

75. Accessory After the Fact: s 10

75.1 Legislation

[Last reviewed: March 2025]

Criminal Code

[Section 10](#) – Accessories after the fact

[Section 307](#) – Accessory after the fact to murder

[Section 544](#) – Accessories after the fact to offences

[Section 545](#) – Punishment of accessories after the fact to offences

75.2 Commentary

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Section 10 defines the expression ‘accessory after the fact’, the offence being created and penalties imposed by other provisions of the *Criminal Code*, including ss 307, 544, and 545.

The Defendant must have:

- (1) Received or assisted another person;
- (2) Who, to the defendant’s knowledge, was guilty of an offence;
- (3) To enable that person to escape punishment.

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 (*R v Carter and Savage*; *ex-parte Attorney-General* [\[1990\] 2 Qd R 371](#)). It may be noted, however, that the reasoning of the majority in *R v Carter and Savage* was doubted in *R v Kirkby* [\[2000\] 2 Qd R 57](#), [64], [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. In *R v Dalton* [\(2020\) 3 QR 273](#), [294], Buss AJA observed that ‘*Carter and Savage* may have been wrongly decided. However, this was not expressly determined in *Kirkby*’.

Knowledge

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 (*Pereira v Director of Public Prosecutions* [\[1998\] HCA 57](#); (1998) 194 CLR 610, [219-220]; *Giorgianni v The Queen*

[\(1985\) 156 CLR 473](#), [504-505]; notwithstanding the view of Gibbs CJ at [487-488] and Mason J at [495]). Mere suspicion is not sufficient (*R v Ancuta* [\[1991\] 2 Qd R 413](#), [418-419]).

Receiving and assistance

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 (*R v Winston* [\[1995\] 2 Qd R 204](#), 207).

Assistance may take many forms, including joining in the removal of a body and weapon and cleaning up blood after a murder (*R v Hawken* [\(1986\) 27 A Crim R 32](#)); disposing of stolen goods (*R v Phelan* [\[1964\] Crim LR 468](#)); changing the engine number on a stolen vehicle (*R v Tevendale* [\[1955\] VR 95](#)); concealing evidence (*R v Levy* [\[1912\] 1 KB 158](#); *R v Williamson* [\[1972\] 2 NSWLR 281](#)); and making a false statement to the police (*Leaman v R* [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 (*R v Winston* [\[1995\] 2 Qd R 204](#), [208]). However, the resumption by the Defendant and the other person of their former habit of living together in a joint household will likely not constitute receiving sufficient for this element of the offence (see *R v Winston* [\[1995\] 2 Qd R 204](#), [207]).

75.3 Suggested Directions

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(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 [name of offence]. 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:

- 1. 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’.**

2. That, after the principal offence was committed, the Defendant assisted [or received] the person who had committed it.
3. 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.
4. That the Defendant performed the act with the purpose of enabling the Principal Offender to escape punishment.

Before you can find the Defendant 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 [name of offence].

(If appropriate, add this sentence): In this case, a certificate of conviction has been tendered to prove that [X] committed the offence of [name of offence], 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 [name of offence] 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. The Defendant 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 [name of offence]. (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.