

1 **14-220. Voluntary manslaughter; lesser included offense.¹**

2 For you to find the defendant guilty of voluntary manslaughter, the state must prove to your
3 satisfaction beyond a reasonable doubt each of the following elements of the crime:

- 4 1. The defendant killed _____ (*name of victim*);
- 5 2. The defendant knew that [~~his~~their] acts created a strong probability of death or great
6 bodily harm² to _____ (*name of victim*) [or any other human being]³;
- 7 3. The defendant acted as a result of sufficient provocation;
- 8 4. This happened in New Mexico on or about the _____ day of
9 _____, _____.

10 The difference between [~~second-degree~~second-degree] murder and voluntary manslaughter
11 is sufficient provocation. In [~~second-degree~~second-degree] murder the defendant kills without
12 having been sufficiently provoked, that is, without sufficient provocation. In the case of voluntary
13 manslaughter the defendant kills after having been sufficiently provoked, that is, as a result of
14 sufficient provocation. Sufficient provocation reduces [~~second-degree~~second-degree] murder to
15 voluntary manslaughter.⁴

16 USE NOTES

- 17 1. This instruction should immediately follow the [~~second-degree~~second-degree]
18 murder instruction.
- 19 2. UJI 14-131 NMRA, the definition of “great bodily harm,” must be given following
20 this instruction.
- 21 3. Use the bracketed phrase when the intent was directed to someone other than the
22 victim. UJI 14-255 NMRA must also be given following this instruction.

1 4. UJI 14-222 NMRA, the definition of sufficient provocation, must be given
2 following this instruction.

3 [As amended by Supreme Court Order No. 14-8300-005, effective for all cases filed or pending
4 on or after December 31, 2014; as amended by Supreme Court Order No. S-1-RCR-2025-00126,
5 effective for all cases pending or filed on or after December 31, 2025.]

6 **Committee commentary.** — See NMSA 1978, § ~~[30-2-3A]~~30-2-3(A). Manslaughter is an
7 intentional homicide which is committed under adequate legal provocation. See generally, LaFave
8 & Scott, *Criminal Law* 572 (1972)~~[-]~~; Perkins, *Criminal Law* 923 (2d ed. 1969). See *State v. Lopez*,
9 1968-NMSC-092, 79 N.M. 282, 442 P.2d 594; *State v. Harrison*, 1970-NMCA-071, 81 N.M. 623,
10 471 P.2d 193, *cert. denied*, 81 N.M. 668, 472 P.2d 382.

11 For cases discussing provocation, see *State v. Kidd*, ~~[1971-NMSC-056]~~1917-NMSC-056, 24 N.M.
12 572, 175 P. 772. As a matter of law, mere words are not sufficient to establish provocation. *State*
13 *v. Nevares*, 1932-NMSC-007, ¶ 12, 36 N.M. 41, 7 P.2d 933. See generally, Perkins, *supra* at 61.

14 There must be evidence that the defendant acted immediately or soon after the provocation. In
15 *State v. Trujillo*, 1921-NMSC-111, 27 N.M. 594, 203 P. 846, the defendant was tried for murder,
16 convicted of voluntary manslaughter and the conviction was reversed on appeal. The evidence
17 showed a quarrel between the defendant and deceased some three and ~~[one-half]~~one-half hours
18 before the time the deceased could have reached the place where ~~[he]~~deceased was later found
19 dead. There was no witness to the killing and the defense was alibi. The ~~[supreme court]~~Supreme
20 Court held that there was clearly no evidence of a sudden quarrel or heat of passion and that the
21 district court should not have submitted manslaughter to the jury.

22 Voluntary manslaughter is a lesser included offense to ~~[second-degree]~~second-degree murder only
23 if there is sufficient evidence to show provocation. See *State v. Rose*, 1968-NMSC-091, 79 N.M.

1 277, 442 P.2d 589, *cert. denied*, 393 U.S. 1028 (~~1968~~)(1969), *abrogated on other grounds by State*
2 *v. Holly*, 2009-NMSC-004, 145 N.M. 513, 201 P.3d 844; *State v. Burrus*, 1934-NMSC-036, 38
3 N.M. 462, 35 P.2d 285. The voluntary manslaughter instruction should not be given when the
4 evidence would not support a finding of manslaughter. [~~State v.~~] *Trujillo*, 1921-NMSC-111[~~supra~~];
5 [~~State v.~~] *Nevarres*, 1932-NMSC-007[~~supra~~]. It is reversible error to submit voluntary manslaughter
6 when the evidence does not warrant the instruction, and no objection is necessary to preserve the
7 error. If there is insufficient evidence of provocation and the defendant is convicted of voluntary
8 manslaughter, [~~he~~]the defendant is entitled to be discharged, even though [~~he~~]the defendant made
9 no objection to submission of voluntary manslaughter. *Smith v. State*[~~Smith~~], [~~1979-NMSC-~~
10 ~~085~~]1976-NMSC-085, 89 N.M. 770, 558 P.2d 39.

11 This instruction made no change in the law of New Mexico. The burden of proof is on the state
12 (once there is enough evidence of provocation to raise the issue and warrant the submission of
13 voluntary manslaughter along with [~~second-degree~~]second-degree murder) and the measure of
14 proof is beyond a reasonable doubt.

15 The New Mexico statute reduces [~~second-degree~~]second-degree murder to voluntary manslaughter
16 if the homicide is “committed upon a sudden quarrel or in the heat of passion.” In *State v. Smith*,
17 1976-NMCA-048, ¶ 18, 89 N.M. 777, 558 P.2d 46, *rev'd on other grounds*, 1976-NMSC-085, 89
18 N.M. 770, 558 P.2d 39[~~(1976)~~], the court stated that “proof of provocation beyond a reasonable
19 doubt is not required for a conviction of voluntary manslaughter.” The court pointed out, by way
20 of dicta, that the state has the burden of proving that the defendant did not act as a result of
21 sufficient provocation in order to prove the material elements of [~~second-degree~~]second-degree
22 murder. It did not decide which of the parties has the burden of proving sufficient provocation in
23 order to establish the elements of voluntary manslaughter. The committee has found no New

- 1 Mexico appellate court opinion which resolves the issue of proving sufficient provocation to
- 2 establish voluntary manslaughter.
- 3 [As amended by Supreme Court Order No. 14-8300-005~~[-effective for all cases filed or pending~~
- 4 ~~on or after December 31, 2014]~~; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]