

## J. Y. Interpretation No.109 (November 3, 1965) \*

**ISSUE:** Is a person who, with the intent to commit a crime in conjunction with others, participated in an act outside of the scope of the requisite elements for the crime, or one who, with the intent to commit a crime in conjunction with others, conspired prior to commission of a crime but did not participate in the carrying out of the crime considered as a principal co-offender?

### **RELEVANT LAWS:**

J.Y. Interpretation Yuan-tze No. 1905, No. 2030-1, and the first part of No. 2202 (司法院院字第一九〇五號、第二〇三〇號之一、第二二〇二號解釋前段).

### **KEYWORDS:**

intent to commit a crime jointly (以自己共同犯罪之意思), element of the crime (犯罪構成要件), conspires with others before the fact (事前同謀), specific identity (特定身分). \*\*

**HOLDING:** A person who, with the intent to commit a crime jointly, commits an act which is not an element of the crime or conspires with others before

**解釋文：**以自己共同犯罪之意思，參與實施犯罪構成要件以外之行為，或以自己共同犯罪之意思，事先同謀，而由其中一部分人實施犯罪之行為

\* Translated by Li-Chih Lin, Esq., J.D.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

the fact without personally committing the crime is also considered to be a joint offender in the commission of the crime. The purposes and intents of J.Y. Interpretation Yuan-tze No. 1905, No. 2030-1, and the first part of No. 2202 are consistent with this opinion.

**REASONING:** Joint offenders of a crime are persons who jointly commit the crime. With the intent to commit a crime jointly, each joint offender commits his or her part of the crime to accomplish the crime. It is not necessary that all joint offenders commit the same act which is an element of the crime. While a person who commits an act which is an element of the crime is considered a joint offender of the crime, a person who, with the intent to commit the crime jointly, commits an act which is not an element of the crime or conspires with others before the fact without personally committing the crime, is also considered to be a joint offender in the commission of the crime and shall be liable for the consequences of the crime. A person who conspired with others before the fact and obtained illegal gains

者，均為共同正犯。本院院字第一九〇五號、第二〇三〇號之一、第二二〇二號前段等解釋，其旨趣尚屬一致。

**解釋理由書：**共同正犯，係共同實施犯罪行為之人，在共同意思範圍內，各自分擔犯罪行為之一部，相互利用他人之行為，以達其犯罪之目的，其成立不以全體均行參與實施犯罪構成要件之行為為要件；參與犯罪構成要件之行為者，因為共同正犯；以自己共同犯罪之意思，參與犯罪構成要件以外之行為，或以自己共同犯罪之意思，事前同謀，而由其中一部分人實行犯罪之行為者，亦均應認為共同正犯，使之對於全部行為所發生之結果，負其責任。本院院字第一九〇五號解釋，係指事前同謀，事後得贓，推由他人實施，院字第二〇三〇號解釋之一，係謂事前同謀，而自任把風，皆不失為共同正犯。院字第二二〇二號解釋前段所謂警察巡長與竊盜串通，窩藏贓物，並代為兜銷，應成立竊盜共犯，如係以自己犯罪之意思，並參與其實施，則屬竊盜共同正

after the fact without personally committing the crime is held to be a joint offender in the commission of the crime in J.Y. Interpretation Yuan-tze No. 1905. A person who conspired with others before the fact and was posted as a lookout, is held to be a joint offender of the crime in J.Y. Interpretation Yuan-tze No. 2030-1. The first part of J.Y. Interpretation Yuan-tze No. 2202 holds that a chief of police who conspired with a thief to conceal and sell the stolen goods for the thief, is considered to be an accomplice in the theft. However, the chief of police who conspired with a thief to conceal and sell the stolen goods for the thief with an intent to commit the crime jointly is considered to be a joint offender in the commission of the theft. While the wordings in the three aforementioned J.Y. Interpretations are different due to different motions filed by different defendants, the purposes and intents of these judicial opinions are still consistent with the present opinion.

Justice Fan-Kang Tseng filed dissenting opinion, in which Justice Shi-Ding Chin and Justice Jou-Kang Jing joined.

犯。上述三號解釋，雖因聲請內容不同，而釋示之語句有異，但其旨趣，則無二致。應併指明。

本號解釋曾大法官繁康、金大法官世鼎與景大法官佐綱共同提出不同意見書。