

1 **14-203. Act greatly dangerous to life; essential elements.**

2 The defendant is charged with first-degree murder by an act greatly dangerous to the lives
3 of others indicating a depraved mind without regard for human life. For you to find the defendant
4 guilty [as charged in Count _____],¹ the state must prove to your satisfaction beyond a
5 reasonable doubt each of the following elements of the crime:

6 1. The defendant _____ (*describe act of defendant*);

7 2. The defendant's act caused² the death of _____ (*name of victim*);

8 3. The act of the defendant was greatly dangerous to the lives of others, indicating a
9 depraved mind without regard for human life;

10 4. The defendant knew that the act was greatly dangerous to the lives of others;

11 5. This happened in New Mexico on or about the _____ day of
12 _____, _____.

13 A person acts with a depraved mind by intentionally engaging in outrageously reckless
14 conduct with a depraved kind of wantonness or total indifference for the value of human life. Mere
15 negligence or recklessness is not enough. In addition, the defendant must have a corrupt, perverted,
16 or malicious state of mind, such as when a person acts with ill will, hatred, spite, or evil intent.
17 Whether a person acted with a depraved mind may be inferred from all the facts and circumstances
18 of the case.

19 USE NOTES

20 1. Insert the count number if more than one count is charged.

21 2. UJI 14-251 NMRA must also be used if causation is in issue.

22 [As amended by Supreme Court Order No. 08 8300 060, effective February 2, 2009; as amended
23 by Supreme Court Order No. 19 8300 016, effective for all cases pending or filed on or after

1 December 31, 2019; as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective
2 for all cases pending or filed on or after December 31, 2025.]

3 **Committee commentary.** — In New Mexico, depraved mind murder is classified as first-degree
4 murder. *See* NMSA 1978, § 30-2-1(A)(3) (1994). Depraved mind murder requires “outrageously
5 reckless conduct performed with a depraved kind of wantonness or total indifference for the value
6 of human life.” *State v. Reed*, 2005-NMSC-031, ¶ 24, 138 N.M. 365, 120 P.3d 447; *see State v.*
7 *Ibn Omar-Muhammad*, 1985-NMSC-006, 102 N.M. 274, 694 P.2d 922. “[O]ne way our courts
8 have distinguished depraved mind murder is by the number of persons exposed to danger by a
9 defendant’s extremely reckless behavior.” *Reed*, 2005-NMSC-031, ¶ 22; *see State v. Brown*,
10 1996-NMSC-073, ¶ 14, 122 N.M. 724, 931 P.2d 69. Generally, in New Mexico, “depraved mind
11 murder convictions have been limited to acts that are dangerous to more than one person.” *Reed*,
12 2005-NMSC-031, ¶ 22. “Such condemned behavior is required to be extremely dangerous and
13 fatal conduct performed without specific homicidal intent but with a depraved kind of wantonness:
14 for example, shooting into a crowd, placing a time bomb in a public place, or opening the door of
15 the lions’ cage in the zoo.” *State v. Johnson*, 1985-NMCA-074, 103 N.M. 364, 707 P.2d 1174.
16 Other types of conduct that have been held to involve a “very high degree of unjustifiable
17 homicidal danger” include “starting a fire at the front door of an occupied dwelling, shooting into
18 the caboose of a passing train or into a moving automobile necessarily occupied by human beings,”
19 and “driving a car at very high speeds along a main street.” 2 Wayne R. LaFave, *Substantive*
20 *Criminal Law* § 14.4, at 440 (2d ed. 2003). LaFave cites additional examples imaginable, including
21 “throwing stones from the roof of a tall building onto the busy street below” and “piloting a
22 speedboat through a group of swimmers.” *Id.* at 441.

1 “In addition to the number of people endangered, [New Mexico] has construed depraved mind
2 murder as requiring proof that the defendant had ‘subjective knowledge’ that his act was greatly
3 dangerous to the lives of others.” *Reed*, 2005-NMSC-031, ¶ 23; *see State v. McCrary*, 1984-
4 NMSC-005, ¶ 9, 100 N.M. 671, 675 P.2d 120. “The required mens rea element of ‘subjective
5 knowledge’ serves as proof that the ~~[accused]~~defendant acted with a ‘depraved mind’ or ‘wicked
6 or malignant heart’ and with utter disregard for human life.” *Brown*, 1996-NMSC-073, ¶ 16.
7 “[T]he legislature intended the offense of depraved mind murder to encompass an intensified
8 malice or evil intent.” *Reed*, 2005-NMSC-031, ¶ 24 (quoting *Brown*, 1996-NMSC-073, ¶ 15).
9 “[O]ne way to distinguish depraved mind murder from manslaughter when an underlying act
10 involves extremely reckless conduct is by identifying an element of viciousness” [~~*Reed*,
11 2005-NMSC-031~~] *Id.*, ¶ 24 (citing Rollin M. Perkins & Ronald N. Boyce, *Criminal Law*, 60 (3d
12 ed.1982)). “Obviously, mere negligence or recklessness will not do.” [~~*Reed*, 2005-NMSC-031~~]
13 *Id.*, ¶ 23.

