

14-310. Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a felony; essential elements.¹

For you to find the defendant guilty of aggravated assault with intent to commit _____² [as charged in Count _____]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 victim*) by _____⁴;

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner⁵.

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 intentionally _____ (describe unlawful act, threat or menacing conduct);

2. The defendant's conduct caused _____ (*name of victim*) to believe the defendant was about to intrude on _____'s (*name of victim*) bodily integrity or personal safety by touching or applying force to _____ (*name of victim*) in a rude, insolent or angry manner⁵;

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

AND

4. The defendant also intended to commit the crime of _____²;

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

USE NOTES

1. This instruction combines the essential elements in UJI 14-308 NMRA and UJI 14-309 NMRA.

2. Insert the name of the felony. If there is more than one felony, insert the names of the felonies in the disjunctive. The essential elements of each felony must also be given immediately following this instruction. 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 NMRA to UJI 14-5184 NMRA.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.09 NMSA 1978; UJI 14-310 SCRA; as amended, effective January 15, 1998; as amended by Supreme Court Order No. 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]