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 Malicious Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel). You may return one of five verdicts under this Count of the indictment:

(1) guilty of Malicious Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel);

(2) guilty of Unlawful Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel);

(3) guilty of Battery of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel);

(4) guilty of Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel), or

(5) not guilty.

A “government representative” means any officer or employee of the state or a political subdivision thereof, or a person under contract with a state agency or political subdivision thereof.

A “health care worker” means any nurse, nurse practitioner, physician, physician assistant, or technician practicing at, and all persons employed by or under contract to a hospital, county or district health department, long-term care facility, physician’s office, clinic or outpatient treatment facility.

“Emergency service personnel” means any paid or volunteer firefighter, emergency medical technician, paramedic, or other emergency services personnel employed by or under contract with an emergency medical service provider or a state agency or political subdivision thereof.

A “utility worker” means any individual employed by a public utility or electric cooperative or under contract to a public utility, electric cooperative or interstate pipeline.

A “law enforcement officer” means (the Superintendent of the State Police) (the chief natural resources police officer of the Division of Natural Resources) (the sheriff of any West Virginia county) (an administrative deputy appointed by the chief natural resources police officer of the Division of Natural Resources) (the chief of any West Virginia municipal law-enforcement agency) (any duly authorized member of a law-enforcement agency authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, including campus police officers at state institutions of higher education, persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws and persons employed as rangers by resort area districts).

A “correctional employee” means any person employed by the West Virginia Department of Corrections, the West Virginia Regional Jail Authority, and the West Virginia Division of Juvenile Services, or by any entity which is under contract with these agencies and which provide services to incarcerated, detained, or housed persons.

Malicious Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) occurs when a person maliciously shoots, stabs, cuts, wounds, or by any means causes bodily injury with the intent to maim, disfigure, disable or kill (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) acting in [his] [her] official capacity and the person committing the malicious assault knows or has reason to know that the (Government Representative) (Health Care Worker) (Emergency Service Personnel) (Utility Worker) (Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) is acting in [his] [her] official capacity. 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 of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) occurs when any person unlawfully but not maliciously shoots, stabs, cuts, wounds, or by some other means causes (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) acting in [his] [her] official capacity bodily injury with the intent to maim, disfigure, disable or kill ([him] [her]) and the person committing the unlawful assault knows or has reason to know that the (Government Representative) (Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) is acting in [his] [her] official capacity.

Battery of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) occurs when a person unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) or unlawfully and intentionally causes physical harm to (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) acting in such capacity.

Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) occurs when a person unlawfully attempts to commit a violent injury to the person of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) or unlawfully commits an act which places (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) 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 of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel), 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 maliciously (cut) (stab) (wound) (shoot) (by any means) cause bodily injury,

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

7. [insert name(s) of victim(s)], (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel)

8. acting in [his][her] official capacity,

9. and the defendant knew or had reason to know that [insert name(s) of victim(s)] was acting in [his] [her] official capacity.

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 of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) 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 and deliberate on the lesser included offense of Unlawful Assault as hereinafter instructed.

Before the defendant can be convicted of Unlawful Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel), 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) or (by any means) cause bodily injury

5. to [insert name(s) of victim(s)], who was (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) acting in [his] [her] official capacity,

6. with the intent to maim, disfigure, disable, or kill [insert name(s) of victim(s)],

7. and the defendant knew or had reason to know that [insert name(s) of victim(s)] was acting in [his] [her] official capacity.

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 of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) 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 and deliberate on the lesser included offense of Battery of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel).

Before the defendant can be convicted of Battery of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel), 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, knowingly and intentionally (make physical contact of an insulting or provoking nature with) (unlawfully and intentionally cause physical harm to)

5. [insert name(s) of victim(s)], (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel)

6. who was acting in [his] [her] official capacity.

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 of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) 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 and deliberate on the lesser included offense of Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel).

Before the defendant can be convicted of Assault of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel), 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 {attempt to commit a violent injury to [insert name(s) of victim(s)]} {commit an act which placed [insert name(s) of victim(s)] in reasonable apprehension of immediately receiving a violent injury},

5. and [insert name(s) of victim(s)] was (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel),

6. acting in [his] [her] official capacity.

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 of (a Government Representative) (a Health Care Worker) (Emergency Service Personnel) (a Utility Worker) (a Law Enforcement Officer) (Correctional Employee) (Emergency Medical Service Personnel) 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