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 Assault. You may return one of two verdicts under this Count of the indictment:

(1) guilty of Domestic Assault; or

(2) not guilty.

 Domestic Assault occurs when a person unlawfully attempts to use force capable of causing physical pain or injury to another family or household member, or unlawfully commits an act which places the family or household member in reasonable apprehension of immediately suffering physical pain or injury.

 “Family member” or “Household member” means a current or former spouse, a 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 Assault 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. did unlawfully {attempt to use force capable of causing physical pain or injury to [insert name(s) of victim(s)], who was a family or household member} {commit an act which places [insert name(s) of victim(s)], a family or household member, in reasonable apprehension of immediately suffering physical pain or injury},

5. 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 of Domestic Assault you may find defendant guilty 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