

**410 EXAMPLE PARTY TO CRIME: CONSPIRACY TO COMMIT 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.

The State contends that the defendant was concerned in the commission of the crime of burglary as a member of a conspiracy to commit that crime.

If a person is a member of a conspiracy to commit a crime and that crime is committed by any member of the conspiracy, then that person and all members of the conspiracy are guilty of the crime.

**Definition of Being A Member of a Conspiracy**

A person is a member of a conspiracy if, with intent that a crime be committed, the person agrees with or joins with another for the purpose of committing that crime. A conspiracy is a mutual understanding to accomplish some common criminal objective or to work together for a common criminal purpose. It is not necessary that the conspirators had any express or formal agreement, or that they had a meeting, or even that they all knew each other.

[IF WITHDRAWAL IS AN ISSUE, INSERT WIS JI-CRIMINAL 412.]

**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 crime of burglary was committed and that the defendant was a member of a conspiracy to commit that crime.

**Statutory Definition of the Crime**

Burglary, as defined in § 943.01 of the Criminal Code of Wisconsin, is committed by one who intentionally enters a building without the consent of the person in lawful possession and with intent to steal.

### **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. A member of the conspiracy intentionally entered a building.
2. A member of the conspiracy entered the building without the consent of the person in lawful possession.
3. A member of the conspiracy knew that the entry was without consent.
4. A member of the conspiracy 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 intent to deprive the owner permanently of possession of the property. [It requires knowledge that the property belonged to another and knowledge 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 was a member of a conspiracy to commit burglary and the crime was committed by a member of the conspiracy [and that the defendant did not withdraw before the crime was committed], you should find the defendant guilty.

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

**COMMENT**

Wis JI-Criminal 410 EXAMPLE was originally published 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.

This instruction illustrates the application of Wis JI-Criminal 410 to a case involving a conspiracy to commit burglary.