

14-303. Assault; attempted battery; threat or menacing conduct; essential elements.¹

For you to find the defendant guilty of assault [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 victim*) 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 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 manner⁴; and

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

AND

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

USE NOTES

1. This instruction sets forth the elements of two of the types of assault in Section 30-3-1 NMSA 1978; one type involves attempted battery and the other involves an unlawful act, a threat or menacing conduct which causes another to reasonably believe he is about to be touched or have force applied to him. If the evidence supports both of these theories of assault, 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. If the "unlawfulness" of the act is in issue, add unlawfulness as an element as provided by Use Note 1 of UJI 14-132. In addition, UJI 14-132 is given. If the issue of "lawfulness" involves self-defense or defense of another, see UJI 14-5181 to UJI 14-5184.

[Adopted effective October 1, 1976; UJI Criminal Rule 3.02 NMSA 1978; UJI 14-303 SCRA; as amended, effective 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.]