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 Assault in the Attempt to Commit a Felony. You may return one of two verdicts under this Count of the indictment:

(1) guilty of Assault in the Attempt to Commit a Felony; or

(2) not guilty.

 Assault in the Attempt to Commit a Felony occurs when a person in the commission of a felony, or in the attempt to commit a felony unlawfully shoots, stabs, cuts or wounds another person. The burden is on the State to prove the defendant’s guilt beyond a reasonable doubt and the defendant is not required to prove [himself] [herself] innocent. [He] [She] is presumed by the law to be innocent of this charge and this presumption remains with [him] [her] throughout the entire trial.

 Before the defendant can be convicted of Assault in the Attempt to Commit a Felony, the State must overcome the presumption the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant,

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

3. on or about the \_\_ day of [insert month], [insert year],

4. in the attempt to commit the offense of [insert elements of underlying felony],

8. did (shoot) (stab) (cut) (wound),

9. [insert name(s) of victim(s)].

 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 of Assault in the Attempt to Commit a Felony as charged. 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