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 Embezzlement.

Embezzlement occurs when any officer, agent, clerk or servant of this state, or of any county, district, school district, or municipal corporation, or of any banking institution, or other corporation, or any officer of public trust in this state, or any agent, clerk, or servant of any firm or person, or company or association of persons not incorporated, embezzles or fraudulently converts to [his] [her] own use, bullion, money, bank notes, drafts, security for money, or any effects or property of another person, which shall have come into [his] [her] possession, or been placed under [his] [her] care or management, by virtue of [his] [her] office, place or employment.

To “embezzle” means to fraudulently appropriate or misapply the property of another by one in whose care it has been entrusted, with the intent of depriving the owner of the property.

To find the defendant guilty of Embezzlement, 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. was {an officer, agent, clerk or servant of [this state] [a county, district, school district or municipal corporation] [a banking institution, or other corporation]} {an officer of public trust in this state} {an agent, clerk or servant of a firm, or person, or company, or unincorporated association of persons}, in this case [insert name of entity), and

5. embezzled or fraudulently converted to [his] [her] own use,

6. bullion, money, bank notes, drafts, security for money, or any effects or property, specifically [insert description of property],

7. which belonged to another person, in this case [insert name(s) of victim(s)],

8. and which came into [his] [her] possession, or had been placed under [his] [her] care or management, by virtue of [his] [her] office, place or employment,

9. in the amount of [insert amount],

10. with the intent to permanently deprive the owner of the property of its use and possession.

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:\_\_\_\_\_\_\_\_\_\_\_\_

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

JUDGE