

A woman shot at her husband, intending to kill him. The bullet passed through the husband's shoulder, wounding him, and struck the couple's son in the head, killing the son instantly.

The woman has been charged with attempted murder of her husband and murder of her son.

Which of the following, if authorized by state law, would be constitutionally permissible?

- A. The woman may be tried in separate trials for both murder and attempted murder and, if convicted, can be punished for both.
- B. The woman may be tried, convicted, and punished for both murder and attempted murder, but only if the two charges are tried together.
- C. The woman may be tried for and convicted of both crimes, but the sentences must run concurrently.
- D. The woman may be tried for both murder and attempted murder but can be convicted of only one of them.

Correct

Collecting Statistics

01 min, 04 secsTime Spent

2023Version

Explanation:

Murder is the unlawful killing of another committed with some type of **malice aforethought** (eg, intent to kill). Under the doctrine of **transferred intent**, when a defendant acts with the **intent to kill or harm one person** and that act directly results in harm to another, the defendant's intent is **transferred** to the **unintentionally harmed person**. And if the defendant does not complete the murder of the intended target, the defendant can still be guilty of **attempted murder** if he/she:

specifically intended to commit murder *and*
committed an **act** in furtherance of the murder.

Once the **attempted crime** is **completed against the intended target**, then the attempt **merges into** the **completed crime**, thereby barring a conviction for both crimes under the constitutional prohibition against **double jeopardy**. However, the attempted and completed crimes do **not merge** when they have **different victims**. Additionally, double jeopardy does **not require** that **all known charges** against the defendant be brought in the **same prosecution**.

Here, the woman intended to kill her husband and committed an act in furtherance of the murder by shooting him. The shot struck and killed the couple's son. Although the woman did not intend to kill the son, her intent to kill her husband can be transferred from the husband to the son through **transferred intent**. Therefore, she committed the *separate* offenses of attempted murder of her husband and murder of their son (ie, no merger). As a result, she may be tried in separate trials for both offenses and, if convicted, can be punished for both **(Choices B & D)**.

(Choice C) There is no constitutional requirement that sentences for separate convictions run concurrently (ie, at the same time). Instead, the court may impose sentences that run consecutively (ie, one after the other).

Educational objective:

When an attempted crime is completed against the intended target, the attempt merges into the completed crime. However, the attempted and completed crimes do not merge when they have different victims, and all known charges against the defendant do not need to be brought in the same prosecution.

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Merger of inchoate & completed crimes

