Colorado Revised Statutes: Title 18: Criminal Code: 18-8-105. Accessory to Crime.

TITLE 18. CRIMINAL CODE. ARTICLE 8. OFFENSES - GOVERNMENTAL OPERATIONS. PART 1. OBSTRUCTION OF PUBLIC JUSTICE.

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(1) A person is an accessory to crime if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a crime, he renders assistance to such person.

(2) "Render assistance" means to:

(a) Harbor or conceal the other; or (a.5) Harbor or conceal the victim or a witness to the crime; or (b) Warn such person of impending discovery or apprehension; except that this does not apply to a warning given in an effort to bring such person into compliance with the law;

or (c) Provide such person with money, transportation, weapon, disguise, or other thing to be used in avoiding discovery or apprehension;

or (d) By force, intimidation, or deception, obstruct anyone in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person;

or (e) Conceal, destroy, or alter any physical or testimonial evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of such person.

(3) Being an accessory to crime is a class 4 felony if the offender knows that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with a crime, and if that crime is designated by this code as a class 1 or class 2 felony. (4) Being an accessory to crime is a class 5 felony if the offender knows that the person being assisted is suspected of or wanted for a crime, and if that crime is designated by this code as a class 1 or class 2 felony. (5) Being an accessory to crime is a class 5 felony if the offender knows that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with a crime, or is suspected of or wanted for a crime, and if that crime is designated by this code as a felony other than a class 1 or class 2 felony; except that being an accessory to a class 6 felony is a class 6 felony.

(6) Being an accessory to crime is a class 1 petty offense if the offender knows that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with a crime, or is suspected of or wanted for a crime, and if that crime is designated by this code as a misdemeanor of any class.

Case Notes: Annotation:

Law reviews. For article, "One Year Review of Criminal Law and Procedure", see 35 Dicta 26 (1958). For article, "Incriminating Evidence: What to do With a Hot Potato", see 11 Colo. Law. 880 (1982).

Annotator's note. Since § 18-8-105 is similar to former § § 40-1-12 and 40-1-13, C.R.S. 1963, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Common-law rule. At common law the accused must have rendered some assistance to a felon, and that assistance must have been such as to shelter him to some extent from prosecution, such as concealing him in his house. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

The common-law rule that a person cannot be prosecuted as an accessory after the fact until after the principal has been convicted does not apply. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

Since the early days of the English common law, it has been generally held that any assistance whatever given to one known to be a felon in order to hinder his being apprehended, or tried, or suffering punishment makes the assistor an accessory after the fact. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

Constitutionality. Former section held not unconstitutionally vague since it gave fair warning of the conduct forbidden, and men of common intelligence can readily apprehend the statute's meaning and application. This is the accepted test in this jurisdiction. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

This section does not violate a defendant's constitutional privilege against self-incrimination. An accessory after the fact, by definition, does not assent to the commission of the principal's crime. And this section does not impose liability upon defendant for his failure to reveal his complicity, but rather for his affirmative acts which constituted the interdicted conduct. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

This section gives fair warning of the conduct forbidden. Men of common intelligence can readily comprehend the statute's meaning and application. People v. Young, 192 Colo. 65, 555 P.2d 1160 (1976).

The word "might" must be construed to mean a reasonable probability that the forbidden result would obtain and thus the statute is not unconstitutionally vague. People v. Pratt, 759 P.2d 676 (Colo. 1988).

Neither is this section unconstitutionally overbroad. People v. Pratt, 759 P.2d 676 (Colo. 1988).

Any assistance whatever given to one known to be a felon, including the harboring and protection of the wrongdoer, constitutes "rendering assistance" within the meaning of this section. People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

Although the mere failure to inform public authorities of one's knowledge of a felon may not be sufficient to establish that an accused is an accessory to the crime, the offense can be established by

proving the defendant was of personal help to, or aided, the offender in avoiding arrest and prosecution. People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

The act of an accessory providing a felon with a secret hiding place in order that he would avoid detection and arrest constituted giving shelter or refuge and thus violated the statutory prohibition against harboring and/or concealing. People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

The act of harboring or concealing a wanted person, coupled with the requisite intent under this section, forms the basis of the criminal offense. People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

For factors supporting the conclusion that accessory was harboring and/or concealing a felon, see People v. Sandoval, 791 P.2d 1211 (Colo. App. 1990).

