

**District of Columbia
Court of Appeals**

Nos. O5-CF-716 & 07-CO-637

HARRY WHEELER,

Appellant,

FEL3155-03

v.

UNITED STATES,

Appellee.

On Appellee's Petition for Rehearing

BEFORE: Ruiz and Blackburne-Rigsby, Associate Judges, and Ferren, Senior Judge.

ORDER

(Filed January 4, 2010)

The government's petition for rehearing is granted to the extent that the division opinion affirming appellant's convictions is modified in *Wheeler v. United States*, 977 A.2d 973 (D.C. 2009) to the limited extent that follows:

1. On page 985, second column, the first full sentence shall be amended to read in part (with addition shown in bold):

“Every juror found, at the very least, that Wheeler had joined a criminal conspiracy **to commit murder** with an unknown co-conspirator”

2. On page 986, second column, the first full sentence shall be amended to read in part (with addition shown in bold):

“Thus, **as elaborated in note 34, supra**, without a conspiracy, a jury finding on count two”

3. On page 986, footnote 34 shall be amended to read in part (with additions shown in bold):

“. . . Although PFCV apparently may be characterized as a “general intent” crime, see note 11, *supra*, our recent decision in *Lancaster* **necessarily** required the same criminal intent for an aider and abettor of PFCV as for the principal. **Because**

“specific steps to assist . . . in the actual possession of firearms,” not mere “general participation in the criminal venture,” will be necessary to prove aiding and abetting of the possessory firearms offense,” *id.* at 174, 175 (italics omitted), the charged aider and abettor will have to know and intend the steps taken, amounting to the same mental state required of the principal. No coherent, conceptually sound argument can be made that the required specific steps -- inherently purposeful as they must be -- can be merely the “natural” or “reasonably foreseeable” consequence of (*i.e.*, a mere negligent reaction to) the principal’s action. *Lancaster*, therefore, necessarily implies a requirement that the trial court apply *Wilson-Bey* to PFCV and instruct accordingly. As a result, *Lancaster* makes clear that *Wilson-Bey* is not limited to specific intent crimes – a conclusion that this court reached implicitly last year in *Coleman v. United States*, 948 A.2d 534 (D.C. 2008). . . .”

PER CURIAM.