

1 **14-2821. Aiding or abetting accessory to felony murder.¹**

2 The defendant _____ (*name of defendant*) may
3 be found guilty of felony murder [as charged in Count _____]², even though the
4 defendant did not commit the murder if the state proves to your satisfaction beyond a reasonable
5 doubt each of the following elements:

6 1. The defendant _____ (*name of defendant*) intended that another
7 person commit the felony of _____ (*name of felony*);

8 2. Another person committed [or] [attempted]³ the felony of
9 _____ [under circumstances or in a manner dangerous
10 to human life]³;

11 3. The defendant _____ (*name of*
12 *defendant*) helped, encouraged, or caused the felony of _____⁴
13 (*name of felony*) to be committed [or attempted];

14 4. During the [commission] [attempted commission] of the felony
15 _____ (*name of deceased*) was killed;

16 5. The defendant _____ (*name of*
17 *defendant*) helped, encouraged, or caused⁵ the killing to be committed;

18 6. The defendant _____ (*name of*
19 *defendant*) intended the killing to occur or knew that the defendant was helping to create a strong
20 probability of death or great bodily harm; and

21 7. This happened in New Mexico on or about the _____ day of
22 _____, _____.

23

USE NOTES

1
2 1. For use if the evidence supports liability as an aider or abettor or co-conspirator
3 regardless of whether conspiracy is charged, for felony murder.

4 2. Insert the count number to which this instruction is applicable if more than one
5 count is submitted to the jury on any theory.

6 3. Use applicable alternatives.

7 4. The essential elements of this felony or these felonies must also be given unless
8 they are otherwise covered by the instructions. To instruct on the elements of an uncharged offense,
9 UJI 14-140 NMRA must be used.

10 5. UJI 14-251 NMRA must also be used if causation is in issue.

11 [As amended, effective March 15, 1995; as amended by Supreme Court Order No. 17-8300-012,
12 effective for all cases pending or filed on or after December 31, 2017; as amended by Supreme
13 Court Order No. 20-8300-004, effective for all cases pending or filed on or after December 31,
14 2020.]

15 **Committee commentary.** — *See* Sections 30-1-13 and 30-2-1A(2) NMSA 1978.

16 This instruction sets out the theory of liability as an aider or abettor for a felony murder. A
17 separate instruction was appropriate because the requisite intent in felony murder is different from
18 that in other crimes. *See* committee commentary to UJI 14-202 (felony murder).

19 *See also* the committee commentary to UJI 14-2822.

20 This instruction is considerably different from UJI 14-2822, because under that instruction
21 the defendant must have intended the crime that was committed, and in this instruction on felony
22 murder, the defendant need only intend that the underlying felony be committed. *State v. Smelcer*,
23 30 N.M. 122, 125, 228 P. 183 (1924). *See also* Perkins, Criminal Law 37-44 (2d ed. 1969). In

- 1 order to make that distinction, the committee merged into this instruction the essential elements of
- 2 felony murder from UJI 14-202.