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. \_\_\_\_

The defendant has asserted, first, that [he] [she] was the occupant of the property, second, that [insert name of victim] attempted to gain access to the defendant’s home and third, that the defendant acted in self-defense. The defendant has introduced evidence in support of that position.

You are instructed that—although the defendant does not have to prove [his] [her] innocence—when asserting the doctrine of self-defense, [he] [she] is required to introduce sufficient evidence to produce in your mind a reasonable doubt on the issue and that the [killing] [wounding] may have resulted from [his] [her] acting in self-defense. The defendant must present evidence that:

1. The defendant was not the aggressor and did nothing to provoke the attack;

2. The intruder threatened the defendant with imminent physical violence or the commission of a felony;

3. [He] [She] believed, based upon all the circumstances [he] [she] perceived at the time deadly force was used, that such force was necessary;

4. Considering all the circumstances surrounding the use of deadly force, another person, similarly situated, could have reasonably formed the same belief (i.e., that such force was necessary;

5. The defendant’s actions were proportionate to the danger.

If you find that the defendant has produced evidence on these matters sufficient to cause you a reasonable doubt as to [his] [her] guilt or culpability, then the State must prove beyond a reasonable doubt that the defendant did not, in fact, act in self-defense. If the State fails to prove this, then you must enter a verdict of not guilty as to Count \_\_ of the indictment.

GIVEN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFUSED:\_\_\_\_\_\_\_\_\_\_\_\_\_

MODIFIED:\_\_\_\_\_\_\_\_\_\_\_\_

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JUDGE