

A college student wanted to purchase a particular narcotic. She approached someone whom she believed to be a drug dealer about buying the narcotic. Unbeknownst to the college student, the person she approached was actually an undercover narcotics officer. The college student asked the undercover officer to sell her a small amount of the narcotic. Thereafter, the undercover officer immediately arrested the college student.

A law in the jurisdiction criminalizes the sale of any amount of the narcotic. The college student was charged with solicitation.

If the charges against the student are dropped, what is the most likely reason?

- A. It was factually impossible for the college student to buy the narcotic from the undercover officer.
- B. The college student is exempted from the solicited crime because the legislature intended to protect solicitors like the college student.
- C. The undercover officer did not actually give the narcotic to the college student.
- D. The undercover officer did not agree to sell the narcotic to the college student.

Explanation:

Defenses unique to solicitation

Impossibility	Legal – when solicited act would not be criminal if completed Factual – no defense
Withdrawal /	Majority/common law – no defense
Renunciation	Minority/MPC – when solicitor voluntarily renounces & thwarts commission of solicited crime
Exemption from solicited crime	Not guilty of solicited crime if legislature intended to protect solicitor

MPC = Model Penal Code.

Solicitation occurs when a person entices, encourages, **requests**, or commands **another** to **commit a crime** with the specific intent that the solicited crime be committed. However, a person who does so (ie, the soliciting party) **cannot be convicted** of solicitation **if**:

the solicited crime requires **more than one participant** (eg, the sale of a narcotic requires a buyer and a seller)

the criminal statute only **imposes liability on one participant** (eg, only the seller can be convicted) *and*

the soliciting party is the type of person the law was **enacted to protect** (eg, the buyer).

The reason is that such persons would not be guilty as an **accomplice** if the solicited crime was completed because their conduct, though essential to commission of the crime, is not specifically prohibited by the statute. Therefore, the college student cannot be convicted of solicitation.*

*In contrast, the college student would have been guilty of solicitation had she requested that the officer sell the narcotic to a third party because the student would no longer be acting as a buyer.

(Choice A) The crime of solicitation is complete once a person entices, encourages, requests, or commands another to commit a crime with the requisite intent. As a result, it is no defense that it was factually impossible for the college student to buy the narcotic from the undercover officer.

(Choices C & D) A defendant can be convicted of solicitation even if the solicited person did not agree to commit, or go through with committing, the solicited crime. Nevertheless, the college student cannot be convicted because she is the type of person the law was enacted to protect.

Educational objective:

A person cannot be convicted of solicitation if (1) the solicited crime requires more than one participant, (2) the criminal statute only imposes liability on one participant, and (3) the soliciting party is the type of person the law was enacted to protect.

References

Wayne R. LaFare, 2 Substantive Criminal Law § 11.1(d) (3rd ed. 2020) (defenses to solicitation).

Copyright © UWorld. All rights reserved.