

1 **14-306. Aggravated assault; attempted battery; threat or menacing conduct with a deadly**  
2 **weapon; essential elements.<sup>1</sup>**

3 For you to find the defendant guilty of aggravated assault by use<sup>2</sup> of a deadly weapon [as  
4 charged in Count \_\_\_\_\_],<sup>3</sup> the state must prove to your satisfaction beyond a reasonable  
5 doubt each of the following elements of the crime:

6 1. The defendant intended to commit the crime of battery against  
7 \_\_\_\_\_ (*name of victim*) by \_\_\_\_\_;<sup>4</sup>

8 A battery consists of intentionally touching or applying force in a rude, insolent or angry  
9 manner.<sup>5</sup>

10 2. The defendant began to do an act which constituted a substantial part of the battery  
11 but failed to commit the battery;

12 OR

13 1. The defendant \_\_\_\_\_ (*describe unlawful act, threat or menacing*  
14 *conduct*);

15 2. The defendant's conduct caused \_\_\_\_\_ (*name of victim*) to believe  
16 the defendant was about to intrude on \_\_\_\_\_'s (*name of victim*) bodily integrity or  
17 personal safety by touching or applying force to \_\_\_\_\_ (*name of victim*) in a rude,  
18 insolent or angry manner;<sup>5</sup>

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

21 AND

22 4. The defendant used<sup>2</sup> a [\_\_\_\_\_] <sup>6</sup> [deadly weapon. The defendant  
23 used a \_\_\_\_\_ (*name of object*). A \_\_\_\_\_ (*name of object*) is a

1 deadly weapon only if you find that a \_\_\_\_\_ (*name of object*), when used as a  
2 weapon, could cause death or great bodily harm <sup>7</sup>];<sup>8</sup> and

3 5. This happened in New Mexico on or about the \_\_\_\_\_ day of  
4 \_\_\_\_\_, \_\_\_\_\_.

5 USE NOTES

6 1. This instruction sets forth the elements of two of the types of assault in NMSA  
7 1978, Section 30-3-1[~~NMSA 1978~~]; one type involves attempted battery and the other involves a  
8 threat or menacing conduct which causes [~~another~~]a person to reasonably believe [~~he is~~]they are  
9 about to be struck. If the evidence supports both of these theories of assault, use this instruction.

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

12 3. Insert the count number if more than one count is charged.

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

14 5. If the “unlawfulness” of the act is in issue, add unlawfulness as an element as  
15 provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132[~~NMRA~~] is given. If the  
16 issue of “lawfulness” involves self-defense or defense of another, *see* UJI 14-5181 to UJI 14-5184  
17 NMRA.

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

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

21 8. This alternative is given only if the object used is not a “deadly weapon” which is  
22 specifically listed in Section 30-1-12(B)[~~NMSA 1978~~].

1 [Adopted effective October 1, 1976; UJI Criminal Rule 3.05 NMSA 1978; UJI 14-306 SCRA; as  
2 amended, effective January 15, 1998; February 1, 2000; as amended by Supreme Court Order No.  
3 16-8300-008, effective for all cases pending or filed on or after December 31, 2016; as amended  
4 by Supreme Court Order No. S-1-RCR-2023-00030, effective for all cases pending or filed on or  
5 after December 31, 2023; as amended by Supreme Court Order No. S-1-RCR-2025-00126,  
6 effective for all cases pending or filed on or after December 31, 2025.]  
7 **Committee commentary.** — *See* committee commentary following UJI 14-304 NMRA.