

SIMPLE ASSAULT (Physical Menace/Substantial Step)
(Lesser Included)¹
(N.J.S.A. 2C:12-1a(3))

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 attempts, by physical menace, to put another in fear of imminent serious bodily injury.

In order for you to find the defendant committed a simple assault, the State must prove, beyond a reasonable doubt:

1. that the defendant purposely attempted to put **(NAME OF VICTIM)** in fear of imminent serious bodily injury.
2. that the defendant did so by physical menace.

The first element that the State must prove is that the defendant purposely attempted to put **(NAME OF VICTIM)** in fear of imminent serious bodily injury.

Serious bodily injury means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.²

Imminent means likely to happen without delay.³

¹ This charge is applicable to an attempt under a "substantial step" theory. N.J.S.A. 2C:5-1(a)(3). If the facts of the case warrant, the charge should be tailored to address the appropriate attempt theory. See N.J.S.A. 2C:5-1(a).

² N.J.S.A. 2C:11-1(b).

³ See the Model Charge for terroristic threats (N.J.S.A. 2C:12-3b).

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In order to find that the defendant attempted to put another in fear of imminent serious bodily injury, you must find that he/she did so purposely.

A defendant acts purposely 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 purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist.

Purpose is a condition of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that his/her purpose was to put the victim in fear of imminent bodily injury. It is within your power to find that proof of purpose has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances.

An attempt occurs, in the context of this charge, if the defendant purposely does or omits to do anything which, under the circumstances as a reasonable person would believe them to be, is an act or omission constituting a substantial step in the course of conduct planned to culminate in his/her putting the victim in imminent fear of serious bodily injury.

To find that the defendant committed a simple assault by attempting to put **(NAME OF VICTIM)** in imminent fear of serious bodily injury by physical menace, the State must prove beyond a reasonable doubt that the defendant had the purpose to put the victim in imminent fear of serious bodily injury. The State must also prove beyond a reasonable doubt that the defendant purposely did or omitted to do anything, which, under the circumstances as a reasonable person would believe them to be, is an act or omission that is a substantial step in the course of conduct planned to culminate in his/her putting the victim in fear of imminent serious bodily injury. However, the step taken must strongly show the defendant's criminal purpose. That is, the step taken must be

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substantial and not just a very remote preparatory act, and must show that the accused has a firmness of criminal purpose.⁴

The second element the State must prove beyond a reasonable doubt is the defendant attempted to put **NAME OF VICTIM** in fear of imminent serious bodily injury by physical menace.

The State must prove beyond a reasonable doubt that the defendant attempted to put the victim in imminent fear of serious bodily injury by means of physical menace. Physical menace is accomplished through an act or acts which are physically threatening acts.⁵ Words alone are insufficient to constitute physical menace.

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.

⁴ If renunciation of criminal purpose is alleged, see N.J.S.A. 2C:5-1(d), that relevant portion of the Model Jury Charge on Attempt should be charged.

⁵ The 1971 Model Commentary to the Proposed Criminal Code stated that 2C:12-1(a)(3) codified preexisting New Jersey law. See State v. Drayton, 114 N.J.Super. 490 (App. Div. 1971) and cases cited therein for treatment of how physical menace was interpreted by pre-2C caselaw.