

ACCOMPLICE LIABILITY

1997

ACCOMPLICE LIABILITY – UNANIMITY

*State v. Chew*, 150 N.J. 30 (1997)

A jury need not unanimously agree on the theory of liability as a principle or accomplice in order to convict of murder.

1998

*State v. Roldan*, 314 N.J. Super. 173 (App. Div. 1998)

To be found guilty under a theory of accomplice liability, a defendant must not only have the purpose of promoting or facilitating the commission of a criminal act, but must also have at least indirectly participated in the commission of the criminal act. A defendant cannot be found guilty of possession of CDS or possession of CDS with the intent to distribute under a theory of accomplice liability if all of his or her activities in furtherance of the drug conspiracy occurred after the coconspirator's criminal possession of CDS had ended as a result of its seizure by police. He or she may be found guilty of conspiracy, however, based solely on an agreement to commit a crime.

*State v. Harrington*, 310 N.J. Super. 272 (App. Div. 1998)

Parties who participate in a criminal act may be found guilty of different degrees of the offense depending on their own actions. An accomplice may be found guilty of a lesser degree crime than the principal.

1999

JURY INSTRUCTIONS

*State v. Phillips*, 322 N.J. Super. 429 (App. Div. 1999)

Judge must instruct jury that defendant could be found guilty as the accomplice of a lesser-included offense, even though the principal is found guilty of the more serious crime and must also tell the jury that parties who participate in a criminal action may be guilty of different degrees or different offenses, depending upon their own actions and state of mind.

## **ACCOMPLICE LIABILITY**

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2008

*State v. Ingram*, 196 N.J. 23 (2008)

When a defendant is charged as an accomplice and lesser-included offenses already are charged in an indictment, the trial court comprehensively must charge the jury on the elements both of the lesser-included crimes and of accomplice liability.

Nevertheless, the failure to so separately charge the jury here did not constitute reversible error. The prosecutor did not misstate the applicability of the statutory affirmative defense to felony murder. In these circumstances, it was error for the trial court to instruct the jury that the defendant's voluntary absence from the trial could be construed by the jury as evidence of consciousness of guilt, and that error mandates a new trial.

## ROBBERY

*State v. Whitaker*, 402 N.J. Super. 495 (App. Div. 2008)

Defendant was convicted under the principle of accomplice liability, N.J.S.A. 2C:2-6b(3), of having committed the crimes of first-degree robbery and felony murder. The question presented on appeal was whether a defendant charged as an accomplice may be found guilty of robbery by uttering an instruction to the principal, during the immediate flight from an attempted theft, to hide the weapon used during the attempted theft, after all necessary elements of the crime of robbery have concluded.

The court answered the question in the negative, holding that the phrase contained in the robbery statute, "[a]n act shall be deemed to be included in the phrase 'in the course of committing a theft,'" N.J.S.A. 2C:15-1a, refers only to those acts set forth in sections a(1), (2), and (3) of the statute which elevate simple theft or attempted theft to the crime of robbery. Further, the phrase does not encompass other acts committed by an alleged accomplice after all elements necessary to constitute the crime of robbery had concluded. Lastly, to the extent that *State v. Williams*, 232 N.J. Super. 432 (App. Div.), *certif. denied*, 118 N.J. 208 (1989), and *State v. Baker*, 303 N.J. Super. 411 (App. Div.), *certif. denied*, 151 N.J. 470 (1997), hold to the contrary, the court disagreed.

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*State v. Quadir Whitaker*, 200 N.J. 444 (2009)

Defendant could not be found guilty as an accomplice of robbery and felony murder unless he shared the principal's intent to commit the theft before or at the time the theft or attempted theft was committed. Because the prosecutor improperly advised the jury that it could convict defendant of robbery and felony murder solely on the ground that he aided in the robber's escape, even if he did not participate or assist in any way in the attempted theft or killing, the Court is constrained to order a new trial.