

1 **14-2207. Aggravated assault on a peace officer; attempted battery with intent to commit a**
2 **violent felony; essential elements.**

3 For you to find the defendant guilty of aggravated assault on a peace officer with intent to
4 [kill] [or]¹ [commit _____²] [as charged in Count _____][¹]³, the state must prove
5 to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

6 1. The defendant intended to commit the crime of battery against _____
7 (*name of peace officer*) by _____⁴;

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

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 3. The defendant also intended to [kill] [or]¹ [commit _____²] on
13 _____ (*name of peace officer*);

14 4. At the time, _____ (*name of peace officer*) was a peace officer and
15 was performing duties of a peace officer⁶;

16 5. The defendant knew _____ (*name of peace officer*) was a peace
17 officer;

18 6. This happened in New Mexico on or about the _____ day of _____,
19 _____.

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USE NOTES

22 1. Use only the applicable bracketed alternatives.

1 2. Insert the name of the felony or felonies in the disjunctive. This instruction is to be
2 used for assault with intent to kill or to commit a violent felony, *i.e.*, mayhem, criminal sexual
3 penetration, robbery or burglary. The essential elements of the felony or felonies must also be
4 given immediately following this instruction. For mayhem, *see* UJI 14-314 NMRA. For criminal
5 sexual penetration in the first, second or third degree, *see* UJI 14-941 to 14-961 NMRA. For
6 robbery, *see* UJI 14-1620 NMRA. For burglary, *see* UJI 14-1630 NMRA. To instruct on the
7 elements of an uncharged offense, UJI 14-140 NMRA must be used.

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

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

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

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

20 [Adopted, effective October 1, 1976; UJI Criminal Rule 22.06 NMSA 1978; UJI 14-2207 SCRA;
21 as amended, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039,
22 effective December 31, 2010; as amended by Supreme Court Order No. 16-8300-008, effective

1 for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order
2 No. 20-8300-004, effective for all cases pending or filed on or after December 31, 2020.]

3 **Committee commentary.** — *See* NMSA 1978, § 30-22-23(A) (1971). *Compare* UJI 14-
4 311 NMRA, UJI 14-312 NMRA, UJI 14-313 NMRA and commentary. *See also* commentary to
5 UJI 14-2201 NMRA, UJI 14-2202 NMRA, and UJI 14-2203 NMRA. This instruction was
6 amended in 2010 to be consistent with *State v. Nozie*, 2009-NMSC-018, 146 N.M. 142, 207 P.3d
7 1119.

8 [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010.]