

AGGRAVATED ASSAULT - BODILY INJURY WITH DEADLY WEAPON¹
(RECKLESSLY)
(N.J.S.A. 2C:12-1b(3))

Count _____ of the indictment charges defendant with aggravated assault in that he/she allegedly

(Read appropriate count of Indictment)

Defendant is accused of violating a section of our law that reads as follows:

A person is guilty of aggravated assault if he recklessly causes bodily injury to another with a deadly weapon.

To find the defendant guilty of recklessly causing bodily injury to another with a deadly weapon, the State must prove beyond a reasonable doubt the following elements:

1. that the defendant caused bodily injury to another; and
2. that the defendant caused the bodily injury by use of a deadly weapon; and
3. that the defendant acted recklessly.

The first element that the State must prove beyond a reasonable doubt is that defendant caused bodily injury to another.

Bodily injury is defined as physical pain, illness, or any impairment of the physical condition of another.²

¹ This charge is inapplicable to assaults involving a motor vehicle. See State v. Parker, 198 N.J. Super. 272, 282-83 (App. Div. 1984), certif. denied, 99 N.J. 239 (1985). Utilize the Model Jury Charges for assault by auto, N.J.S.A. 2C:12-1c(1) for cases involving reckless conduct and a motor vehicle.

² N.J.S.A. 2C:11-1a.

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The second element that the State must prove beyond a reasonable doubt is that the defendant caused the bodily injury by use of a deadly weapon.

Causation has a special meaning under the law. To establish causation, the State must prove two elements, each beyond a reasonable doubt:

First, that but for the defendant's conduct, (name of victim) would not have sustained bodily injury.

Second, the bodily injury sustained by (name of victim) must have been within the design or contemplation of the defendant. If not, it must involve the same kind of injury or harm as that designed or contemplated, and must also not be too remote, too accidental in its occurrence or too dependent on another's volitional act to have a just bearing on the defendant's liability or on the gravity of his/her offense. In other words, the State must prove beyond a reasonable doubt that the bodily injury sustained by (name of victim) was not so unexpected or unusual that it would be unjust to find the defendant guilty of aggravated assault.

A deadly weapon is any firearm or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury. Serious bodily injury means bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

The third element that the State must prove beyond a reasonable doubt is that the defendant acted recklessly. A person acts recklessly when he/she is aware of and consciously

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disregards a substantial and unjustifiable risk. The risk must be of such a nature and degree that, considering the nature and purpose of defendant's conduct and the circumstances known to defendant, his/her disregard of that risk involves a gross deviation from the standard of conduct that a reasonable person would follow in the actor's situation. One is said to act recklessly if one acts with recklessness, with scorn for the consequences, heedlessly, foolhardily.

Reckless is a condition of the mind that cannot be seen and that can be determined only from inferences from conduct, words or acts. It is not necessary for the State to produce a witness to testify that the defendant stated that he/she acted with a particular state of mind. It is within your power to find that proof of purpose or knowledge has been furnished beyond a reasonable doubt by inferences that may arise from the nature of the acts and circumstances surrounding the conduct in question.

[CHARGE WHERE APPROPRIATE]

[When the actual victim was one other than the intended victim, add:

It is immaterial that (name the victim) was or was not the intended victim.]³

[CHARGE IN ALL CASES]

If you find that the State has proved each element beyond a reasonable doubt, then you must find defendant guilty. If you find that the State has failed to prove any element beyond a reasonable doubt, then you must find defendant not guilty.

³ N.J.S.A. 2C:2-3d.