
202.10 ACTING IN CONCERT.

For a defendant to be guilty of a crime, it is not necessary that the defendant do all of the acts necessary to constitute the crime.[1] If two or more persons join in a common purpose[2] to commit (*name crime*), each of them, if actually or constructively present,[3] is guilty of the crime (and also guilty of any other crime committed by the other in pursuance of the common purpose to commit (*name crime*), or as a natural or probable consequence thereof.[4])[5]

(A defendant 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.[6] To be guilty the defendant must aid or actively encourage the person committing the crime, or in some way communicate to another person the defendant's intention to assist in its commission.)[7]

FINAL MANDATE

If you find from the evidence beyond a reasonable doubt that on or about the alleged date, the defendant acting either by (himself) (herself)[8] or acting together with (other persons) . . . (continue with appropriate mandate).[9]

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1. This instruction is intended for use in a case in which it is clear that the defendant was an actual participant in the crime even though the defendant did not himself or herself do all of the necessary acts. This instruction, rather than an aiding and abetting charge, should be given in such a case.

2. See State v. Joyner, 297 N.C. 349 (1979).

3. A person is constructively present when he is close enough to the scene to render assistance to the perpetrator or is standing by to help the perpetrator. See State v. Davis, 301 N.C. 394, 271 S.E.2d 263 (1980); State v. Price, 280 N.C. 154, 184 S.E.2d 866 (1971); State v. McKinnon, 306 N.C. 288, 293 S.E.2d 118 (1982); State v. Matthews, 299 N.C. 284, 261 S.E.2d 8872 (1980).

4. For specific intent crimes occurring on or after September 29, 1994 and before March 3, 1997, the jury should be instructed as follows: One may not be criminally responsible on the basis of acting in concert for [name specific intent crime], which requires specific intent, unless he is shown to have the requisite specific intent. State v. Blankenship, 337 N.C. 543 (1994). However, for offenses occurring on or after March 3, 1997, this is no longer the law. State v. Barnes overruled State v. Blankenship, 337 N.C. 543 (1994); State v. Barnes, 345 N.C. 184 (1997), quoting State v. Westbrook, 279 N.C. 18 (1971).

5. Where the participant is being tried for a crime other than the offense that the participants joined together to commit, use the parenthetical portion of this charge.

6. Mere presence at the scene of a crime is not itself a crime, and is insufficient where the State presents no evidence of any criminal intent. See State v. Holloway, 793 S.E.2d 766, 774 (N.C. Ct. App. 2016), writ denied, review denied, 798 S.E.2d 525 (N.C. 2017). For a definition of intent, see N.C.P.I.—Crim. 120.10.

7. 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).

8. Under certain factual circumstances it may not be appropriate to include the phrase ". . .acting either by himself or . . .". State v. Graham, 145 N.C. App. 483, 549 S.E.2d 908 (2001).

9. This instruction must be in accord with both the indictment and evidence presented at trial. See State v. Chavez, 842 S.E.2d 128 (N.C. Ct. App. 2020).