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 Unlawful Assault. You may return one of four verdicts under this Count of the indictment:

1. guilty of Unlawful Assault;

2. guilty of Battery;

3. guilty of Assault; or

4. not guilty.

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 or permanently disable, or kill the other person.

Battery occurs when a person unlawfully and intentionally makes physical contact with force capable of causing physical pain or injury to the person of another, or unlawfully and intentionally causes physical pain or injury to another person.

Assault occurs when a person unlawfully and intentionally attempts to use physical force capable of causing physical pain or injury to the person of another or unlawfully commits an act which places another in reasonable apprehension of immediately suffering physical pain or 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 and this presumption remains with [him] [her] throughout the entire trial.

Before the defendant can be convicted of Unlawful Assault, the State must overcome the presumption 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

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 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 shall 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 with force capable of causing physical pain or injury) (cause physical pain or injury) to [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 use physical force capable of causing physical pain or 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 suffering physical pain or 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