

A bank teller was fired by the president of the bank. The teller decided to take revenge against the president but decided against attempting it personally because he knew the president was protected around the clock by bank security guards. The teller also knew that his cousin had a violent temper and was very jealous. The teller falsely told his cousin that the cousin's wife was having an affair with the president. Enraged, the cousin said, "What am I going to do?" The teller said, "If it were my wife, I'd just march into his office and blow his brains out."

The cousin grabbed a revolver and rushed to the bank. He walked into the bank, carrying the gun in his hand. One of the security guards, believing a holdup was about to occur, shot and killed the cousin.

If the teller is charged with attempted murder of the president, which verdict should be rendered?

- A. Guilty, because he intended to kill the president and used the cousin to carry out his plan.
- B. Guilty, because he was extremely reckless as to the president.
- C. Not guilty, because the cousin, if successful, would be guilty of no more than manslaughter and an accomplice cannot be guilty of a higher crime than the principal.
- D. Not guilty, because the president was never in imminent danger of being killed.

Explanation:

Attempt is an inchoate crime that requires proof of three elements:

The defendant had the **specific intent** to commit a crime.

The **defendant—or his/her agent**—performed an **act** in furtherance of that crime.

The target crime was **not completed**.

Proof of specific intent is *always* required for attempt—even when proof of a lesser mental state would be sufficient for the target crime. Therefore, a defendant is only guilty of attempted murder if he/she specifically intended to kill the victim. No other type of malice aforethought will suffice **(Choice B)**.

Here, the teller intended to have the bank president killed. And the teller committed an act in furtherance of this crime—and used the cousin to carry out his plan—when the teller lied to the cousin about his wife's affair and urged him to shoot the president. But since the cousin was shot by a security guard, the president's murder was never completed. Therefore, the teller is guilty of attempted murder.

(Choice C) Had the intended murder been successful, it would *not* have been reduced to **voluntary manslaughter** since there was no adequate provocation or other mitigating factor. And though an accomplice (person encouraging crime) cannot be guilty of a *higher* crime than the principal (person committing criminal act), they are *equally* liable. Therefore, the teller (accomplice) and the cousin (principal) are equally guilty of attempted murder.

(Choice D) The lack of imminent danger would only negate the act requirement in the few jurisdictions that use the dangerous proximity test. Under this test, an act occurs when the defendant is so close to completing the target crime that it is essentially unstoppable. But most jurisdictions use the substantial step test, which only requires that an act exceed mere preparation and strongly corroborate the defendant's criminal intent.

Educational objective:

Attempt always requires (1) the specific intent to commit a crime and (2) an act by the defendant or his/her agent in furtherance of that crime.

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Malice aforethought
(attempted v. completed murder)

