Aiding and Abetting

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Categories : Crimes and Elements, Uncategorized

Tagged as : abetting, aiding, elements

Date : January 5, 2011

Under the common law doctrine of aiding and abetting, a person is considered to be a principal to a crime when:

(1) a crime is committed by another,

(2) the person knowingly advises, instigates, encourages, procures, or helps the other person commit the crime, *and*

(3) his or her actions or statements caused or contributed to the commission of the crime by the other person.

State v. Goode, 350 N.C. 247 (1999). Aiding and abetting is not a separate crime; rather, it merely describes a person's participation in a crime. As a general rule, aiding and abetting becomes an issue when it is not clear whether the defendant committed any part of the crime.

Typically, a person who aids or abets a crime is guilty of that crime and is punishable as provided for that crime. However, a few criminal statutes punish aiding and abetting at a lower level. See, e.g., G.S. 14-46 (providing that the main crime is punished as a Class I felony, while aiding and abetting the crime is a Class 1 misdemeanor).

Some of the more common questions that I get asked about aiding and abetting are listed below. If you have others, let me know.

1. Can you get an aiding and abetting conviction before the principal in the first degree is convicted? Yes. The principal in the first degree need not be convicted before a person can be found guilty of aiding and abetting that principal. State v. Beach, 282 N.C. 261, 269 (1973) (citing State v. Jarrell, 141 N.C. 722 (1906)); State v. Williams, 28 N.C. App. 320, 323 (1976). However, the State must establish that the crime in fact was committed. Beach, 283 N.C. at 269; State v. Cassell, 24 N.C. App. 717, 722 (1975).

2. Is a mental state required for aiding and abetting a strict liability crime? Yes. As discussed in my blog post here, because aiding and abetting requires that the defendant act knowingly, when the defendant is prosecuted as an aider and abettor to a strict liability crime, a mental state is required. See, e.g., Bowman, 188 N.C. App. at 649 ("[a]lthough statutory rape is a strict liability crime, aiding and abetting statutory rape is not"; the trial court erred by denying the defendant's request for an instruction that defendant had to know the age of the victims in order to be convicted of aiding and abetting statutory rape).

3. Does the defendant have to be present when the crime is committed? No. Even if the defendant is not immediately present, he or she can be convicted if the defendant stands by in a position in which he or she can help, and the principal in the first degree knows that. State v. McKinnon, 306 N.C. 288 (1982).

4. Is mere presence enough? Mere presence at the crime scene does not make the defendant an aider and abettor, even if the defendant has an intent to assist; to be guilty, the defendant must aid or actively encourage the person committing the crime or communicate to that person in some way his or her intention to assist. State v. Lucas, 353 N.C. 568 (2001); Goode, 350 N.C. 247. The communication or intent to aid does not have to be by express words; it may be

inferred from the defendant's actions and relation to the perpetrator. Goode, 350 N.C. 247. One exception to the rule that mere presence isn't enough for aiding and abetting is when the bystander is a friend of the perpetrator and knows that his or her presence will be regarded by the perpetrator as encouragement and protection. Lucas, 353 N.C. 568; Goode, 350 N.C. 247.

5. Can an omission ever be the basis of an aiding and abetting charge? Yes. Cases have held that the failure of a parent who is present to take all steps reasonably possible to protect the parent's child from attack or sexual assault by another person constitutes an act of omission by the parent showing the parent's consent and contribution to the crime and thus is sufficient to support a conviction based on aiding and abetting. State v. Walden, 306 N.C. 466 (1982); State v. Ainsworth, 109 N.C. App. 136 (1993).

6. Can a defendant be convicted if the principal is acquitted? North Carolina law is not entirely clear as to the effect of an acquittal of the principal on an aider and abettor's conviction. Some cases suggest that if the principal and the aider and abettor are tried separately, the defendant may be convicted of aiding and abetting even if a principal in the first degree is acquitted. State v. Beach, 283 N.C. 261, 268-69 (1973) (conviction as an aider and abettor was valid when the indictment alleged that the defendant aided and abetted "an unknown party" and the principal was acquitted in a separate trial); State v. Witt, 113 N.C. 716 (1983) (rejecting the defendant's argument that the trial judge improperly instructed the jury that the principal's prior acquittal should not affect its determination as to the defendant's guilt or innocence of aiding and abetting). Distinguishing this law, however, at least one case has held that if the indictment names a principal, the defendant may not be convicted of aiding and abetting if the named principal is acquitted in a separate trial. State v. Byrd, 122 N.C. App. 497, 498-99 (1996).

If the principal and the aider and abettor are tried jointly, at least one court of appeals case suggests that acquittal of the principal does not bar a conviction of the aider and abettor. Byrd, 122 N.C. App. at 498. Other decisions, however, including those of the North Carolina Supreme Court, hold that an aider and abettor's conviction is improper in these circumstances. See State v. Spruill, 214 N.C. 123, 125 (1938) (aiding and abetting could not support the defendant's manslaughter conviction, arising out of a vehicle accident; the vehicle was owned by the defendant but driven by the principal, who was acquitted in a joint trial); State v. Gainey, 273 N.C. 620, 623 (1968) (citing Spruill and holding that because the evidence was insufficient to support the principal's conviction for carrying a concealed weapon, the conviction of others for aiding and abetting also must fail); State v. Austin, 31 N.C. App. 20, 24 (1976) ("Where there is insufficient evidence to convict a specifically named principal defendant of the crime charged, another person may not be convicted of aiding and abetting him."); State v. Spencer, 18 N.C. App. 499, 499 (1973) (in a case in which the principal and the aider and abettor were tried jointly but appealed separately, the court noted that a new trial had been ordered on the principal's conviction; citing Gainey, it went on to indicate that if the principal is not convicted in the new trial, the aider and abettor's conviction cannot stand).

7. Is a conviction barred if the principal pleads to a lesser offense? At least one case suggests that the answer to this question is no. In State v. Cassell, 24 N.C. App. 717 (1975), the court held that a principal's guilty plea to voluntary manslaughter did not invalidate the defendant's conviction in a separate trial as an aider and abettor to second-degree murder. The court reasoned that although the State allowed the principal to plead guilty to voluntary manslaughter before the defendant's trial, the plea "did not . . . determine that the crime of second[-]degree murder had not been committed." Id. at 722.