

CHAPTER 6: PARTIES TO CRIME AND VICARIOUS LIABILITY

The text discusses parties to crime in terms of accessories and accomplices. Accessories are defined as accessory before the fact – those who help prepare for the crime – and accessories after the fact – those who assist offenders after the crime. Accomplices are defined as those who participate in the crime. Accessories are typically not punished as much as accomplices; accomplices are usually treated the same as the principal offender, while accessories are treated less harshly.

Accomplices and Accessories Before the Fact

In Ohio, accomplices and accessories before the fact are treated similarly, while accessories after the fact are treated separately. The Ohio law of *complicity* defines accomplices and accessories before the fact:

(A) No person...shall do any of the following:

- (1) Solicit or procure another to commit the offense;
- (2) Aid or abet another in committing the offense;
- (3) Conspire with another to commit the offense;
- (4) Cause an innocent or irresponsible person to commit the offense.

(Ohio Revised Code, § 2923.03, 1986).

Note that two parts of the complicity statute – (A)(1) and (A)(3) – indicate solicitation and conspiracy. These two crimes are discussed in Chapter 7.

The punishment for complicity is the same as for the principal offender; that is, if Offender A robs a liquor store and Offender B drives the getaway car, both offenders are subject to the same punishment, even though Offender A would be charged with robbery and Offender B would be charged with complicity (Ohio Revised Code, § 2923.03 (F), 1986).

The actus reus for the crime of complicity is found in the terms “aid” and “abet;” however, as the text states, these terms can be confusing. Is a person “aiding and abetting” if he lets a friend borrow a car, who then uses the car during the commission of a crime? What actions constitute “aiding and abetting?” In *State v. Sims* (10 Ohio App. 3d 56, 1983), the Ohio Court of Appeal for the Eighth District provided numerous definitions of “aid” and “abet.” The court stated that,

...one is not an aider or abettor unless he knowingly does something which assists or tends in some way to affect the doing of the thing which the law forbids (p. 59).

As stated in the text and in this case, “mere presence” is not enough to satisfy the actus reus requirement.

Although the Ohio complicity statute does not mention accessories before the fact, case law states that these individuals are covered under the statute. In *Sims*, the court of appeal noted,

a person is not an accessory before the fact, unless there is some sort of active proceeding on his part; he must incite, or procure, or encourage the criminal act, or assist or enable it to be done, or engage or counsel, or command the principal to do it (p. 59).

This definition clearly fits under the language of the complicity statute.

The mens rea for the crime of complicity can be confusing and, as seen in Ohio law, there are no levels of culpability mentioned. Generally, intent is inferred from the behavior of the players involved in the crime. In *State v. Cartellone* (3 Ohio App. 3d 145, 1981), the Court of Appeals for the Eighth District indicated that intent can be discerned from both direct and circumstantial evidence:

...participation in criminal intent may be inferred from presence, companionship, and conduct before and after the offense is committed...[it] may also be established by overt acts of assistance such as driving a getaway car or serving as a lookout (p. 150).

Thus, courts will look at the actions of those involved in the crime to determine if intent is present.

Accessories After the Fact

As stated earlier, accessories after the fact are treated separately than accomplices and accessories before the fact. Being an accessory after the fact was originally a common law crime that evolved into the modern “obstruction of justice” statute. This states,

(A) No person, with purpose to hinder the discovery, apprehension, prosecution, conviction, or punishment of another for crime or to assist another to benefit from the commission of a crime...shall do the following:

- (1) Harbor or conceal the other person...;
- (2) Provide the other person...with money, transportation, a weapon, a disguise, or other means of avoiding discovery or apprehension;
- (3) Warn the other person...of impending discovery or apprehension;
- (4) Destroy or conceal physical evidence of the crime or act, or induce any person to withhold testimony or information or to elude legal process summoning the person to testify or supply evidence;
- (5) Communicate false information to any person;
- (6) Prevent or obstruct any person, by means of force, intimidation, or deception, from performing an act to aid in the discovery, apprehension, or prosecution of the other person...

