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 starvation then you may find the defendant guilty of First Degree Murder.

The essential difference between Second Degree Murder and First Degree Murder by Starvation is the element of starvation. To kill by starvation means the defendant in some manner deprived the decedent of food, water, or other necessary sustenance with the knowledge and purpose that the deprivation kills the decedent.

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

1. the 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 starvation.

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:\_\_\_\_\_\_\_\_\_\_\_\_

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JUDGE