

A girl told an 18-year-old boy she would like to have sexual intercourse with him and that he should come to her apartment that night at 7 p.m. After the boy arrived, he and the girl went into the bedroom. As the boy started to remove the girl's blouse, she said she had changed her mind. The boy tried to convince her to have intercourse with him, but after ten minutes of her sustained refusals, he left the apartment. Unknown to the boy, the girl was 15 years old. Because she appeared to be older, the boy believed her to be about 18 years old.

A statute in the jurisdiction provides: "A person commits rape in the second degree if he has sexual intercourse with a girl, not his wife, who is under the age of 16 years."

If the boy is charged with attempting to violate this statute, what is the proper verdict?

- A. Guilty, because he persisted after she told him she had changed her mind.
- B. Guilty, because no mental state is required as to the element of age.
- C. Not guilty, because he did not intend to have intercourse with a girl under the age of 16.
- D. Not guilty, because he reasonably believed she had consented and voluntarily withdrew after she told him she had changed her mind.

Explanation:

Attempt is an inchoate crime that occurs when the defendant:

has the specific intent to commit a crime

performs an **act** in furtherance of the intended crime *but*

does not complete it.

Therefore, an attempt to violate this jurisdiction's criminal statute requires proof that the defendant specifically intended to have sexual intercourse with a girl under 16 years of age. This is true **even when** the **target crime** (statutory rape) is a **strict liability offense** that does not require proof of a particular mental state as to the element of age (**Choice B**).

Here, the boy tried to convince the 15-year-old girl to have sexual intercourse with him. But he did not intend to have intercourse with a girl under the age of 16 since the girl appeared to be older and the boy believed her to be about 18 years old. As a result, he should be found *not* guilty of attempting to violate the statute.

(Choice A) Had the boy possessed the requisite intent for attempt, his persistent efforts to convince the girl to have intercourse with him may have satisfied the act requirement. But since the boy lacked such intent, he should not be convicted of attempt.

(Choice D) Consent is not an element of statutory rape or attempt, so the boy's reasonable belief that the girl had consented is irrelevant. And since attempt is complete once the act is committed, abandonment is no **defense**. Therefore, the fact that the boy voluntarily left the girl's apartment after she changed her mind would not absolve him of liability.

Educational objective:

Attempt always requires proof that the defendant specifically intended to commit a crime—even if the target crime does not require specific intent (eg, statutory rape).

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Types of mens rea

