

4.3 Accessory After the Fact

The defendant is charged with having been an accessory after the fact to the crime of [specify crime charged]. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, [name of principal] committed the crime of [specify crime charged];

Second, the defendant knew that [name of principal] had committed the crime of [specify crime charged]; and

Third, the defendant assisted [name of principal] with the specific purpose or design to hinder or prevent that person's [apprehension] [trial] [or] [punishment].

The government is not required to prove that [name of principal] has been indicted for or convicted of the crime of [specify crime charged in the indictment].

Comment

The court must charge on the elements of the underlying offense if those elements are not set forth in another count.

When there is substantial evidence that the defendant participated in the principal offense before its completion, an instruction on this distinct offense need not be given. *United States v. Panza*, 612 F.2d 432, 441 (9th Cir. 1979); *United States v. Jackson*, 448 F.2d 963, 971 (9th Cir. 1971).

Knowledge that the principal committed the offense charged may be inferred from circumstantial evidence. *United States v. Mills*, 597 F.2d 693, 697 (9th Cir. 1979). Accordingly, an instruction requiring "positive knowledge in contrast to imputed or implied knowledge" should not be given, but the jury should be instructed that the accessory after the fact must know of the principal's actions and act with the "specific purpose or design" to hinder or prevent the principal's apprehension, trial, or punishment. *Id.*

If the name of the principal is unknown, replace "[name of principal]" with "someone else."

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