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. \_\_\_\_

 Malicious Assault (including lesser offenses) (effective June 29, 2017)

Count \_\_ of the indictment charges the defendant with Malicious Assault. You may return one of five verdicts under this Count of the indictment:

1. guilty of Malicious Assault;

2. guilty of Unlawful Assault;

3. guilty of Battery;

4. guilty of Assault; or

5. not guilty.

 Malicious Assault occurs when a person maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury to another with the intent to permanently maim, permanently disfigure, permanently disable, or kill the other person. Malice is a legal term of art. It is the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will infer an evil intent, a condition of the mind showing a heart regardless of social duty and fatally bent on mischief.

 Unlawful Assault occurs when a person unlawfully, but not maliciously, shoots, stabs, cuts, wounds, or by any means causes bodily injury to another with intent to permanently maim, permanently disfigure, permanently disable, or kill the other person.

 Battery occurs when a person unlawfully and intentionally makes physical contact of an insulting or provoking nature to another person, or unlawfully and intentionally causes physical harm to another person.

 Assault occurs when a person unlawfully and intentionally attempts to commit a violent injury to another person or unlawfully commits an act which places another person in reasonable apprehension of immediately receiving a violent injury.

 The burden is on the State to prove the defendant’s guilt beyond a reasonable doubt and 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 [him] [her] throughout the entire trial.

 Before the defendant can be convicted of Malicious Assault, the State must overcome the presumption that the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant

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

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

4. did maliciously (cut) (stab) (wound) (shoot) (or by any means) cause bodily injury to

5. [insert name(s) of victim(s)],

6. with the intent to permanently maim, permanently disfigure permanently disable, or kill

7. [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, you may find the defendant guilty of Malicious Assault 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 of Malicious Assault (and deliberate on the lesser included offense of Unlawful Assault as instructed).

 Before the defendant can be convicted of Unlawful Assault, the State must overcome the presumption that the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant,

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

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

4. did unlawfully but not maliciously (cut) (stab) (wound) (shoot) (by any means) cause bodily injury to [insert name(s) of victim(s)],

5. with the intent to permanently maim, permanently disfigure, permanently disable, or kill

6. [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, you may find the defendant guilty of Unlawful Assault as charged. If you have a reasonable doubt of the truth of the charge as to any one or more of these elements, you must find the defendant not guilty of Unlawful Assault, and deliberate on the lesser included offense of Battery as instructed.

 Before the defendant can be convicted of Battery, the State must overcome the presumption that the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant

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

3. on or about the \_\_day of [insert month], [insert year],

4. did unlawfully and intentionally [make physical contact of an insulting or provoking nature] [cause physical pain or injury] to

5. [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, you may find the defendant guilty of Battery as charged. 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 of Battery (and deliberate on the lesser included offense of Assault as instructed).

 Before the defendant can be convicted of Assault, the State must overcome the presumption that the defendant is innocent and prove beyond a reasonable doubt that:

1. the defendant

2. in [insert county] County, West Virginia

3. on or about the \_\_day of [insert month], [insert year],

4. did unlawfully {attempt to commit a violent injury to [insert name(s) of victim(s)]} {unlawfully commit an act that placed [insert name(s) of victim(s)] in reasonable apprehension of immediately receiving a violent injury}.

 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 of Assault as charged. 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