

Nine gang members, including the gang leader, were indicted for the murder of a tenth gang member, who had become an informant. The gang leader pleaded guilty. At the trial of the other eight gang members, the state's evidence showed the following: The gang leader had announced a party to celebrate the release of a gang member from jail, but the party was not what it seemed. The gang leader had learned that the released gang member had earned his freedom by informing the authorities about the gang's criminal activities. The gang leader decided to use the party to let the other gang members see what happened to informants. He told no one about his plan. At the party, after everyone had consumed large amounts of liquor, the gang leader announced that the released gang member was an informant and stabbed him with a knife in front of the others. The eight other gang members watched and did nothing while the released gang member slowly bled to death. The jury found the eight gang members guilty of murder, and they appealed.

Should the appellate court uphold the convictions?

- A. No, because mere presence at the scene of a crime is insufficient to make a person an accomplice.
- B. No, because murder is a specific-intent crime, and there is insufficient evidence to show that the other gang members intended to kill.
- C. Yes, because the gang members made no effort to save the informant after he had been stabbed.
- D. Yes, because voluntary intoxication does not negate criminal responsibility.

Explanation:

Parties to a crime

Modern view	Common law	Definition	Liability
Principal	Principal (first degree)	Performs criminal act with requisite intent or uses innocent agent to commit criminal act	Target & foreseeable crimes
Accomplice	Principal (second degree)	Present at crime & aids/encourages principal with intent that principal commit crime	
	Accessory before the fact*	Not present at crime but aids/encourages principal with intent that principal commit crime	
Accessory after the fact		Knows principal has committed felony & helps principal avoid arrest or conviction	Independent crime

*Common law liability requires conviction of principal.

Accomplice liability extends to anyone who:

intentionally aided or encouraged the principal **before or during a crime**

with the specific intent that the crime be completed.

However, **mere presence** at the scene of a crime does not amount to aid or encouragement and is therefore **insufficient** to make a person an accomplice.

Here, the gang leader committed murder—an unlawful killing with **malice aforethought**—when he stabbed the informant to death. And though eight other gang members watched while the informant bled to death, they are *not* guilty of murder since they did nothing—and mere presence at a crime scene does not establish accomplice liability. As a result, the appellate court should not uphold the gang members' murder convictions.

(Choice B) Murder does not require specific intent to kill since other forms of malice aforethought (eg, depraved heart) will suffice. But regardless, the gang members are not responsible for the murder since they did not aid or encourage the gang leader's crime.

(Choice C) Criminal liability can only arise from a failure to act (ie, omission) if the defendant had a **legal duty** to act and could have reasonably done so. And since the gang

members had no legal duty to save the informant, the fact that they made no effort to do so is irrelevant.

(Choice D) *Voluntary intoxication* *does* negate criminal responsibility for specific intent crimes when it prevents the defendant from forming the requisite mental state. But it does not matter whether the gang members were sober or intoxicated here since they were merely present (not responsible) for the murder.

Educational objective:

An accomplice is someone who (1) intentionally aids or encourages the principal before or during a crime (2) with the specific intent that the crime be completed. But mere presence at the scene of a crime does not make a person an accomplice.

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