

**SIMPLE ASSAULT (Deadly Weapon)(Lesser Included)**  
**(N.J.S.A. 2C:12-1a(2))<sup>1</sup>**

The law requires that the Court instruct the jury with respect to possible (lesser) included offenses, even if they are not contained in the indictment. Just because the Court is instructing you concerning these offenses does not mean that the Court has any opinion one way or another about whether the defendant committed these, or any, offenses. You should consider these offenses along with those for which the defendant is indicted. However, you are not to render a verdict on these offenses or answer the questions on the verdict sheet unless you find that the State has failed to meet its burden with regard to the offense(s) in the indictment.

Simple assault is a lesser-included offense to count \_\_\_\_\_ of this indictment. The statute which defines simple assault provides that:

A person commits a simple assault if he negligently causes bodily injury to another with a deadly weapon.

In order for you to convict the defendant of this offense, the State must prove the following elements beyond a reasonable doubt:

1. that the defendant caused bodily injury to **NAME OF VICTIM** (or another);<sup>2</sup>
2. that the defendant caused the bodily injury by use of a deadly weapon;
3. that the defendant acted negligently.

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

Bodily Injury is defined as physical pain, illness, or any impairment of the physical condition of another.<sup>3</sup>

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<sup>1</sup> Note that one cannot be guilty of committing an attempt of this offense. State v. Clarke, 198 N.J.Super. 219 (App. Div. 1985). The jury should be so instructed if the facts of a case warrant it.

<sup>2</sup> A person can violate the provisions of the statute under a theory of transferred intent. See N.J.S.A. 2C:2-3(d).

<sup>3</sup> N.J.S.A. 2C:11-1(a).

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

Deadly Weapon is defined as 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.<sup>4</sup>

The third element the State must prove beyond a reasonable doubt is the defendant acted negligently.

A person acts negligently with respect to causing bodily injury when he/she should be aware of a substantial and unjustifiable risk that the material element exists or will result from his/her conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his/her conduct and the circumstance known to him/her, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. A person is said to act negligently if the person acts with carelessness, when compared to how a reasonable person should act under the circumstances as they exist at the time of the assault.<sup>5</sup>

If you find that the State has proved each element of the offense beyond a reasonable doubt, then you must find the defendant guilty. If, however, you find that the State has failed to prove any element of the offense beyond a reasonable doubt, then you must find the defendant not guilty.<sup>6</sup>

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<sup>4</sup> N.J.S.A. 2C:11-3(c).

<sup>5</sup> State v. Brown, 228 N.J.Super 211 (App. Div. 1988), *rev'd on other grounds* 118 N.J. 595 (1990).

<sup>6</sup> Simple Assault is a disorderly persons offense. It is a petty disorderly persons offense if the assault was committed in a fight or in a scuffle entered into by mutual consent. See N.J.S.A. 2C:12-1(a). If a reasonable view of the evidence supports a view that such circumstances may exist, the jury should be instructed that the State bears the burden of proving the absence of such circumstances beyond a reasonable doubt. Apprendi v. New Jersey, 530 U.S. 466 (2000); State v. Johnson, 166 N.J. 523 (2001). See also State v. Jordon, 86 N.J.Super. 585 (App. Div. 1965), interpreting predecessor fighting statute, N.J.S.A. 2A:170-27.