

A defendant is being tried for the murder of a woman who disappeared 10 years ago and has not been heard from since. Her body has never been found.

The prosecutor has presented strong circumstantial evidence that she was murdered by the defendant. To help establish the fact of her death, the prosecutor has requested that the judge give the following instruction, based on a recognized presumption in the jurisdiction: "A person missing and not heard from in the last seven years shall be presumed to be deceased."

Is the instruction proper?

- A. No, because mandatory presumptions are not allowed against a criminal defendant on an element of the charged crime.
- B. No, because the fact that someone has not been heard from in seven years does not necessarily lead to a conclusion that the person is dead.
- C. Yes, because it expresses a rational conclusion that the jury should be required to accept.
- D. Yes, because the defendant has a chance to rebut the presumption by offering evidence that the woman is alive or has been heard from in the last seven years.

Explanation:

Mandatory presumption v. Permissible inference

Mandatory presumption	Rebuttable	Conclusion that <i>must</i> be drawn from basic facts unless rebutted
	Conclusive	Conclusion that <i>must</i> be drawn from basic facts & cannot be rebutted
Permissible inference		Conclusion that <i>may</i> be drawn from basic facts

The law distinguishes between:

permissible inferences – which *allow* the fact finder to reach a conclusion once a party proves an underlying fact or set of facts (ie, basic facts) and

mandatory presumptions – which *compel* the fact finder to reach a conclusion from basic facts unless and until it is rebutted.

Mandatory presumptions **cannot be used against a criminal defendant** to establish an **element of the charged crime**. Such use would **violate** the defendant's **due process rights** by relieving the prosecution of its burden to prove every element of the charged crime *beyond a reasonable doubt*.

Here, the prosecutor requested a jury instruction that "a person missing and not heard from in the last seven years *shall be presumed* to be deceased." This instruction constitutes a mandatory presumption that would relieve the prosecution of its burden to establish the woman's death—an element of the charged *murder*—beyond a reasonable doubt. As a result, the instruction is improper.

(Choices B & C) A presumption or inference does not have to be certain. Instead, it only requires a rational connection between the basic facts (eg, person missing and not heard from in seven years) and the conclusion drawn from those facts (eg, person dead). Nevertheless, the presumption in the requested instruction is improper because it would violate due process.

(Choice D) Mandatory presumptions on an element of a charged crime are not allowed—regardless of whether the defendant has a chance to rebut the presumption.

Educational objective:

Due process prohibits the use of mandatory presumptions—ie, conclusions that must be drawn from basic facts—against a criminal defendant on an element of the charged crime.

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