GILSHENAN & LUTON
LEGAL PRACTICE



Being an accessory to ("aiding and abetting") a crime

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When a person personally commits all of the elements of an offence, they are regarded as a *"principal offender"*. It is possible though, that someone can be convicted of an offence even though not performing any of the acts or omissions which constitute the offence. Such people are known as a *"party"* to the offence, sometimes also called an *"accomplice"* or an *"accessory"*. The general term of *"aiding and abetting"* is also sometimes used in this context.

When will someone be a party to a crime (accessory, aiding and abetting, counselling)?

The Queensland criminal law recognises different situations which can result in someone being regarded as an accessory or party to a crime. Under Queensland law, a person is guilty of an offence if they do an act or omission:

- for the purpose of enabling or aiding another person to commit the offence; or
- which aids another person in committing the offence; or
- in which they counsel or procure any other person to commit the offence.

Aiding and abetting

Aiding a crime (commonly called aiding and abetting) will generally involve providing "material assistance" to a principal offender. The assistance provided must have been given for the purpose of aiding in the commission of the offence, or done so *"knowingly"*.

Aiding can even extend to providing encouragement or support at the scene of an offence. (Encouragement beforehand can also constitute the *counselling* of a crime – see below). Generally, though, a mere passive presence during the commission of an offence, without any positive actions, does not amount to aiding an offence.

Counselling or procuring someone to commit an offence

Counselling is taken to mean the encouragement of the commission of an offence, whether by word or actions. *Procuring* involves intentionally causing or commissioning the commission of an offence.

Importantly, it does not matter if the offence actually committed is the same as that counselled or a different one, provided that the facts constituting the offence committed are a probable consequence of carrying out the acts counselled.

Accessory after the fact is not a party to a crime

Being a party to an offence does not include being an *"accessory after the fact"*. That term is used to describe someone who helps an offender escape punishment after the offence has been committed. It is different to being a party, who assists the principal offender/s commit the offence.

Examples of being a party to a crime

A simple example of a party to a crime is someone who acts as a getaway driver as part of a bank robbery. That person might not go inside the bank, or share in the proceeds of the robbery, but they can nonetheless be convicted of the robbery given their role as *aiding* the commission of the crime.

Other examples include hiring (*procuring*) someone to commit an offence (such as to assault or kill someone).

A woman whose male partner assaults another male for his conduct towards the female does not commit any offence by passively watching her partner assault the other male. If however, that female encourages or assists her partner in any way, before or during the assault, she too may be convicted of that assault as a party to her partner's offending (due to her act of counselling her partner).

When criminal plans go wrong

The law also extends criminal liability for any offence that is a "probable consequence" of an unlawful purpose entered into between two or more people, even if it is not what was actually agreed. In other words, one can be a party to an offence even where one of the parties goes beyond the original plan entered into.

For example, where a group of **unarmed** youths agree to rob a service station and then, to the surprise of the others, one offender pulls out a knife mid-robbery. In this scenario, all the robbers can be convicted on the basis of an **armed** robbery, even though most were initially unaware of the knife.

This is because the use of the knife was a probable consequence of their unlawful plan to rob the service station. All participants in the common purpose (in this scenario, to rob the service station), are liable for any offence committed by one of them in the furtherance of their common purpose, as long as the offence was a probable consequence of putting the plan into action.

What are the consequences of being charged as a party to an offence?

The effect of being a party to an offence is that the person can be charged and convicted as if they were a principal offender. So, in the bank robbery example given above, the getaway driver can be charged with armed robbery of the bank, even though they didn't enter the bank or share in the spoils of the robbery.

Although a party can be charged with the same offence as a principal offender, they are usually sentenced more leniently than principal offenders, recognising their reduced role and culpability in the commission of the offence.

What if the principal offender is not convicted?

Importantly, a person can still be convicted of being a party to an offence even if the principal offender has not been convicted.

This might be because the principal offender has escaped detection, or may be dead, or may have a defence which is not available to the party (such as insanity). In those instances, a party can still be liable to be punished for the offence, even though the principal offender has not been convicted.

It is also possible for the party to be convicted of a lesser offence than the principal offender.

Conclusion

The law surrounding criminal responsibility for being an accessory or party to a crime can be complex. Gilshenan and Luton has significant expertise and experience in defending people charged with being a party to an offence. It is crucial, as is often the case in criminal law, that you seek advice early to ensure we can optimise your options to defend the charges.

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