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 has charged the defendant with Use of Obscene Matter with Intent to Seduce a Minor.

“Use of Obscene Matter with Intent to Seduce a Minor” occurs when an adult, having knowledge of the character of the matter, who knows or believes that a person is a minor at least four years younger than the adult, distributes, offers to distribute, or displays by any means any obscene matter to the person who is known or believed to be a minor at least four years younger than the adult, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor.

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

(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.

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

4. was an adult,

5. having knowledge of the character of the obscene matter,

6. who knew or believed that [insert name(s) of victim(s)] was a minor at least four years younger than the defendant, and

7. distributed, offered to distribute, or displayed by any means the obscene matter,

8. to [insert name(s) of victim(s)], who the defendant knew or believed to be a minor at least four years younger than the defendant,

9. and such distribution, offer to distribute, or display was undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor.

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