

202.20 AIDING AND ABETTING - FELONY, MISDEMEANOR.<sup>1</sup>

A person may be guilty of (*name crime*) although the defendant personally does not do any of the acts necessary to constitute that crime. A person who aids and abets another to commit a crime is guilty of that crime. You must clearly understand that if the defendant does aid and abet, the defendant is guilty of the crime, just as if the defendant had personally done all the acts necessary to constitute that crime.

For you to find the defendant guilty of (*name crime*) because of aiding and abetting, the State must prove three things beyond a reasonable doubt:

First, that the crime of (*name crime*) was committed by some other person(s).<sup>2</sup> (Here give the elements of the crime as they relate to this case).<sup>3</sup>

Second, that the defendant knowingly [advised] [instigated] [encouraged] [procured] [aided] the other person(s) to commit that crime.

(A person is not guilty of a crime merely because the defendant is present at the scene, even though the defendant may silently approve of the crime or secretly intend to assist in its commission. To be guilty the defendant must aid or actively encourage the person committing the crime, or in some way communicate to this person the defendant's intention to assist in its commission.)<sup>4</sup>

And Third, that the defendant's actions or statements caused or contributed to the commission of the crime by that other person.<sup>5</sup>

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, some person(s) other than the defendant

committed (*name crime*), that the defendant knowingly [advised] [instigated] [encouraged] [procured] [aided] the other person(s) to commit the crime, and that in so doing the defendant's actions or statements caused or contributed to the commission of the crime by the other person(s), it would be your duty to return a verdict of guilty of (*name crime*). If you do not so find or have a reasonable doubt as to one or more of these things, it would be your duty to return a verdict of not guilty.

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1. This charge may be given in connection with a charge on the principal crime where it is not clear whether defendant, if he committed the crime at all, actually committed the crime himself or did so as an aider and abettor. For special problems where the aider and abettor is tried alone, see *S. v. Jackson*, 270 N.C. 773 (1967).

2. *S. v. Bond*, 345 N.C. 1, 24 (1996), citing *S. v. Francis*, 341 N.C. 156 (1995). A showing of the defendant's presence, or lack thereof, is not required.

Accessories before the fact who do not actually commit the crime and may not have been present can be convicted of the crime under a theory of aiding and abetting.

3. The parenthetical language should be given only if a mandate on the principal crime has not been given elsewhere.

4. This paragraph should be given only where there is support in the evidence for a finding that defendant was present at the scene of the crime. *S. v. Beach*, 283 N.C. 261, 267-268 (1973), states that there is an exception to the rule that mere presence does not make one an accessory: ". . . when the bystander is a friend of the perpetrator, and knows that his presence will be regarded by the perpetrator as an encouragement and protection, presence alone may be regarded as an encouragement, and in contemplation of the law this was aiding and abetting." See *S. v. Walden*, 306 N.C. 466 (1982).

5. See *S. v. Davis*, 319 N.C. 620 (1987).

SPECIAL VERDICT FORM

STATE OF NORTH CAROLINA                      IN THE GENERAL COURT OF JUSTICE  
COUNTY OF \_\_\_\_\_                      SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA

-VS-

\_\_\_\_\_, DEFENDANT

Issue One:

We, the jury, return as our unanimous verdict that the defendant is:

(1) Guilty of (*name crime*). \_\_\_\_\_

OR

(2) Not guilty of (*name crime*). \_\_\_\_\_

IF YOU ANSWERED ISSUE ONE "GUILTY" THEN DO NOT ANSWER  
ISSUE TWO. IF YOU ANSWERED ISSUE ONE "NOT GUILTY" THEN  
ANSWER ISSUE TWO.

Issue Two:

We, the jury, return as our unanimous verdict that the defendant is:

(3) Guilty of Accessory Before the Fact to (*name crime*).  
\_\_\_\_\_

OR

(4) Not guilty of Accessory Before the Fact to (*name crime*).  
\_\_\_\_\_

This the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Jury Foreperson