

[WITHDRAWN]

1 ~~[14-6002. Necessarily included offense.¹~~

2 ~~—— If you should have a reasonable doubt as to whether the defendant committed the crime~~
3 ~~of _____ (*greater offense*)², you must proceed to determine whether the~~
4 ~~defendant committed the included offense of _____³.~~

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USE NOTES

7 ~~—— 1. This instruction should be given immediately preceding the instruction containing the~~
8 ~~elements of a lesser included offense. Repeat the instruction as necessary if there is more than~~
9 ~~one included offense. This instruction is not to be used where the offense charged is murder or~~
10 ~~manslaughter; UJI 14-250 should be given in those cases.~~

11 ~~—— 2. Identify the greater offense by the name used in the elements instruction.~~

12 ~~—— 3. Identify the lesser included offense by the name used in the elements instruction.~~

13 ~~[Withdrawn by Supreme Court Order No. 20-8300-004, effective for all cases pending or filed~~
14 ~~on or after December 31, 2020.]~~

15 ~~—— **Committee commentary.** — Under New Mexico decisions, a party has a right to have the~~
16 ~~jury instructed on a necessarily included offense if there is evidence to establish such offense. *State*~~
17 ~~*v. Chavez*, 82 N.M. 569, 484 P.2d 1279 (Ct. App.), cert. denied, 82 N.M. 562, 484 P.2d~~
18 ~~1272 (1971). The instruction on a necessarily included offense need not be given if the evidence~~
19 ~~would justify only a conviction for the higher offense or an acquittal. *State v. Chavez*, *supra*; *State*~~
20 ~~*v. James*, 76 N.M. 376, 415 P.2d 350 (1966); *State v. Sandoval*, 59 N.M. 85, 279 P.2d 850 (1955).~~

21 ~~—— Under Rule 5-608 NMRA, if the jury is so instructed, the defendant may be convicted of~~
22 ~~"an offense necessarily included in the offense charged or of an attempt." For a lesser offense to~~

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1 be necessarily included, the greater offense cannot be committed without also committing the
2 lesser. *State v. Medina*, 87 N.M. 394, 534 P.2d 486 (Ct. App. 1975). *See also State v. Everitt*, 80
3 N.M. 41, 450 P.2d 927 (Ct. App. 1969). In certain property crimes, and in arson, this rule would
4 be applied where the crime is divided into degrees depending on the amount of property stolen,
5 etc. *See, e.g., State v. Schrager*, 74 Wash. 2d 75, 442 P.2d 1004 (1968).

6 ——— The conviction of a lesser included offense constitutes an acquittal of the higher crime or
7 degree of the crime. *State v. Medina*, *supra*. *Cf. State v. White*, 61 N.M. 109, 295 P.2d 1019 (1956),
8 petition to correct mandate and commitment denied, 71 N.M. 342, 378 P.2d 379 (1962). An
9 acquittal of the lesser included offense also bars prosecution for the greater offense. *Ex parte*
10 *Williams*, 58 N.M. 37, 265 P.2d 359 (1954).]

11 [Withdrawn by Supreme Court Order No. 20-8300-004, effective for all cases pending or filed on
12 or after December 31, 2020.]