

**“The only thing necessary for evil  
to triumph . . .”  
Accomplice Liability in Child  
Abuse Cases**

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**You've got the abuser behind bars, so  
why do you care?**

- The legal theory:
  - “A parent's failure to take all steps reasonably possible to protect the parent's child from an attack by another person constitutes an act of omission by the parent showing the parent's consent and contribution to the crime being committed.”
  - State v. Walden, 306 N.C. 466, 476 (1982)

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**Partners in Abuse /  
Partners in Accountability?**

- Factual Scenarios of Partnered Abuse
  - Sexual Abuse
  - Physical Abuse
  - Neglect
- Legal Theories for Accountability
  - Principals
  - Accessories / Aid & Abet
  - Conspirators
- Practical Implications
  - Interviewing
  - Investigation
  - Prosecution

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Recognizing Accomplice Scenarios

## IT TAKES TWO

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### Factual Scenarios: Sexual Abuse

- Facilitators
  - Providing the child
  - Filming the abuse
- Deniers
  - Active disclosures
  - Past incidents
- Protectors
  - Intimidation
  - Fugitive aid
- “Gigglers”
  - Older boyfriend in house
  - Statutory rape enablers

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### Factual Scenarios: Physical Abuse

- Weapon Providers
  - Co-participants in actual abuse
  - Provide instrumentation of crime
- Opportunity Providers
  - Leaving child with known abuser
- Head turners
  - Do nothing when confronted with obvious signs of abuse
- Cleaners
  - Create excuses / explanations for injuries
  - Destroy crime scene

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## Factual Scenarios: Neglect

- Injury / death causers
  - Original injury actually worsens due to neglect
- Dirty house cases
  - Absent but aware parent / guardian
- Physical abuse enablers
  - Denying medical attention
  - Keeping children out of public view
- Kool-aid drinkers
  - My husband / boyfriend / girlfriend / wife makes decisions about medicine and he / she thought the child was fine ☺

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Legal Theories of Accountability

**I KNOW IT MAKES YOU MAD,  
BUT IS IT A CRIME?**

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## Legal Theories for Accountability

- Legal Theories for Accountability
  - Principals
    - Actual actors
    - Primary abuser / Final actor
  - Accessories / Aid & Abet
    - Facilitators
    - Accessories after the fact
  - Conspirators
    - Planned / patterned behaviors
    - Agreement between parties

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## Principal Liability

- “In most cases of death by child abuse, only the person who actually inflicts the injuries is charged with murder; the parent who fails to protect the child is rarely charged as an aider and abettor unless she too has inflicted injuries. Rather, that parent is generally charged with child endangerment, felony child abuse, or a similar, though lesser, crime.  
– Harv. J. on Legis. (1999)

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## Principal Liability

- Consideration:
  - In many states, there are no special charges for “aiding and abetting”
  - May be charging accomplice at same level as primary abuser

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## Accomplice Liability: Accessory / Aider / Abettor

- Acts required?
  - Black’s Law Dictionary: all assistance rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance if necessary (6th Ed. 1990)
- Mental state required?
  - Shared criminal intent?
  - Specific intent to aid or facilitate?

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## Issues with Aiding / Abetting

- What type of accessory knowledge is required?
  - Reasonable person standard?
  - Mere parental relationship? (should have known)

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## Consistencies in Case Law: Convictions Upheld

- What makes appellate courts happy?
  - Parental relationship
  - Clear indications of abuse
  - Direct actions or clearly offensive omissions

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## Accomplice Liability: Duty to Protect

### Signal Assent

- By saying nothing, you signal assent and approval especially when the failure is by a parent
  - State v. Edgar, 127 P.3d 1016, 1023-24 (Kan. 2006)

### Implicitly Sanction

- “By failing to act, the parent may be deemed to have implicitly sanctioned the criminal behavior and, therefore, may be held accountable for the abusive conduct”
  - People v. Pollock, 780 N.E. 2d 669, 684 (Ill. 2002)\*\*\*

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**Accomplice Liability:  
Parent Found Not Liable**

- Sexual abuse cases
- Lack of clear disclosures
- Not actually witnessing abuse
- Cooperative parent

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**Aid and Abet Liability:  
For Your Purposes**

- Frequently seen aid / abet scenarios:
  - Failure to act in face of clear signs of abuse
    - Signs that a reasonable person would recognize as abuse

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**Aid and Abet Liability:  
For Your Purposes**

- Aid / abet scenarios:
  - Failure to stop abusive incidents
    - Defendant is aware that incident is actually occurring
  - Failure to obtain medical treatment
    - Usually for fear of detection of abuse

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## Conspirator Liability

- Basic tenets
  - Agreement with another
  - Agreement to commit a crime
  - Overt act in furtherance of conspiracy

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## Conspirator Liability

- Useful in
  - Child Pornography
  - Child Trafficking
  - Prostituted Children Cases

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## Conspirator Liability

- Providing child to abuser knowing purpose for providing child
- Providing child to be prostituted
  - North Carolina drugs-for-child alleged murder
  - State v. Maggie Moore
- Websites seeking parents with children

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## Conspirator Liability

- Neglect Cases
  - Agreement to deny medical attention to abused child
    - Parents know that child needs medical attention
    - Neither parent takes child for needed treatment

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Practical Implications For Accomplice Liability

## SO WHAT DO I DO WHEN . . .

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## What Do I Do When You . . .

