

435 LIABILITY FOR THE ACTS OF ANOTHER; AUTHORIZATION OR ACQUIESCENCE

The defendant is charged with committing the crime of (charged crime) by authorizing or acquiescing in the commission of that crime by another person, whose activities the defendant had a duty to direct or supervise.

Before you may find the defendant guilty, you must be satisfied beyond a reasonable doubt that the crime of (charged crime) was committed by a person whose activities the defendant had a duty to direct or supervise and that the defendant authorized or acquiesced in such acts.

(Charged crime), as defined in § _____ of the Criminal Code of Wisconsin, is committed by one who (summarize the elements of the charged crime).¹ The State must prove by evidence which satisfies you beyond a reasonable doubt that the following _____² elements of (charged crime) were present.

[CONTINUE WITH EACH OF THE ELEMENTS OF THE CHARGED CRIME. USE THE APPROPRIATE UNIFORM INSTRUCTION, OMITTING THE LAST TWO PARAGRAPHS. USE THE NAME OF THE PERSON WHO DIRECTLY COMMITTED THE CRIME IN PLACE OF "THE DEFENDANT" THAT IS TYPICALLY USED IN THE UNIFORM INSTRUCTION. IF THE NAME IS NOT KNOWN, USE "THE PERSON" OR "THE OTHER PERSON."]³

Next consider whether (name of person) was a person whose activities the defendant had a duty to direct or supervise.

Finally, consider whether the defendant (authorized) (acquiesced in) the acts allegedly committed by (name of person). This requires that (charged crime) was committed by (name of person) with the knowledge of the defendant and either with the defendant's consent or without the defendant's objection and efforts to prevent the acts.

If you are satisfied beyond a reasonable doubt from the evidence in this case that (name of person) (summarize the elements of the charged crime), that the defendant had a duty to direct or supervise (name of person), and that the defendant knew (name of person) committed the acts and (authorized) (acquiesced in) the acts allegedly committed by (name of person), you should find the defendant guilty.

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

COMMENT

Wis JI-Criminal 435 was originally published in 1966 and reviewed and republished without change in 1987. This revision was approved by the Committee in May 1995.

This instruction deals with the individual liability of a person for crimes committed by one whom the person has a duty to direct or supervise. Though such situations will commonly arise in the corporate setting, this instruction deals with the criminal liability of individuals, not the liability of corporations. Regarding the latter, see Wis JI-Criminal 420.

There have been no Wisconsin appellate cases dealing with the substance of the type of liability addressed by this instruction from the time of its original publication. It was revised in 1995 in an attempt to explain the basis of liability more clearly and to integrate the elements of the underlying crime. The revised instruction is set up in a way that parallels the approach used for party to crime cases: the jury must determine whether someone directly committed the crime charged and then determine whether that person had a sufficient connection with the defendant to extend liability to the defendant. See Wis JI-Criminal 400.

The rule of liability in the above instruction is illustrated by the case of State ex rel. Kropf v. Gilbert, 213 Wis. 196, 251 N.W. 478 (1933). The question in that case concerned the liability of certain corporate officers for embezzlement. There was no evidence that the officers in question expressly authorized the embezzlement, but there was evidence that they knew what was going on and made no effort to stop it. The court said that cases dealing with liability on account of aiding and abetting are not on point. Those cases generally hold that failure to take affirmative action to prevent a crime even though one could easily do so does not constitute

aiding and abetting. See Connaughty v. State, 1 Wis. 143 (1853). Furthermore, the court distinguished cases which dealt with employees who carried out orders of superior officers. Those cases generally hold that the employee is not liable, various reasons being given for that conclusion, such as the fact that they have no power to control the affairs of the corporation or that they were in no sense advancing their own personal interests. See Weber v. State, 190 Wis. 257, 208 N.W. 923 (1926), and Kralovetz v. State, 191 Wis. 374, 211 N.W. 277 (1926). While the results reached in the various cases discussed above are correct, the analysis should proceed on the basis of whether there is a legal duty to act under the circumstances of the particular case. A person ordinarily does not have a legal duty to interfere to prevent a crime of violence from being committed [but see § 940.34, Duty To Aid Victim or Report Crime], and, therefore, he may stand by and acquiesce in the commission of the crime without being guilty as an aider and abetter on account of his mere presence and failure to take affirmative action. An employee of a corporation does not have a duty to manage the affairs of the corporation, and, therefore, he does not incur criminal liability simply because he fails to take affirmative action to prevent improper things from being done. Managerial officers, however, have such a duty and, therefore, guilt may be posited on mere acquiescence in the acts of another. See Carolene Products Co. et al. v. United States, 140 F.2d 61 (4th Cir. 1944).

1. Here summarize the definition of the charged crime. This can usually be done by using the statement found in the first paragraph of the uniform instruction.
2. Insert the appropriate number of elements from the uniform instruction for the crime.
3. The primary change required in integrating the instruction for the charged crime is to phrase it in terms of another person committing the crime rather than by using "the defendant." In this case, it is the other person who directly commits the crime; "the defendant" is the person whose liability depends on being a person with a duty to supervise the person who directly commits the crime.