



## **CHARGE OF THE COURT**

You are considering the case of the State of Georgia versus Steven Donald Lemery.

### **1. Indictment**

The grand jury of this county has indicted the Defendant for Aggravated Child Molestation, Human Trafficking, Pandering by Compulsion and Enticing a Child for Indecent Purposes. The indictment states the exact offenses. Please read it carefully.

This indictment was returned into court on April 1, 2011.

### **2. Issue and Plea of Not Guilty**

To this indictment, the Defendant has entered a plea of not guilty, and this makes the issue which you have been selected, sworn, and empaneled to try.

### **3. Indictment and Plea**

I caution you that the fact that the accused has been indicted by the grand jury is no evidence of his guilt. You should not consider the indictment as evidence or implication of guilt. Neither is the plea of not guilty to be considered as evidence.

### **4. Presumption of Innocence**

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 which 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 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 whatever, and the burden never shifts to the Defendant to prove innocence. 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. It is a doubt of a fair-minded, impartial juror, honestly seeking the truth. It 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, a conflict in the evidence, or any combination of these.

If after giving consideration to all the facts and circumstances of this case, your minds are wavering, unsettled or unsatisfied, then that is a doubt of the law, and you should 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.

## **5. Credibility of Witnesses**

You must determine the credibility or believability of the witnesses. It is for you to determine what witness or witnesses you will believe and which witness or witnesses you will not believe, if there are some you do not believe. In passing upon their credibility, you may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their interest or lack of interest, their means and opportunity for knowing the facts which they testify about, the nature of the facts which they testify about, the probability or improbability of their testimony, and of the occurrences which they testify about. You may also consider their personal credibility insofar as it may legitimately appear from the trial of this case.

#### **6. Conflicts in Testimony**

When you consider the evidence in this case, if you find a conflict, you should settle this conflict, if you can, without believing that any witness made a false statement. If you cannot do so, then you should believe that witness or those witnesses whom you think are best entitled to belief.

You must determine what testimony you will believe and what testimony you will not believe.

#### **7. Impeachment**

To impeach a witness is to prove that the witness is unworthy of belief. A witness may be impeached by:

- a) disproving the facts to which the witness testified,
- b) proof of contradictory statements, previously made by the witness about matters relevant to the witness's testimony and to the case.

If any attempt has been made in this case to impeach any witness by proof of contradictory statements previously made, you must determine from the evidence

- a) whether any such statements were made,
- b) whether such statements were contradictory to any statements the witness made on the witness stand, and
- c) whether such statements were relevant to the witness's testimony and to the case.

If you find that a witness has been successfully impeached by proof of previous, contradictory statements, you may disregard that testimony, unless it is supported by other credible testimony. The credit to be given to the balance of the testimony of the witness would be for you to determine.

It is for you to determine whether or not a witness has been impeached and to determine the credibility of such witness and the weight the witness's testimony shall receive in the consideration of the case.

Should you find that any witness has made any other statement inconsistent with that witness's testimony from the stand in this case and that such prior inconsistent statement is material to the case and the witness's testimony, then you are authorized to consider that other statement not only for purposes of impeachment, but also as substantive evidence in the case.

## **8. Jury as Judges of Law and Facts**

Members of the jury, it is my duty and responsibility to ascertain the law applicable to this case and to instruct you on that law, by which you are bound. It is your responsibility to ascertain the facts of the case from all the evidence presented.

It then becomes your duty and responsibility to apply the law I give you in the charge to the facts as you find them to be.

#### 9. **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, or omission to act, and intention.

#### 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.

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.

#### 11. **Evidence**

Evidence is the means by which any fact which is put in issue is established or disproved. Evidence includes all the testimony of the witnesses and the exhibits admitted during the trial. It does not include the indictment or the opening statements and closing arguments by the attorneys.

Evidence may be either direct or circumstantial or both.

Direct evidence is evidence which points immediately to the question at issue.

Evidence may also be used to prove a fact by inference. This is referred to as circumstantial evidence. Circumstantial evidence is the proof of facts or circumstances, by direct evidence, from which you may infer other related or connected facts which are reasonable and justified in the light of your experience.

To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the theory of guilt, but must exclude every other reasonable theory other than the guilt of the accused. The comparative weight of circumstantial evidence and direct evidence, on any given issue, is a question of fact for the jury to decide.

## **12. Venue**

The law provides that criminal actions shall be tried in the county where the crime was committed except as otherwise provided by law. Venue, that is, that the crime was committed in Douglas County is a jurisdictional fact which must be proved by the state beyond a reasonable doubt as to each crime charged in the indictment just as any element of the offenses. This may be done by direct or circumstantial evidence, or both.

## **13. Offenses Charged**

The Defendant is charged with the offenses of Aggravated Child Molestation, Human Trafficking, Pandering by Compulsion and Enticing a Child for Indecent Purposes. The court will now define the offenses for you.