Section applicable to noncriminal-code crimes. There is nothing in the statutory context of this section indicating a legislative intent to prohibit the application of its provisions on being an accessory to crime to noncriminal-code crimes. Barreras v. People, 636 P.2d 686 (Colo. 1981).

The relevant standard for knowledge in regard to the accessory statute is whether defendant knew the principal had committed a crime. People v. Young, 192 Colo. 65, 555 P.2d 1160 (1976).

Knowledge that a theft has occurred is knowledge sufficient to sustain a conviction of accessory to theft of auto parts. Barreras v. People, 636 P.2d 686 (Colo. 1981).

It is not necessary for the defendant to have known that the crime committed was a particular class. People v. Young, 192 Colo. 65, 555 P.2d 1160 (1976).

When such classification is relevant. The statutory classification of the crime committed by the principal (class one or two felony) is only relevant in determining the degree of the accessory charge (class four or five felony or class one petty offense). People v. Young, 192 Colo. 65, 555 P.2d 1160 (1976).

The phrase "charged with", as used in the former accessory after the fact statute, means more than a mere formal charge and includes responsibility for the crime. Self v. People, 167 Colo. 292, 448 P.2d 619 (1968).

Elements of offense. The offense may be committed by either concealing the commission of the crime from the magistrate, or by harboring or protecting the felon. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

To convict a defendant under this section it must be proved that a crime has been committed; that after full knowledge of the commission of such crime, the defendant concealed the same from the magistrate, or that defendant harbored and protected the criminal after he had full knowledge that the crime had been committed. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

Where defendant was prosecuted as an accessory to murder, it was necessary for the people to prove that the alleged killer had murdered his wife, and that defendant with knowledge of that fact concealed the commission of the crime, or that after full knowledge of the commission of the crime had harbored and protected the murderer. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

Whether one is an accessory depends on whether what he did was a personal help to the offender to elude punishment. He need only aid the criminal to escape arrest and prosecution. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

To establish that an accused is guilty of being an accessory under subsection (5), the following statutory elements must be proven: (1) A crime has been committed; (2) the accused rendered assistance to the actor; (3) the accused intended to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of the principal; (4) the accused knew that the person being assisted has committed, or has been convicted of, or is charged by pending information, indictment, or complaint with such crime, or is suspected of or wanted in connection with such crime; and, (5) the underlying crime is designated as a felony other than a class 1 or 2 felony. Barreras v. People, 636 P.2d 686 (Colo. 1981).

Mere silence is not enough. Mere silence as to one's knowledge of a felony, with no intent to aid the felon, or mere failure to inform the public authorities, does not establish such person as an accessory. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

Specific statutory definition of "render assistance" must be included in jury instructions, where failure to do so may lead jurors to conclude that the defendant's mere presence at scene of crime is "assistance". People v. Broom, 797 P.2d 754 (Colo. App. 1990).

Section does not retain full knowledge requirement of previous accessory after fact statutes. Prior to the adoption of subsection (1), proof that the defendant had full knowledge of the underlying crime actually committed was a condition precedent to conviction for the statutory offense of accessory after the fact. People v. Barreras, 44 Colo. App. 402, 618 P.2d 704 (1980), aff'd, 636 P.2d 686 (Colo. 1981).

This section has no application to one who was guilty of the principal offense as a complicitor, if the commission of both offenses is grounded upon the same act; a different specific intent is required for accessory offenses than for the crime of conspiracy. People v. Broom, 797 P.2d 754 (Colo. App. 1990).

