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 proven 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, maliciously, and by lying in wait, then you may find the defendant guilty of First Degree Murder.

 The essential difference between Second Degree Murder and First Degree Murder by Lying in Wait is the element of lying in wait. Lying in wait requires two things (1) the physical act of concealing one’s presence to allow for secret observation and (2) the mental state of doing so for the purpose of killing the decedent.

 To find the defendant guilty of First Degree Murder by Lying in Wait, the State must prove beyond a reasonable doubt sufficient to overcome the presumption of innocence that:

1. the defendant

2. killed [insert name(s) of victim(s),

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

4. unlawfully,

5. intentionally,

6. maliciously,

7. and was lying in wait.

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

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

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

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 JUDGE