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 Abuse.

 First Degree Sexual Abuse occurs when a person subjects another person to sexual contact without that person’s consent and the lack of consent results from forcible compulsion exerted on the alleged victim.

 “Sexual contact” means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of the alleged victim, or intentional touching of any part of the complainant’s body by the actor’s sex organs, where the alleged victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

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

 “Forcible compulsion” means:

(1) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or

(2) A threat or intimidation, either express or implied, placing the alleged victim in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or,

(3) Fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.

 Therefore, for you to find the defendant guilty, the State must overcome the presumption of innocence and prove beyond a reasonable doubt that:

1. the defendant,

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

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

4. subjected [insert name(s) of victim(s)],

5. to sexual contact,

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

7. and that said lack of consent was the result of forcible compulsion.

 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