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. \_\_\_\_

 If you believe the State has proven beyond a reasonable doubt that the defendant killed [insert name(s) of victim(s)] in [insert county] County, West Virginia, and did so unlawfully, intentionally, maliciously and by imprisonment then you may find the defendant guilty of First Degree Murder.

 The essential difference between Second Degree Murder and First Degree Murder by Imprisonment is the element of imprisonment. To kill by imprisonment means the defendant in some manner restrained the decedent such that the defendant expected and desired the restraint to result in the decedent’s death.

 To find the defendant guilty of First Degree Murder, the State must prove beyond a reasonable doubt that:

1. he defendant

2. killed [insert name(s) of victim(s)],

3. in [insert county] County, West Virginia,

4. unlawfully,

5. intentionally,

6. maliciously,

7. and by imprisonment.

 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