

101.39 LACK OF UNANIMITY ON PRINCIPAL CHARGE; "REASONABLE EFFORTS".

NOTE WELL: Only provide this instruction if this question is raised.

With respect to your question - whether the jury is required unanimously to find that the defendant is not guilty of first-degree murder before considering whether *he* is guilty of second-degree murder? - I instruct you that the jury should first consider first degree murder, but you are not required to determine unanimously that the defendant is not guilty of that offense before you may consider second degree murder.¹ If you reach a unanimous verdict that the defendant is not guilty of first-degree murder, or if, after all reasonable efforts, you are unable to reach a verdict as to that offense, then you may consider whether the defendant is guilty of second-degree murder.²

¹ If applicable, this instruction should be modified to include other lesser-included offenses.

² See *State v. Mays*, 158 N.C. App. 563, 575, 582 S.E.2d 360, 368, *disc. rev. denied*, 357 N.C. 510, 588 S.E.2d 379 (2003).