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 Financial Exploitation of an Elderly Person, Protected Person, or Incapacitated Adult. You may return one of two verdicts under this Count of the indictment:

(1) guilty of Financial Exploitation of [an Elderly Person] [a Protected Person] [an Incapacitated Adult]; or

(2) not guilty.

Financial Exploitation of an Elderly Person, a Protected Person, or an Incapacitated Adult occurs when a person financially exploits an an Elderly Person, a Protected Person, or an Incapacitated Adult.

“Elderly Person” means a person who is sixty-five years or older.

“Incapacitated Adult” means any person who by reason of physical, mental or other infirmity is unable to physically carry on the daily activities of life necessary to sustaining life and reasonable health.

“Protected person” means an adult individual, 18 years of age or older, who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity to: (1) meet the essential requirements for [his] [her] health, care safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (2) manage property or financial affairs or to provide for [his] [her] support or for the support of legal dependents without the assistance or protection of a conservator.

“Financial exploitation or financially exploit” means the intentional misappropriation or misuse of funds or assets of an elderly person, a protected person, or an incapacitated adult, but shall not apply to a transaction or disposition of funds or assets where the accused made a good-faith effort to assist the elderly person, protected person or incapacitated adult with the management of [his] [her] money or other things of value.

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 the defendant throughout this trial.

To prove the defendant guilty of Financial Exploitation of an [Elderly Person] [Protected Person] [Incapacitated Adult], 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], through the \_\_ day of [insert month], [insert year],

4. financially exploited,

5. [insert name(s) of victim(s)], {[an incapacitated adult] [an elderly person] [a protected person]}.

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