

**LIABILITY FOR ANOTHER'S CONDUCT**  
**(N.J.S.A. 2C:2-6(c)(1)(c))**

**ACCOMPLICE – LEGAL DUTY**

The indictment charges (OR The State alleges) that the defendant is legally responsible for the criminal conduct of X<sup>1</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. 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.

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, having a legal duty to prevent the commission of the offense, fails to make proper effort to do so.<sup>2</sup>

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 \_\_\_\_\_;
2. That this defendant had a legal duty to prevent the commission of the crime;
3. That this defendant failed to make proper effort to prevent the commission of the crime; and
4. That this defendant's purpose in failing to make proper effort to prevent the commission of the crime was to promote or facilitate the crime.<sup>3</sup>

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<sup>1</sup> X can be a named person or an unknown person.

<sup>2</sup> N.J.S.A. 2C:2-6(c)(1)(c). Although this charge is written to provide complete instructions if (1)(c) is a stand-alone charge, it can also be inserted in either of the charges (ACCOMPLICE – LESSERS and NO LESSERS) on accomplice liability that ordinarily would be used if (1)(a) or (b) were the only types charged.

<sup>3</sup> State v. Ramirez, 246 N.J. 61, 65 (2021).

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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].

The second element that the State must prove beyond a reasonable doubt is that defendant had a legal duty to prevent the commission of the crime(s). A person having a legal duty includes a natural parent, adoptive parent, resource family parent, step-parent or any other person who has assumed responsibility or upon whom there is a legal duty of protection. A person who has such a legal duty includes any person who assumes a general and ongoing responsibility or who establishes a continuing or regular supervisory or caretaker relationship with the person to be protected.<sup>4</sup>

The legal duty to prevent the commission of the crime may be formal or it may arise from informal arrangements. It may be based, not only on a parental relationship or legal custody, but also on less structured relations such as cohabitation. Temporary, brief, or occasional caretaking functions such as irregular or infrequent babysitting could not constitute proof beyond a reasonable doubt of a legal duty. Supervision on a regular and continuing basis over extended periods of time and engagement in matters that are generally committed to full-time caregivers could prove such a legal duty beyond a reasonable doubt.

The third element that the State must prove beyond a reasonable doubt is that this defendant failed to make proper effort to prevent the commission of the offense. A proper effort is one that is objectively reasonable under the circumstances.<sup>5</sup>

The fourth element that the State must prove beyond a reasonable doubt is that this defendant's purpose in failing to make proper effort to prevent the commission of the crime was to promote or facilitate the crime. 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. A person acts purposely with respect to attendant circumstances if he/she is aware of the existence of such circumstances or he/she believes or hopes that they exist. "With purpose,"

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<sup>4</sup> State v. Galloway, 133 N.J. 631, 659-62 (1993). See also, N.J.S.A. 2C:2-1(b)(2) for other examples of "duty to perform ... otherwise imposed by law."

<sup>5</sup> See, for instance, N.J.S.A. 2C:17-2(d) ("take reasonable measures to prevent or mitigate ...").

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“designed,” “with design,” or equivalent terms have the same meaning.

Whether the defendant's purpose in failing to make proper effort to prevent the commission of the crime was to promote or facilitate the crime is a question of fact for you to decide. Purpose is a condition of the mind which cannot be seen and can only be determined by inference from conduct, words, or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that his/her purpose was to cause the death of the victim. It is within your power to find that proof of purpose has been furnished beyond a reasonable doubt by inference which may arise from the nature of the acts and the surrounding circumstances.

If you find that the defendant, with the purpose of promoting or facilitating the commission of the offense(s), and having a legal duty to prevent the commission of the crime(s), failed to do so, then you should consider him/her as if he/she committed the crime(s) himself/herself. 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.<sup>6</sup>

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. Purpose 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

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<sup>6</sup> Ramirez, supra, at 69.

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presence has any probative value depends upon the total circumstances. To constitute guilt there must exist a community of purpose for 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, 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.

**(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 or has been acquitted.

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 had a legal duty to prevent the commission of the crime;
3. That this defendant failed to make proper effort to prevent the commission of the crime; and
4. That defendant's purpose in failing to make proper effort to prevent the commission of the crime was to promote or facilitate the crime.

(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.