

1 **14-2811. Liability as a co-conspirator.**¹

2 The defendant [also] may be found guilty of _____ [attempt to commit
3 _____] [as charged in Count _____], as a [co-conspirator] [partner in crime]
4 even though [~~he himself~~] the defendant did not do the acts constituting the [crime], [attempt] if the
5 state proves to your satisfaction beyond a reasonable doubt that:

6 1. The defendant and _____ by words or acts agreed together to
7 commit the _____ and intended to commit the _____; and

8 2. The defendant or _____, or both of them, [committed] [attempted
9 to commit] the crime.

10 USE NOTES

11 1. No instruction on this subject shall be given.

12 [As amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending
13 or filed on or after December 31, 2025.]

14 **Committee commentary.** — This instruction is a statement of the theory of liability as a co-
15 conspirator for crimes committed by others. It applies whether the crime of conspiracy is charged,
16 *State v. Ross*, 86 N.M. 212, 521 P.2d 1161 (Ct. App. 1974), or not charged. *Territory v. McGinnis*,
17 10 N.M. 269, 61 P. 208 (1900); *Territory v. Neatherlin*, 13 N.M. 491, 85 P. 1044 (1906); *State v.*
18 *Armijo*, 90 N.M. 10, 12, 558 P.2d 1149, 1151 (Ct. App. 1976). If the existence of a conspiracy is
19 established, then all members of a conspiracy are equally guilty whether present or not and
20 irrespective of physical participation, aid, or encouragement extended at the time of the offense.
21 *State v. Ochoa*, 41 N.M. 589, 72 P.2d 609 (1937).

22 The court in *Ochoa* noted that, although aiding and abetting and conspiracy usually accompany
23 each other, they are two different theories of liability. *See also State v. Armijo*, supra. However,

1 the language of UJI 14-2820, 14-2821, and 14-2822 is broad enough to include liability as an aider
2 or abettor or co-conspirator or both. Therefore, a separate instruction on this subject should not be
3 given.