

**400 EXAMPLE PARTY TO CRIME: AIDING AND ABETTING:
DEFENDANT EITHER DIRECTLY COMMITTED OR
INTENTIONALLY AIDED A BURGLARY**

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 contends that the defendant was concerned in the commission of the crime of burglary 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 a burglary, the defendant must know that another person is committing or intends to commit the crime of burglary and have the purpose to assist the commission of that crime.

[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 – 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 burglary 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.

Statutory Definition of the Crime

Burglary, as defined in § 943.10 of the Criminal Code of Wisconsin, is committed by one who intentionally enters the building of another without the consent of the person in lawful possession and with intent to steal.¹

State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements of burglary were present.

Elements of the Crime That the State Must Prove

1. The defendant or _____² intentionally entered a building.
2. The defendant or _____ entered the building without the consent of the person in lawful possession.
3. The defendant or _____ knew that the entry was without consent.
4. The defendant or _____ entered the building with intent to steal.

"Intent to steal" requires the mental purpose to take and carry away movable property of another without consent and the intent to deprive the owner permanently of possession of the property. It requires knowledge that the property belonged to another person and that the person did not consent to the taking of the property.

When Must Intent Exist?

The intent to steal must be formed before entry is made. The intent to steal, which is an essential element of burglary, is no more or less than the mental purpose to steal formed at any time before the entry, which continued to exist at the time of the entry.

Deciding About Intent and Knowledge

You cannot look into a person's mind to find intent and knowledge. Intent and knowledge must be found, if found at all, from acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon intent and knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant directly committed all four elements of burglary 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 EXAMPLE was originally published in 1994. This revision was approved the Committee in April 2005 and involved adoption of a new format, nonsubstantive changes to the text, and updating of the Comment.

This instruction illustrates the application of Wis JI-Criminal 400 to a case involving burglary. Wis JI-Criminal 400 applies when two theories of party to crime liability are submitted: directly committing the crime; and, aiding and abetting the person who directly committed the crime.

1. See Wis JI-Criminal 1421 for the complete instruction on burglary with intent to steal.
2. If the name of the person who directly committed the crime is known, it should be inserted in the blank and used throughout the instruction. If the case presents the unusual situation where the name of that person is not known, use "another person" in the first blank and "the person" or "that person" in the other blanks.