Evidence that defendant rendered assistance to his companions' efforts to conceal or destroy evidence of murder for which defendant was convicted supported defendant's conviction of being an accessory, on the basis of complicity, to the conduct of his two companions. People v. Ager, 928 P.2d 784 (Colo. App. 1996).

This section has no application to one who was a principal in the commission of the crime. Miller v. People, 92 Colo. 481, 22 P.2d 626 (1933).

Guilt of principal, not legal status, is element of section. The guilt or innocence of an accessory after the fact depends as to one element on the factual status of the principal as to guilt or innocence; not on his legal status as regards liability or nonliability to suffer a penalty. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

Thus, the state must establish that the crime was in fact committed on the trial of the accessory, and the result of the trial of the principal, if there is a trial, is immaterial. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

Since this section creates a crime complete in itself, before a conviction may be had every necessary element must be established in the case in which the accessory is on trial, including the factual commission of the antecedent crime concealed or the perpetrator of which was harbored. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

On the trial of a criminal charge of accessory to a murder, the state is required to establish the killing, and this requirement is not satisfied by evidence of the prior conviction of the principal perpetrator of the crime. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

To successfully convict a defendant of being an accessory, there must be sufficient evidence presented to show that there was, in fact, a principal who was guilty of the crime charged, even though it is inconsequential whether or not the principal was ever charged with the criminal offense. Britto v. People, 178 Colo. 216, 497 P.2d 325 (1972).

But conviction of principal is not condition precedent. Under this article, being an accessory after the fact is a statutory offense, and a person may be convicted thereof although the principal had not been formally charged with, or convicted of the crime. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

The accessory statute is held to create a substantive statutory crime and, as construed, the conviction of the principal is not a condition precedent to the conviction of an accessory. Roberts v. People, 103 Colo. 250, 87 P.2d 251 (1938).

The conviction of the principal is not a condition precedent to the conviction of an accessory. Lowe v. People, 135 Colo. 209, 309 P.2d 601 (1957).

Accessory distinguished from one who aids or abets a crime. It is not true that one can be indicted as principal whose conduct is such as to make of him an accessory. The penalty provided for this crime is entirely different from that authorized for one who "aids, abets, or assists", or who has advised and encouraged the perpetration of the crime, and the essential ingredients of the crimes under comparison are entirely different. Martinez v. People, 166 Colo. 524, 444 P.2d 641 (1968).

Accessory after the fact is not lesser included offense. As to accessories after the fact a specific charge raising that issue is necessary. Questions relating thereto are not included, upon the theory of a lesser included offense, within an information in which the persons accused are charged as principals. Martinez v. People, 166 Colo. 524, 444 P.2d 641 (1968); Mingo v. People, 171 Colo. 474, 468 P.2d 849 (1970).

The court's refusal to instruct the jury that the crime of accessory during the fact is also a lesser included offense when robbery is charged, which was the defendant's principal theory of the case, was not error because accessory during the fact is a separate and distinct offense which was not charged and which could not properly have been the subject of an instruction. Maes v. People, 178 Colo. 46, 494 P.2d 1290 (1972).

And acquittal of a criminal charge does not bar conviction as an accessory after the fact. Howard v. People, 97 Colo. 550, 51 P.2d 594 (1935).

This section requires only that a defendant obstruct anyone in the performance of any act which might aid in detection of the principal; this section does not require that the act be successful. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

This section is distinguishable from § 18-8-111. A deliberate attempt to thwart law enforcement is more destructive than conduct not designed to do so. As a result, the greater punishment for the offense of accessory to a crime is justified. People v. Preciado-Flores, 66 P.3d 155 (Colo. App. 2002).

Applied in

People v. Roberts, 43 Colo. App. 100, 601 P.2d 654 (1979); People v. McCall, 43 Colo. App. 117, 603 P.2d 950 (1979); People v. Archuleta, 616 P.2d 977 (Colo. 1980); People v. R.V., 635 P.2d 892 (Colo. 1981); People v. Mann, 646 P.2d 352 (Colo. 1982); People v. Simien, 656 P.2d 698 (Colo. 1983).