

A woman and her sister took a trip to the Caribbean. When they passed through U.S. Customs inspection upon their return, the customs officials found packages of cocaine stitched inside separate carry-on bags belonging to each of them. They were arrested. Upon separate questioning by customs officers, the woman broke down and cried, "I told my sister there were too many officers at this airport." The sister did not give a statement.

The woman and her sister were indicted for conspiracy to import cocaine. They were tried separately. At the woman's trial, after the government introduced the above evidence and rested its case, her lawyer moved for a judgment of acquittal on grounds of insufficient evidence.

Should the court grant the motion?

- A. No, because the evidence shows that both the woman and her sister agreed to import cocaine.
- B. No, because the evidence shows that both the woman and her sister possessed cocaine.
- C. Yes, because the evidence shows only that the woman and her sister committed separate crimes of cocaine possession.
- D. Yes, because the evidence shows that the woman effectively withdrew from the conspiracy when she cooperated by giving a statement.

Explanation:

Conspiracy

	Agreement	Overt act
Majority view (modern & MPC)	Unilateral approach – at least one person specifically intends to enter agreement	At least one conspirator must commit overt act
Minority view (common law)	Bilateral approach – two or more persons specifically intend to enter agreement	Not required

MPC = Model Penal Code.

Conspiracy requires proof that:

two or more persons **entered an agreement** (explicitly or implicitly) 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.

Therefore, a court should grant a motion for acquittal if no rational trier of fact could find that the evidence, viewed in the light most favorable to the prosecution, establishes these elements beyond a reasonable doubt.

Here, there is no evidence of an *explicit* agreement (eg, express words). But a rational trier of fact could find evidence of an *implicit* agreement because (1) the statement that "I told my sister there were too many officers at this airport" and (2) the cocaine found inside the sisters' carry-on bags show their intent to jointly achieve a criminal objective—importing cocaine. Therefore, the court should deny the woman's motion for acquittal.

*Whether this jurisdiction follows the unilateral or bilateral approach to conspiracy is not stated. However, there is evidence that both women agreed and specifically intended to import cocaine, so either approach is satisfied under these facts.

(Choice B) Evidence that the sisters possessed cocaine also shows that they committed an overt act in furtherance of the conspiracy. But since an overt act is not an element of conspiracy in *every* jurisdiction, this is not the strongest basis for denying the woman's motion.

(Choice C) The evidence shows that the woman and her sister committed separate crimes of cocaine possession. But it also shows that they committed conspiracy—a distinct crime.

(Choice D) **Withdrawal** is only a defense to conspiracy after an overt act under the Model Penal Code, which requires that the defendant voluntarily renounce the conspiracy and

thwart its success. Here, the woman's statement to customs officers did not prevent the import of cocaine, so she did not withdraw.

Educational objective:

Conspiracy requires an agreement between two persons to commit a crime, but the agreement need not be express. It can be implied from conduct demonstrating an intent to jointly achieve a shared criminal objective.

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