

14-2203. Aggravated assault on a peace officer; attempted battery or threat or menacing conduct with a deadly weapon; essential elements.¹

For you to find the defendant guilty of aggravated assault on a peace officer by use of a deadly weapon [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 manner.⁴

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 officer;⁵

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

6. The defendant's conduct⁴

[threatened the safety of _____ (*name of peace officer*);]⁵

[or]⁶

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

7. The defendant used a [_____]⁷ [deadly weapon. The defendant used a _____ (name of object). A _____ (name of object) is a deadly weapon only if you find that a _____ (name of object), when used as a weapon, could cause death or great bodily harm⁸]⁹;

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

USE NOTES

1. This instruction combines the elements of UJI 14-2201 and 14-2202 NMRA. If the evidence supports both of the theories of assault set forth in UJI 14-2201 and 14-2202 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 of 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. 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.

7. Insert the name of the weapon. Use this alternative only if the deadly weapon is specifically listed in Section 30-1-12B NMSA 1978.

8. UJI 14-131 NMRA, the definition of “great bodily harm,” must also be given.

9. This alternative is given only if the object used is not specifically listed in Section 30-1-12B NMSA 1978.

[Adopted, effective October 1, 1976; UJI Criminal Rule 22.02 NMSA 1978; UJI 14-2203 SCRA; as amended, effective January 15, 1998; February 1, 2000; 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. 21-8300-031, effective for all cases pending or filed on or after December 31, 2021.]