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 that [he] [she] acted in self-defense, and 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 the defendant 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. [He] [She] believed, based upon all the circumstances [he] [she] perceived at the time deadly force was used, that [he] [she] was at imminent risk of death or serious bodily injury, and that such force was necessary;

3. Considering all the circumstances surrounding the use of deadly force, another person, similarly situated, could have reasonably formed the same belief (i.e., that there was an imminent risk of death or serious bodily injury and that such force was necessary;

4. 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 the defendant’s 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