

1 **14-2211. Battery upon a peace officer; essential elements.**

2 For you to find the defendant guilty of a battery upon a peace officer [as charged in Count
3 _____]¹, the state must prove to your satisfaction beyond a reasonable doubt each of the
4 following elements of the crime:

5 1. The defendant intentionally touched or applied force to
6 _____ (*name of peace officer*) by _____²;

7 [2. The defendant's act was unlawful;]³

8 3. At the time, _____ (*name of peace officer*) was a peace
9 officer and was performing the duties of a peace officer;

10 4. The defendant knew _____ (*name of peace officer*) was a peace
11 officer⁴;

12 5. The defendant's conduct caused
13 [an actual injury to _____ (*name of peace officer*)]⁵;

14 [or]

15 [an actual threat to the safety of _____ (*name of peace officer*)];

16 [or]

17 [a meaningful challenge to the authority of _____ (*name of peace*
18 *officer*)];

19 6. The defendant acted in a rude, insolent, or angry manner;

20 7. This happened in New Mexico on or about the _____ day of
21 _____, _____.

22 USE NOTES

23 1. Insert the count number if more than one count is charged.

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

2 3. In addition to the harm component of Element 5, the underlying battery must also
3 be “unlawful.” If the unlawfulness of the act is at issue, add unlawfulness as an element as provided
4 by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 is given. If the issue of “lawfulness”
5 involves self-defense or defense of another, *see* UJI 14-5181 to UJI 14-5184 NMRA.

6 4. “Peace officer” is defined in NMSA 1978, Section 30-1-12(C). If there is an issue
7 as to whether or not the victim was a peace officer, give UJI 14-2216 NMRA, which defines “peace
8 officer.” If there is an issue as to whether the officer was within the lawful discharge of the officer’s
9 duties, an instruction may need to be drafted. The mistake of fact referred to in prior UJI 14-2216
10 has been incorporated into this instruction as an element. If some other mistake of fact is raised as
11 a defense, *see* UJI 14-5120 NMRA.

12 5. Use only applicable alternative or alternatives.

13 [Adopted, effective October 1, 1976; UJI Criminal Rule 22.10 NMSA 1978; UJI 14 2211 SCRA;
14 as amended, effective January 15, 1998; November 1, 2001; as amended by Supreme Court Order
15 No. 10 8300 039, effective December 31, 2010; as amended by Supreme Court Order No. 19-
16 8300-016, effective for all cases pending or filed on or after December 31, 2019.]

17 **Committee commentary.** — *See* NMSA 1978, § 30-22-24 (1971). *See* commentaries to UJI
18 14-320 NMRA, UJI 14-2201 NMRA, UJI 14-2202 NMRA, and UJI 14-2203 NMRA.

19 *In State v. Padilla*, 1997-NMSC-022, ¶¶ 2, 11, 123 N.M. 216, 937 P.2d 492, the Supreme Court
20 held that to satisfy the Section 30-22-24 requirement that the act be “unlawful” the state must prove
21 “injury or conduct that threatens an officer’s safety or meaningfully challenges [~~his or her~~][their]
22 authority.” *See also State v. Jones*, 2000-NMCA-047, ¶ 1, 129 N.M. 165, 3 P.3d 142 (although
23 sufficient for conviction under the factual circumstances, whether spitting on an officer constitutes

1 a “meaningful challenge to authority” in a particular case is a jury question). The separate
2 “unlawfulness” requirement may be placed in issue under a justification defense or evidence
3 implicating the scenarios discussed in UJI 14-132 NMRA. *See, e.g., State v. Padilla,*
4 1983-NMCA-096, ¶ 15, 101 N.M. 78, 678 P.2d 706 (“In New Mexico, simple battery is a lesser
5 included offense of peace officer battery; defendant is entitled to an instruction on simple battery
6 if the evidence raises a factual issue of whether the peace officer used excessive force so as to take
7 ~~him~~[the peace officer] out of the scope of ~~his~~[the peace officer’s] lawful duties.” (*citing State*
8 *v. Gonzales*, 1982-NMCA-043, ¶¶ 9-11, 97 N.M. 607, 642 P.2d 210 (recognizing the right of self
9 defense against a peace officer using excessive force, thus negating the lawful discharge of the
10 officer’s duties))), *rev’d on other grounds*, 1984-NMSC-026, 101 N.M. 58, 678 P.2d 686.
11 The committee believed that it would be seldom, if ever, that a person would be charged with the
12 crime of assisting in assault on a peace officer during a riot or unlawful assemblage pursuant to
13 NMSA 1978, § 30-22-26 (1971) and, therefore, provided no instruction for the latter offense.
14 This instruction was amended in 2010 by adding a subjective knowledge element in accordance
15 with *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d 1119.
16 [As amended by Supreme Court Order No. 10-8300-039~~[-effective December 31, 2010]~~; as
17 amended by Supreme Court Order No. 19-8300-016~~[-effective for all cases pending or filed on or~~
18 ~~after December 31, 2019]~~; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]