

14-2207. Aggravated assault on a peace officer; attempted battery with intent to commit a violent felony; essential elements.

For you to find the defendant guilty of aggravated assault on a peace officer with intent to [kill] [or]¹ [commit _____]² [as charged in Count _____¹],³ the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. The defendant intended to commit the crime of battery against _____ (*name of peace officer*) by _____;⁴
A battery consists of intentionally touching or applying force in a rude, insolent, or angry manner.⁵
2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;
3. The defendant also intended to [kill] [or]¹ [commit _____]² on _____ (*name of peace officer*);
4. At the time, _____ (*name of peace officer*) was a peace officer and was performing duties of a peace officer;⁶
5. The defendant knew _____ (*name of peace officer*) was a peace officer;
6. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. Use only the applicable bracketed alternatives.
2. Insert the name of the felony or felonies in the disjunctive. This instruction is to be used for assault with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual penetration, robbery or burglary. The essential elements of the felony or felonies must also be given immediately following this instruction. For mayhem, see UJI 14-314 NMRA. For criminal sexual penetration in the first, second or third degree, see UJI 14-941 to 14-961 NMRA. For robbery, see UJI 14-1620 NMRA. For burglary, see UJI 14-1630 NMRA. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used.
3. Insert the count number if more than one count is charged.
4. Use ordinary language to describe the touching or application of force.
5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the issue of “lawfulness” involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184 NMRA.
6. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978. If there is an issue as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216 NMRA has been incorporated into this instruction as an element. If some other mistake of fact is raised as a defense, see UJI 14-5120 NMRA.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.06 NMSA 1978; UJI 14-2207 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as amended by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 20-8300-004, effective for all cases pending or filed on or after December 31, 2020.]