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. \_\_\_\_

 Count \_\_ of the indictment charges the defendant with Domestic Battery. You may return one of two verdicts under this Count of the indictment:

(1) guilty of Domestic Battery; or

(2) not guilty.

 Domestic Battery occurs when any family or household member unlawfully and intentionally makes physical contact of an insulting or provoking nature with his or her family or household member, or unlawfully and intentionally causes physical harm to a family or household member.

 “Family member” or “Household member” means a current or former spouse, current or former sexual or intimate partner, a person with whom the defendant has a child in common, a person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant’s child or ward, or a member of the defendant’s household at the time of the offense.

 The burden is on the State to prove the defendant’s guilt beyond a reasonable doubt and the defendant is not required to prove [himself] [herself] innocent. [He] [She] is presumed by the law to be innocent of this charge and this presumption remains with [him] [her] throughout the entire trial.

 Before the defendant can be convicted of Domestic Battery, the State must overcome the presumption that the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant,

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

3. on or about the \_\_ day of [insert month], [insert year],

4. unlawfully and intentionally

5. {made physical contact of an insulting or provoking nature with [insert name(s) of victim(s)]} {caused physical harm to the person of [insert name(s) of victim(s)]},

6. who was a family or household member,

7. of which family or household the defendant was also a member.

 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 of Domestic Battery as charged. 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