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 Entry of a [Building Other than a Dwelling House] [Railroad, Traction or Motorcar] [Steamboat or Other Vessel].

[Entry of a Building Other than a Dwelling occurs when a person at any time enters an office, shop, underground coal mine, storehouse, warehouse, banking house, or a house or building other than a dwelling house or adjoining or occupied outhouse] [Entry of a Railroad, Traction or Motorcar occurs when a person enters a railroad or traction car that is propelled by steam, electricity or otherwise] [Entry of a Steamboat or other Vessel occurs when a person enters a steamboat or other boat or vessel] [Entry of an enclosed property occurs when a person enters a commercial, industrial, or public utility property enclosed by a fence, wall, or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons], within the jurisdiction of any county in this state and with the intent to commit a felony or a larceny.

An “entry” is the slightest intrusion by any part of the body, or with any instrument or weapon introduced for the purpose of committing a crime inside a building.

To find the defendant guilty of Entry of a Building other than a Dwelling, 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. [broke and entered] [entered without breaking]

5. [an office, shop, underground coal mine, storehouse, warehouse, banking house, or any house or building other than a dwelling house or outhouse adjoining thereto or occupied therewith] [a railroad or traction car that is propelled by steam, electricity or otherwise] [a steamboat or other boat or vessel] [a commercial, industrial or public utility property enclosed by a fence, wall or other structure erected with the intent of the property owner of protecting or securing the area within and its contents from unauthorized persons],

6. within the jurisdiction of [insert county] county,

7. with the intent to commit the felony of [insert offense], which occurs when [insert statutory definition of underlying offense], or any larceny, 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