

1974 WL 28029 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 12, 1974

***1 Re: Criminal Responsibility of one, other than the driver in a hit and run accident.**

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190 N. Coit Street
Florence, SC 29501

Dear Solicitor:

You have requested that this Office advise you as to whether there may be an abettor in the commission of a hit and run offense.

Section 46-321 et seq. of the 1962 Code of Laws of South Carolina (as amended) established the requirements and liabilities of a person involved in a hit-and-run accident. The basic requirements are that the driver must stop and give information and render aid if necessary. See Sections 46-321, 46-323 of the 1962 Code of Laws. Although the aforementioned Sections of the Code make mention only to the 'driver' of the vehicle, it is possible that a 'passenger' in a vehicle can be held liable as an aider and abettor in the commission of a hit-and-run offense. Section 46-681 of the South Carolina Code provides:

Every person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared herein to be a crime, whether individually or in connection with one or more other persons or as a principal, agent, or accessory shall be guilty of such offense and every person who falsely, fraudulently, forcible or willfully induces, causes, coerces, requires, permits, or directs another to violate any provisions of this chapter is likewise guilty of such offense.

Generally, where a person other than the driver has been prosecuted under the hit-and-run statutes, it has been on the theory that the passenger aided and abetted the driver in the commission of the offense. [People v. Nails](#), 10 Ill.2d 279, 139 N.E.2d 744, 62 A.L.R.2d 1124 (1957); [State v. Dutch](#), 246 N.C. 438, 98 S.E.2d 475 (1957); [James v. Commonwealth](#), 178 Va. 28, 16 S.E.2d 296 (1941); [Petition of Saltman](#), 289 Mass. 554, 194 N.E. 703 (1935); See 62 A.L.R.2d 1130 (1958) for further collection of cases. 'An aider and abettor is . . . defined as one who advises, counsels, procures or encourages another to commit a crime.' [State v. Derosia](#), 94 N.H. 228, 50 A.2d 231 233 (1946). In [Derosia](#), *supra* at 233, where the passenger was convicted as a principal in the second degree felony of a fatal hit-and-run accident, there was evidence to show that the passenger said to the driver: 'Let's get out of here and take me home before somebody comes.' It was also shown in [Derosia](#), *supra* that the passenger also advised the driver; 'Go out through there and we will skip them and they can't find out who it was.'

In order for one to be convicted of aiding and abetting in a hit-and-run violation, it is necessary that the guilt of the driver be first established. [State v. Dutch](#), *supra*.

However, the essential factor in a prosecution for violation of a hit-and-run statute, that the driver had knowledge that his vehicle had been involved in an accident or had caused injury, must be established in a prosecution against a person other than the driver at the time of the accident or injury. 7 Am.Jur.2d [Automobiles and Highway Traffic](#) § 252 (1963).

***2** Although there seems to be no case directly in point in South Carolina, it seems that the courts would probably follow the theory of aiders and abettors in the situation of a hit-and-run violation by one other than the driver. Cf. [State v. Cox](#), 258 S.C. 114; 187 S.E.2d 525 (1972). Therefore, in view of the authorities presented and Section 46-681, it would be possible to obtain a conviction against a passenger who aids or abets in the commission of a hit-and-run offense.

I trust this will be of some assistance to you, if we may be of any further assistance, please do not hesitate to call or write.

Ken, I appreciate very much your offer to me of being the assistant solicitor for Marion County of the 12th. Judicial Circuit. I have found however that it will be impossible for me to move to that area any time in the near future, so I must decline your very kind offer.

Although I will no longer be with the Attorney General's Office, if I may ever be of any assistance to you in any manner, please do not hesitate to let me know.

Very truly yours,

Timothy G. Quinn
Senior Assistant Attorney General

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