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 with force capable of causing physical pain or injury to a 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 with force capable of causing physical pain or injury to [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