

AID – ABET

Compelling Evidence That Defendant Helped or Assisted in a Murder is Sufficient to Support a Jury Instruction On Aiding and Abetting.

State v. Young, __ N.C. App. __, __ S.E.2d __ (May 5, 2009).

Evidence presented at trial showed that Defendant drove Batiste to the neighborhood; stopped the vehicle in front of victim's residence with the headlights off; sped away from the scene after the shooting; threw the shell casing out of the car window; and dropped Batiste and the other passengers off in a neighboring town, telling them to "get low" or "get missing." There was also evidence that the rifle used in the shooting belonged to Defendant, Defendant frequently kept the loaded rifle in the vehicle, and the vehicle was detailed before Defendant left town the next day. Further, there was testimony that Defendant and Batiste were "tight"; they were both members of the Crips; Defendant had a superior rank of "original gangster" to Batiste's low-rank of "foot soldier"; and Defendant knew that Batiste was planning to redeem his reputation that night in a neighborhood known as Bloods' territory. This evidence is sufficient to support a jury instruction on aiding and abetting Batiste in the killing of the victim. The evidence presented at trial supports the conclusion that the shooting was committed by Batiste, Defendant encouraged and aided Batiste, and Defendant's actions contributed to the commission of the crime.

Defendant's Knowledge of Victims' Ages Is Element in State's Prosecution of Statutory Rape When State Relies on Aiding and Abetting Theory to Prove Defendant's Guilt and Evidence Is Offered Concerning Defendant's Lack of Knowledge That Victims Were Under Statutory Age of Consent

State v. Bowman, 188 N.C. App. 635, 656 S.E.2d 638 (19 February 2008).

The defendant was convicted of three counts of aiding and abetting statutory rape under G.S. 14-27.7A (statutory rape of 13, 14, or 15 year old). The court ruled, relying on *State v. Evans*, 279 N.C. 447 (1991), *State v. Capps*, 77 N.C. App. 400 (1985), *State v. Walker*, 35 N.C. App. 182 (1978), and other cases, that the defendant's knowledge of the victims' ages is an element in the state's prosecution of statutory rape when the state relies on the aiding and abetting theory to prove the defendant's guilt and evidence is offered concerning the defendant's lack of knowledge that the victims were under the statutory age of consent. The court stated that although statutory rape is a strict liability crime, aiding and abetting statutory rape is not. Evidence was resented that the defendant (prosecuted as an aider and abettor) did not know the victims' ages, and he thought they were over 18 years old. The court ruled that the defendant was entitled to a jury instruction requiring the state to prove the defendant knew that the victims were under 16 years old.

Trial Judge Did Not Err in Instructing Jury on Aiding and Abetting False Pretenses Even Though Indictment Alleged Acting in Concert, Because Indictment's Allegation Was Surplusage

State v. Estes, 186 N.C. App. 364, 651 S.E.2d 598 (16 October 2007).

The court ruled, relying on *State v. Westbrooks*, 345 N.C. 43 (1996), that the trial judge did not err in instructing the jury on aiding and abetting false pretenses even though the indictment alleged acting in concert, because the indictment's allegation was surplusage.

Sexual Offenses -- First-degree -- Failure to Instruct on Acting in Concert or Aiding and Abetting -- Failure to Show Defendant Personally Employed or Displayed Dangerous or Deadly Weapon

State v. Roberts, 176 N.C. App. 159 (2006).

The trial court erred by concluding that the evidence was sufficient to permit a reasonable juror to find beyond a reasonable doubt that defendant committed first-degree sexual offense, and the case is remanded for entry of judgment against defendant for second-degree sexual offense, because: 1) the jury was instructed it could find defendant guilty of first-degree sexual offense only if he employed or displayed a dangerous or deadly weapon; 2) without an instruction on acting in concert or the theory of aiding and abetting, the evidence must support a finding that defendant personally employed or displayed a dangerous or deadly weapon in the commission of the sexual offense; 3) there was no evidence at trial that defendant ever, personally, employed or displayed a dangerous weapon during the time he was in the victim's apartment; 4) all the testimony at trial established that another man held the shotgun throughout the incident; and 5) the jury's verdict is recognized as a verdict of guilty of second-degree sexual offense.

Homicide -- Alternative Theories -- Aiding and Abetting -- Acting in Concert

State v. Roache, 358 N.C. 243 (2004).

The trial court did not err in a multiple murder prosecution by overruling defendant's objection to the State's use of two alternative theories of guilt including aiding and abetting in connection with premeditation and deliberation, and acting in concert with regard to felony murder, because: 1) defendant's argument that the two theories utilized by the State are mutually exclusive has no merit, and in any given case, both theories may be proven by the same evidence; and 2) defendant failed to show prejudice.

