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 an Automobile, Motorcar or Bus.

 Entry of an Automobile, Motorcar, or Bus occurs when a person at any time enters an automobile, motorcar, or bus, intending to commit a felony or any larceny.

 An “entry” is the least intrusion into an automobile, motor car, or bus with the whole or any part of the body, hand, or foot, or with any instrument or weapon used for the purpose of committing a crime therein.

 The law recognizes two kinds of breakings, actual and constructive.

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

 A “constructive breaking” occurs when entrance has been obtained by a threat of violence or by fraud.

 To find the defendant guilty of Entry of an Automobile, Motorcar, or Bus, the State must overcome the presumption of innocence and prove to you beyond a reasonable doubt that:

1. he defendant,

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

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

4. entered

5. an automobile, motorcar, or bus,

6. {with the intent to commit the felony of [insert offense], which occurs when [insert elements]} {any larceny, which occurs when [insert elements]}.

 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