

Four men are being tried for conspiracy to commit a series of bank robberies. Nine successful bank robberies took place during the period of the charged conspiracy. Because the robbers wore masks and gloves and stole the bank surveillance tapes, no witnesses have been able to directly identify the robbers. Some circumstantial evidence ties each of the men to the overall conspiracy.

During cross-examination, a prosecution witness testified that one of the men was in jail on other charges during the last six robberies. That man's lawyer has moved for a judgment of acquittal at the close of the government's case.

Should the motion be granted?

- A. No, because a conspirator is not required to agree to all of the objectives of the conspiracy.
- B. No, because a conspirator need not be present at the commission of each crime conspired upon.
- C. Yes, provided that the man has complied with the rule requiring pretrial notice of alibi.
- D. Yes, regardless of compliance with the alibi rule, because the government is bound by exculpatory evidence elicited during its case-in-chief.

Explanation:

A motion for a judgment of acquittal (ie, court-ordered acquittal) should be granted if the evidence presented at trial cannot establish guilt beyond a reasonable doubt. For **conspiracy**, this occurs when no rational trier of fact could find that:

two or more people entered an **agreement** with the **specific intent to commit a crime** *and* in most jurisdictions, at least one conspirator committed an **overt act** in furtherance of that agreement.

Since the crime of conspiracy is completed once an agreement and (if required) overt act occur, a **conspirator need not be present** during the commission of the agreed-upon crime(s). Therefore, the man's inability to participate in the last six robberies due to his incarceration is no defense. And since circumstantial evidence ties him to the overall conspiracy to commit a series of bank robberies, his motion for acquittal should be denied.

(Choice A) Conspirators *are* required to agree on all essential objectives of the conspiracy—ie, the target crime or crimes.

(Choice C) Under the alibi-notice rule, the government may request information about a defendant's alibi defense. The defendant must then state (1) where the defendant claims to have been during the alleged crime and (2) the names, addresses, and telephone numbers of the *defendant's* alibi witnesses. But since the *government's* witness provided the man's alibi—ie, that he was in jail—this rule is irrelevant.

(Choice D) The government is *not* bound by exculpatory evidence elicited during its case-in-chief. But even if it were, the elicited testimony was not exculpatory because it was immaterial to the man's guilt or innocence.

Educational objective:

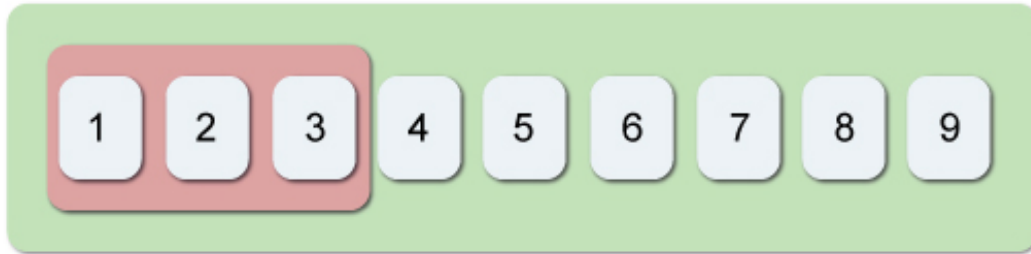
A conspiracy is completed once an agreement and, if required, overt act occur. Therefore, a conspirator need not be present during the commission of the target crime(s) to be convicted of conspiracy.

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Conspiracy

(presence not required)



■ = Presence ■ = Conspiracy ■ = Robbery