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 Battery of an Athletic Official. You may return one of three verdicts under this Count of the indictment:

(1) guilty of Battery of an Athletic Official;

(2) guilty of Assault of an Athletic Official or

(3) not guilty.

 Battery of an Athletic Official occurs when a person unlawfully and intentionally makes physical contact of an insulting or provoking nature with an athletic official or unlawfully and intentionally causes physical harm to an athletic official.

Assault of an Athletic Official occurs when a person unlawfully attempts to commit a violent injury to an athletic official or places such person in reasonable apprehension of immediately receiving a violent injury.

 An “athletic official” is a person at a sports event who enforces the rules of that event, such as an umpire or referee or a person who supervises the participants, such as a coach.

 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 Battery of an Athletic Official, 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. did unlawfully and intentionally make physical contact of an insulting or provoking nature, or unlawfully and intentionally caused physical harm to [insert name(s) of victim(s)],

5. who was acting as an athletic official at the time of the battery.

 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 defendant guilty 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 (and deliberate on the lesser included offense of Assault of an Athletic Official as instructed).

 Before the defendant can be convicted of Assault of an Athletic Official, 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. did unlawfully attempt to commit a violent injury to [insert name(s) of victim(s)], or placed such person in reasonable apprehension of immediately receiving a violent injury, and

5. [insert name(s) of victim(s)] was acting as an athletic official at the time of the assault.

 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 defendant guilty 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:\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 JUDGE