

406 EXAMPLE PARTY TO CRIME: AIDING AND ABETTING: FIRST DEGREE INTENTIONAL HOMICIDE AS THE NATURAL AND PROBABLE CONSEQUENCE OF ARMED ROBBERY

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.

The State contends that the defendant was concerned in the commission of the crime of first degree intentional homicide 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. A person who intentionally aids and abets the commission of one crime is also guilty of any other crime which is committed as a natural and probable consequence of the intended 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 intentionally aided and abetted the commission of the crime of armed robbery, that first degree intentional homicide was committed, and that under the circumstances, first degree intentional homicide was a natural and probable consequence of armed robbery.

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.

[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.]

First consider whether the defendant intentionally aided and abetted the crime of armed robbery.

Statutory Definition of the Intended Crime

Armed robbery, as defined in § 943.32 of the Criminal Code of Wisconsin, is committed by one who, with the intent to steal and by use or threat of use of a dangerous weapon, takes property from the person or presence of the owner by [using force against the person of the owner with intent to overcome physical resistance or physical power of resistance to the taking or carrying away of the property] [or] [by threatening the imminent use of force against the person of the owner with intent to compel the owner to submit to the taking or carrying away of the property].

State's Burden of Proof – Intended Crime

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

Elements of the Intended Crime That the State Must Prove

1. (Name) was the owner of property.
2. _____ took and carried away property from the person or from the presence of (name).
3. _____ took the property with the intent to steal.
4. _____ acted forcibly.
5. At the time of the taking or carrying away, _____ used or threatened to use a dangerous weapon.

ADD THE FOLLOWING IF THE CASE INVOLVES A THREAT TO USE A WEAPON AND NO WEAPON OR OTHER ARTICLE IS ACTUALLY DISPLAYED:

[This element does not require that _____ actually display or possess a dangerous weapon. It is sufficient if the victim reasonably believed defendant had a dangerous weapon at the time of the threat. Whether the victim reasonably believed that _____ was armed with a dangerous weapon is to be determined from the standpoint of the victim at the time of the alleged offense. The standard is what a person of ordinary intelligence and prudence would have believed under the circumstances that existed at that time.]

Meaning of Owner

"Owner" means a person who has possession of property.

Meaning of Intent to Steal

"Intent to steal" means that _____ had the mental purpose to take and carry away property of another without consent and that _____ intended to deprive the owner permanently of possession of the property. [It further requires that _____ knew that the property belonged to another and knew that the person did not consent to the taking of the property.]

Deciding About Intent

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

Meaning of Forcibly

"Forcibly" means that _____ [used force against (name) with the intent to overcome or prevent physical resistance or physical power of resistance to the taking or carrying away of the property] [or] [threatened the imminent use of force against (name) with the intent to compel (name) to submit to the taking or carrying away of the property].

Meaning of Imminent

"Imminent" means "near at hand" or "on the point of happening."

Meaning of Dangerous Weapon

A "dangerous weapon" is (any firearm, whether loaded or not) (any device designed as a weapon and capable of producing death or great bodily harm) (any device or instrumentality which in the manner it is used or intended to be used is calculated or likely to produce death or great bodily harm).

Next consider whether the crime of first degree intentional homicide was committed.

Statutory Definition of the Charged Crime

First degree intentional homicide, as defined in § 940.01 of the Criminal Code of Wisconsin, is committed by one who causes the death of another human being with intent to kill that person or another.

State's Burden of Proof – Charged Crime

The State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements of first degree intentional homicide were present.

Elements of the Charged Crime That the State Must Prove

1. _____ caused the death of (name of victim).

"Cause" means that the defendant's act was a substantial factor in producing the death.

2. _____ acted with the intent to kill ((name of victim)) (another human being).

"Intent to kill" means that _____ had the mental purpose to take the life of another human being or was aware that (his) (her) conduct was practically certain to cause the death of another human being.

When May Intent Exist?

While the law requires that the defendant acted with intent to kill, it does not require that the intent exist for any particular length of time before the act is committed. The act need not be brooded over, considered, or reflected upon for a week, a day, an hour, or even for a minute. There need not be any appreciable time between the formation of the intent and the act. The intent to kill may be formed at any time before the act, including the instant before the act, and must continue to exist at the time of the act.

Deciding About Intent

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

Intent and Motive

Intent should not be confused with motive. While proof of intent is necessary to a conviction, proof of motive is not. "Motive" refers to a person's reason for doing something. While motive may be shown as a circumstance to aid in establishing the guilt of a defendant, the State is not required to prove motive on the part of a defendant in order to convict. Evidence of motive does not by itself establish guilt. You should give it the weight you believe it deserves under all of the circumstances.

Natural and Probable Consequences

Finally, consider whether under the circumstances first degree intentional homicide was a natural and probable consequence of armed robbery.

A crime is a natural and probable consequence of another crime if, in the light of ordinary experience, it was a result to be expected, not an extraordinary or surprising result. The probability that one crime would result from another should be judged by the facts and circumstances known to the defendant at the time the events occurred. If the defendant knew, or if a reasonable person in the defendant's position would have known, that the crime of first degree intentional homicide was likely to result from the commission of armed

robbery, then you may find that under the circumstances first degree intentional homicide was a natural and probable consequence of armed robbery.

Jury's Decision

If you are satisfied beyond a reasonable doubt that the defendant intentionally aided and abetted the commission of the crime of armed robbery, that first degree intentional homicide was committed, and that under the circumstances, first degree intentional homicide was a natural and probable consequence of armed robbery, you should find the defendant guilty.

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

COMMENT

Wis JI-Criminal 406 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 406 to a case where the defendant is alleged to be guilty of first degree intentional homicide as a natural and probable consequence of aiding and abetting an armed robbery. It incorporates parts of the uniform instructions for armed robbery [Wis JI-Criminal 1480] and first degree intentional homicide [Wis JI-Criminal 1010]. The footnotes to those instructions should be consulted for information on substantive issues.

The primary change required in integrating the instruction for the underlying crime with the party to crime instruction is to phrase it in terms of another person directly committing the crime rather than referring to "the defendant." In the party to crime case, it is the other person who directly commits the crime; "the defendant" is the person whose liability depends on being a party to that crime. The draft provides a blank where the reference to "the defendant" would typically appear. If the name of the principal is known, it should be inserted in each blank. If the case presents the unusual situation where the name of the principal is not known, use "another person" in the first blank and "the person" or "that person" in the others.