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. \_\_\_\_

One of the disputed issues in this case is the identification of the defendant as the person who committed the crime(s) charged. The State has the burden of proving this beyond a reasonable doubt. In considering whether the State has proved beyond a reasonable doubt that the defendant was the person who committed the crime(s) charged in the indictment, you may consider the following with regard to an identification witness’s testimony:

1. The witness’s opportunity to observe the person(s) committing the crime, which includes the amount of time for observation, and the physical conditions such as lighting, distance, or obstructions at the time of the observation;

2. The witness’s degree of attention at the time of the observation, whether the witness was under stress, and whether the witness had occasion to see or know the person in the past;

3. Whether the witness gave a description of the person after the crime and, if so, the description’s accuracy and the length of time after the crime the description was given; and

4. Whether the witness made any subsequent identification of the person after the crime, along with the circumstances surrounding such subsequent identification, the witness’s level of certainty at such subsequent identification, and the length of time between the crime and the subsequent identification.

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

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

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

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JUDGE