

A man offered to sell illegal drugs to an undercover police officer, who immediately arrested the man. The officer searched the man but found no drugs in his possession.

The jurisdiction follows the common law of conspiracy and solicitation, and uses the dangerous-proximity test for attempt.

What crime, if any, has the man committed?

- A. Conspiracy to distribute controlled substances. (1%)
- B. Attempted distribution of controlled substances. (23%)
- C. Solicitation. (51%)
- D. No crime. (22%)

Correct

51% Answered correctly

33 secs Time Spent

2023 Version

## Explanation:

### Inchoate crimes

- Attempt** Specific intent to commit crime & overt act committed in furtherance of target crime  
Merges with intended crime if completed
- Conspiracy** Agreement entered with specific intent to commit crime & overt act committed in furtherance of agreement  
No merger
- Solicitation** Inducing or encouraging another to commit crime with specific intent that crime be committed, but solicited party need not agree  
Merges with solicited crime if completed

Common-law **solicitation** requires proof that the defendant:

enticed, **encouraged**, or commanded another to **commit a crime** (eg, possession of a controlled substance) *and*

had the specific intent that the person commit that crime.

Here, by offering to sell the undercover officer illegal drugs, the man encouraged the officer to possess a controlled substance (crime) with the specific intent that the officer do so **(Choice D)**. Therefore, the man committed solicitation.

**(Choice A)** **Conspiracy** occurs when two or more persons enter an agreement with the specific intent to commit a crime. Under the common-law bilateral theory of conspiracy, there must be *at least two* guilty minds, so no conspiracy is formed when a would-be conspirator (eg, an undercover officer) feigns agreement. And here, there was no agreement—feigned or otherwise.

**(Choice B)** Attempt occurs when a defendant has the specific intent to commit a crime, commits an **act** in furtherance of that crime, but does not complete it. Under the dangerous-proximity test, an act occurs when the defendant is so close to completing the target crime that it is essentially unstoppable. Here, the act of offering to sell drugs to the officer did not bring the man close to distributing controlled substances—especially since he had no drugs in his possession.

### Educational objective:

Common-law solicitation occurs when a defendant (1) entices, encourages, or commands another to commit a crime (2) with the specific intent that the person commit that crime.

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