

A man was engaged to marry a woman. One evening, the man became enraged at the comments of the woman's eight-year-old daughter, who was complaining, in her usual fashion, that she did not want her mother to marry the man. The man, who had had too much to drink, began beating the daughter. The daughter suffered some bruises and a broken arm. The woman took her daughter to the hospital, and the police were notified by the hospital staff.

The man was indicted for felony child abuse. He pleaded with the woman to forgive him and to run away with him. She agreed. They moved out of state and took the daughter with them. Without the testimony of the child, the prosecution was forced to dismiss the case. Some time later, the woman returned for a visit with her family and was arrested and indicted as an accessory after the fact to child abuse.

At the woman's trial, how should the court proceed?

- A. Dismiss the charge, because the evidence shows that any aid the woman rendered occurred after the crime was completed.
- B. Dismiss the charge, because the man had not been convicted.
- C. Submit the case to the jury, on an instruction to convict only if the woman knew the man had been indicted.
- D. Submit the case to the jury, on an instruction to convict only if the woman's purpose in moving was to help the man avoid conviction.

## 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.

A person is an **accessory after the fact** if he/she:

knew that the principal had committed a felony

**aided or assisted** the principal **after the felony was complete** *and*

did so for the **purpose of helping** the principal **avoid apprehension or conviction**.

Although the accessory after the fact is not liable for the principal's crime, the accessory is liable for a separate crime—often "harboring a fugitive" or "obstructing justice".

Here, the man was indicted for felony child abuse after beating the woman's daughter. Although the woman was aware of this crime, she moved out of state with the man and her daughter. This move helped the man avoid conviction since the daughter's unavailability to testify forced the state to dismiss his case. But the jury should only convict the woman as an accessory after the fact if her *purpose* in moving was to help the man avoid conviction.

**(Choice A)** The evidence that the woman aided the man after the crime was completed supports her liability as an accessory after the fact—not a dismissal of the charge.

**(Choice B)** A person can be convicted as an accessory after the fact even if the principal has not been prosecuted for, or convicted of, the completed felony.

**(Choice C)** An accessory after the fact must know that the principal has *committed* a felony but need not know that the principal has been *indicted* for that crime.

**Educational objective:**

An accessory after the fact (1) knows that the principal has committed a felony, (2) aids or assists the principal after the felony is complete, and (3) does so to help the principal avoid apprehension or conviction.

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