As to Counts One and Fourteen: A person commits the

offense of aggravated child molestation when that person does an indecent act with a child less than 16 years of age with the intent to satisfy the sexual desires of the person and the act involves the act of sodomy. The act of sodomy is defined as performing or submitting to a sexual act involving the sex organs of one and the mouth of another. The State must also prove beyond a reasonable doubt that the child was under the age of 16 at the time of any such act.

As to Counts Eight and Eleven:

A person commits the offense of trafficking a person for sexual servitude when that person knowingly maintains another person in sexual servitude.

As to Count Nine and Twelve:

A person commits the offense of trafficking a person for sexual servitude when that person knowingly transports another person for the purpose of sexual servitude.

As to Count Ten and Thirteen:

A person commits the offense of trafficking a person for sexual servitude when that person knowingly harbors another person for the purpose of sexual servitude.

"Sexual servitude" means:

(A) Any sexually explicit conduct or performance involving sexually explicit conduct for which anything of value is directly or indirectly given, promised to, or received by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years; or

(B) Any sexually explicit conduct or performance involving

sexually explicit conduct which is performed or provided by any person, which conduct is induced or obtained by coercion or deception or which conduct is induced or obtained from a person under the age of 18 years.

“Sexually explicit conduct” means actual or simulated:

- (A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (B) Masturbation;
- (C) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts; OR
- (D) Penetration of the rectum by any object except when done as part of a recognized medical procedure.

“Coercion” means:

- (A) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person, or threatening to physically restrain or confine any person;
- (B) Exposing or threatening to expose any fact or information or disseminating or threatening to disseminate any fact or information that would tend to subject a person to criminal or immigration proceedings, hatred, contempt, or ridicule;
- (C) Providing a controlled substance, as such term is defined by Georgia law, to such person for the purpose of compelling such person to engage sexual servitude against his or her will; or
- (E) Causing or threatening to cause financial harm to any person or using financial control over any person.

“Deception” means:

(A) Creating or confirming another's impression of an existing fact or past event which is false and which the accused knows or believes to be false;

(B) Promising benefits or the performance of services which the accused does not intend to deliver or perform or knows will not be delivered or performed. Evidence of failure to deliver benefits or perform services standing alone shall not be sufficient to authorize a conviction under this Code section.

The age of consent for sexual activity or the accused's lack of knowledge of the age of the person being trafficked shall not constitute a defense in a prosecution for a violation of this Code section.

A person commits the offense of pandering by compulsion when he by coercion causes a person to perform an act of prostitution.

Prostitution is defined by Georgia law as follows:

A person commits the offense of prostitution when he performs or offers or consents to perform a sexual act, including but not limited to sexual intercourse or sodomy, for money or other items of value.

A person commits the offense of enticing a child for indecent purposes when he takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation.

#### **14. Defendant's Failure to Testify**

The defendant in a criminal case is under no duty to present any evidence tending to prove innocence and is not required to take the stand and testify in the case. If the defendant elects not to testify, no inference hurtful, harmful, or adverse to the

defendant shall be drawn by the jury, nor shall such fact be held against the defendant in any way.

**15. Grave Suspicion**

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

**16. Verdict**

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 Douglas County, Georgia, did, commit any of the alleged offenses, you would be authorized to find the Defendant guilty and, in that event, the form of your verdict would be: "We, the jury, find the Defendant guilty" of the offense then under your consideration.

As to Count Sixteen, Pandering by Compulsion you may consider the lesser offense of pandering. That offense is defined as follows: A person commits the offense of pandering when he solicits a person to perform an act of prostitution in his own behalf or in behalf of a third person or when he knowingly assembles persons at a fixed place for the purpose of being solicited by others to perform an act of prostitution.

If you do not believe beyond a reasonable doubt that the Defendant is guilty pandering by compulsion, but do believe beyond a reasonable doubt that the Defendant is guilty of pandering, then you would be authorized to find the Defendant guilty of pandering, and the form of your verdict in that event would be: "We, the jury, find the defendant guilty of pandering."

If you do not believe that the defendant is guilty of either of these 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."

You must make a determination as to each count separately.

You will not have to make a decision as to Count Fifteen. It appears that charge duplicates the charge made in Count Fourteen, and the State is not proceeding forward on Court Fifteen.

#### **17. Responsibility for Sentencing**

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

#### **18. Unanimous Verdict**

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

#### **19. 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 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.

**20. Court Has No Interest in Case**

By no ruling or comment which 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.

**21. Alternate Jurors**

Ms. Sherrill Lunsford and Ms. Carol McMahon are the alternate jurors, and we can only allow twelve to deliberate the case. The bailiffs will show the alternates to a separate room.

**22. Cell Phones**

Please turn your cell phones off during deliberations and do not use them during any time you all are discussing the case.

**23. 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 which has been admitted in the case.

David Emerson  
Judge Superior Court