- **Suspect the primary abuser had help?**
  - Interviewing witnesses
  - Finding evidence to prove involvement
- **Know that there is an accomplice?**
  - Charging offenses?
  - Plea agreements?
- **Try the case?**
  - Jury thoughts
  - Addressing defenses

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## Investigations

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## What Should I Be Looking For?

- Do you suspect that the primary abuser had help?
  - Long term injuries
  - Obvious injuries
  - Past disclosures

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## Warning Signs: Accomplices

- Long-term injuries:
  - Constellation of injuries
  - Multiple medical visits
  - Symptoms that would cause a reasonable parent concern
    - If these happened in the presence of a stranger, what would the response be?

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## Warning Signs: Accomplices

- Obvious injuries:
  - Is the explanation given just plain dumb?
  - Explanation inconsistent with medical evidence?
  - Multiple explanations given?

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## Warning Signs: Accomplices

- Past Disclosures:
  - Do you know of past abuse?
    - Including neglect?
  - What about drug use in home?
  - Presence of domestic violence?
- Each of these factors make it more difficult for parent to address child's abuse

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## Investigating Accomplices

- Is child victim talking to you?
  - Who did child tell?
    - What did child disclose?
    - Did abuse happen after disclosure?
  - Was anyone else ever around during abusive incidents?
    - Present in house?

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## Accomplices: Investigating

- Describe IN DETAIL obvious physical injuries
  - How the injury looked?
  - Injuries that are plainly visible
  - Injuries that could not be hidden
  - Injuries that affected daily life
- Describe child response:
  - How did child respond to the injury?
  - How did child act towards abuser and others?
- Detail accomplice response
  - To discovery of abuse
  - To needs of child

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## When You Suspect Aiding

- Interview other witnesses
  - Siblings / friends
  - Other caregivers
  - Medical care providers
  - Social workers
  - Child protection
  - Teachers
  - Church

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## When You Suspect Aiding

- Interviewing “non-offending” parents
  - Witness today, accomplice tomorrow?
  - Miranda advisements?
  - Record interview?

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### When You Suspect Aiding: Interviewing Primary Abuser

- Establish roles of parties
  - Who had access to child?
  - Who was primary caregiver?
  - Who was in position to notice injuries / abuse?
- Single incident or multiple incidents?
- Any abuse perpetrated in presence of accomplice?
- Does principal think accomplice knew?
  - Why or why not?

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### When You Suspect Aiding: Evidence To Show Complicity

- Gather evidence to show
  - Absence of action where required
  - Direct actions that aided and abetted either before, during or after that facilitated the offense
- Demonstrate
  - Duty
  - Proximity
  - Ability to stop abuse
- Identify disclosures:
  - When
  - How
  - What was said
- Detail accomplice response

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### When You Suspect Aiding: Evidence To Show Complicity

- Relationship between primary abuser and accomplice
- Joint action with respect to child
- Joint attempts to cover behavior
- Mutual suspicion of “the system”
- Dependence of accomplice on principal

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## When You Suspect Aiding:

Finding Evidence to Back "Uniformity" Theory

- **Social networking sites**
- **Text / email messages**
  - Photos
  - Did child disclose abuse this way?
- **Investigate like a DV Case**
  - Evidence of "honeymoon" – this will never happen again
  - Threats: we'll both lose the kids
- **Jail calls**
  - Continued conspiracy to maintain a story
- **Prior warnings:**
  - To keep offender away from victim?
  - Danger to child?
  - Injuries of non-accidental nature?

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## Charging Accomplices

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## Prosecution: Accomplice Liability Cases

- **Charging decisions:**
  - Would you charge mother who starved infant to death with murder?
    - Starvation is an omission?
- **Failing to stop abuse is an omission?**
  - Why wouldn't you prosecute omission that results in death as murder (or other relevant offense)?

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## Should I Charge This Offense?

- Why charge “cooperative” non-offending parent?
  - Crimes cannot happen or continue without their “cooperation”
  - Reducing “safe havens” makes children safer
  - Accomplices can always reproduce . . .
  - . . . And they tend to choose same types of partners over and over

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## Should I Charge This Accomplice?

