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 Nighttime Burglary.

 Nighttime Burglary occurs when a person, during the nighttime, enters another person’s dwelling house, or a house that adjoins or is occupied along with the owner’s dwelling house, intending to commit a crime.

 “Nighttime” is that period between sunset and sunrise during which there is not enough daylight to discern a person’s face except by artificial light or moonlight.

 “Breaking,” as an element of the crime of burglary, may be either actual or constructive.

 An actual “breaking” involves the application of force to gain entrance; any slight physical force is sufficient to constitute a breaking.

There is a “constructive breaking” when entrance is obtained by force or a threat of force.

 An “entry” is the slightest intrusion into the dwelling house or outhouse adjoining thereto of another by any part of the perpetrator’s body, or with any instrument or weapon introduced for the purpose of committing a crime therein.

 A “dwelling house” is a building or portion thereof intended for use as a human habitation, home or residence, and includes, but is not limited to, a mobile home, house trailer, modular home, factory-built home, or self-propelled motor home, used as a dwelling regularly or only from time to time, or any other nonmotive vehicle primarily designed for human habitation and occupancy and used as a dwelling regularly or only from time to time.

 An “outhouse” is a house that adjoins the owner’s dwelling or is occupied along with it.

 To prove Nighttime Burglary, the State must overcome the defendant’s presumption of innocence and prove beyond a reasonable doubt that:

1. the defendant,

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

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

4. during the nighttime,

5. did feloniously,

6. enter

7. [a dwelling house] [an outhouse adjoining thereto or occupied therewith],

8. which belonged to a person other than the defendant, in this case, [insert name(s) of victim(s)]

9. with the intent to commit a crime therein, specifically [insert offense], which occurs when [insert statutory definition of underlying offense].

 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 as charged in Count \_\_ of the indictment. 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