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 Willfully Damaging or Attempting to Damage Railroad Property.

 Willfully Damaging or Attempting to Damage Railroad Property occurs when a person willfully damages or attempts to damage railroad property or willfully endangers or attempts to endanger the safety of another by taking any of the following actions:

1. If the person takes, removes, alters, or otherwise vandalizes a railroad sign, placard or marker;

2. If the person throws or drops an object capable of causing significant damage to railroad property at or on a locomotive, railroad car or train;

3. If the person shoots a firearm or other dangerous weapon at a locomotive, railroad car or train;

4. If the person removes appurtenances from, damages, or otherwise impairs the operation of a railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, on a railroad owned, leased, or operated by a railroad carrier, and without consent of the railroad carrier involved;

5. If the person interferes or tampers with, or obstructs in any way, or threatens to interfere with, tamper with or obstruct in any way any railcar or locomotive, switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier without the consent of the railroad carrier involved; or

6. If the person takes, steals, removes, changes, adds to, alters, or in any manner interferes with any part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier in this state, without consent of the railroad carrier; and

7. bodily injury occurs or the damage to railroad property exceeds $1,000.00.

For purposes of Count \_\_ of the indictment:

 “Bodily injury” means substantial physical pain, illness or any impairment of physical injury.

 “Railroad” means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including: commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and high-speed ground transportation systems that connect metropolitan areas but do not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

 [Insert, if applicable. “Railroad carrier” means a person providing railroad transportation; railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device. “Railroad property” does not include administrative buildings, administrative offices, or administrative office equipment; ]

 [Insert, if applicable“Right-of-way” means the track or roadbed owned, leased, or operated by a railroad carrier which is located on either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs; ]

 [Insert, if applicable. “Yard” means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives and other rolling stock are kept when not in use or when awaiting repairs. ]

 To find the defendant guilty of Willfully [Damaging] [Attempting to Damage] Railroad Property, the State must overcome the defendant’s presumption of innocence and prove beyond a reasonable doubt that:

1. the defendant,

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

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

4. [took, removed, altered, or otherwise vandalized a railroad sign, placard or marker];

5. [threw or dropped an object capable of causing significant damage to railroad property at or on a locomotive, railroad car or train];

6. [shot a firearm or other dangerous weapon at a locomotive, railroad car or train];

7. [removed appurtenances from, damaged, or otherwise impaired the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, on a railroad owned, leased, or operated by any railroad carrier, and without consent of the railroad carrier involved];

8. [interfered or tampered with, or obstructed in any way, or threatened to interfere with, tamper with or obstruct in any way any railcar or locomotive, switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier without consent of the railroad carrier involved];

9. [took, stole, removed, changes, added to, altered, or in any manner interfered with any part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier in this state without consent of the railroad carrier]; and

10. bodily injury occurred or the damage to the railroad property exceeded $1,000.00.

 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