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 Employment or Use of a Minor to Produce Obscene Matter or Assist in Doing Sexually Explicit Conduct.

 Employment or Use of a Minor to Produce Obscene Matter or Assist in Doing Sexually Explicit Conduct occurs when an adult, who knows the victim is a minor or fails to exercise reasonable care in determining the age of a minor: hires, employs or uses such minor to produce obscene material, or has the minor do or assist in doing any sexually explicit conduct.

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

(1) An average person, applying contemporary adult 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 that

(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.

 For the purposes of this charge, “sexually explicit conduct” means an ultimate sexual act, normal or perverted, actual or simulated, including sexual intercourse, sodomy, oral copulation, sexual bestiality, sexual sadism and masochism, masturbation, excretory functions and lewd exhibition of the genitals.

 To find the defendant guilty, the State must overcome the defendant’s 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, who was an adult,

4. while knowing the alleged victim was a minor or failing to exercise reasonable care in determining the age of a minor,

5. either:

a. hired, employed or used such minor to produce obscene material; or,

b. had the minor do or assist in doing sexually explicit conduct.

 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