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. \_\_\_\_

 As used in these instructions, lawfulness, intent, malice, premeditation, and deliberation are defined by the defendant’s mental state and not by an arbitrary amount of time preceding the killing. It is sufficient that at the moment of the killing itself these elements existed. If you agree unanimously that the State has proven any of these mental states existed at that time you may deliver a verdict appropriate to the mental state or states you find.

 However, the Court cautions you to be mindful of the fact that an opportunity for these mental states to exist does not mean that in actuality they did exist. Your job as a juror is to decide from the totality of the circumstances whether the State has proven beyond a reasonable doubt that the required mental states actually did exist.

 Furthermore, although these mental states do not require any fixed period of time, be mindful of the fact that premeditation and deliberation, by their very meaning, require the passage of some amount of time prior to the killing for the defendant to have actually reflected upon the act, and to have thought about whether [he] [she] should proceed, and to have then chosen to kill the decedent.

GIVEN:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

REFUSED:\_\_\_\_\_\_\_\_\_\_\_\_\_

MODIFIED:\_\_\_\_\_\_\_\_\_\_\_\_

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 JUDGE