

14-703. Negligent use of a deadly weapon.

For you to find the defendant guilty of negligent use of a deadly weapon [as charged in Count _____]1, the state must prove to your satisfaction beyond a reasonable doubt each of the following elements of the crime:

1. [The defendant discharged a firearm into a [building]2 [vehicle];] [OR]2

[The defendant discharged a firearm knowing that he was endangering [a person]2 [property];]

[OR]

[The defendant was carrying a firearm while under the influence of [alcohol]2

[narcotics];]

[OR]

[The defendant endangered the safety of another, by handling or using a [deadly weapon]3 [firearm] in a negligent4 manner;]

[OR]

[The defendant discharged a firearm within one hundred and fifty yards of a [dwelling]5 [or] [building] without permission of the owner or lessee. [The state must also prove that either:

A. the weapon was discharged on non-public lands; or

B. the discharge did not occur during hunting season; or

C. that the [dwelling] [or] [building] was not an abandoned or vacated building;]6

[2. The defendant was not a peace officer7 or other public employee who is required or authorized by law to carry or use a firearm in the course of employment and who carries, handles, uses or discharges a firearm while lawfully engaged in carrying out the duties of such office or employment;]

3. This happened in New Mexico on or about the _____ day of

_____, _____.

USE NOTES

1. Insert the count number if more than one count is charged.

2. Use only the applicable alternative.

3. If this alternative is used, Subsection B of Section 30-1-12 NMSA 1978, the definition of "deadly weapon", is given immediately after this instruction.

4. If this alternative is used, UJI 14-133, the definition of criminal negligence, is given immediately after this instruction.

5. If this alternative is given, Instruction 14-1631, definition of "dwelling house" is given as the definition of "dwelling".

6. This alternative is to be given only if the court finds that the evidence presents issues on whether: (1) the building was an abandoned or vacated building; (2) the building was located on public lands; and (3) the defendant discharged the firearm during hunting season.

7. This alternative may be given if there is an issue as to whether the defendant was a peace officer or public employee in the lawful discharge of duty. This alternative is not to be given if the defendant is charged with carrying a firearm while under the influence of an intoxicant or narcotic.

[Adopted, effective May 1, 1986; as amended, effective January 1, 1999.]

Committee commentary. — The 1998 amendments to this instruction were made to conform this instruction with the 1993 amendment of Section 30-7-4 NMSA 1978 and to be consistent with the Supreme Court's opinions construing "negligence" as used in the criminal code to mean "criminal negligence. *See State v. Yarborough*, 1996-NMSC-068, 122 N.M. 596,

930 P.2d 131 (1996) and *Santillanes v. State*, 115 N.M. 215, 849 P.2d

358 (1993). If the issue is whether or not the defendant handled a firearm or deadly weapon in a negligent manner, UJI 14-133 is to be given.

The committee also deleted the requirement that the definition set forth in UJI 14-704 NMRA be used with this instruction. UJI 14-704 NMRA is based on the definitions in Section 30-7-16(C) NMSA 1978, which was enacted eighteen years after 30-7-4, does not refer to it and specifically recites that the definition applies only to the term "as used in this section". The definitions in Section 30-7-16 NMSA 1978 may be limited to Section 30-7-16 NMSA 1978 offenses.

[Amended November 12, 1998.]

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, in Element 1, added the first footnote 2 designations in the first through third paragraphs, made a gender neutral change in the third paragraph, added the footnote 4 designation in the fourth paragraph, in the fifth paragraph substituted "a [dwelling] or [building]" for "an occupied [dwelling] [building]", made a minor stylistic change, and added "The state must also prove that either:" at the end, and added paragraphs A through C; added Element 2; and redesignated former Element 2 as Element 3.

Cross references. — For negligent use of a deadly weapon, *see* Section 30-7-4 NMSA 1978.

Adding "negligently" to instruction not necessary. — The trial court did not have to modify this instruction to add the word "negligently." Section 30-7-4(A)(2) NMSA 1978 defines negligent use of a deadly weapon as "carrying a firearm while under the influence of an intoxicant or narcotic." The proscribed conduct is negligence per se.

State v. Mata y Rivera, 1993-NMCA-011, 115 N.M. 424, 853 P.2d 126.