

21.18 ACCESSORY AFTER THE FACT

§ 777.03(1) Fla. Stat.

To prove the crime of Accessory After the Fact, the State must prove the following [four] [five] elements beyond a reasonable doubt:

1. A (felony alleged) **was committed by** (name of person committing felony).
2. **After the** (felony alleged) **was committed**, (defendant) **[maintained] [assisted] [aided or attempted to aid]** (name of person committing felony).
3. **At that time**, (defendant) **knew that** (name of person committing felony) **had committed the** (felony alleged).
4. (Defendant) **did so with the intent that** (name of person committing felony) **avoid or escape detection, arrest, trial, or punishment.**

If the felony alleged is a third degree felony, give element #5.

5. (Defendant) **was not related to** (name of person committing felony) **by blood or marriage as husband, wife, parent, grandparent, child, grandchild, brother, or sister.**

Define the felony alleged.

It is not necessary for the State to prove that (defendant's) **assistance was successful in allowing** (name of person committing felony) **to avoid or escape detection, arrest, trial or punishment, nor is it necessary for the State to prove that** (name of person committing felony) **was convicted.**

The intent with which an act is done is an operation of the mind and, therefore, is not always capable of direct and positive proof. It may be established by circumstantial evidence like any other fact in a case.

Comments

The degree and offense level of "Accessory After the Fact" depends on the severity of the underlying felony. Accordingly, lesser included offenses must be tailored depending on the felony alleged.

In cases involving proof of knowledge by circumstantial evidence, *see Bowen v. State*, 791 So. 2d 44 (Fla. 2nd DCA 2001).

If the felony alleged is child abuse, neglect of a child, aggravated child abuse, aggravated manslaughter of a child under 18 years of age, or murder of a child under 18 years of age, the court may need to determine whether the defendant is a victim of domestic violence. *See* § 777.03(1)(b), Fla. Stat. If a court determines that the defendant was not a victim of domestic violence, it is unclear whether the courts will require a jury finding on that issue.

This instruction was adopted in 1987 [508 So. 2d 1221] and amended in 2008 [995 So. 2d 489],

and 2018.