### You are not required to accept the testimony of any witnesses, expert or otherwise. Testimony of an expert, like that of all witnesses, is to be given only such weight and credit as you think it is properly entitled to receive.

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#### **PART TWO**

#### This defendant is charged with the offense(s) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*These offenses/This offense* *is/are* defined as follows:

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# **PART THREE**

## **1.60.10 Verdict, Generally**

## If, after considering the testimony and evidence presented to you, together with the charge of the court, you should find and believe beyond a reasonable doubt that the defendant in \_\_\_\_\_\_\_\_\_\_\_\_\_ County, Georgia, did on or about the \_ day of , \_\_\_\_\_\_\_ commit the offenses as alleged in the indictment or any one of the offenses, you would be authorized to find the defendant guilty. In that event, the form of your verdict would be, "We, the jury, find the defendant guilty."

## If you do not believe that the defendant is guilty of these offenses or of any one of the offenses, or if you have any reasonable doubt as to the defendant's guilt, then it would be your duty to acquit the defendant, in which event the form of your verdict would be, "We, the jury, find the defendant not guilty."

### **1.70.10 Court Has No Interest in Case**

### By no ruling or comment that the court has made during the progress of the trial has the court intended to express any opinion upon the facts of this case, upon the credibility of the witnesses, upon the evidence, or upon the guilt or innocence of the defendant.

### **1.70.20 Sentencing; Responsibility for**

(*Note: Do not give this charge in the sentencing phase of death penalty or life without parole cases.)*

You are only concerned with the guilt or innocence of the defendant. You are not to concern yourselves with punishment.

## **1.70.30 Deliberations**

## One of your first duties in the jury room will be to select one of your number to act as foreperson, who will preside over your deliberations and who will sign the verdict to which all twelve of you freely and voluntarily agree.

You should start your deliberations with an open mind. Consult with one another and consider each other's views. Each of you must decide this case for yourself, but you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hesitate to change an opinion if you are convinced that it is wrong. However, you should never surrender an honest opinion in order to be congenial or to reach a verdict solely because of the opinions of the other jurors.

### **1.70.40 Unanimous Verdict**

### Whatever your verdict is, it must be unanimous (that is, agreed to by all). The verdict must be in writing and signed by one of your members as foreperson, dated, and returned to be published in open court.

**1.70.50 Alternate Juror**

 *[Send out alternate juror]*

### **1.70.60 Retire to Jury Room**

### You may now retire to the jury room, but do not begin your deliberations until you receive the indictment and any evidence that has been admitted in the case. Bailiff, escort the jury to the jury room.