

A woman and her coworker were invited to go on a hunting trip by their boss. The woman and the coworker were vying for the same promotion, so they were eager to impress their boss with their hunting skills. At one point while the woman and the coworker were hunting alone, the coworker pointed a gun at the woman while her back was turned and said, "Promise you will turn down the promotion or I will shoot you!" Unbeknownst to the coworker, the woman could not hear him because she had placed protective earplugs in her ears before the hunt began. The coworker believed that the woman was intentionally ignoring him, so he aimed at and killed a nearby deer, frightening the woman with the blast from the gun.

If the coworker is charged with assault, is he likely to be convicted?

- A. No, because the coworker took no substantial step toward committing a battery.
- B. No, because the woman was not aware of the coworker's threat of harm.
- C. Yes, because the coworker intended to cause apprehension of bodily harm.
- D. Yes, because the woman was placed in actual danger when the coworker pointed the gun at her.

### Explanation:

There are two types of **criminal assault**:

Attempted battery – when the defendant has the specific intent to commit and takes a substantial step toward committing a battery

**"Fear of harm" assault** (ie, apprehension assault) – when the defendant intentionally places another in **reasonable apprehension** of imminent harmful or offensive contact

For "fear of harm" assault, the victim must have been **aware of the defendant's threat** of harm **at the time it occurred**. Because actual apprehension is necessary, the victim's **lack of awareness** of the threat of harm is a **defense** to this type of assault.

Here, the coworker did not intend to batter the woman and took no substantial step toward doing so. He did, however, intend to place the woman in reasonable apprehension of imminent harmful contact (**Choice A**). But the woman was not aware of the coworker's threat of harm since her back was turned and she could not hear his threat due to her protective earplugs. Therefore, the coworker is not likely to be convicted of assault.

**(Choice C)** Although the coworker had the requisite intent to cause apprehension of bodily harm, he did not cause the reasonable apprehension of such harm. Both elements must be met for the coworker to be convicted of "fear of harm" assault.

**(Choice D)** For "fear-of-harm" assault, a defendant need not place a victim in actual danger. Instead, the defendant must intentionally place a victim in reasonable *apprehension* of harm. Because the woman lacked awareness of the coworker's threat, it is unlikely that the coworker will be convicted of assault.

### Educational objective:

Criminal assault occurs when a defendant (1) attempts to commit a battery or (2) intentionally places another in reasonable apprehension of imminent harmful or offensive contact. Apprehension only exists when the person is actually aware of the defendant's threat of harm at the time it occurs.

## Apprehension



No apprehension  $\neq$  Assault

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Apprehension = Assault