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 Distribution and Display to a Minor of Obscene Matter.

Distribution and Display to a Minor of Obscene Matter occurs when an adult, knowing the character of the material, knowingly and intentionally distributes, offers to distribute, or displays obscene material to a minor.

For purposes of this Count, “display” means to show, exhibit or expose material, in a manner visible to the general or invited public, including minors.

For purposes of this Count, “distribute” means to transfer possession, transport, transmit, sell or rent, with or without some kind of payment.

For purposes of this charge, obscene matter means matter that:

(1) An average person, applying community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest; or

(2) An average person, applying community standards, would find depicts or describes, in a patently offensive way, sexually explicit conduct; and

(3) A reasonable person would find, taken as a whole, lacks serious literary, artistic, political or scientific value.

“Prurient” means characterized by, exhibiting, or arousing inappropriate, inordinate, or unusual sexual desire; or having or showing too much interest in sex.

Therefore, for you to find the defendant guilty, the State must overcome the presumption of innocence and prove beyond a reasonable doubt that:

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

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

3. the defendant

4. knowingly and intentionally,

5. distributed, offered to distribute, or displayed obscene material

6. to a minor, that is, a person younger than eighteen,

7. and the defendant knew the obscene character of the material.

{[Insert, if applicable]: The defendant has asserted an affirmative defense, to the effect that the obscene material was [concealed from minors’ view] [displayed after the defendant took reasonable steps to ascertain the age of the minor]. The defendant must show that:

1. The obscene material was displayed in an area from which minors are physically excluded and when the material is displayed there, it cannot be viewed by a minor from nonrestricted areas; or

2. The obscene material was covered by a device, commonly known as a “blinder rack,” such that the lower two thirds of the cover of the material is not exposed to view; or

3. The obscene material was enclosed in an opaque wrapper such that the lower two thirds of the cover of the material was not exposed to view, or;

4. The obscene material was displayed or distributed after taking reasonable steps to receive, obtain or check an adult identification card, such as a driver’s license or other technically or reasonably feasible means of verification of age.

If the evidence on these matters is enough to raise a reasonable doubt in your mind, then, in addition to proving the elements of the offense, the State must prove beyond a reasonable doubt that the elements of the affirmative defense are untrue. If the State has failed to prove that the defense is untrue beyond a reasonable doubt, your verdict must be not guilty.}

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