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 Fourth Degree Arson.

Fourth Degree Arson occurs when a person willfully and maliciously attempts to set fire to or burn, or attempts to cause to be burned, or attempts to aid, counsel, procure, persuade, incite, entice, or solicit another person to burn a building or structure, whether a dwelling, an outbuilding, or not, and whether occupied, unoccupied, or vacant, and regardless of ownership, or personal property of any class or character, which is valued at $500 or more, and which is the property of another person; or when one commits any act preliminary to or in furtherance of such conduct.

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 Fourth 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. [attempted to set fire to or burn] [attempted to cause to be burned] [attempted to aid, counsel, procure, persuade, incite, entice or solicit to burn],

6. [a building or structure,] [personal property of any kind which had a value of $500.00 or more, and which belonged to another person, in this case [insert name(s) of victim(s)];

7. or committed an act preliminary to or in furtherance of such conduct.

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:\_\_\_\_\_\_\_\_\_\_\_\_

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JUDGE