Aiding and Abetting -- Acting in Concert -- Motion to Dismiss -- Sufficiency of Evidence -- Constructive Presence

State v. Tirado, 358 N.C. 551 (2004).

The trial court did not err by denying defendant's motion to dismiss the charges for the substantive offenses of attempted first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, kidnapping, and robbery with a dangerous weapon committed against one of the victims based on the theory of aiding and abetting or acting in concert even though defendant contends that he was not physically present for these crimes, because: 1) the State presented sufficient evidence to allow a rational juror to conclude that defendant joined with one or more persons in the purpose to kidnap, rob, assault with a deadly weapon, and attempt to murder the victim; and 2) defendant was constructively present when these crimes were carried out.

Homicide -- Aiding and Abetting First Degree Murder -- No Variance Between Indictment and Trial

State v. Glynn 178 N.C. App. 689 (2006)

There was no fatal variance between the allegations in the indictment and the evidence at trial in a first degree murder prosecution. The State is not required to declare any specific theory for first degree murder prior to trial; the State's evidence here, regardless of the theory, supports the indictment.

Indecent Liberties -- Theory Not Charged in Indictment -- Principal or Aider and Abettor

State v. Fuller 179 N.C. App. 61

The trial court did not commit plain error by instructing the jury that it could convict defendant of indecent liberties under either a principal or aiding and abetting theory even though the original indictments charged him as a principal but the superseding indictments later charged him only as an aider and abettor, because: 1) allegations of aiding and abetting are not required to be in an indictment since aiding and abetting is not a substantive offense but just a theory of criminal liability; 2) the superseding indictments simply placed defendant on notice that he would have to defend as to a different theory of guilt, but not a different criminal offense; and 3) the fact that the State presented evidence tending to show that defendant committed indecent liberties as a principal as well as an aider and abettor did not mean the State offered evidence of commission of an offense not charged in the indictment

False Pretenses -- Aiding and Abetting -- Private Work by Government Employee

State v. Sink 178 N.C. App. 217 (2006).

There was sufficient evidence to deny defendant's motion to dismiss the charge of aiding and abetting obtaining property by false pretenses based on a county worker performing a household repair for defendant, a county commissioner, on county time. Defendant's own statement and a prior bad act provided evidence from which intent and knowledge could be inferred.

Embezzlement -- Aiding and Abetting -- Sufficiency of Evidence

State v. Weaver 359 N.C. 246 (2005)

The trial court erred by denying defendant's motion to dismiss the charges of embezzlement and conspiracy to embezzle both based on the theory that defendant aided and abetted embezzlement committed by his former wife, because: 1) defendant cannot be convicted of aiding and abetting embezzlement without proof that an embezzlement was committed; 2) the lawful possession or control element of the crime of embezzlement was not satisfied when an administrative employee took a corporate signature stamp without permission and wrote unauthorized corporate checks thereby misappropriating funds from her employer, and these facts appear to support the crime of larceny rather than embezzlement; 3) defendant's former wife was not her employer's agent and she never lawfully possessed the misappropriated funds; and 4) it is immaterial whether the former wife had actual or constructive possession of the misappropriated funds when her possession was not lawful, and thus, the crime of embezzlement has not occurred.

Homicide -- Alternative Theories -- Aiding and Abetting -- Acting in Concert

State v. Roache 358 N.C. 243 (2004)

The trial court did not err in a multiple murder prosecution by overruling defendant's objection to the State's use of two alternative theories of guilt including aiding and abetting in connection with premeditation and deliberation, and acting in concert with regard to felony murder, because: 1) defendant's argument that the two theories utilized by the State are mutually exclusive has no merit, and in any given case, both theories may be proven by the same evidence; and 2) defendant failed to show prejudice.

Aiding and Abetting -- Acting in Concert -- Motion to Dismiss -- Sufficiency of Evidence -- Constructive Presence

State v. Tirado 358 N.C. 551 (2004)

The trial court did not err by denying defendant's motion to dismiss the charges for the substantive offenses of attempted first-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, kidnapping, and robbery with a dangerous weapon committed against one of the victims based on

the theory of aiding and abetting or acting in concert even though defendant contends that he was not physically present for these crimes, because: 1) the State presented sufficient evidence to allow a rational juror to conclude that defendant joined with one or more persons in the purpose to kidnap, rob, assault with a deadly weapon, and attempt to murder the victim; and 2) defendant was constructively present when these crimes were carried out.

Aiding and Abetting -- Voluntary Manslaughter -- Intent

State v. Shaw 164 N.C. App. 723 (2004)

Defendant could properly be convicted for aiding and abetting voluntary manslaughter even though defendant argues that aiding and abetting requires specific intent to commit the underlying crime whereas voluntary manslaughter is a general intent crime, because: 1) defendant concedes that North Carolina has long held that an aider and abettor can be liable for voluntary manslaughter; 2) aiding and abetting is not a crime separate and apart from the underlying offense, but rather it is a theory upon which a person's culpability for the underlying offense may be based; and 3) depending upon the type of criminal intent required to consider an offender culpable for the underlying offense, an aider and abettor, like any other principal to an offense, may develop either specific or general intent.

