

'I'm going to shoot you, if you don't do as I say'.

The above was said by victim's prankster friend, establish if it amounts to assault or not? Please support your answer with case law.

Would it make difference if they both knew the gun was real and that it could fire?

Under Section 39 of the Criminal Justice Act 1988, assault occurs when a person intentionally or recklessly causes another person to apprehend the immediate use of unlawful force. For Actus reus, that the V apprehended application of immediate unlawful force from the D. In this scenario, V may believe that the friend is playing a prank and most likely believe the gun is not real too, similarly to the case of [Lamb](#), where V did not apprehend any violence from gun as it believed it would not go off. If courts find that in this scenario, then AR cannot be established for assault. However, in [Ireland](#), the court found that the defendant's conduct constituted an assault, even though no physical violence was actually used. Furthermore, in [Constanza](#), spoken words alone can amount to an assault as long as V apprehends application of immediate force. This is for the courts to decide and can establish AR.

To establish Mens rea must show that D either had the intention, direct ([Mohan](#)) or indirect ([Woollin](#)) in causing V to apprehend immediate unlawful force in the victim. At the very least be D must be reckless ([Cunningham](#)) to it, that he foresees a risk but takes it anyway. Here if the D believes the gun is not loaded as demonstrated in Lamb and will not fire, therefore it will not satisfy the either mens rea, and does not amount to assault.

It would make a difference if the both knew the gun is loaded as D would at least be reckless to causing V to apprehend immediate unlawful force, thus satisfying the mens rea.

In conclusion, the courts most likely to find assault if both knew gun is loaded otherwise courts will need to consider whether the spoken words alone, without any physical violence, were sufficient to establish actus reus.