

400 PARTY TO CRIME: AIDING AND ABETTING: DEFENDANT EITHER DIRECTLY COMMITTED OR INTENTIONALLY AIDED THE CRIME CHARGED

Party to a Crime

Section 939.05 of the Criminal Code of Wisconsin provides that whoever is concerned in the commission of a crime is a party to that crime and may be convicted of that crime although that person did not directly commit it.

Two Ways in Which Defendant Can Be a Party to a Crime

The State contends¹ that the defendant was concerned in the commission of the crime of (name crime charged) by either directly committing it or by intentionally aiding and abetting the person who directly committed it. If a person intentionally aids and abets the commission of a crime, then that person is guilty of the crime as well as the person who directly committed it.

Definition of Aiding and Abetting

A person intentionally aids and abets the commission of a crime when, acting with knowledge or belief that another person is committing or intends to commit a crime, (he) (she) knowingly either:

- assists the person who commits the crime; or
- is ready and willing to assist and the person who commits the crime knows of the willingness to assist.

To intentionally aid and abet (name crime charge), the defendant must know that another person is committing or intends to commit the crime of (name crime charged) and have the purpose to assist the commission of that crime.²

[USE THE FOLLOWING IF SUPPORTED BY THE EVIDENCE.]

[However, a person does not aid and abet if (he) (she) is only a bystander or spectator and does nothing to assist the commission of a crime.]

State's Burden of Proof B Party To A Crime

Before you may find the defendant guilty, the State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant directly committed the crime of (name crime charged) or intentionally aided and abetted the commission of that crime.

Unanimous Agreement Not Required Regarding Theory Of Party To A Crime

All twelve jurors do not have to agree whether the defendant directly committed the crime or aided and abetted the commission of the crime. However, each juror must be convinced beyond a reasonable doubt that the defendant was concerned in the commission of the crime in one of those ways.³

Statutory Definition of the Crime

(Name crime charged), as defined in § _____ of the Criminal Code of Wisconsin, is committed by one who (state the elements of the crime).⁴

State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the following _____⁵ elements of (name crime charged) were present.

Elements of the Crime That the State Must Prove

DEFINE THE ELEMENTS OF THE CHARGED CRIME. USE THE APPROPRIATE UNIFORM INSTRUCTIONS, OMITTING THE LAST TWO PARAGRAPHS. USE "THE DEFENDANT OR (NAME OF OTHER PERSON)" IN PLACE OF "THE DEFENDANT" THAT IS TYPICALLY USED IN THE UNIFORM INSTRUCTION. IF THE NAME IS NOT KNOWN, USE "THE DEFENDANT OR ANOTHER PERSON."⁶

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant directly committed all _____⁷ elements of (name crime charged) or that the defendant intentionally aided and abetted the commission of that crime, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 400 was originally published in 1962 and revised in 1994. This revision was approved by the Committee in April 2005 and involved adoption of a new format, nonsubstantive changes to the text, and updating of the Comment.

The originally published version of Wis JI-Criminal 400 (© 1962) provided a single model that included all of the alternative theories of party to crime liability in § 939.05. The 1994 revision provided a series of separate instructions, based on the Committee's conclusion that the basis for liability is more clearly set forth where the instruction addresses only the theories supported by the evidence.

In addition to providing separate instructions, the 1994 revision provided more specifically for integrating the elements of the underlying crime with the facts required for party to crime liability. This structure is believed to be more effective in emphasizing that someone, if not the defendant charged in the instant case, directly committed the crime. Instructions illustrating how several of the models would be implemented are also provided, titled "EXAMPLE."

This instruction is one of three in the series that provides for submitting more than one theory of liability to the jury: directly committing the crime; and aiding and abetting the person who directly committed the crime. Wis JI-Criminal 401 is drafted for the case where aiding and abetting and being a member of a conspiracy are submitted. Wis JI-Criminal 402 is drafted for the case where all three alternatives are submitted.

For an illustration of how this instruction would be applied in a burglary case, see Wis JI-Criminal 400 EXAMPLE.

1. It is recommended, but not required, that the state indicate in the charging document that a party to crime theory of liability will be relied upon. LaVigne v. State, 32 Wis.2d 190, 194, 145 N.W.2d 175 (1966). The statement "the State contends that . . ." is used because it is broad enough to cover cases where the party to crime theory is charged and those where it was not charged but develops based on the evidence presented at trial.

2. The definition of "intentionally" deals with the clear-cut case where the defendant acted with the purpose to assist the commission of the crime charged. "Intentionally" is also defined to include one who is aware that his or her conduct is practically certain to cause the result specified. See § 939.23(3) and Wis JI-Criminal 923A. For a case involving the "natural and probable consequences" variation of aiding and abetting, see Wis JI-Criminal 406.

3. The jurors need not be instructed that they must unanimously agree on the basis of liability, that is, whether the defendant directly committed the crime or aided and abetted its commission. Holland v. State, 91 Wis.2d 134, 280 N.W.2d 288 (1979).

4. Here summarize the definition of the underlying crime. This can usually be done by using the statement found in the first paragraph of the uniform instruction.

5. Insert the appropriate number of elements from the uniform instruction for the crime charged.

6. The primary change required in integrating the instruction for the underlying crime is to phrase it in terms of either the defendant or another person committing the crime rather than by using only "the defendant."

In the type of party to crime case covered by this instruction, either the defendant or the other person may have directly committed the crime.

Wis JI-Criminal 400 EXAMPLE illustrates the integration of the instructions for a burglary case.

7. Insert the appropriate number of elements from the uniform instruction for the crime charged.