

**SIMPLE ASSAULT (NEGLIGENTLY CAUSING BODILY INJURY
WITH A DEADLY WEAPON)¹**
(N.J.S.A. 2C:12-1a(2))

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; and
2. That the defendant caused bodily injury by use of a deadly weapon; and
3. That the defendant acted negligently in causing bodily injury to Name of Victim.

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

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

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:

¹ This disorderly persons offense should be charged only as a lesser included offense of aggravated assault with a deadly weapon. The court cannot charge an attempt and/or conspiracy to commit this offense because the code does not penalize an attempt to commit a disorderly persons offense, State v. Clarke, 198 N.J. Super. 219, 225-26 (App. Div. 1985), and conspiracy is limited to crimes. N.J.S.A. 2C:5-2a.

² N.J.S.A. 2C:11-1(a).

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First, that but for the defendant's conduct, Name of Victim would not have sustained bodily injury.

Second, that the bodily injury sustained by Name of Victim was within the risk of which the defendant should have been aware. If not, it must involve the same kind of injury or harm as the probable result, 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 a simple 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 negligently in causing bodily injury to Name of Victim.

A person acts negligently when he/she should be aware of a substantial and unjustifiable risk (of causing bodily injury). The risk must be of such a nature and degree that defendant's failure to perceive it, considering the nature and purpose of his/her conduct and the circumstances known to him/her, involves a gross deviation from the standard of care that a reasonable person would observe in the same situation.³ In other words, for you to find that defendant acted negligently, you must be satisfied beyond a reasonable doubt that defendant should have been aware of a substantial and unjustifiable risk that his/her conduct would cause bodily injury to Name of Victim.

[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.]⁴

[CHARGE IN ALL CASES]

³ See N.J.S.A. 2C:2-2b(4).

⁴ N.J.S.A. 2C:2-3d.

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You should understand that negligence is a condition of the mind. It cannot be seen. It can only be determined by inferences from conduct, words or acts. Therefore, it is not necessary for the State to produce witnesses to testify that defendant stated, for example, that he/she acted negligently when he/she did a particular thing. It is within your power to find that proof of negligence has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances. The place where the acts occurred and all that was done or said by defendant preceding, connected with, and immediately succeeding the events in question are among the circumstances to be considered.

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.