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 defendant has asserted an affirmative defense in this case. The defendant does not have the burden of proof in this case; that burden remains with the State. The defendant must only provide sufficient proof that it creates a reasonable doubt in your mind, specifically, that

1. the defendant,

2. at the time of the incident(s) alleged in the indictment,

3. did not know of the facts or conditions responsible for [insert name(s) of victim(s)]’s incapacity to consent, and

4. the defendant was not reckless in failing to know about such facts or conditions.

 If the evidence on these matters is enough to raise a reasonable doubt in your mind, then, in addition to proving the elements of the offense, the State must prove beyond a reasonable doubt that the elements of the affirmative defense are untrue. If the State has failed to prove that the defense is untrue beyond a reasonable doubt, your verdict must be not guilty.

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

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

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

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 JUDGE