- Factors to consider
  - What was level of participation?
  - How much worse did accomplice make abuse for child?
  - Did accomplice ultimately “rescue” child?
- How necessary is accomplice’s testimony in principal’s trial?
- CPS / Criminal History
- Motivations for action / inaction

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## Should I Charge The Offense?

- Questions to ask:
  - What indications did accomplice have (where not obvious) that there was abuse?
  - What opportunities did the accomplice have to change the abusive dynamic?

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## How Should I Charge Accomplice?

- As principal?
  - But / for situations
    - Who gave primary abuser access to child?
  - Equivalent liability
    - May have also physically or sexually abused child

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## How Should I Charge Accomplice?

- Endangerment / neglect (other lessers):
  - Minor impact on child
  - Behavior merely careless
  - Short-term abuse or single incident?
  - Level of parenting experience / resources?

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## Plea Negotiations

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### Should I Plead the Case?

- What is Accomplice offering you?
- How does the child victim feel?
- How are you protecting future victims?

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### Should I Plead the Case?

- Punishment commensurate with accomplice's participation in offense?
- Effect on primary abuser's trial?
  - Selling too low can affect verdict in principal's trial
    - Similar levels of participation
    - Accomplice owed greater duty to child than primary abuser
- Plea benefits disclosed in discovery?

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### Pleading Accomplice Cases

- Case Study: I.V.

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## Pleading Accomplice Cases

- Case Study: I.V. (almost 7 months old)
  - Manner of death: homicide by BFT to head
    - Subdural, subarachnoid, subgaleal bleeds
    - Acute and Chronic (4-6 weeks old)
    - Spiral FX of humerus
  - Charged
    - Neglect / Death on both parents

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## Pleading Accomplice Cases

- Case Study: I.V.
  - Plea decision:
    - Amber got better offer
      - Didn't believe she killed child
      - Deception with CPS, continued Spice use was neglectful
      - MITIGATING: She tried to get help b/c she didn't know what was wrong with baby
    - Ascencion: B felony Neglect
      - Believed he inflicted fatal blows
      - Not going to doc visits
      - Alone with baby prior to earlier symptoms of AHT

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Bringing The Accomplice To Trial

**KEEPING THE BALANCE TRUE**

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## How Do I Pick a Jury?

- Addressing Jury Issues:
  - Juror issues with mothers who fail to protect
  - Jurors may feel sympathy for parent / guardian who has “lost” a child
  - Need to address potential defenses, including domestic violence

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## How Do I Pick a Jury? Accomplice Trial

- General concepts about facilitating crime
  - How should law differentiate between participants in crimes?
  - Why do you think law allows accomplice to be held as responsible?
  - When should person who fails to act to prevent a crime or to stop a crime in progress be held responsible for crime?

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## How Do I Pick a Jury? Accomplice Trial

- Intent:
  - What do you think this statement means: “A person intends the logical consequences of his actions?”
    - Throwing water balloon into a crowd of people?
    - Dropping raw meat into dog kennel?
  - Are there times when a person says “I didn’t know that would happen” when it’s just not believable?

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## Prosecution: Accomplices in Jury Selection

- Use analogies
  - Examples:
    - Providing guns to friends going to commit a robbery
    - Driving a getaway car in a robbery
    - Hiding profits from fraudulent transactions
  - Make analogies timely
  - DO NOT get too fact sensitive
  - You want the jury to understand the importance of “in-concert” action

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## How Do I Pick a Jury? Accomplice Trial

- Sympathy where child is dead
  - “If a juror said during deliberations, “look, I think she committed the crime that the state charged and I know the prosecutor has proved it, but hasn’t she suffered enough?”

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## What Defenses Can I Expect?

- I didn’t know . . .
  - Didn’t know abuse was occurring
  - Didn’t know that this person was perp
  - Didn’t know how bad it was
- I was being threatened / abused
  - I am battered woman
  - I was directly threatened if I told
  - I feared losing children if I told
- I thought it would get worse if I intervened

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## What Defenses Can I Expect?

- DEFEAT Denial: I didn't know what was happening
  - Proximity to abuse
    - Consider jury visits to show close living quarters
    - Video documentation of scene
  - Actions to cover abuse
    - Evidence of available medical options
  - Was accomplice warned?

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## What Defenses Can I Expect?

- Victimization of accomplice:
  - Prior indications of domestic violence
    - Prior to defense counsel
- Did it excuse inaction?
  - Opportunities to get out
- BUT
  - Parents are not required to risk their own lives to save their children
  - Just to take all reasonable steps

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## What Defenses Can I Expect?

- Domestic Violence / Learned Helplessness
  - Need to determine its affect on ability to protect victim
  - Distinguish between failure to act and actively participating in abuse

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## Prosecution Issues

- Ultimately, make sure that all decisions made with an attempt to protect and to hold offenders accountable in proportionate measure.
- Remind jury that multiple people had a hand in abusing the child
  - Had any of them stood up and said “this is wrong,” how much better off would this child be?

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