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 a Carrier or Other Person.

 Embezzlement by a Carrier or Other Person occurs when a carrier or other person to whom money or other property may be delivered to be carried for hire, or any other person who may be entrusted to carry and deliver such property, embezzles to [his] [her] own use, or secretes with intent to do so, any such property, either in mass or otherwise, before delivery of the property to the proper person or place.

 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 by carrier or other person 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 a carrier or other person to whom money or other property was delivered to be carried for hire] [was a person who was entrusted to carry and deliver money or other property], and

5. embezzled that property to the defendant’s own use

6. by depriving the owner of the property, or by secreting the property with intent to do so, either in mass or otherwise,

7. before delivery thereof at the place at which, or to the person to whom,

8. the property was to be delivered.

 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