

## Ninth Circuit Model Criminal Jury Instructions

### 5.1 AIDING AND ABETTING

A defendant may be found guilty of *[specify crime charged]*, even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First, *[specify crime charged]* was committed by someone;

Second, the defendant knowingly and intentionally aided, counseled, commanded, induced or procured that person to commit each element of *[specify crime charged]*; and

Third, the defendant acted before the crime was completed. It is not enough that the defendant merely associated with the person committing the crime, or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit *[specify crime charged]*.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

#### Comment

See *United States v. Lopez*, 484 F.3d 1186, 1199 (9th Cir.2007) (en banc), citing this instruction (“to obtain a conviction for aiding and abetting, the government must prove beyond a reasonable doubt that, *inter alia*, the defendant ‘knowingly and intentionally aided, counseled, commanded, induced or procured [the principal] to commit each element of the crime charged’”).


An aiding and abetting instruction is proper even where the indictment does not specifically charge that offense, since all indictments are read to embody that offense in each count. *United States v. Vaandering*, 50 F.3d 696, 702 (9th Cir.1995); *United States v. Armstrong*, 909 F.2d 1238, 1241-42 (9th Cir.1990); *United States v. Jones*, 678 F.2d 102, 104 (9th Cir.1982). See also *United States v. Gaskins*, 849 F.2d 454, 459 (9th Cir.1988); *United States v. Sayetsitty*, 107 F.3d 1405, 1412 (9th Cir.1997).

A person may be convicted for aiding and abetting despite the prior acquittal of the principal. *Standefer v. United States*, 447 U.S. 10, 20 (1980); *United States v. Mejia-Mesa*, 153 F.3d 925, 930 (9th Cir.1998). Moreover, the principal need not be named or identified; it is necessary only that the offense was committed by somebody and that the defendant intentionally did an act to help in its commission. *Mejia-Mesa*, 153 F.3d at 930 (citing *Feldstein v. United States*, 429 F.2d 1092, 1095 (9th Cir.1970)). It is necessary, however, that the government prove that the defendant aided and abetted in each essential element of the offense. *Jones*, 678 F.2d at 105-06. For example, when a defendant is charged with aiding and abetting another in carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. § 924(c), the government must prove both that the defendant knowingly aided and abetted the use or carrying of the firearm and knowingly aided and abetted the commission of the related crime of violence. *United States v. Bancalari*, 110 F.3d 1427, 1429-30 (9th Cir.1997). See Instruction 8.71 (Firearms—Using or Carrying in Commission of Crime of Violence or Drug Trafficking Crime).

Aiding and abetting is not a separate and distinct offense from the underlying substantive crime, but is a different theory of liability for the same offense. *United States v. Garcia*, 400 F.3d 816, 820 (9th Cir.2005). No specific unanimity instruction on the issue of who acted as principal or aider and abettor is necessary (*id.*), nor does the jury need to reach unanimous agreement on the manner (e.g. “procured,” “aided,” “abetted,” “counseled,” “induced,” or “commanded”) by which the defendant provided assistance. *United States v. Kim*, 196 F.3d 1079, 1083 (9th Cir.1999).

The last paragraph of this instruction has been expressly approved in *Vaandering*, 50 F.3d at 702. It may be unnecessary to give the last paragraph if there is no dispute as to the identity of the principal and the aider and abettor.

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