

1 **14-5150. Alibi.**

2 Evidence has been presented concerning whether or not the defendant was present at the
3 time and place of the commission of the offense charged. If, after a consideration of all the
4 evidence, you have reasonable doubt that the defendant was present at the time the crime was
5 committed, you must find ~~him~~ the defendant not guilty.

6 USE NOTES

7 No instruction on this subject shall be given.

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

10 **Committee commentary.** — The language of this instruction is derived from California Jury
11 Instructions Criminal, 4.50. The New Mexico Supreme Court has held that the ~~defendant's~~
12 defendant's alibi is a question for the jury. *State v. Garcia*~~[,]~~, 1969-NMSC-017, 80 N.M. 21, 450
13 P.2d 621 [~~(1969)~~]. The ~~court~~ Court has also held that it is improper to instruct that the burden is
14 on the defendant to prove ~~his~~ an alibi. *State v. Smith*~~[,]~~, 1915-NMSC-085, 21 N.M. 173, 153 P.
15 256 [~~(1915)~~]. There are no New Mexico decisions holding that the jury must be instructed on the
16 question of alibi. Analytically, an alibi is not a technical or ~~["]"~~“legal~~["]"~~” defense but it is used to
17 cast doubt on the proof of elements of the crime. *See, e.g., People v. Williamson*~~[,]~~ 168 Cal. App.
18 2d 735], 336 P.2d 214 (Cal. Dist. Ct. App. 1959). Consequently, the committee believed that no
19 instruction on alibi should be given since it merely comments on the evidence.

20 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]