

2007 BATTERY: LIABILITY OF AN AIDER AND ABETTOR

Question ___ asks whether (defendant) participated in a battery to _____.

A person may participate in a battery even though he or she does not physically attack the victim. A person participates in a battery if the person:

1. knowingly renders assistance to the person(s) committing the battery, or
2. indicates a readiness or willingness to join in the battery and the person(s) committing the battery knows of his or her willingness, or
3. is present at the scene of the battery and intentionally incites another person to unlawfully attack another person. The word "incite" means to move another person to action, to spur him or her on, or persuade him or her to commit the battery.

A person who is present at the time and place of a battery but does not make an act, word, or gesture to aid or encourage the physical attack is not deemed to have participated in the battery even though the person did nothing to prevent or stop the attack.

COMMENT

This instruction and comment were originally approved in 1966 and were revised in 1986 and 2010. See Krudwig v. Kaepke, 227 Wis. 1, 277 N.W. 670 (1938); Krudwig v. Kaepke, 223 Wis. 244, 270 N.W.2d 79 (1936); Fredrickson v. Kabat, 266 Wis. 442, 63 N.W.2d 756 (1954); Rinehart v. Whitehead, 64 Wis. 42, 46, 24 N.W. 401 (1885); Hilmes v. Stroebel, 59 Wis. 74, 75, 17 N.W. 539 (1883); 6 Am. Jur.2d Assault and Battery § 128 (1963).

For one to incite another to commit a battery, it is necessary that he or she be present at the scene of the action. Krudwig v. Kaepke, 227 Wis. 1, 277 N.W.2d 670 (1938).

"To 'incite' one, that is move him to action, spur him on, or persuade him to action, as to commit an assault, the person inciting him must be present at the scene of the action and not merely directing, ordering, or procuring such action." Krudwig, 227 Wis. at 5.

In Winslow v. Brown, 125 Wis.2d 327, 336, 371 N.W.2d 417 (Ct. App. 1985), the court concluded that a person is liable for aiding and abetting if: (1) the person undertakes conduct that as a matter of objective fact aids another in the commission of an unlawful act; and (2) the person consciously desires or intends that the conduct will yield such assistance. The court of appeals also held that liability premised on aiding and abetting in the civil context is not limited to intentional conduct but also extends to negligent torts as well.