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 Fiduciary.

 Embezzlement by a Fiduciary occurs when a guardian, personal representative, or other fiduciary, willfully and knowingly fails to make and return an inventory of any personal property (of which an inventory is required by law to be made) which may come to [his] [her] hands as such, or willfully and knowingly fails or refuses to produce any such property for appraisement in the manner required by law, or willfully and knowingly conceals or embezzles any such property.

 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.

 A “fiduciary” is someone who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, loyalty, due care, and disclosure.

 To find the defendant guilty of embezzlement by a fiduciary, you must find the State has overcome the defendant’s presumption of innocence and proved 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 guardian, personal representative, or other fiduciary, and

5. willfully and knowingly,

6. failed to make and return an inventory as required by law of any personal property which came to [his] [her] hands as such, or willfully and knowingly failed or refused to produce any such property for appraisement in the manner required by law, or willfully and knowingly concealed or embezzled any such property.

 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