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. \_\_\_\_

“Possession” includes “Constructive Possession;” however, mere proximity to illegal drugs is not sufficient to convict a defendant of possession. To prove constructive possession, the State must prove beyond a reasonable doubt that the defendant had knowledge of the controlled substance and that it was subject to defendant’s dominion and control.

In determining whether the State of West Virginia has proven beyond a reasonable doubt that the defendant was in constructive possession of the controlled substance, you may consider such factors as whether the defendant was the owner or lessee of the premises in which the controlled substances were found; whether the defendant had exclusive control over the area within the premises where the controlled substances were found; the defendant’s proximity to the controlled substances at the time of the arrest; the number of other people, if any, present at the time the controlled substances were found; the defendant’s relationship or association with any other people present at the time the controlled substances were found; and the defendant’s conduct at the time the controlled substances were found.

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

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

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

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JUDGE