

A woman agreed to purchase 1,000 tablets of a prescription drug from undercover narcotics agents. The agents told the woman that they would steal the drugs from a pharmacy. The next day, the agents met the woman and told her that they had the tablets in a bag. The bag did in fact contain tablets of the drug, but the agents had not stolen the tablets.

The woman paid the agents. She told them that she did not want to take possession of the bag and that instead they should deliver it to her friend waiting in a car across the street. The agents, after delivering the bag to the woman's friend, arrested both the woman and her friend.

Can the woman properly be convicted of attempting to receive stolen property?

- A. No, because the agents entrapped the woman. (2%)
- B. No, because the drugs were not stolen property. (18%)
- C. No, because the woman never attempted to possess the drugs. (10%)
- D. Yes. (68%)

Incorrect

Correct answer D

68% Answered correctly

01 min, 35 secs Time Spent

2023 Version

Explanation:

Attempt

(inchoate crime)

	Mens rea	Actus reus
	(specific intent)	(overt act)
Common law	Intends to commit target offense	Dangerous proximity test – performs act sufficiently close to completing target offense
Majority & MPC		Substantial step test – engages in conduct that exceeds mere preparation & strongly corroborates criminal intent

MPC = Model Penal Code.

Attempt is an inchoate crime—ie, a crime committed in anticipation of, or preparation for, another crime—that requires proof that the defendant:

had the specific intent to **commit a crime**

performed an **overt act** in furtherance of the intended crime *but* did not complete it.

Under the common-law **dangerous-proximity test**, an overt act occurs when the defendant comes so close to completing the target offense that it is essentially unstoppable. And under the **substantial-step test** used in a majority of jurisdictions, a defendant's conduct qualifies as an overt act when it exceeds mere preparation and strongly corroborates the defendant's criminal intent.

Here, the woman specifically intended to receive stolen property when she agreed to purchase 1,000 stolen tablets of the prescription drug from the undercover narcotics agents. And her act of meeting the undercover agents the next day constituted an overt act that would satisfy both the dangerous-proximity and substantial-step tests. Therefore, the woman can be properly convicted of attempting to receive stolen property.

(Choice A) In a majority of jurisdictions, entrapment occurs when the defendant (1) is induced by a government official or agent to commit a crime and (2) was not predisposed to commit the crime. Here, there is no indication that the undercover agents induced the woman to receive stolen drugs or that she was not predisposed to do so. Therefore, the woman was *not* entrapped by the agents.

(Choice B) Though the drugs were not actually stolen, this is irrelevant to the issue of the woman's guilt for attempted receipt of stolen property. The relevant inquiry is whether the

woman had the specific intent to receive stolen property and committed an overt act in furtherance of that crime.

(Choice C) Although the woman never actually possessed the drugs, she did constructively possess them by controlling where the undercover agents took the drugs and to whom the agents gave them.

Educational objective:

Attempt requires proof that the defendant (1) had the specific intent to commit a crime, (2) performed an overt act in furtherance of the intended crime, but (3) did not complete it.

Copyright © 2021 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.