

A man wanted to kill his coworker because the man believed the coworker was having an affair with the man's wife. Early one morning, armed with a pistol, the man crouched behind some bushes on a park hillside overlooking a path upon which the coworker frequently jogged. On this morning, however, the man saw the coworker jogging on another path about a half mile away. Nonetheless, the man fired five shots at the coworker. None of the five shots came anywhere close to the coworker as he was well out of the range of the pistol the man was using.

At the man's trial, what verdict should the jury return?

- A. Guilty of attempted murder, because a reasonable person would not have been aware of the limited range of the pistol.
- B. Guilty of attempted murder, because the man was not aware of the limited range of his pistol.
- C. Not guilty of attempted murder, but guilty of assault.
- D. Not guilty of attempted murder or any lesser included offense, because it was impossible for the man to have killed his coworker.

Explanation:

A defendant is guilty of **attempt** if he/she:

had the **specific intent to commit a crime** (eg, **murder**)
performed an **act** in furtherance of the target crime *but*
did not complete it.

In most jurisdictions, an act is a **substantial step** taken toward the completion of the target crime that exceeds mere preparation and strongly corroborates criminal intent. Once this occurs, the defendant can be convicted of attempt **even if** it was **factually impossible** to complete the target crime.

Here, the man wanted to kill his coworker (intent to commit murder) and fired five shots at him with a pistol. None of the shots came anywhere close to the coworker because he was well out of the pistol's range (factual impossibility). But since the man was not aware of the pistol's limited range, he acted with the intent to kill the coworker—and took a substantial step toward murder by pulling the trigger (overt act). Therefore, the jury should find him guilty of attempted murder.

(Choice A) There is no reasonable person standard for attempt. Therefore, the man can be guilty of attempt even if a reasonable person would not have been aware of the pistol's limited range.

(Choice C) Assault is (1) an attempted battery *or* (2) conduct that intentionally puts the victim in reasonable apprehension of imminent bodily harm. Here, the man may have committed assault when he shot at the coworker. But since the man intended to *kill* his coworker, the jury should find the man guilty of the greater offense of attempted murder.

(Choice D) It was impossible for the man to kill his coworker under the circumstances since the coworker was well out of the pistol's range. But **factual impossibility** is *never* a defense to attempt.

Educational objective:

Attempt requires proof that the defendant specifically intended to commit a crime and performed an act (ie, substantial step) in furtherance of that crime. A defendant can be convicted even if it was factually impossible for the target crime to be committed.

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Attempted murder

Intent + overt act = attempt

No intent + overt act \neq attempt

