

1 **14-211. Second-degree murder; voluntary manslaughter not lesser included offense;**  
2 **essential elements.<sup>1</sup>**

3 For you to find the defendant guilty of second-degree murder [as charged in Count  
4 \_\_\_\_\_],<sup>2</sup> the state must prove to your satisfaction beyond a reasonable doubt each of the  
5 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 harm<sup>3</sup> to \_\_\_\_\_ (*name of victim*) [or any other human being];<sup>4</sup>

9 3. This happened in New Mexico on or about the \_\_\_\_\_ day of  
10 \_\_\_\_\_, \_\_\_\_\_.<sup>5</sup>

11 USE NOTES

12 1. This instruction is to be used only when second-degree murder is the lowest degree  
13 of homicide to be considered by the jury.

14 2. Insert the count number if more than one count is charged.

15 3. UJI 14-131 NMRA, the definition of great bodily harm, must be given.

16 4. Use this bracketed phrase when the intent was directed to someone other than the  
17 victim. In such a case, UJI 14-255 NMRA must also be given.

18 5. UJI 14-141 NMRA, general criminal intent, must also be given.

19 [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as  
20 amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or  
21 after December 31, 2018; as amended by Supreme Court Order No. S-1-RCR-2025-001216,  
22 effective for all cases pending or filed on or after December 31, 2025.]

1 **Committee commentary.** — *See* NMSA 1978, § 30-2-1(B) (1994). Second-degree murder is  
2 committed when death results from acts which the defendant knew created a strong probability of  
3 death or great bodily harm. The second-degree murder statute is designed to discourage and punish  
4 the unlawful killing of people. *State v. Mireles*, 2004-NMCA-100, 136 N.M. 337, 98 P.3d 727.  
5 Although murder in the second degree is a lesser included offense of the crime of murder in the  
6 first degree, an instruction on second-degree murder should not be given when the evidence only  
7 supports murder in the first degree. *See State v. Aguilar*, 1994-NMSC-046, ¶ 17, 117 N.M. 501,  
8 873 P.2d 247.

9 Under New Mexico's statutory scheme, murder consists of two categories of intentional killings:  
10 those that are willful, deliberate, and premeditated; and those that are committed without such  
11 deliberation and premeditation but with knowledge that the killer's acts create a strong probability  
12 of death or great bodily harm. *State v. Garcia*, 1992-NMSC-048, 114 N.M. 269, 837 P.2d 862.  
13 The mens rea constitutes a subjective rather than objective knowledge requirement. *State v. Suazo*,  
14 2017-NMSC-011, ¶¶ 22-25, 390 P.3d 674 (rejecting the notion that prior precedent supported an  
15 objective "should have known" mens rea (citing *State v. Brown*, 1996-NMSC-073, ¶ 16, 122 N.M.  
16 724, 931 P.2d 69)). *Suazo* held that a second-degree murder conviction requires *more* than "that a  
17 defendant should have known of the risk of his or her conduct without anything more, because that  
18 is essentially a civil negligence standard." *Id.* ¶ 23. Furthermore, it would blur the line between  
19 second-degree murder and involuntary manslaughter. *Id.* ¶ 24.

20 Regarding transferred intent, to be guilty of second-degree murder, it is sufficient that the  
21 defendant have the necessary mens rea with respect to the individual toward whom the defendant's  
22 lethal act was directed; it is not necessary, however, that the defendant have this mens rea with

1 respect to the actual victim of that act. *State v. Lopez*, 1996-NMSC-036, 122 N.M. 63, 920 P.2d  
2 1017; *see also* UJI 14-251 NMRA.

3 Regarding evidence that permitted the jury to make a reasonable inference that the acts of the  
4 defendant constituted a significant cause of the victim's death and that there was no other  
5 independent event that broke the chain of events from the beating to the victim's death, *see State*  
6 *v. Huber*, 2006-NMCA-087, 140 N.M. 147, 140 P.3d 1096.

7 [As amended by Supreme Court Order No. 10-8300-039, effective December 31, 2010; as  
8 amended by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending on or  
9 after December 31, 2014; as amended by Supreme Court Order No. 18-8300-012, effective for all  
10 cases pending or filed on or after December 31, 2018.]