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 (Attempted) Second Degree Robbery. You may return one of two verdicts under this Count of the indictment:

(1) guilty of (Attempted) Second Degree Robbery; or

(2) not guilty.

 Second Degree Robbery occurs when a person forcibly takes or attempts to take the property of another by placing the victim in fear of bodily injury or by means designed to temporarily disable the victim, including, but not limited to, the use of a disabling chemical substance or an electronic shock device.

 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 Second Degree Robbery, the State must overcome the presumption that 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. [took and carried away] [attempted to take and carry away],

5. property, specifically, [insert description of property]

6. {[from the person of] [in the presence of]} [insert name(s) of victim(s)],

7. {by placing [insert name(s) of victim(s)] in fear of bodily injury} {by using means designed to temporarily disable [insert name(s) of victim(s)], {[insert, if applicable] including but not limited to the use of a disabling chemical substance or an electronic shock device},

8. with the intent to permanently deprive [insert name(s) of victim(s)] of said property.

 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 Second Degree Robbery 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