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. \_\_\_\_

 If you believe the State has proved beyond a reasonable doubt that the defendant killed [insert name(s) of victim(s)] in [insert county] County, West Virginia, and did so unlawfully, intentionally, and with malice, then you may find the defendant guilty of Second Degree Murder.

 The essential difference between Second Degree Murder and Voluntary Manslaughter is malice. A killing is malicious if, more than being unlawful, the circumstances indicate a wanton disregard for human life and societal duty.

 “Unlawful” means it was not objectively reasonable for the defendant to commit an action resulting in death. Malice requires more than this—that the defendant’s action was not subjectively reasonable, either. The defendant’s purpose for intentionally taking a life was unjustifiable.

 To find the defendant guilty of Second Degree Murder the State must prove beyond a reasonable doubt that:

1. the defendant

2. killed [insert name(s) of victims(s)],

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

4. unlawfully,

5. intentionally,

6. and with malice.

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

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

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 JUDGE