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 Driver, Motorman, Conductor, Captain, Pilot, or Other Person in Charge of any Vehicle or Boat Used for Public Conveyance. Where the alleged victim operates such vehicle or boat, I shall refer to him or her as the “Operator of a Public Conveyance,” or simply “Operator.”

 You may return one of five verdicts under this Count of the indictment:

(1) guilty of Malicious Assault of the Operator of a Public Conveyance;

(2) guilty of Unlawful Assault of the Operator;

(3) guilty of Battery of the Operator;

(4) guilty of Assault of the Operator; or

(5) not guilty.

 Malicious Assault of an Operator of a Public Conveyance occurs when a person maliciously shoots, stabs, cuts or wounds, or by any means causes bodily injury, with the intent to permanently maim, permanently disfigure, permanently disable, or kill any Operator acting in his or her official capacity, and the defendant knew or had reason to know that the person was the Operator of a public conveyance acting in his or 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 the 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 the Operator of a Public Conveyance 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 Operator of a public conveyance acting in his or her official capacity, and the defendant knew or had reason to know that the person was an Operator acting in an official capacity.

 Battery of the Operator of a Public Conveyance occurs when a person unlawfully, knowingly and intentionally makes physical contact of an insulting or provoking nature with, or unlawfully and intentionally causes physical harm to the Operator of a public conveyance acting in his or her official capacity, and the defendant knew or had reason to know that the person was an Operator of a public conveyance.

 Assault of the Operator of a Public Conveyance occurs when a person unlawfully attempts to commit a violent injury to an Operator, or commits an act which places an Operator acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury, and the person committing the assault knew or had reason to know that the person was an Operator of a public conveyance.

 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 an Operator of a Public Conveyance, 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 [insert other means]} and 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)], who was acting in an official capacity as an Operator of a Public Conveyance;

8. and the defendant had reason to know that [insert name(s) of victim(s)] was an Operator of a Public Conveyance.

 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 of Malicious Assault, you may find defendant guilty 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 of Malicious Assault, you shall find the defendant not guilty of Malicious Assault (and deliberate on the lesser included offense of Unlawful Assault of an Operator as instructed).

 Before the defendant can be convicted of Unlawful Assault of an Operator of a Public Conveyance, 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 [insert other means] cause bodily injury to

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

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

7. [insert name(s) of victim(s)], who was acting in an official capacity as an Operator of a Public Conveyance,

8. and the defendant had reason to know that [insert name(s) of victim(s)] was the Operator.

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

 Before the defendant can be convicted of Battery of an Operator of a Public Conveyance, 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,

5. with the person of [insert name(s) of victim(s)], who was acting in an official capacity as an Operator of a Public Conveyance,

6. and the defendant had reason to know that [insert name(s) of victim(s)] was an Operator of a Public Conveyance.

 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 of Battery, you may find the defendant guilty 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 an Operator as instructed).

 Before the defendant can be convicted of Assault of a Driver, Motorman, Conductor, Captain, Pilot, or Other Person in Charge of any Vehicle Used for Public Conveyance, 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 {attempt to commit a violent injury to [insert name(s) of victim(s)]} {place [insert name(s) of victim(s)] in reasonable apprehension of immediately receiving a violent injury},

5. and [insert name(s) of victim(s)] was an Operator of a Public Conveyance,

6. who was acting in an official capacity as an Operator,

7. and the defendant had reason to know that [insert name(s) of victim(s)] was an Operator of a Public Conveyance.

 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 of Assault, you may find defendant guilty as charged. If you have a reasonable doubt of the truth of the charge as to any one or more of these elements of Assault of an Operator, you shall find the defendant not guilty.

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

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

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

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 JUDGE