

14-306. Aggravated assault; attempted battery; threat or menacing conduct with a deadly weapon; essential elements.¹

For you to find the defendant guilty of aggravated assault by use² of a deadly weapon [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 manner.⁵

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;⁵

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

AND

4. The defendant used² a [_____]⁶ [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 harm⁷];⁸ and

5. 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 a threat or menacing conduct which causes another to reasonably believe he is about to be struck. If the evidence supports both of these theories of assault, use this instruction.

2. If use of the weapon is in issue, UJI 14-135 NMRA, the definition of "use," must also be given.

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 to UJI 14-5184 NMRA.

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

7. UJI 14-131 NMRA, the definition of "great bodily harm," must also be given.

8. This alternative is given only if the object used is not a “deadly weapon” which is specifically listed in Section 30-1-12(B) NMSA 1978.
[Adopted effective October 1, 1976; UJI Criminal Rule 3.05 NMSA 1978; UJI 14-306 SCRA; as amended, effective January 15, 1998; February 1, 2000; 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. S-1-RCR-2023-00030, effective for all cases pending or filed on or after December 31, 2023.]