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. \_\_\_\_

 The defendant has asserted that he was not present at the place and time when the offense was supposed to have been committed. This is called an alibi. Please keep in mind that the defendant does not need to prove that [he] [she] was not present; the burden of proof never shifts from the State, who must prove every element of the crime beyond a reasonable doubt.

 The defendant does not need to prove [his] [her] alibi beyond a reasonable doubt—or even by a preponderance of the evidence. [He] [She] need only introduce evidence which, when considered with the whole evidence, creates a reasonable doubt regarding [his] [her] guilt. If the defendant has offered sufficient evidence to raise the possibility that [he] [she] has an alibi regarding the offense in question, then the burden is on the State to prove beyond a reasonable doubt that the defendant was present at the place and time of the offense.

 So if, after considering all the evidence, you have a reasonable doubt that the defendant was present at the time and place the alleged offense was committed, you should find the defendant not guilty.

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

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

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

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 JUDGE