[WITHDRAWN]

~~[14-5002. Circumstantial evidence; sufficiency.~~

~~You are not permitted to find the defendant guilty of [the] [any] crime charged against him based on circumstantial evidence alone, unless the chain of circumstances excludes every other reasonable explanation except the defendant's guilt beyond a reasonable doubt.~~

~~USE NOTE~~

~~No instruction on this subject shall be given.~~

[Withdrawn by Supreme Court Order No. 19-8300-016, effective December 31, 2019.]

~~**Committee commentary.** — The language in this instruction is the test for reviewing the evidence on appeal, *State v. Mares*, 82 N.M. 682, 486 P.2d 618 (Ct. App.), rev'd, 83 N.M. 225, 490 P.2d 667 (1971), and on a motion for directed verdict, *State v. Malouff*, 81 N.M 619, 471 P.2d 189 (Ct. App. 1970). The adoption of this instruction and use note eliminates the requirement that the jury must also be instructed on the issue when the state's case rests solely on circumstantial evidence. *See, e.g.*, *State v. Duran*, 86 N.M. 594, 526 P.2d 188 (Ct. App.), cert. denied, 86 N.M 593, 526 P.2d 187 (1974); *Territory v. Lermo*, 8 N.M. 566, 46 P. 16 (1896); *State v. Garcia*, 61 N.M. 291, 299 P.2d 467 (1956); and compare *State v. McKnight*, 21 N.M. 14, 42-43, 153 P. 76 (1915), appeal dismissed per curiam, 246 U.S. 653, 38 S. Ct. 335, 62 L. Ed. 923 (1917).~~

~~The committee believed that once the court has found that the state has met the legal test for sufficiency of the evidence, nothing is added by instructing the jury on this subject.~~

[WITHDRAWN]

~~The jury is instructed on its duty to find the facts and that it must be satisfied beyond a reasonable doubt of the defendant's guilt. Furthermore, this instruction would constitute a comment on the evidence prohibited by Rule 11-107 NMRA.~~]

[Withdrawn by Supreme Court Order No. 19-8300-016, effective December 31, 2019.]