

1 **14-210. [~~Second-degree~~ Second-degree murder; voluntary manslaughter lesser included**
2 **offense; essential elements.**¹

3 For you to find the defendant guilty of [~~second-degree~~ second-degree murder [as charged
4 in Count _____],² the state must prove to your satisfaction beyond a reasonable doubt each
5 of the following elements of the crime:

- 6 1. The defendant killed _____ (*name of victim*);
- 7 2. The defendant knew that [~~his~~ ~~her~~] their acts created a strong probability of death
8 or great bodily harm⁴ to _____ (*name of victim*) [or any other human being]³;
- 9 3. The defendant did not act as a result of sufficient provocation;⁴
- 10 4. This happened in New Mexico on or about the _____ day of
11 _____, _____.⁴

12 USE NOTES

- 13 1. This instruction is to be given only when provocation is an issue.
- 14 2. Insert the count number if more than one count is charged.
- 15 3. Use this bracketed phrase when the intent was directed to someone other than the
16 victim. UJI 14-255 NMRA must also be given following UJI 14-220 NMRA, voluntary
17 manslaughter; lesser included offense.
- 18 4. The following instructions must also be given after UJI 14-220[~~NMRA~~], voluntary
19 manslaughter, lesser included offense:
20 UJI 14-141 NMRA, general criminal intent;
21 UJI 14-131 NMRA, definition of great bodily harm;
22 UJI 14-222 NMRA, definition of sufficient provocation; and
23 UJI 14-250 NMRA [withdrawn], jury procedure for various degrees of homicide.

1 [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as
2 amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or
3 after December 31, 2018; as amended by Supreme Court Order No. S-1-RCR-2025-00126,
4 effective for all cases pending or filed on or after December 31, 2025.]

5 **Committee commentary.** — *See* committee commentary to UJI 14-211 NMRA for a discussion
6 of instructions on [~~second-degree~~]second-degree murder.

7 Essential Element Number 3, providing for the jury to consider the issue of provocation, is
8 consistent with the requirements of *Mullaney v. Wilbur*, 421 U.S. 684 (1975). Parties must be
9 aware that an attempt to commit reckless or unintentional murder is "a crime that does not exist."
10 *State v. Carrasco*, 2007-NMCA-152, ¶ 7, 143 N.M. 62, 172 P.3d 611. Therefore, to avoid potential
11 confusion, if the charge of attempt to commit [~~second-degree~~]second-degree murder proceeds to a
12 jury, the instructions should be drafted to take into account the holding below from *Carrasco* and
13 the specific facts of the case.

14 Attempt to commit a felony is the commission of "an overt act in furtherance of and with intent to
15 commit a felony and tending but failing to effect its commission." NMSA 1978, § 30-28-1 (1963).

16 It is a specific intent crime. *State v. Jernigan*, 2006-NMSC-003, ¶ 18, 139 N.M. 1, 127 P.3d 537.

17 Attempted [~~second-degree~~]second-degree murder, however, is not a valid crime in all
18 circumstances because [~~second-degree~~]second-degree murder can be committed either

19 intentionally or unintentionally. *See State v. Johnson*, [E]1985-NMCA-074, ¶¶ 10-20, [F] 103 N.M.

20 364[at 368-70], 707 P.2d 1174[at 1178-80]. When [~~second-degree~~]second-degree murder is

21 committed as a general intent crime, it requires that the defendant kill the victim with the
22 knowledge that the defendant's acts "create a strong probability of death or great bodily harm."

1 Section 30-2-1(B). As a general intent crime, it does not require an intent to kill; a reckless killing
2 satisfies the statutory requirements.

3 *Carrasco*, 2007-NMCA-152, ¶ 7.

4 The mens rea constitutes a subjective rather than objective knowledge requirement. *State v. Suazo*,
5 2017-NMSC-011, ¶¶ 22-25, 390 P.3d 674 (rejecting the notion that prior precedent supported an
6 objective "should have known" mens rea (citing *State v. Brown*, 1996-NMSC-073, ¶ 16, 122 N.M.
7 724, 931 P.2d 69)). *Suazo* held that a second-degree murder conviction requires more than "that a
8 defendant should have known of the risk of his or her conduct without anything more, because that
9 is essentially a civil negligence standard." *Id.* ¶ 23. Furthermore, it would blur the line between
10 second-degree murder and involuntary manslaughter. *Id.* ¶ 24.

11 [As amended by Supreme Court Order No. 10-8300-039[, ~~effective December 31, 2010~~]; as
12 amended by Supreme Court Order No. 18-8300-012[, ~~effective for all cases pending or filed on or~~
13 ~~after December 31, 2018~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]