

A man decided to rob a bank to pay off his crippling loan debt, so he purchased a gun, a mask, and some duffel bags. The man then told his friend that he had decided to rob a local bank and was going to scope it out the next day. As planned, the man went inside the local bank to look around. After surveilling the bank, he decided not to go through with robbing the bank because a bank in the neighboring city had fewer cameras. Unbeknownst to the man, the friend had called the police to inform them of the man's plan. As the man was walking back to his car, he was arrested by the police.

Of what crime, if any, may the man be properly convicted?

- A. Attempted robbery, because he still intended to rob the neighboring bank.
- B. No crime, because he voluntarily withdrew from the robbery.
- C. No crime, because his conduct did not exceed mere preparation.
- D. Robbery, because he committed an act in furtherance of that crime.

Explanation:

Act

(requirement for attempt crimes)

Dangerous-proximity test (common law)	Defendant performs act sufficiently close to completing crime—eg, act indispensable to crime's success, act close in time or physical proximity to crime
Substantial-step test (majority & MPC)	Defendant's conduct exceeds mere preparation & strongly corroborates defendant's criminal intent—eg, surveilling place where crime is to occur

MPC = Model Penal Code.

Attempt occurs when a defendant (1) has the specific intent to commit a crime, (2) commits an **act** in furtherance of that crime, but (3) does not complete it. Under the **substantial-step test** used in the majority of jurisdictions, an act occurs when the defendant's conduct **exceeds mere preparation** and **strongly corroborates** the defendant's **criminal intent**.

Here, the man did not actually rob a bank, so he cannot be convicted of **robbery (Choice D)**. However, he did intend to do so. And though merely purchasing supplies for a robbery would *not* constitute a substantial step, his conduct exceeded mere preparation when he surveilled the bank (**Choice C**). Therefore, absent a defense, the man may be convicted of attempted robbery.

However, most jurisdictions recognize **abandonment** as a defense to attempt when a person **completely and voluntarily turns away** from a crime before completing it.* Abandonment is **not voluntary** if it is motivated by:

a desire to **avoid detection**

a decision to **delay** the commission until a **more favorable time** *or* the selection of **another similar objective or victim**.

Here, the man decided not to rob the local bank because a bank in the neighboring city had fewer cameras. This shows that his abandonment was motivated by his desire to avoid detection and the selection of another similar objective. Therefore, abandonment is not a defense here (**Choice B**).

*At common law, once the defendant has taken a substantial step toward the commission of the offense, the defendant may not claim abandonment due to a change of heart as a defense.

Educational objective:

Abandonment is not a defense to attempt if it was motivated by (1) a desire to avoid detection, (2) a decision to delay the commission until a more favorable time, or (3) the selection of another similar objective or victim.

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