

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

**ACCOMPLICE**

**CHARGE # TWO - Where defendant is charged as accomplice and jury is instructed as to lesser included charges.<sup>1</sup>**

The indictment charges/or the State alleges<sup>2</sup> that the defendant is legally responsible for the criminal conduct of X<sup>3</sup>, 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. [IF APPROPRIATE: and/or having a legal duty to prevent the commission of the offense, fails to make proper effort to do so].

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. Now this responsibility as an accomplice may be equal and the same as he/she who actually committed the crime(s) or there may be responsibility in a different degree depending on the circumstances as you may find them to be. The court will further explain this distinction in a moment.

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<sup>1</sup> This charge is intended to address circumstances similar to those in State v. Bielkiewicz, 267 N.J. Super. 520, 533 (App. Div. 1993).

<sup>2</sup> 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).

<sup>3</sup> X can be a named person or an unknown person.

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In this case, the State alleges that the defendant is equally guilty of the crime(s) committed by X because he/she acted as his/her accomplice by soliciting or aiding or agreeing or attempting to aid X in planning or committing it with the purpose that the specific crime(s) charged be committed. In order to find the defendant guilty of the specific crime(s) charged, the State must prove beyond a reasonable doubt each of the following elements:

1. That X committed the crime(s) of \_\_\_\_\_. I will shortly explain (or have already explained) 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 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 criminal act.

The first element that the State must prove beyond a reasonable doubt is that X committed the crime of \_\_\_\_\_. I will now explain the elements of this/these offense(s) [OR: I have already explained the elements of the offenses when I instructed you on the law regarding count(s) \_\_\_ of the indictment].

“Solicit” means to strongly urge, suggest, lure or proposition. “Aid” means to assist, support, or supplement the efforts of another. “Agree 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).

**[If accomplice liability under N.J.S.A. 2C:2-6(c)(1)(c) is also charged or alleged, insert appropriate portions of the charge on ACCOMPLICE – LEGAL DUTY]**

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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 a participant in it, proof that one is present at the scene of the commission of the crime(s), 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.<sup>4</sup>

**(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 has not been prosecuted or has been convicted of a different offense or degree of offense or has an immunity from prosecution or conviction or has been acquitted.

Remember that this defendant can be held to be an accomplice with equal responsibility only if you find as a fact that he/she possessed the criminal state of mind that is required to be proved against the person who actually committed the criminal act(s).

In order to convict the defendant as an accomplice to the specific crime(s) charged, you must find that the defendant had the purpose to participate in that particular crime. He/She must

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<sup>4</sup> 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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act [or, having a legal duty to prevent the crime, failed to 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 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.
3. That this defendant's purpose was to promote or facilitate the commission of the offenses.
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.

**[If ACCOMPLICE – LEGAL DUTY is included in the jury instruction, insert the “in sum” list from page 4 of that charge].**

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

If you find that the State has proven each one of the elements as described above beyond a reasonable doubt, then you must find the defendant guilty of [crime charged]. 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 of [crime charged]. As I have previously instructed, any verdict(s) rendered must be unanimous. All twelve jurors must agree as to guilty or not guilty.

Now, as I have previously indicated, you will initially consider whether the defendant should be found not guilty or guilty of acting as an accomplice of X with full and equal responsibility for the specific crime(s) charged. If you find the defendant guilty of the specific charge(s), then you need not consider any lesser charge(s).

If, however, you find the defendant not guilty of acting as an accomplice of X on the

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specific crime(s) charged, then you should consider whether the defendant did act as an accomplice of X but with the purpose of promoting or facilitating the commission of some lesser offense(s) than the actual crime(s) charged in the indictment.

Our law recognizes that two or more persons may participate in the commission of an offense but each may participate therein with a different state of mind. The liability or responsibility of each participant for any ensuing offense is dependent on his/her own state of mind and not on anyone else's.

Guided by these legal principles, and if you have found the defendant not guilty of the specific crime(s) charged, you should then consider whether the defendant is guilty or not guilty as an accomplice on the lesser charge of \_\_\_\_\_. I will now explain the elements of that offense to you. (Here the court may tell the jury what view of the facts could lead to this conclusion).<sup>5</sup>

In considering whether the defendant is guilty or not guilty as an accomplice on this lesser charge, remember that each person who participates in the commission of an offense may do so with a different state of mind and the liability or responsibility of each person is dependent on his/her own state of mind and no one else's.

Therefore, in order to find the defendant guilty of the lesser included offense(s) of \_\_\_\_\_, the State must prove beyond a reasonable doubt:

1. That X committed the crime(s) of \_\_\_\_\_, as alleged in the indictment, or the lesser included offense of \_\_\_\_\_.
2. That this defendant solicited X to commit [lesser included offense] and/or did aid or agree or attempt to aid him/her in planning to commit [lesser included offense].
3. That this defendant's purpose was to promote or facilitate the commission of [lesser included offense].
4. That this defendant possessed the criminal state of mind that is required for the commission of [lesser included offense].

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<sup>5</sup> In instructing the jury as to lesser included offense(s), the court should tell the jury what view of the facts could lead to this conclusion. See State v. Bielkiewicz, 267 N.J. Super. 520, 533 (App. Div. 1993).

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If you find that the State has proven each one of these elements 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 indicated, your verdict(s) must be unanimous. All twelve jurors must agree as to guilty or not guilty.