

AGGRAVATED ASSAULT
(POINTING OR DISPLAYING IMITATION FIREARM
AT LAW ENFORCEMENT OFFICER)
(N.J.S.A. 2C:12-1b(10))¹

Count _____ of this indictment charges the defendant with the crime of aggravated assault.

(READ INDICTMENT)

The applicable statute provides, in pertinent part, that:

A person is guilty of aggravated assault if he . . . (k)nowingly points, displays or uses an imitation firearm . . . at or in the direction of a law enforcement officer with the purpose to intimidate, threaten or attempt to put the officer in fear of bodily injury or for any unlawful purpose.

In order for you to find the defendant guilty, the State must prove each of the following elements beyond a reasonable doubt:

1. that the defendant knowingly pointed, displayed or used an imitation firearm at or in the direction of a law enforcement officer;
2. that the defendant knew that the person was a law enforcement officer; and
3. that the defendant acted with the purpose to intimidate, threaten or attempt to put the officer in fear of bodily injury or for any unlawful purpose.

The first element that the State must prove beyond a reasonable doubt is that the defendant knowingly pointed, displayed or used an imitation firearm at or in the direction of a law enforcement officer.

An imitation firearm is defined as an object or device reasonably capable of being

¹ This statute took effect on April 20, 1999.

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mistaken for a firearm.²

A firearm is defined as any handgun, rifle, shotgun, machine gun, or automatic or semi-automatic rifle.³

A law enforcement officer is a person whose public duties include the power to act as an officer for the detection, apprehension, arrest and conviction of offenders against the laws of this State.⁴

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if he/she is aware that his/her conduct is of that nature or that such circumstances exist or if he/she is aware of a high probability of their existence. A person acts knowingly with respect to the result of his/her conduct if he/she is aware that it is practically certain that his/her conduct will cause such a result.

Knowledge is a condition of the mind that cannot be seen and that can be determined only by inferences from conduct, words or acts. A state of mind is rarely susceptible of direct proof but must ordinarily be inferred from the facts. Therefore, it is not necessary that the State produce witnesses to testify that an accused said that he/she had a certain state of mind when he/she engaged in a particular act. It is within your power to find that such proof has been furnished beyond a reasonable doubt by inference, which may arise from the nature of the defendant's acts and conduct, from all that he/she said and did at the particular time and place, and from all surrounding circumstances.

The second element that the State must prove beyond a reasonable doubt is that the defendant knew that the person was a law enforcement officer.

As I instructed you earlier, a person acts knowingly with respect to the nature of the attendant circumstances if he/she is aware that such circumstances exist or if he/she is aware of a high probability of their existence.

The third element that the State must prove beyond a reasonable doubt is that the defendant acted with the purpose to intimidate, threaten or attempt to put the officer in fear of

² N.J.S.A. 2C:39-1v.

³ N.J.S.A. 2C:39-1f.

⁴ Cf. N.J.S.A. 2C:25-19c.

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bodily injury or for any unlawful purpose.

A person acts with purpose with respect to the nature of his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result. A person acts with purpose with respect to attendant circumstances if he/she believes or hopes that they exist. A person acts with purpose if he/she acts with design, with a specific intent, with a particular object or purpose, or if he/she means to do what he/she does. As with knowledge, purpose is a condition of the mind that cannot be seen and that can be determined only by inferences from conduct, words or acts.

A person has a purpose to use an imitation firearm unlawfully if he/she has a purpose to use it in a manner that is prohibited by law. In this case, the State contends that the defendant's unlawful purpose was **[describe the unlawful purpose alleged by the State]**.⁵

[If the defense alleges a lawful purpose, the trial court should instruct the jury on the defense claim. See, for example, the model charge for Possession of a Firearm for an Unlawful Purpose, N.J.S.A. 2C:39-4a.

You must not rely on your own notions of the unlawfulness of some other undescribed purpose of the defendant. Rather, you must consider whether the State proved the specific unlawful purpose alleged.⁶ The unlawful purpose alleged by the State may be inferred from all that was said or done and from all of the surrounding circumstances in this case. However, the State need not prove that the defendant accomplished his/her unlawful purpose.

Bodily injury is defined as physical pain, illness or any impairment of physical condition.⁷

If you find that the State has proved each and every element of this offense beyond a reasonable doubt, then you must find the defendant guilty of aggravated assault. If, however, you find that the State has failed to prove any element of this offense beyond a reasonable doubt, then you must find the defendant not guilty.

⁵ State v. Villar, 150 N.J. 503, 511 (1997).

⁶ State v. Jenkins, 234 N.J. Super. 311, 316 (App. Div. 1989). See also, State v. Villar, supra.

⁷ N.J.S.A. 2C:11-1d.