14 Therefore, this instruction sets forth a subjective test for depraved mind murder. “The defendant
15 must know his act is greatly dangerous to the lives of others.” *Johnson*, 1985-NMCA-074, ¶ 11.
16 But, “[a] defendant does not have to actually know that his victim will be injured by his act.” *Ibn*
17 *Omar-Muhammad*, 1985-NMSC-006, ¶ 21; *see also McCrary*, 1984-NMSC-005, ¶¶ 9-10. In
18 *McCrary*, the defendant had attended a carnival in Hobbs and felt [he was]cheated out of
19 sixty-four dollars. [~~*Id.*~~] 1984-NMSC-005, ¶ 2. He and a co-defendant claimed that they decided to
20 get revenge by shooting the tires of the carnival trucks. *Id.* They discharged about twenty-five
21 shots into several tractor-trailers and cabs. Not a single tire was shot. *Id.* ¶ 11. The victim was in a
22 sleeper cab of one of the trucks and was killed by one of these bullets. *Id.* ¶ 3. The Court stated,
23 “Defendants did not have to actually know that [victim] was in the sleeper compartment. Rather,

1 sufficient subjective knowledge exists if Defendants’ conduct was very risky, and under the
2 circumstances known to Defendants they should have realized this very high degree of risk.” *Id.* ¶
3 9. The fact that no tires were shot and there were twenty-five bullet holes in the upper parts of the
4 vehicles was substantial evidence of the defendants’ knowledge of the risk. *Id.* ¶ 11. The Court
5 also pointed out the fact that the defendants contemplated slashing the tires but rejected it for fear
6 of being caught, indicating that defendants had reason to know people were in the area. *Id.* The
7 Court held that in light of the surrounding circumstances known to defendants, there was
8 substantial evidence for a jury to find that defendants had subjective knowledge of the risk. *Id.* ¶
9 11.

10 The Supreme Court has held that “a fact finder may consider evidence of extreme intoxication
11 when determining whether a defendant possessed the requisite mental state of ‘subjective
12 knowledge’ for first-degree depraved mind murder.” *See Brown*, 1996-NMSC-073, ¶ 1.

13 Also note that the existence of an intent to kill a particular individual does not remove the act from
14 this class of murder. *See State v. Sena*, 1983-NMSC-005, 99 N.M. 272, 657 P.2d 128. In *Sena*, the
15 defendant[~~, a woman, and another man~~]and two other people entered a bar through the front
16 entrance. [~~The woman~~]One of the two was holding a drink and the [~~doorman~~]door attendant did
17 not allow [~~her~~]that person to enter with the drink. A dispute arose and the defendant hit the
18 [~~doorman~~]attendant. The [~~doorman~~]attendant then sprayed defendant with mace, hit [~~him~~]the
19 defendant with a flashlight, and threw [~~him~~]the defendant out of the door. Within a few seconds
20 the defendant returned with a gun. [~~He~~]The defendant then opened fire on the [~~doorman~~]attendant,
21 who immediately turned and ducked. The defendant fired four or five times. The first shot hit the
22 [~~doorman~~]attendant in the face, but the other shots missed. One of these shots struck and killed an
23 innocent bystander. The Court held, “By firing at the doorman in a room containing other persons

1 within the line of fire, [defendant] committed an act ‘greatly dangerous to the lives of others’ which
2 falls within the depraved mind theory. It is irrelevant whether he intended only to kill the doorman
3”*Id.* ¶ 9.

4 Additionally, it must also be unjustifiable for the defendant to take the risk. Here is an example:

5 If [a defendant] speeds through crowded streets, thereby endangering other motorists
6 and pedestrians, in order to rush a passenger to the hospital for an emergency operation,
7 he may not be guilty of murder if he unintentionally kills, though the same conduct
8 done solely for the purpose of experiencing the thrill of fast driving may be enough for
9 murder.

10 2 LaFave, *supra*, § 14.4, at 439. As said in a simpler way, “the extent of the defendant’s knowledge
11 of the surrounding circumstances and the social utility of his conduct” are to be considered. *Id.*

12 [As amended by Supreme Court Order No. 08-8300-060[~~effective February 2, 2009~~]; as amended
13 by Supreme Court Order No. 19-8300-016[~~effective for all cases pending or filed on or after~~
14 ~~December 31, 2019~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]