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 Second Degree Sexual Assault.

Second Degree Sexual Assault occurs when a person engages in sexual intercourse or sexual intrusion with another person without the person’s consent, and the lack of consent results from forcible compulsion;

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

 Forcible compulsion means either:

(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, which either places the victim in fear of immediate death or bodily injury to himself or herself or another person or places the victim in fear that he or she or another person will be kidnapped.

 For you to find defendant guilty, the State must overcome the defendant’s 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. engaged in

a. sexual intercourse

b. sexual intrusion

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

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

7. and the 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