IN THE CIRCUIT COURT OF [*county*] COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA,

v. [*case number*]

Hon. [*name*]

[*name-all caps*],

Defendant.

DEFENDANT’S INSTRUCTION NO. \_\_\_\_

The trial will proceed in the following order:

First, the parties have the opportunity to make opening statements. The State may make an opening statement at the beginning of the case. The defendant(s) may make an opening statement following the State’s opening statement or may postpone the making of an opening statement until the close of the State’s case. The defendant(s) [is] [are] not obligated to make an opening statement.

What is said in the opening statements is not evidence. The opening statements serve as an introduction to the evidence which the party making the opening statement intends to produce during the trial.

Second, after the opening statements, the State will introduce evidence which it feels supports the charge(s) contained in the indictment.

Third, after the State has presented its evidence, the defendant(s) may present evidence, but [is] [are] not obligated to do so.

The burden or obligation, as you will be told many times during the course of this trial, is always on the State to prove each and every element of the offense(s) charged beyond reasonable doubt. The law never imposes on a defendant in a criminal case the burden of calling any witnesses, producing any exhibits, or introducing any evidence. A defendant is presumed to be innocent of the charge(s).

Fourth, after all the evidence has been received—in other words, after all the witnesses have testified and after all the exhibits have been admitted—each party will be given the opportunity to present argument to you in support of its case. This is called “closing argument.”

What is said in closing argument is not evidence, just as what is said in the opening statements is not evidence. The closing arguments are designed to present the parties’ theories and conclusions as to what each believes the evidence has shown and what inferences may be drawn from the evidence.

Fifth, [after] [before] you hear the parties’ closing arguments, I will give you, orally [insert, if applicable, and in writing], the final instructions concerning the law which you must apply to the evidence received during the trial. Those instructions will be much more detailed than these I am giving you now. You will then retire to consider your verdict. Your verdict must be unanimous—all twelve of you must agree to it. Your deliberations are secret. You will not be required to explain your verdict to anyone.

Sixth, you must keep an open mind to both the State and the defense during this trial. As you know, there are generally two sides to most stories and you must not make up your mind about any of the questions in this case until you have heard all the evidence and all the law which you must apply to that evidence—in other words, until you begin your deliberations.

GIVEN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFUSED:\_\_\_\_\_\_\_\_\_\_\_\_\_

MODIFIED:\_\_\_\_\_\_\_\_\_\_\_\_

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JUDGE