

1 **14-2209. Aggravated assault on a peace officer; attempted battery; threat or menacing**  
2 **conduct with intent to commit a violent felony; essential elements.<sup>1</sup>**

3 For you to find the defendant guilty of aggravated assault on a peace officer with intent to  
4 [kill] [or]<sup>2</sup> [commit \_\_\_\_\_<sup>3</sup>] [as charged in Count \_\_\_\_\_]<sup>4</sup>, the state must prove to  
5 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 \_\_\_\_\_<sup>5</sup>;

8 A battery consists of intentionally touching or applying force in a rude, insolent, or angry  
9 manner<sup>6</sup>.

10 2. The defendant began to do an act which constituted a substantial part of the battery  
11 but failed to complete 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 peace officer*) to  
16 believe the defendant was about to intrude on \_\_\_\_\_'s (*name of peace officer*)  
17 bodily integrity or personal safety by touching or applying force to \_\_\_\_\_ (*name*  
18 *of peace officer*) in a rude, insolent or angry manner<sup>6</sup>;

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

21 AND

22 4. The defendant also intended to [kill] [or]<sup>2</sup> [commit \_\_\_\_\_<sup>3</sup>] on  
23 \_\_\_\_\_ (*name of peace officer*);

1           5.     At the time, \_\_\_\_\_ (*name of peace officer*) was a peace officer and  
2 was performing the duties of a peace officer<sup>7</sup>;

3           6.     The defendant knew \_\_\_\_\_ (*name of peace officer*) was a peace  
4 officer;

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

7

8

USE NOTES

9           1.     This instruction combines the essential elements set forth in UJI 14-2207 and 14-  
10 2208 NMRA.

11          2.     Use only the applicable bracketed alternatives.

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

19          4.     Insert the count number if more than one count is charged.

20          5.     Use ordinary language to describe the touching or application of force.

21          6.     If the “unlawfulness” of the act is in issue, add unlawfulness as an element as  
22 provided by Use Note 1 of UJI 14-132 NMRA. In addition, UJI 14-132 NMRA is given. If the

1 issue of “lawfulness” involves self-defense or defense of another, *see* UJI 14-5181 to UJI 14-5184  
2 NMRA.

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

9 [Adopted, effective October 1, 1976; UJI Criminal Rule 22.08 NMSA 1978; UJI 14-2209 SCRA;  
10 as amended, effective January 15, 1998; as amended by Supreme Court Order No. 10-8300-039,  
11 effective December 31, 2010; as amended by Supreme Court Order No. 16-8300-008, effective  
12 for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order  
13 No. 20-8300-004, effective for all cases pending or filed on or after December 31, 2020.]

14 **Committee commentary.** — *See* committee commentary for UJI 14-2207 NMRA. This  
15 instruction was amended in 2010 to be consistent with *State v. Nozie*, 2009-NMSC-018, 146 N.M.  
16 142, 207 P.3d 1119.

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