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 Second Degree Arson.

 Second Degree Arson occurs when a person willfully and maliciously sets fire to or burns, or who causes to be burned, or who aids, counsels, procures, persuades, incites, entices, or solicits any person to burn a building or structure of any class or character that is not a dwelling house or 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.

 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 Second Degree Arson, the State must overcome the presumption 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 a person to burn]

6. a building or structure other than a dwelling house or associated 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 Second 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:\_\_\_\_\_\_\_\_\_\_\_\_

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 JUDGE