

1 **14-5120. Ignorance or mistake of fact.**¹

2 An issue in this case is whether the defendant believed that _____². The
3 burden is on the state to prove beyond a reasonable doubt that the defendant did not have an honest
4 and reasonable belief in the existence of those facts at the time of the alleged conduct. If you have
5 a reasonable doubt as to whether the defendant’s alleged conduct resulted from a reasonable belief
6 in those facts, you must find the defendant not guilty.

7 USE NOTES

8 1. If this instruction is given, add to the essential elements instruction for the offense
9 charged, “The defendant did not [act] [fail to act] under a mistake of fact.”

10 2. Describe [~~what the defendant claims he or she believed~~] the defendant’s claimed
11 belief.

12 [As amended, effective January 1, 1997; as amended by Supreme Court Order No. 16-8300-008,
13 effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme
14 Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after
15 December 31, 2025.]

16 **Committee commentary.** —

17 *When to give*

18 A jury should be instructed on mistake of fact as a defense “when it negates the existence of the
19 mental state essential to the crime charged.” *State v. Contreras*, 2007-NMCA-119, ¶ 15, 142 N.M.
20 518, 167 P.3d 966. The jury instructions should be considered in their entirety to determine
21 whether they adequately instruct on the requisite mental state. *Id.*

22 “Ordinarily, a defendant is not entitled to a specific instruction where the jury has already been
23 adequately instructed upon the matter by other instructions.” *State v. Venegas*, 1981-NMSC-047,

1 ¶ 9, 96 N.M. 61, 628 P.2d 306 (upholding the district court’s refusal to give the defendant’s
2 requested mistake of fact jury instruction because it was duplicative). *See also State v. Nozie*, 2009-
3 NMSC-018, ¶ 36, 146 N.M. 142, 207 P.3d 1119, distinguishing *Venegas*, 1981-NMSC-047, ¶ 9
4 (explaining that it was unnecessary to decide whether a mistake of fact instruction, when given
5 along with a proper instruction on the essential elements of the offense of aggravated battery upon
6 a peace officer, would have been cumulative or superfluous because the jury had not been
7 instructed that knowledge of the victim’s status as a peace officer was an essential element of the
8 offense). *See also* UJI 14-2211 NMRA.

9 *Essential Element – Examples*

10 Where the defendant was charged with aggravated battery upon a peace officer, an offense
11 requiring knowledge of the victim’s identity as a peace officer, the defendant was entitled to a
12 mistake of fact instruction where a reasonable jury could have found that the defendant was in an
13 intoxicated and disoriented state, and in such a state, [he] defendant believed that the individual
14 [he] they attacked was the private security guard who had followed [him] the defendant from the
15 supermarket parking lot. *Nozie*, 2009-NMSC-018, ¶¶ 34-35. (Note: UJI 14-2213 and UJI 14-2214
16 were amended in 2010 to be consistent with *Nozie* and add knowledge as an essential element to
17 the offense of aggravated battery upon a peace officer.)

18 In a conviction for breaking and entering, where lack of permission is an essential element, the
19 defendant was entitled to a mistake of fact instruction because sufficient evidence was presented
20 that the defendant believed [he] defendant had permission to enter the room: the defendant was
21 very intoxicated, [he] paid for a room, and it could be reasonably inferred that defendant [he] used
22 the room as one that [he] paid for. *Contreras*, 2007-NMCA-119, ¶¶ 9, 11-12, 18.

23 *Fundamental Error*

1 In *State v. Bunce*, the Supreme Court held that if the defendant had offered a correct mistake of
2 fact instruction as a defense to embezzlement, the district court’s refusal to instruct the jury would
3 have been in error. 1993-NMSC-057, ¶ 13, 116 N.M. 284, 861 P.2d 965. The Supreme Court
4 further concluded that the defendant’s offered mistake of fact instruction was inadequate because
5 the jury could have convicted the defendant based on solely innocent conduct and reversed the
6 defendant’s conviction on the basis of fundamental error. *Id.* ¶¶ 14-15 (explaining the defendant’s
7 offered instruction would have required the jury to find the defendant not guilty if the defendant
8 believed only that [~~he~~] defendant was owed money, but that the pertinent question was not whether
9 the defendant believed that [~~he was~~] they were owed money, “but [instead] whether the payments
10 [received by the defendant] were intended to apply to the balance due or whether those payments
11 were intended for some other purpose, such as the purchase and installation of materials”).
12 [As amended by Supreme Court Order No. 09-8300-028[, ~~effective September 16, 2009~~]; as
13 amended by Supreme Court Order No. 16-8300-008[, ~~effective for all cases pending or filed on or~~
14 ~~after December 31, 2016~~]; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]