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 introduced evidence that [he] [she] lacked criminal intent in this case because [he] [she] was under duress, or was compelled or coerced to commit the act charged. You are instructed that, in general, an act that would otherwise be a crime may be excused if it was done under compulsion or duress, because there is then no criminal intent. You are cautioned again that the defendant does not have the burden of proving duress or compulsion beyond a reasonable doubt or even by a preponderance of the evidence; once the defendant has given evidence sufficient to raise a reasonable doubt as to [his] [her] intent, the burden is on the State to prove beyond a reasonable doubt that there was no duress or compulsion.

The compulsion or coercion that will excuse an otherwise criminal act must be present, and imminent or impending, and such as would induce a well-grounded apprehension of death or serious bodily harm if the criminal act is not done; it must be continuous; and there must be no reasonable opportunity to escape the compulsion without committing the crime. The mere threat of a future injury is not enough.

If, therefore, you find that the defendant has provided sufficient evidence to raise a reasonable doubt in your mind as to whether [he] [she] intended to commit the crime willfully and voluntarily, then the State must prove beyond a reasonable doubt that the duress, or compulsion, or coercion

1. did not exist; or

2. was not present at the time of the act; or

3. was not continuous, in other words, there was a break or letup in the compulsion;

4. and that the defendant had a reasonable opportunity to escape the compulsion without committing the crime.

If the State proves to your satisfaction that the duress or compulsion was not such as to induce a well-grounded apprehension of death or serious bodily harm unless the defendant committed the criminal act, then you may find the defendant guilty as charged. If, on the other hand, you have a reasonable doubt about the voluntariness of the defendant’s conduct based on the presence of duress or compulsion, then you should find the defendant not guilty.

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

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

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

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JUDGE