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 Intentional and Malicious Abuse or Neglect of an Incapacitated Adult by a Caregiver Causing Bodily Injury. You may return one of two verdicts under this Count of the indictment:

(1) guilty of Intentional and Malicious [abuse] [neglect] of an Incapacitated Adult by a Caregiver Causing Bodily Injury; or

(2) not guilty.

 “Intentional and Malicious Abuse or Neglect” in this context occurs when a caregiver intentionally and maliciously abuses or neglects an incapacitated adult and causes that adult a bodily injury.

 “Abuse” means the intentional infliction of bodily injury on an incapacitated adult.

 “Neglect” means the unreasonable failure by a caregiver to provide the care necessary to assure the physical safety or health of an incapacitated adult.

 “Bodily injury” means substantial physical pain, illness or any impairment of physical condition.

 “Caregiver” means any person who has assumed the legal responsibility or a contractual obligation for the care of an incapacitated adult, or has voluntarily assumed responsibility for the care of an incapacitated adult. This includes facilities operated by any public or private agency, organization, or institution which provide services to, and have assumed responsibility for, the care of an incapacitated adult.

 “Incapacitated Adult” means any person 18 years of age or older who by reason of advanced age, physical, mental or other infirmity is unable to carry on the daily activities of life necessary to sustaining life and reasonable health.

 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.

 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 Intentional and Malicious [abuse] [neglect] of an Incapacitated Adult by a Caregiver Causing Bodily Injury, 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], through the \_\_ day of [insert month], [insert year],

4. intentionally and maliciously [neglected] [abused]

5. [insert name(s) of victim(s)], who was an incapacitated adult,

6. causing bodily 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 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.

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

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

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

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 JUDGE