

14-2200B. Assault on a peace officer; attempted battery; threat or menacing conduct; essential elements.¹

For you to find the defendant guilty of assault on a peace officer [as charged in Count _____]², 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 _____³;

A battery consists of intentionally touching or applying force in a rude, insolent, or angry manner⁴.

2. The defendant began to do an act which constituted a substantial part of the battery but failed to commit the battery;

OR

1. The defendant _____ (*describe unlawful act, threat or menacing conduct*);

2. The defendant's conduct caused _____ (*name of peace officer*) to believe the defendant was about to intrude on _____'s (*name of peace officer*) bodily integrity or personal safety by touching or applying force to _____ (*name of peace officer*) in a rude, insolent or angry manner;

3. A reasonable person in the same circumstances as _____ (*name of peace officer*) would have had the same belief;

AND

4. At the time, _____ (*name of peace officer*) was a peace officer and was performing duties of a peace officer⁵;

5. The defendant knew _____ (*name of peace officer*) was a peace officer.

6. The defendant's conduct [threatened the safety of _____ (*name of peace officer*);]⁶

[or]

[challenged the authority of _____ (*name of peace officer*);]

7. This happened in New Mexico on or about the _____ day of _____, _____.

USE NOTES

1. This instruction combines the elements of UJI 14-2200 and 14-2200A NMRA. If the evidence supports both of the theories of assault set forth in UJI 14-2200 and 14-2200A NMRA, use this instruction.

2. Insert the count number if more than one count is charged.

3. Use ordinary language to describe the touching or application of force.

4. In *State v. Padilla*, 1996-NMCA-072, 122 N.M. 92, 920 P.2d 1046, the Supreme Court held that to satisfy the Section 30-22-24 NMSA 1978 requirement that the act be "unlawful" the state must prove "injury or conduct that threatens an officer's safety or meaningfully challenges his or her authority." If any other issue of lawfulness is raised 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 or another, see UJI 14-5181 to UJI 14-5184 NMRA.

5. “Peace officer” is defined in Subsection C of Section 30-1-12 NMSA 1978 and UJI 14-2216 NMRA. 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.

6. Use only applicable alternative or alternatives.

[Adopted by Supreme Court Order No. 16-8300-008, effective for all cases pending or filed on or after December 31, 2016.]