

LIABILITY FOR ANOTHER'S CONDUCT
(N.J.S.A. 2C:2-6)

ACCOMPLICE

CHARGE # ONE - Where defendant is charged as accomplice and jury does not receive instruction on lesser included charges.

The indictment charges/or the State alleges¹ that the defendant is legally responsible for the criminal conduct of X², in violation of a law which reads in pertinent part as follows:

A person is guilty of an offense if it is committed by his own conduct or the conduct of another person for which he is legally accountable, or both.

A person is legally accountable for the conduct of another person when he/she is an accomplice of such other person in the commission of an offense.

A person is an accomplice of another person in the commission of an offense if, with the purpose of promoting or facilitating the commission of the offense, he/she (a) solicits such other person to commit it and/or (b) aids or agrees or attempts to aid such other person in planning or committing it.

This provision of the law means that not only is the person who actually commits the criminal act responsible for it but one who is legally accountable as an accomplice is also responsible as if he/she committed the crime(s) himself/herself.

In this case, the State alleges that the defendant is guilty of the crime(s) committed by X because he/she acted as his/her accomplice. In order to find the defendant guilty, the State must prove beyond a reasonable doubt each of the following elements:

1. That X committed the crime(s) of _____. I will now explain the elements of this/these offense(s).

2. That this defendant solicited him/her to commit it/them and/or did aid or agree or

¹ Where the evidence indicates a rational basis for accomplice liability, the judge can charge the jury on that basis even though the indictment does not expressly allege a violation of N.J.S.A. 2C:2-6. The court should indicate its intention to so charge, with or without request, before summations so that counsel can prepare to comment on the issue of accomplice liability during summations. See State v. Hakim, 205 N.J. Super. 385, 388 (App. Div. 1985).

² X can be a named person or an unknown person.

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attempt to aid him/her in planning or committing it/them.

3. That this defendant's purpose was to promote or facilitate the commission of the offense(s).
4. That this defendant possessed the criminal state of mind that is required to be proved against the person who actually committed the act.

Remember that one acts purposely with respect to his/her conduct or a result thereof if it is his/her conscious object to engage in conduct of that nature or to cause such a result.

"Solicit" means to strongly urge, suggest, lure or proposition. "Aid" means to assist, support or supplement the efforts of another. "Agrees to aid" means to encourage by promise of assistance or support. "Attempt to aid" means that a person takes substantial steps in a course of conduct designed to or planned to lend support or assistance in the efforts of another to cause the commission of a substantive offense.

If you find that the defendant, with the purpose of promoting or facilitating the commission of the offense(s), solicited X to commit it/them and/or aided or agreed or attempted to aid him/her in planning or committing it/them, then you should consider him/her as if he/she committed the crime(s) himself/herself. (If more than one offense is charged, instruct jury that accomplice status should be considered separately as to each charge).

To prove the defendant's criminal liability, the State does not have to prove his/her accomplice status by direct evidence of a formal plan to commit a crime. There does not have to be verbal agreement by all who are charged. The proof may be circumstantial. Participation and agreement can be established from conduct as well as the spoken words.

(READ IF APPROPRIATE)

Mere presence at or near the scene does not make one a participant in the crime, nor does the failure of a spectator to interfere make him/her a participant in the crime. It is, however, a circumstance to be considered with the other evidence in determining whether he/she was present as an accomplice. Presence is not in itself conclusive evidence of that fact. Whether presence has any probative value depends upon the total circumstances. To constitute guilt there must exist a community of purpose and actual participation in the crime committed.

While mere presence at the scene of the perpetration of a crime does not render a person

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a participant in it, proof that one is present at the scene of the commission of the crime, without disapproving or opposing it, is evidence from which, in connection with other circumstances, it is possible for the jury to infer that he/she assented thereto, lent to it his/her countenance and approval and was thereby aiding the same. It depends upon the totality of the circumstances as those circumstances appear from the evidence.³

(RESUME ACCOMPLICE CHARGE)

An accomplice may be convicted on proof of the commission of a crime or of his/her complicity therein even though the person who it is claimed committed the crime(s) has not been prosecuted or convicted or has been convicted of a different offense or degree of offense or has an immunity from prosecution or conviction of has been acquitted.

In order to convict the defendant as an accomplice to the crime(s) charged, you must find that the defendant had the purpose to participate in that particular crime(s). He/She must act with the purpose of promoting or facilitating the commission of the substantive crime(s) with which he/she is charged.

It is not sufficient to prove only that the defendant had knowledge that another person was going to commit the crime(s) charged. The State must prove that it was defendant's conscious object that the specific conduct charged be committed.

In sum, in order to find the defendant guilty of committing the crime(s) of _____, the State must prove each of the following elements beyond a reasonable doubt:

1. That X committed the crime(s) of _____.
2. That this defendant's purpose was to promote or facilitate the commission of the offense(s).
3. That this defendant solicited him/her to commit it/them and/or did aid or agree or attempt to aid him/her in planning or committing it/them.
4. That this defendant possessed the criminal state of mind that is required to be proved against the person who actually committed the criminal act.

³ See the charge on Possession, page 2, for a charge on mere presence as specifically applied to possessory offenses. See State v. Randolph, 228 N.J. 566, 590-93 (2017).

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(Again, remind the jury to consider the accomplice status separately as to each charge).

If you find that the State has proven each and every one of the elements that I have explained to you beyond a reasonable doubt, then you must find the defendant guilty. If on the other hand you find that the State has failed to prove one or more of these elements beyond a reasonable doubt, then you must find the defendant not guilty. As I have previously instructed, your verdict(s) must be unanimous. All twelve jurors must agree as to guilty or not guilty.