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 sexual intercourse or sexual intrusion without the victim’s consent.

 In this case, the State has charged that the lack of consent resulted from the incapacity on the part of the alleged victim to consent to [sexual intercourse] [sexual intrusion].

 “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.

 “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” 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.

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

 The specific groups of people who are unable to consent are:

1. persons less than sixteen years old;

2. persons who are diagnosed with a mental illness and, because of that illness, are incapable of evaluating the nature of their conduct;

3. persons who are under the influence of a controlled or intoxicating substance that the person did not choose to ingest and, because of being under the influence, are temporarily unable to evaluate or to control their conduct;

4. persons who are physically helpless as evidenced by being unconscious or for any other reason rendered incapable of stating their unwillingness to an act;

5. persons who are subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse or causing sexual intrusion or sexual contact.

 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