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 by Misuse of Power of Attorney or other Fiduciary Relationship.

Embezzlement by Misuse of Power of Attorney or other Fiduciary Relationship occurs when a person holding a fiduciary power of attorney or having a fiduciary relationship with a person willfully and intentionally defrauds, embezzles, misappropriates or fraudulently converts for [his] [her] own benefit, or for the benefit of another, the assets or property, real or personal, with which [he] [she] has been entrusted, or misuses or misappropriates funds from the person to whom [he] [she] owes a fiduciary duty or misuses any account, line of credit, or credit card of the principal for purposes not contemplated by the terms of the power of attorney instrument or fiduciary relationship, or for purposes not intended by the principal in the execution of the power of attorney or for purposes not intended by the fiduciary relationship.

A “fiduciary relationship” is one in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship.

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 the property.

To find the defendant guilty of Embezzlement by Misuse of Power of Attorney or other Fiduciary Relationship, 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. had a [fiduciary power of attorney] [fiduciary relationship]

5. with a person, that is [insert name(s) of victim(s)],

6. and the defendant willfully and intentionally either

i. [defrauded, embezzled, misappropriated or fraudulently converted,

ii. for the defendant’s own benefit, or for the benefit of another, in this case, [insert name of person],

iii. the assets or property, real or personal, with which the defendant was entrusted]

7. or

i. [misused or misappropriated funds from the person to whom the defendant owed a fiduciary duty or misused any account, line of credit or credit card belonging to the principal for purposes not contemplated by the terms of the power of attorney instrument or fiduciary relationship, or for purposes not intended by the principal in the execution of the power of attorney or for purposes not intended by the fiduciary relationship.

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