

1 **14-222. Sufficient provocation; defined.**

2 "Sufficient provocation" can be any action, conduct or circumstances which arouse anger,
3 rage, fear, sudden resentment, terror or other extreme emotions. The provocation must be such as
4 would affect the ability to reason and to cause a temporary loss of [~~self-control~~]self-control in an
5 ordinary person of average disposition. The "provocation" is not sufficient if an ordinary person
6 would have cooled off before acting.

7 **Committee commentary.** — In defining sufficient provocation, the court in *State v. Kidd*, 1917-
8 NMSC-056, 24 N.M. 572, 175 P. 772[~~(1917)~~] stated:

9 "All that is required is sufficient provocation to excite in the mind of the defendant such emotions
10 as either anger, rage, sudden resentment, or terror as may be sufficient to obscure the reason of an
11 ordinary man, and to prevent deliberation and premeditation, and to exclude malice, and to render
12 the defendant incapable of cool reflection."

13 In *State v. Trujillo*, 1921-NMSC-111, 27 N.M. 594, 203 P. 846[~~(1921)~~], the court pointed out that
14 "[no] mere words, however opprobrious or indecent, are deemed sufficient to arouse ungovernable
15 passion, so as to reduce a homicide from murder to manslaughter." In *State v. Nevares*,[~~36 N.M.~~
16 ~~41, 7 P.2d 933~~[~~(1932)~~],] the court pointed out that:

17 "Mere sudden anger or heat of passion will not reduce the killing from murder to manslaughter.
18 There must be adequate provocation. The one without the other will not suffice to effect the
19 reduction in the grade of the offense. The two elements must concur. And words alone, however
20 scurrilous or insulting, will not furnish the adequate provocation required for this purpose. The test
21 of whether the provocation was adequate must be determined by considering whether it would
22 have created the passion offered in mitigation in the ordinary man of average disposition. If so,

1 then it is adequate and will reduce the offense to manslaughter.” 1932-NMSC-007, ¶ 12, 36 N.M.
2 41, 7 P.2d 933 (citations omitted).

3 "The phrase ["']heat of passion[']" includes a killing in circumstances which arouse anger, fear,
4 rage, sudden resentment, terror or other extreme emotions. Such killings are held to be upon
5 ["']sufficient provocation.'" *State v. Smith*, 1976-NMCA-048, ¶ 8, 89 N.M. 777, 558 P.2d 46[
6 (1976)] (citation omitted), rev'd on other grounds, 1976-NMSC-085, 89 N.M. 770, 558 P.2d 39[
7 (1976)].

8 Examples of fact situations which support a conviction of manslaughter include cases where: the
9 defendant and deceased draw their guns and fire at each other through a closed door, and it is
10 unknown who fired first, *State v. Burrus*, 1934-NMSC-036, 38 N.M. 462, 35 P.2d 285[~~(1934)~~];
11 the defendant feared that the deceased was attempting to get a gun with which to shoot the
12 defendant, and the defendant acts to prevent the deceased from getting [~~his~~] a gun, *State v. Wright*,
13 1934-NMSC-056, 38 N.M. 427, 34 P.2d 870[~~(1934)~~]; and the defendant was suddenly, and
14 without warning, partially pulled from the seat of [~~his~~]the defendant's car, by the deceased who
15 could not be seen by the defendant, and defendant reacted by firing a gun, *State v. Lopez*, 1968-
16 NMSC-092, 79 N.M. 282, 442 P.2d 594[~~(1968)~~].

17 Examples of provocative acts are: the finding of a [~~wife~~]spouse by [~~her husband~~]the other spouse
18 in the act of adultery with a paramour; the seduction of the defendant's infant [~~daughter~~]child; the
19 rape of a close [~~female~~] relative of the defendant; the murder or injury of a close relative of the
20 defendant; the act of sodomy with the defendant's [~~young son~~]child; a killing to prevent the rape
21 of the defendant's [~~wife~~]spouse. Perkins, Criminal Law (2d ed.) p. 65.

22 Examples of sufficient heat of passion in other jurisdictions include: shooting of mistress by
23 defendant who was aroused to heat of passion by a series of events over a considerable period of

1 time, *People v. Borchers*, 50 Cal. 2d 321, 325 P.2d 97 (1958); knifing by defendant during fist
2 fight where defendant has a depressed skull which caused him to fear that a blow to his head could
3 cause blindness or death, *People v. Otwell*, 61 Cal. Rptr. 427 (Ct. App. 1967); shooting of man
4 defendant's wife found with where the wife's illicit activities had been suspected by defendant over
5 a long period of time, *Baker v. People*, 114 Colo. 50, 160 P.2d 983 (1945); shooting by defendant
6 of father-in-law upon learning deceased had raped defendant's wife while defendant on business
7 trip, *State v. Flory*, 40 Wyo. 184, 276 P. 458 (1929); shooting of deceased after deceased accosted
8 defendant and defendant's father with a pistol and slightly wounded them both, *Sanders v. State*,
9 26 Ga. App. 475, 106 S.E. 314 (Ct. App. 1921); shooting by defendant of brother where evidence
10 showed series of events [acts] by brother provided "pent-up anger" which defendant relieved by
11 shooting after brother made statement which further aroused defendant, *Ferrin v. People*, 164
12 Colo. 130, 433 P.2d 108 (1967).

13 "Heat of passion" may be based upon a series of events over a considerable period of time which
14 would arouse a person to an extreme emotion when an otherwise dispassionate event occurs. *See*
15 *State v. Benavidez*, 1980-NMSC-097, 94 N.M. 706, 616 P.2d 419 [~~(1980)~~].

16 An example of sufficient provocation arising from a "sudden quarrel" is the shooting of a person,
17 who had been drinking extensively and had become angered at the defendant to such an extent as
18 to knock a hole in defendant's wall, when, upon being requested to leave, he looked threateningly
19 at defendant and started to rise from his chair. *State v. Montano*, 1980-NMCA-163, 95 N.M. 233,
20 620 P.2d 887 [~~(Ct. App. 1980)~~].

21 An example of lack of sufficient provocation is presented in *State v. Farris*, 1980-NMSC-118, 95
22 N.M. 96, 619 P.2d 541 [~~(1980)~~] where the deceased, who was the wife of defendant and whose

- 1 boyfriend had previously threatened defendant, poked defendant in the chest and called him names
- 2 prior to his shooting her.
- 3 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]