

Accessory After the Fact: s 10

Legislation

Criminal Code s 10

Accessories after the fact

A person who receives or assists another who is, to the person's knowledge, guilty of an offence, in order to enable the person to escape punishment, is said to become an accessory after the fact to the offence.

Commentary

Section 10 defines the expression “accessory after the fact”, the offence being created and penalties imposed by other provisions of the *Criminal Code*.¹

In contra-distinction to ss 7 and 8, the conviction of the other person is admissible, and is prima facie evidence, that that person did the acts and possessed the state of mind (if any), which constitute the principal offence.²

Where criminal responsibility depends upon the defendant's knowledge of a matter, actual knowledge is required. Wilful blindness alone is not sufficient, but it may be a basis for inferring the defendant's actual knowledge.³ Mere suspicion is not sufficient.⁴

The prosecution must prove some positive act by the defendant “in an aspect of the behaviour by the defendant, directed towards” the other person, before it can be said that the defendant assisted or received that person.⁵

Assistance may take many forms, including⁶ joining in the removal of a body and weapon and cleaning up blood after a murder;⁷ disposing of stolen goods;⁸ changing the engine number on a stolen vehicle;⁹ concealing evidence;¹⁰ and making a false statement to the police.¹¹

¹ See ss 307, 544, 545.

² *R v Carter and Savage; ex-parte Attorney-General* [1990] 2 Qd R 371. However, the reasoning of the majority in *R v Carter and Savage* was doubted in *R v Kirkby* [2000] 2 Qd R 57 at [44], [80]-[81]. In *R v Triffett* (1992) 1 Tas R 293, Underwood J refused to apply *R v Carter and Savage*, and to permit evidence of the conviction of the other person on a plea of guilty.

³ *Pereira v Director of Public Prosecutions* (1988) 82 ALR 217, 219-220; *Giorgianni v The Queen* (1985) 156 CLR 473 at 504-505; notwithstanding the view of Gibbs CJ at 487-488 and Mason J at 495. See the discussion by White J in *ASIC v ActiveSuper Pty Ltd (in liq)* (2015) 235 FCR 181 at [398]-[411], quoted by Douglas J in *ASIC v Managed Investments Ltd and Ors (No 9)* (2016) 308 FLR 216; [2016] QSC 109 at [751].

⁴ *R v Bainbridge* [1960] 1 QB 129, 134; *R v Ancuta* [1991] 2 Qd R 413, 418-419.

⁵ *R v Winston* [1995] 2 Qd R 204, 207.

⁶ For further examples of discussion of assistance see *J W Cecil Turner Russell on Crime* (12th ed) London, Stevens & Sons, 1964, pp 163, 164-165.

⁷ See *R v Hawken* (1986) 27 A Crim R 32.

⁸ *R v Phelan* [1964] Crim LR 468.

⁹ *R v Tevendale* [1955] VR 95.

¹⁰ *R v Levy* [1912] 1 KB 158, *R v Williamson* [1972] 2 NSWLR 281.

¹¹ *Leaman v The Queen* [1986] Tas R 223.

A person may “receive” another, when the first person accepts the second person into an area or location which the first person controls, or over which the first person exercises some influence. This conduct will then constitute a particular form of assistance.¹² However, the resumption by the defendant and the other person of their former habit of living together in a joint household will not, without more, constitute receiving sufficient for this element of the offence.¹³

Directions

The trial Judge should select and/or adapt directions from those suggested below. Relevant evidence and/or admissions should be identified for each direction. It will often be convenient to provide a short summary of the arguments of the parties in relation to each direction.

I must now direct you about the offence of being an accessory after the fact to the offence of ... I shall refer to this offence as the principal offence.

To prove that the defendant is an accessory after the fact, the prosecution must prove four elements beyond reasonable doubt:

One - that someone committed the principal offence. In these directions, I will sometimes refer to [X], the person who committed that offence, as the “principal offender”.

Two - that, after the principal offence was committed, the defendant assisted (or received) the person who had committed it.

Three - that, when the defendant assisted (or received) the principal offender, he/she knew or believed that [X], the principal offender, had committed the principal offence.

Four - that the defendant performed the act with the purpose of enabling the principal offender to escape punishment.

Before you can find NOA guilty of assisting an offender you must be satisfied that the prosecution has proved all four of these elements beyond reasonable doubt.

I will now further explain each of these elements.

The first element is that the principal offender, [X], committed the offence of ...

¹² *R v Winston* [1995] 2 Qd R 204, 208.

¹³ *R v Lee and Scott* (1834) 6 Car & P 536, 172 ER 1353; *R v Winston* [1995] 2 Qd R 204, 207.

[If appropriate] **In this case, a certificate of conviction has been tendered to prove that [X] committed the offence of ..., and there has been no evidence to the contrary, so you may find yourselves satisfied of the first matter.**

[Otherwise directions relating to the commission of the principal offence should be given, with references to the relevant evidence.]

The second element the prosecution must prove is that, after the offence of ... was committed, the defendant assisted (or received) the principal offender.

To prove this, the prosecution must establish that the defendant performed some act by way of assistance to the principal offender (or that the defendant in some way received the principal offender).

In this case it is alleged that the defendant [describe relevant act].

This element will only be met if you are satisfied, beyond reasonable doubt, that

- 1. He/she performed this act; and**
- 2. this occurred after the principal offence was committed; and**
- 3. this act in some way assisted [X] (or that the defendant thereby received [X]; it will often be necessary to explain the concept of receiving a defendant, in a way relevant to the case).**

The third element the prosecution must prove is that, when the defendant [describe relevant act], he/she knew or believed that the principal offender had committed the offence of ...

[If appropriate, add] **You must be satisfied that the defendant actually knew this; mere suspicion on the part of the defendant is not sufficient.**

The fourth element the prosecution must prove is that the defendant assisted (or received) [X] by [describe relevant act] in order to enable [X] to escape punishment for the principal offence.