

A woman wanted to make some money, so she decided to sell cocaine. She asked her neighbor, who was reputed to have access to illegal drugs, to supply her with cocaine so she could resell it. The neighbor agreed and sold the woman a bag of white powder. The woman then repackaged the white powder into smaller containers and sold one to an undercover police officer who promptly arrested the woman. The woman immediately confessed and said that her neighbor was her supplier. Upon examination, the white powder was found not to be cocaine or any type of illegal substance.

If the neighbor knew the white powder was not cocaine but the woman believed it was, which of the following is correct?

- A. Both the neighbor and the woman are guilty of attempting to sell cocaine.
- B. The neighbor is guilty of attempting to sell cocaine, but the woman is not.
- C. The neighbor is not guilty of attempting to sell cocaine, but the woman is.
- D. Neither the neighbor nor the woman is guilty of attempting to sell cocaine.

Explanation:

Defenses to attempt

- Impossibility** Legal – intended act would not be criminal if completed
 Factual (no defense) – unknown condition prevents completion of intended crime
- Abandonment** Majority/common law (no defense) – attempt complete once overt act committed
 Minority/MPC – voluntary & complete withdrawal from crime

MPC = Model Penal Code.

A defendant is guilty of an attempted crime if he/she had the **specific intent to commit a crime**, performed an **act** in furtherance of that crime, but did not complete it. This is true even when an **unknown condition** makes it **factually impossible** to complete the intended crime. Therefore, factual impossibility is **never a defense** to attempt.

Here, the neighbor did not have the specific intent to sell cocaine because he knew that the white powder was not cocaine. Therefore, he is not guilty of this attempted crime (**Choices A & B**). In contrast, the woman believed that the white powder was cocaine when she repackaged it and sold some to an undercover police officer. And though it was factually impossible for her to actually sell cocaine, this is no defense to attempt. As a result, only the woman is guilty of attempting to sell cocaine (**Choice D**).

Educational objective:

Attempt requires proof that the defendant (1) had the specific intent to commit a crime, (2) performed an act in furtherance of that crime, but (3) did not complete it. And the defendant can be convicted of attempt even if it was factually impossible to complete the intended crime.

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