(Ohio Revised Code, § 2921.32, 2002).

The punishment for obstruction of justice depends on the offense committed by the person being assisted. If it is a misdemeanor, the obstruction of justice charge would be at the same level of the misdemeanor; in effect, if a second-degree misdemeanor was committed, then the obstruction of justice charge would also be a second-degree misdemeanor. If a third, fourth, or fifth-degree felony was committed, the obstruction of justice charge would be a fifth-degree felony. If aggravated murder or a first or second degree felony was committed, the obstruction of justice charge would be third-degree felony (Ohio Revised Code, § 2921.32 (C)(2)(3)(4), 2002).

Vicarious Liability

As the text states, some persons may be held liable for the criminal actions of another. For example, parents may be held liable for offenses committed by their children and businesses may be held liable for offenses committed by their employees. This type of liability is not necessarily criminal liability, however. In many instances, parents, businesses, etc. are sued in civil court for damages resulting from the criminal acts of others. Nevertheless, the rules for civil liability are similar to the rules for criminal liability.

The following case illustrates an interesting situation involving liability of a business owner when the business is being robbed. The case is *Schultz v. Elm Beverage Shoppe*, 40 Ohio St. 3d 326, 1988).

Schultz v. Elm Beverage Shoppe

In this case, the beverage shop was in the midst of a robbery. A customer, Schultz, walks in the store and finds no one else there but a clerk and the robber. He stopped at the door's entrance and he later stated that he knew almost immediately that the store was being robbed. In the meantime, the clerk shouted, "run, call the cops;" Schultz started to run out the door when shots rang out. The clerk was killed and Schultz was shot twice.

Schultz filed a civil suit against the store's owner, claiming that the clerk's warning to call the police put his life in jeopardy. Schultz was claiming that, by putting customers at risk, the behavior of the clerk was negligent. The Ohio Supreme Court was asked to consider whether a store owner could be held liable for injuries sustained by a customer during a robbery at the store.

The court stated that store owners or their agents (in this case, the clerk) must not create an unreasonable risk of harm. This applies to any sort of harm, from wiping up slippery floors to dealing with unruly customers. During the course of a robbery, however, the court indicated that the actions of the store owner or agent must be judged less harshly because of the stress of the situation. In this case, the Ohio Supreme Court ruled that the clerk's actions were reasonable in light of the circumstances; therefore, the store owner was not held liable for the injuries to Schultz.

REFERENCES

Ohio Revised Code, www.ohio.gov/ohio/ohiolaws.html

State v. Cartellone 3 Ohio App. 3d 145 (1981)

Schultz v. Elm Beverage Shoppe 40 Ohio St. 3d 326 (1988)

State v. Sims 10 Ohio App. 3d 56 (1983)

REVIEW QUESTIONS

1. Which of the following is true regarding punishment for “complicity”?
 - a. it is punished the same as the underlying offense
 - b. it is punished one degree less than the underlying offense
 - c. it is punished one degree more than the underlying offense
 - d. the underlying offense is irrelevant for the punishment

2. What is the term for the crime of “accessory after the fact” in Ohio?
 - a. aiding and abetting
 - b. complicity
 - c. obstruction of justice
 - d. accomplice

DISCUSSION QUESTION

This chapter discusses vicarious liability and how business owners and their agents can be held liable for harm that occurs when a crime is committed in their store. In *Schultz v. Elm Beverage Shoppe*, the court ruled that the business owner should not be held liable for the clerk’s actions. Do you agree with this verdict? Do you feel that the clerk’s actions made the situation more dangerous?

WEB RESOURCES

- www.onlinelawyersource.com/personal_injury/vicarious_liability/index.html - a website that gives information and the latest news on a variety of issues. This address takes you to cases involving vicarious liability