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 shoplifting. The offense of shoplifting occurs when a person, either alone or in concert with another and intending to appropriate merchandise without paying the merchant’s stated price for the merchandise, knowingly: (1) conceals the merchandise upon his or her person or in another manner; or (2) removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or (3) alters, transfers or removes any price marking affixed to the merchandise; or (4) transfers the merchandise from one container to another; or (5) causes the cash register or other sales recording device to reflect less than the merchant’s stated price for the merchandise; or (6) removes a shopping cart from the premises of the mercantile establishment; or (7) repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor ;

Shoplifting occurs also when a person, alone or in concert with another, knowingly and intentionally obtains an exchange or refund, or attempts to obtain an exchange or refund, for merchandise which has not been purchased from the store or establishment.

The court instructs you that

[Insert if applicable: “Card-not-present credit or debit transaction” is a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not require the cardholder’s signature or physical presentation of the credit or debit card to the merchant. ]

“Conceal” is to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.

“Merchant” is an owner or operator of any mercantile establishment and includes the merchant's employees, servants, security agents or other agents.

“Mercantile establishment” is any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. “Mercantile establishment” does not include adjoining parking lots or adjoining areas of common use with other establishments.

“Merchandise” is any goods, foodstuffs, wares or personal property, or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.

“Value of the merchandise” is the merchant’s stated price of the merchandise, or, in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, the difference between the merchant's stated price of the merchandise and the altered price.

To find the defendant guilty of shoplifting, the State must overcome the defendant’s presumption of innocence and prove beyond a reasonable doubt that

1. the defendant, either alone or in concert with another person,

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

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

4. with intent to appropriate merchandise without paying the merchant’s stated price for the merchandise,

5. knowingly:

i. [concealed the merchandise upon [his] [her] person or in another manner];

ii. [removed or caused the removal of merchandise from the mercantile establishment or beyond the last station for payment];

iii. [altered, transferred or removed any price marking affixed to the merchandise];

iv. [transferred the merchandise from one container to another];

v. [caused the cash register or other sales recording device to reflect less than the merchant’s stated price for the merchandise];

vi. [removed a shopping cart from the premises of the mercantile establishment];

vii. [repudiated a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor]

6. [or if such person, alone or in concert with another person,

7. knowingly and intentionally

8. obtained an exchange or refund, or attempted to obtain an exchange or refund, for merchandise which had not been purchased from the mercantile establishment.]

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