

An undercover police detective told a local drug dealer that she wanted to buy cocaine but needed time to raise the necessary funds. The drug dealer said that he needed time to get the cocaine. They agreed to meet again in 10 days. An hour later, without a warrant, other officers forcibly entered the drug dealer's apartment and arrested him for attempted possession of a controlled substance.

If the drug dealer is prosecuted in a common law jurisdiction for attempted possession of cocaine, should he be convicted?

- A. No, because he had not taken sufficient steps toward commission of the crime.
- B. No, because he was illegally arrested.
- C. Yes, because by objective standards the undercover detective and the drug dealer had made an agreement that the dealer would obtain cocaine.
- D. Yes, because he unequivocally expressed his intent to obtain the cocaine.

Explanation:

Attempt

(inchoate crime)

	Mens rea	Actus reus
	(specific intent)	(overt act)
Common law	Intends to commit target offense	Dangerous proximity test – performs act sufficiently close to completing target offense
Majority & MPC		Substantial step test – engages in conduct that exceeds mere preparation & strongly corroborates criminal intent

MPC = Model Penal Code.

Criminal liability for an **attempted crime** arises when a defendant:

has the specific intent to commit a crime

performs an **overt act** in furtherance of the target crime *but* does not complete it.

An overt act must go **beyond mere preparation** for the target crime. At **common law**, this requires the defendant to perform an act that is sufficiently close—in time and physical proximity—to completing the target crime (ie, **dangerous proximity test**). In other words, the defendant must commit an **act** that is **indispensable to the crime's success**.

Here, the drug dealer was charged with attempted possession of cocaine because he told the undercover detective that he needed time to get cocaine for her to buy. The drug dealer's statement evidences his intent to obtain cocaine. But this interaction did not amount to an overt act because it did not bring the drug dealer dangerously close to completing the crime—especially since he and the detective were not going to meet again for 10 days (**Choice D**). Therefore, the drug dealer should not be convicted.

(Choice B) While an illegal (eg, warrantless) arrest may lead to suppression of evidence, it will not stop a criminal prosecution or serve as a defense to the charged crime. Therefore, the dealer could be convicted despite being illegally arrested.

(Choice C) Merely agreeing to commit a crime is not an overt act under either the dangerous proximity test (common law approach) or substantial step test (modern approach).

Educational objective:

Attempt requires proof that the defendant committed an overt act in furtherance of the intended crime. At common law, this requirement is met when the defendant performs an act that is dangerously close (in time and physical proximity) to completing the intended crime.

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