

While on their way home from a ball game, a driver and his passenger stopped at an all-night gas station. The passenger offered to pay for the gas. While the passenger pumped gas, he was surprised to see the driver enter the station, take money from the unattended cash drawer, and get back in the car. The passenger paid the attendant for the gas, and the driver drove off. The driver offered to reimburse the passenger for the gas, but the passenger declined. After discovering the missing cash, the gas station attendant called the police, and the driver was later stopped. The driver escaped with the stolen money, however, and was never prosecuted.

If the passenger is prosecuted for theft as an accomplice, should he be convicted?

- A. No, because he had no intent to promote the commission of the offense.
- B. No, because the driver, the principal, was never prosecuted.
- C. Yes, because he facilitated commission of the offense by failing to make any effort to stop it.
- D. Yes, because he paid the attendant while he knew the driver was holding the stolen money.

Explanation:

Parties to a crime

(modern & majority approach)

Party	Definition	Liability
Principal	Commits criminal act with requisite mens rea <i>or</i> Tricks or forces another (ie, innocent agent) to commit criminal act	Liable for resulting crime
Accomplice	Aids or encourages principal before or during crime with intent that principal commit crime	Liable to same extent as principal
Accessory after the fact	Knows principal has committed felony & helps principal avoid arrest or conviction	Liable for independent crime (not principal's)

An **accomplice** is someone who (1) **intentionally aids or encourages** another (the principal) before or during a crime (2) with the **intent that the crime be completed**—making both parties **equally liable** for the crime. Since the passenger was surprised to see the driver steal the money and had no intent to help the driver do so, the passenger should not be convicted of theft as an accomplice.

(Choice B) In most jurisdictions, an accomplice can be convicted of a crime even if the principal was never prosecuted for (or convicted of) the crime. Therefore, the fact that the driver (principal) was never prosecuted does not preclude the passenger's conviction. Nevertheless, the passenger should not be convicted of theft as an accomplice because he did not intend to help the driver complete the crime.

(Choices C & D) Although the passenger made no effort to stop the driver's theft and paid the attendant while knowing that the driver had taken the money, neither of these facts shows that the passenger had the mental state necessary to trigger accomplice liability (ie, that he intended to promote the theft).

Educational objective:

Accomplice liability arises when a person (1) intentionally aids or encourages the principal before or during a crime (2) with the intent that the crime be completed. Both parties are then equally liable for the crime.

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