

N.C.P.I.—Criminal 202.30
 ACCESSORY BEFORE THE FACT (WITH SPECIAL VERDICT FORM). G.S. 14-5.2
 General Criminal Volume
 Replacement June 2011

NOTE WELL: The status of being an accessory before the fact¹ has been eliminated, with one exception. G.S. 14-5.2 abolished all distinctions between accessories before the fact and principals in the commission of felonies.² Nonetheless, the following instruction may be useful when the defendant's role was one of accessory before the fact.

NOTE WELL: Where the defendant is charged with both (name crime) and accessory before the fact to (name crime), the jury must be instructed as follows: "You may convict the defendant of (name crime) or accessory before the fact to (name crime), but not both." (State v. Melvin, 2010 WL 5246101 (N.C.)). Where a defendant is charged with both (name crime) and accessory before the fact to (name crime), use a special verdict sheet. (See sample verdict sheet attached.)

A person may be guilty of (*name crime*) although the person is not present and personally does not do any of the acts necessary to constitute that crime. A person who, although not present at the time the crime is committed, nevertheless counsels, procures, commands or knowingly aids another to commit (*name crime*), is guilty of (*name crime*) just as if the person had been present and personally done all the acts necessary to constitute that crime.

For you to find the defendant guilty of (*name crime*), the State must prove four things beyond a reasonable doubt:

First, that (*name crime*) was committed by some person(s) other than the defendant.
 (Set forth elements of the crime using Pattern Jury Instructions.)

Second, that before the crime was committed the defendant [counseled] [procured] [commanded] [knowingly aided] that (those) other person(s) to commit that crime.

Third, that the defendant's actions or statements caused or contributed to the commission of that crime by that (those) other person(s).

¹ "Although the elements of the crime of accessory before the fact remained separate and distinct from those of the principal felony, the legislature abolished the difference in guilt and sentencing treatment between a principal to the felony and an accessory before the fact to the same felony." State v. Gallagher, 313 N.C. 132, 141 (1985).

² The exception is that if a defendant who heretofore would have been guilty as an accessory before the fact is convicted of a capital felony, and the jury finds that his conviction was based solely on the uncorroborated testimony of one or more principals, co-conspirators or accessories to the crime, he shall be guilty of a Class B2 felony.

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And Fourth, that the defendant was not present when the crime was committed.

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 before the crime was committed the defendant [counseled] [procured] [commanded] [knowingly aided] the other person(s) to commit the crime, and in so doing, the defendant's actions or statements caused or contributed to the commission of the crime by the other person(s), and that the defendant was not present when the crime was committed, it would be your duty to return a verdict of guilty. 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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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

