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. \_\_\_\_

 Count \_\_ of the indictment charges the defendant with First Degree Sexual Assault.

First Degree Sexual Assault occurs when a person engages in sexual intercourse or sexual intrusion with another person without the other person’s consent and, during the act, either causes serious bodily injury upon that person or uses a deadly weapon.

 To understand this instruction, the definitions of sexual intercourse and sexual intrusion are:

 “Sexual intercourse” is any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

 “Sexual intrusion” is any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

 “Penetration” is the entry of the penis or some other part of the body or a foreign object into the vagina or other bodily orifice. Penetration is more than mere touching.

 Additionally, the Court instructs you:

 “Serious bodily injury” is bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

 “Deadly weapon” is an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use.

 Additionally, the Court instructs you that consent means agreement, approval, or permission regarding some act or purpose.

 Therefore, for you to find the defendant guilty, the State must overcome the defendant’s presumption of innocence and prove each of the following elements beyond a reasonable doubt:

1. the defendant,

2. on or about the \_\_ day of [insert month], [insert year],

3. in [insert county] County, West Virginia;

4. engaged in

a. sexual intercourse, or

b. sexual intrusion

5. with [insert name(s) of victim(s)]

6. without the consent of [insert name(s) of victim(s)],

7. and in so doing

a. inflicted serious bodily injury upon [insert name(s) of victim(s)] or

b. employed a deadly weapon in the commission of the act.

 If, after impartially considering, weighing and comparing all the evidence (that of both the State and the defendant), you are convinced beyond a reasonable doubt of the truth of the charge as to each of these elements, you may find the defendant guilty as charged in Count \_\_ of the indictment. If you have a reasonable doubt of the truth of the charge as to any one or more of these elements, you shall find the defendant not guilty.

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

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

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

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 JUDGE