

# ADA ELLIOTT - BATTERY - PEACE OFFICER

Battery upon a peace officer is “the unlawful, intentional touching or application of force to the person of a peace officer while he or she is in the lawful discharge of his or her duties, when done in a rude, insolent or angry manner. NMSA 1978, Section 30-22-24(A).

Fourth degree felony.

Court decisions have clarified the statute. Not every rude, insolent, or angry touching is punishable as a felony. To be a felony the battery must result in actual injury to the officer, represent a threat to the officer’s safety, or present a “**meaningful challenge**” to the officer’s authority. Whether or not a defendant’s conduct is a meaningful challenge depends upon the context in which the battery occurred. In the following cases a “meaningful challenge” was found because a proper context or background to the incident was established.

## State v. Jones (2000)

Defendant was arrested for DWI and placed in the back seat of a police car. He leaned forward and spit on the officer. Court of Appeals held that a reasonable jury could, in this context, find that spitting on the officer was a “meaningful challenge” to the authority the officer was lawfully exercising over him pursuant to his arrest for DWI.

## State v. Martinez (2002)

Defendant was convicted of spitting on a corrections officer while engaged in a struggle with that officer. Court noted that we have to look at the context in which the battery occurred. Here, defendant attempted to reject the officer’s authority by pulling away from him, twice, while the officer was trying to lead Defendant to his cell. When the officer restrained Defendant, he continued to resist the officer’s authority. It was at that point Defendant spit in the officer’s face. Court of Appeals concluded conduct presented a meaningful challenge to the officer’s authority.

Recommendation: Put a lot of details in the complaint. This will assist the Judge or jury to understand the context in which the battery occurred.