Embezzlement -- Aiding and Abetting -- Motion to Dismiss -- Sufficiency of Evidence

State v. Weaver 160 N.C. App. 613 (2003)

The trial court erred by denying defendant's motion to dismiss the charges of conspiracy to embezzle and embezzlement both based on the theory that defendant aided and abetted embezzlement committed by his former wife, because: 1) defendant cannot be convicted of aiding and abetting embezzlement without proof that an embezzlement was committed; 2) mere access to personal property will not satisfy the requirement that to be properly convicted of embezzlement, the accused must have received the property lawfully in the course of and under the terms of her employment; and 3) although defendant's former wife misappropriated funds, the State failed to prove that she was guilty of embezzlement where there was no evidence from which the jury could find that she ever had lawful possession either of the blank checks that she forged (or of the U.S. currency deposits represented by the checking accounts) or of the signature stamp essential to make the checks negotiable when the evidence was uncontradicted that she had no general authority to write checks and had to obtain express permission regarding each individual check before she could fill it out.

Aiding and Abetting -- Instructions -- Specific Intent -- Mere Presence

State v. Lucas, 353 N.C. 568 (2001).

(1) The Court of Appeals erred by holding improper a trial court's instructions on aiding and abetting a kidnapping and burglary where the offense occurred when *State v. Blankenship, 337 N.C. 543, 447 S.E.2d 727*, was in effect and the court instructed the jury that it had to find that defendant "knowingly encouraged or aided" in the burglary and kidnapping in order to convict. These instructions are similar to those approved in *State v. Allen, 339 N.C. 545, 453 S.E.2d 150*, and adequately convey the requirement that defendant had to have the specific intent to aid in the underlying offenses. (2) There was no plain error in a prosecution for first-degree burglary and first-degree kidnapping as an aider and abettor where defendant contends that the court should have instructed on "mere presence." There is no obligation to instruct on mere presence when the evidence is undisputed that defendant participated in the crime and was not just a bystander. Moreover, read as a whole, the instructions adequately conveyed the principle that defendant's presence alone is not sufficient to support a conviction for burglary or kidnapping as an aider and abettor.

No Allegation of Aiding and Abetting Required in Indictment of Mother in First Degree Rape of Son

State v. Ainsworth, 109 N.C. App. 136 (1993) 426 S.E.2d 410

A mother may be found guilty of first degree rape on a theory of aiding and abetting when her twelve year- old child engaged in intercourse with an adult woman in her presence and the mother did not take any reasonable steps to prevent the intercourse.

Assault and Battery -- Brick Throwing Incident -- Aiding and Abetting -- Sufficiency of Evidence

State v. Poe, 119 N.C. App. 266 (1995)

Defendant Poe was properly found guilty of aiding and abetting the commission of the offense of assault with a deadly weapon inflicting serious injury and damage to personal property not only because he was present when the crimes were committed but because his actions in driving the car from which several items were thrown by his passengers at other cars and in throwing items at other cars himself showed his consent to the criminal purpose and contribution to its execution.

Aiding and Abetting Principal Found Not Guilty -- Conviction Invalid

State v. Byrd, 122 N.C. App. 497 (1996) 470 S.E.2d 548

Defendant's conviction for assault based on aiding and abetting was invalid where the named principal alleged in the indictment was subsequently found not guilty of the crime.

Homicide -- First-Degree Murder -- Aiding and Abetting -- Constructive Presence -- Sufficiency of Evidence

State v. Vanhoy, 343 N.C. 476 (1996) 471 S.E.2d 404

The State's evidence was sufficient to show that defendants were constructively present during a murder so as to support the trial court's submission of issues of their guilt of first-degree murder under the theory of aiding and abetting where it tended to show that defendants promised the perpetrator \$15,000 and a truck if he would kill the victim; defendants explicitly instructed the perpetrator how to enter the victim's trailer, where to find the victim, how to kill the victim, where to find money and how to make the murder scene look as if a breaking and entering had occurred; defendants drove the perpetrator to the trailer so he could commit the murder and remained in close enough proximity to the trailer to drive him away just after he committed the murder; and defendants supplied the perpetrator with money for a motel room so he could escape detection in the hours following the murder. The jury could infer from this evidence that both defendants were constructively present because they remained in close enough proximity to the trailer to render assistance to the perpetrator in carrying out the murder, should it become necessary, and that both defendants communicated this intent to the perpetrator through their actions and words.

