

14-313. Aggravated assault; attempted battery; threat or menacing conduct with intent to commit a violent felony; essential elements.¹

For you to find the defendant guilty of aggravated assault with intent to [kill] [or]² [commit _____³] [as charged in Count _____⁴], 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 _____;⁵

A battery consists of intentionally touching or applying force in a rude, insolent or angry manner.⁶

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 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 manner;⁶

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 [kill] [or]² [commit _____³] on _____
(*name of victim*);

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

USE NOTES

1. This instruction combines the essential elements set forth in UJI 14-311 NMRA and UJI 14-312 NMRA, for use when the two forms of the offense are charged in the alternative.

2. Use only the applicable bracketed alternatives.

3. 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. To instruct on the elements of an uncharged offense, UJI 14-140 NMRA must be used. For mayhem, see UJI 14-314 NMRA. For criminal sexual penetration in the first, second or third degree, see UJIs 14-941 to 14-961 NMRA. For robbery, see UJI 14-1620 NMRA. For burglary, see UJI 14-1630 NMRA.

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

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

6. 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 UJIs 14-5181 to 14-5184 NMRA.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.06 NMSA 1978; UJI 14-307 SCRA; as amended, effective September 1, 1988; January 15, 1998; 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. 21-8300-025, effective for all cases pending or filed on or after December 31, 2021.]