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 commits an act of sexual intercourse or of sexual intrusion without the alleged victim’s consent.

 Sexual intercourse means 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.

 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.

 Sexual intrusion means 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 that consent means agreement, approval, or permission regarding some act or purpose.

 In this case, the State alleges that the lack of consent is the result of forcible compulsion by the defendant against the alleged victim.

 Forcible compulsion requires an act or acts of significant violence performed or threatened to be performed against the alleged victim or another person.

 This violence is achieved through:

(a) physical force strong enough to overtake or otherwise control the alleged victim who is resisting, or

(b) a threat or intimidation, expressed or implied, placing the alleged victim in fear of immediate death or bodily injury to [himself] [herself] or herself or another person or of kidnapping to either the alleged victim or another person.

 For the purpose of this instruction, acts of resistance may include either physical resistance or any clear communication of the alleged victim’s lack of consent.

 If the alleged victim was 16 years old or less at the time of the alleged crime, forcible compulsion also can occur by intimidation, expressed or implied, by a perpetrator who is at least four years older than the alleged victim.

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

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

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

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 JUDGE