

A jurisdiction has the following decisional law on questions of principal and accomplice liability:

CASE A: The defendant, a hardware store owner, sold several customers a device which detects police radar and enables speeders to avoid detection. When one of the devices broke down and the speeder was arrested, he confessed that he often sped, secure in the knowledge that the device would warn him of police radar in the vicinity. Held: The defendant is guilty as an accomplice to speeding.

CASE B: The defendant told a friend that the defendant had stored some stereo equipment in a self-storage locker. He gave the friend a key and asked her to pick up the equipment and deliver it to the defendant's house. The friend complied and removed the equipment from the locker using the key. In fact, the equipment belonged to the defendant's neighbor, whose locker key the defendant had found in the driveway. Held: The defendant is guilty as a principal to burglary.

CASE C: A city council member accepted a bribe from the defendant in exchange for his vote on the defendant's application for a zoning variance. A statute prohibits the taking of bribes by public officials. Held: The defendant is not guilty as an accomplice to the city council member's violation of the bribery statute.

CASE D: The defendant, an innkeeper, sometimes let his rooms to prostitutes whom he knew to be using the rooms to ply their trade. He charged the prostitutes the same price as other guests at his inn. Held: The defendant is not guilty as an accomplice to prostitution.

A plastic surgeon agreed to remove the fingerprints from the hands of a man whom the surgeon knew to be a safecracker. The surgeon charged his usual hourly rate for the operation. Afterward, the man burglarized a bank safe and was convicted of burglary. The surgeon has been charged with burglary.

Should he be convicted or acquitted of this crime?

- A. Convicted on the authority of Case A.
- B. Convicted on the authority of Case B.
- C. Acquitted on the authority of Case C.
- D. Acquitted on the authority of Case D.

Explanation:

Although the surgeon did not commit **burglary**, he can be convicted under the theory of **accomplice liability** if he:

intentionally aided or encouraged the principal (the safecracker) before or during the crime

with the **specific intent** that the **crime be completed**.

As Case D shows, mere knowledge that the principal intended to use a person's aid—particularly aid involving the sale of goods or services—to commit a crime does not show that the person *intentionally* aided the principal. But such intent can be inferred when a seller provides highly specialized goods or services (as seen in Case A), receives unusually large profits from the sale, or has an interest in the crime's success beyond a mere sale.

Here, the surgeon removed fingerprints from a known safecracker at the surgeon's usual hourly rate (**Choice D**). But since a procedure that allows persons to avoid detection is highly specialized, the surgeon's intent to aid the safecracker in committing the burglary can be inferred—just as in Case A. Therefore, the surgeon should be convicted as an accomplice to the safecracker's burglary on this authority.

(Choice B) Case B shows that a defendant can be convicted as a principal for encouraging an innocent agent to commit a crime. An innocent agent is someone who lacked the requisite mens rea (eg, intent) because he/she was tricked or forced into committing the crime. But since the safecracker *intentionally* committed burglary, this authority does not apply here.

(Choice C) Case C shows that a person is exempt from accomplice liability when (1) the aided crime requires at least two participants but (2) the criminal statute only imposes liability on one participant. But this exception does not apply here because burglary—unlike bribery or the sale of narcotics—only requires one participant.

Educational objective:

An accomplice's intent to aid the principal can be inferred when the accomplice (1) provides highly specialized goods or services, (2) receives unusually large profits from a sale, or (3) has some greater interest in the crime's success.

Copyright © 1995 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Inferred intent for accomplice liability

Unusually large profit from sale



©UWorld

Highly specialized goods or services