Actual or Constructive Presence Not Required To Prove Accessory Before Fact as Aider and Abettor

State v. Bond, 345 N.C. 1 (1996) 478 S.E.2d 163

Actual or constructive presence is no longer required to prove a defendant's guilt of a crime under an aiding and abetting theory. Thus, accessories before the fact, who do not actually commit the crime and may not have been present, can be convicted of first-degree murder under a theory of aiding and abetting N.C.G.S. § 14-5.2.

Homicide -- Second-Degree Murder -- Aiding and Abetting -- "Friend Exception" -- Sufficient Evidence

State v. Allen, 127 N.C. App. 182 (1997)

There was sufficient evidence to support defendant's conviction of second-degree murder based upon aiding and abetting where the evidence at trial indicated that defendant was aware of the murderer's intent to kill the victim, defendant accompanied the murderer and other men as they took the victim to the murder

scene in a van, and defendant was at the scene of the murder, standing and watching as the victim was shot. This evidence coupled with the evidence that defendant and the murderer were friends was sufficient, under the "friend exception," to support an inference that defendant, by his presence, had communicated that he was willing to assist in the crime if it became necessary.

Homicide -- First-Degree Murder -- Aiding and Abetting -- Presence Not Required

State v. Gaines, 345 N.C. 647 (1997)

There was sufficient evidence to convict defendant Harris of first-degree murder on the theory of aiding and abetting where Harris contended that there was insufficient evidence of his presence at the scene. The evidence amply supported the jury's finding that defendant was either actually or constructively present at the scene; moreover, actual or constructive presence is no longer required to prove a crime under an aiding and abetting theory. Cases decided after N.C.G.S. § 14-5.2 became applicable which suggest that actual or constructive presence is necessary to prove a crime under an aiding or abetting theory are no longer authoritative on this issue.

Homicide -- First-Degree Murder -- Aiding and Abetting -- Mere Presence -- Friend Exception

State v. Lemons, 348 N.C. 335 (1998)

The trial court did not err in a capital prosecution for first-degree murder by instructing the jury on the friend exception to the mere presence rule where the evidence showed that defendant and Leggett were first cousins and that defendant moved in with Leggett's family upon relocating to North Carolina; defendant met Teague while living with his cousin; defendant left a house on the night of the murder in a strange car which he knew had been stolen "from some crack heads"; defendant knew the victims were in the trunk and that Teague and Leggett were getting ready to rob some people; defendant went to his aunt's house with Leggett and Teague after the murder, where he lived until he was arrested; and Teague remained in contact with defendant and informed him when he sold one of the weapons used in the murders. The evidence was sufficient to support the inference that defendant, by his presence, communicated to Leggett and Teague his intent to render aid in the commission of the crime should it become necessary.

(1) Aiding and Abetting -- Presence at Scene -- Encouragement or Assistance

(2) Aiding and Abetting -- First-Degree Murder -- Sufficiency of Evidence

State v. Goode, 350 N.C. 247 (1999)

(1) A person is not guilty of a crime merely because he is present at the scene even though he may silently approve of the crime or secretly intend to assist in its commission; to be guilty he must aid or actively encourage the person committing the crime or in some way communicate to this person his intention to assist in its commission. The communication or intent to aid does not have to be shown by express words of the defendant but may be inferred from his actions and from his relation to the actual perpetrators; furthermore, when the bystander is a friend of the perpetrator and knows that his presence will be regarded by the perpetrator as an encouragement and protection, presence alone may be regarded as an encouragement. (2) The evidence was sufficient to support defendant's conviction of two first-degree murders based on the theory of aiding and abetting where it tended to show that defendant was the younger brother of one perpetrator and a friend of the second perpetrator; defendant was present with his brother and the friend when the male victim arrived at the brother's mobile home to ask about the rent and when the friend began an assault on the male victim and his brother joined in the attack; when the friend went into the mobile home, leaving defendant's brother alone fighting with the male victim, defendant kicked the victim in order to aid his brother; defendant remained nearby when his friend and his brother stabbed the male victim to death; when the female victim arrived and the friend said that he had to "take her out too," defendant knew that the friend meant that he would kill her; defendant stood only ten feet away as he watched the friend throw the female victim down, beat her, and stab her to death; defendant assisted the friend in moving the bodies to the back of the male victim's truck; and defendant also helped clear the area of evidence.

Rape -- Sufficiency of Evidence -- Woman as Aider and Abettor

State v. Owen, 133 N.C. App. 543 (1999)

The trial court did not err by denying defendant's motion to dismiss charges of first-degree statutory rape against a woman who acted as an aider and abettor to her husband. Even though a woman is physically incapable of committing rape upon another woman, she may still be convicted of rape if she aids and abets a male assailant and, viewing the evidence in the light most favorable to be State, defendant was an active participant in the rape by her husband of this victim.