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 First Degree Arson.

 First Degree Arson occurs when a person willfully and maliciously sets fire to or burns, or causes to be burned, or aids, counsels, procures, persuades, incites, entices or solicits another person to burn a dwelling, whether occupied, unoccupied, or vacant, or any outbuilding, whether his or her property or that of another.

 “Willfully and maliciously” means an intentional as distinguished from an accidental burning and without lawful reason, cause, or excuse.

 “Dwelling” means any building or structure intended for habitation or lodging, in whole or in part, regularly or occasionally. It shall include, but not be limited to, any house, apartment, hotel, dormitory, hospital, nursing home, jail, prison, mobile home, house trailer, modular home, factory-built home or self-propelled motor home;

 “Outbuilding” means any building or structure which adjoins, is part of, belongs to, or is used in connection with a dwelling, and includes, but is not limited to, any garage, shop, shed, barn or stable.

 The burden is on the State to prove the defendant’s guilt beyond a reasonable doubt; 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 First Degree Arson, the State must overcome the presumption that the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant,

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

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

4. willfully and maliciously

5. [set fire to or burned] [caused to be burned] [aided, counseled, procured, persuaded, incited, enticed, or solicited another person to burn]

6. a dwelling or outbuilding,

 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 First Degree Arson, 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