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 Third Degree Arson.

Third 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 another person to burn, any personal property of any class or character, which is worth at least five hundred dollars, and which is the property of another person.

“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 Third 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. personal property, which is

7. valued at five hundred dollars or more, and,

8. which is the property of another person, in this case [insert name(s) of victim(s)].

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 Third 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