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. \_\_\_\_

 “Delivery of a Counterfeit Substance” is committed when a person knowingly and unlawfully delivers a counterfeit substance to another person.

 “Delivery,” as it is used in these instructions, means the actual, constructive or attempted transfer from one person to another of a counterfeit substance, whether or not there is an agency relationship.

 “Constructive transfer” is the transfer of a counterfeit substance belonging to an individual or under his or her control, by some other person or agency at the instance or direction of the accused.

 In order to prove the commission of the offense of “Delivery of a Counterfeit Substance,” the State of West Virginia must overcome the presumption of innocence and prove beyond a reasonable doubt that:

1. the defendant,

2. on the \_\_ day of [insert month], [insert year],

3. in [insert county] County, West Virginia,

4. knowingly

5. delivered a Schedule [insert] Counterfeit Substance, specifically, [insert controlled substance]

6. to another person.

 After consideration of all the evidence, if each of you is convinced beyond a reasonable doubt that the State has proven all these elements of Delivery of a Counterfeit Substance, you may find the defendant guilty as charged in Count \_\_ of the indictment. However, if any of you has a reasonable doubt as to one or more of these elements, you shall find the defendant not guilty.

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

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

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

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 JUDGE