

AGGRAVATED ASSAULT
(N.J.S.A. 2C:12-1b(4))

Count _____ of the indictment charges defendant with Aggravated Assault by Pointing a Firearm. The statute upon which this count of the indictment is based reads, in pertinent part, as follows:

[An actor] is guilty of aggravated assault if he knowingly, under circumstances manifesting extreme indifference to the value of human life, points a firearm...at or in the direction of another whether or not the actor believes it to be loaded.

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

- First: that the defendant knowingly pointed a firearm at or in the of another whether or not the defendant believed it to be loaded;

- Second: that the defendant acted under circumstances that manifested extreme indifference to the value of human life.

A firearm is defined as any pistol, revolver, rifle ... etc. (See footnote definition and use appropriate portion thereof as facts dictate).¹

A person acts knowingly with respect to the nature of his/her conduct or the attendant circumstances if the person is aware that his/her conduct is of that nature, or that such circumstances exist or the person is aware of a high probability of their existence. A person acts knowingly with respect to a result of his/her conduct if the person is aware that it is practically certain that his/her conduct will cause such a result. In other words, to satisfy this element, the

¹ N.J.S.A. 2C:39-1f: Definition of Firearm - A firearm is defined as any pistol, revolver, or other firearm as the term is commonly used, or any gun from which may be fired or ejected any solid projectile ball, slug, pellet, missile or bullet, or any gas, vapor or other noxious thing, by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances. It shall also include, without limitation, any carbon dioxide or compressed air gun or pistol, or other weapon of a similar nature in which the propelling force is a spring, elastic band, carbon dioxide, compressed or other gas or vapor, air or compressed air, or is ignited by compressed air, or ejecting a bullet or missile smaller than 3/8 of an inch in diameter, with sufficient force to injure the person.

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State must prove beyond a reasonable doubt that when the defendant pointed the firearm, the defendant was aware that he/she was doing so or was aware that it was highly probable that his/her act would result in the pointing of the firearm in such a fashion.

[NOTE: When the actual person at whom or in whose direction the firearm is pointed is one other than the intended victim, add:

It is immaterial that (name of victim) was not the intended victim so long as the other elements of this crime have been proven to you beyond a reasonable doubt.)

Furthermore, it is unnecessary for the State to prove that the defendant believed the firearm was loaded.

The second element the State must prove beyond a reasonable doubt is that the defendant acted under circumstances that manifest extreme indifference to the value of human life. The phrase “under circumstances manifesting extreme indifference to the value of human life” does not focus on defendant’s state of mind, but rather on the circumstances under which you find the defendant acted. The State must prove beyond a reasonable doubt that defendant acted in a way that showed that the defendant was indifferent to whether or not the victim or another lived or died, that is, the defendant acted in a way which showed that defendant did not care that someone might be killed.

To summarize, the State must prove two elements beyond a reasonable doubt in order for you to find the defendant guilty of this count:

- (1) That the defendant knowingly pointed a firearm at or in the direction of another whether or not the defendant believed it to be loaded;
- (2) That the defendant acted under circumstances manifesting extreme indifference to the value of human life.

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If you are satisfied that these two elements have been proven to you beyond a reasonable doubt, then you must find the defendant guilty. If you are not satisfied that the State has proven these two elements beyond a reasonable doubt then you must find the defendant not guilty.