

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAURA DEANNE JERRETT,

Defendant-Appellant.

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UNPUBLISHED

May 18, 1999

No. 206436

St. Clair Circuit Court

LC No. 96-003454 FC

Before: Markey, P.J., and Holbrook, Jr. and Neff, JJ.

PER CURIAM.

Defendant appeals by right from her jury trial conviction of solicitation to commit first-degree murder, MCL 750.157b(2); MSA 28.354(2)(2) and MCL 750.316; MSA 28.548. The trial court sentenced defendant to three to fifteen years' imprisonment. We affirm.

I

Defendant first contends that there was insufficient evidence to support her conviction. This Court reviews an issue regarding the sufficiency of the evidence by considering the evidence presented at trial in a light most favorable to the prosecution and determining if a rational jury could find that the essential elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 478, amended 441 Mich 1201 (1992). Our examination of the evidence in the appropriate light leads us to conclude that sufficient evidence was presented by the prosecutor. Daniel Muse testified that defendant brought up the subject of hiring someone to kill her former boyfriend and his wife, and that she offered to pay for this killing. Muse further testified that defendant continued to seek to pursue this murder plot in a later meeting and in subsequent conversations. Some of defendant's statements are captured on a tape recording and, fairly interpreted, they support the jury's conclusion that defendant solicited Muse to have her former boyfriend and his wife killed, and that she sought to engage someone to do the killing. *People v Vandelinder*, 192 Mich App 447, 450; 481 NW2d 787 (1992). It was for the jury to decide if Muse's testimony was credible. *Wolfe, supra* at 514-515.

## II

Defendant next contends that the trial court committed error requiring reversal when it denied her motion to dismiss on the basis of entrapment. A trial court's decision to deny an entrapment motion is reviewed for clear error. *People v Juliet*, 439 Mich 34, 61; 475 NW2d 786 (1991). A trial court's findings will be deemed clearly erroneous if, after reviewing the record, this Court is left with the definite and firm conviction that a mistake has been made. *People v Connolly*, 232 Mich App 425, 429; \_\_\_NW2d\_\_\_ (1998). Entrapment will be found if (1) the police engaged in impermissible conduct that would induce a law-abiding person to commit a crime in similar circumstances, or (2) the police engaged in conduct so reprehensible that it cannot be tolerated. *Id.* The defendant must prove entrapment by a preponderance of the evidence. *Juliet*, *supra*.

The trial court found that the evidence indicated that defendant had initiated the murder plot and had brought up the subject of payment for the murder. Defendant did not testify or present any contrary evidence and did not request an evidentiary hearing, but instead simply sought to cast doubt on the credibility of the prosecutor's chief witness. Such credibility issues were for the trier of fact. *People v Daoust*, 228 Mich App 1, 17; 577 NW2d 179 (1998). The evidence indicated that Muse did not play on defendant's sympathy or friendship to induce her to commit a crime – he only offered to provide assistance to her in achieving the illegal goal she had already decided to pursue. Such offers do not constitute impermissible or reprehensible conduct. *People v Butler*, 444 Mich 965, 966; 512 NW2d 583 (1994); *People v Ealy*, 222 Mich App 508, 510; 564 NW2d 168 (1997). Therefore, in the face of the prosecutor's evidence, defendant failed to prove entrapment by a preponderance of the evidence, and she has failed to demonstrate clear error in the trial court's decision.

## III

Defendant next contends that the trial court erred by failing to give a sua sponte instruction on the offense of solicitation to commit second-degree murder. Where, as here, there has been no objection, jury instructions are reviewed only to determine if manifest justice resulted from the absence of the instruction. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). Manifest injustice occurs where the erroneous or omitted instruction pertains to a basic and controlling issue in the case. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). To the extent that this issue turns on considerations of statutory interpretation, such questions are legal issues that are reviewed de novo on appeal. *People v Givans*, 227 Mich App 113, 124; 575 NW2d 84 (1997).

Defendant was convicted of solicitation to commit murder, a felony offense that is punishable by life or any term of years. MCL 750.157b(2); MSA 28.354(2)(2). With defendant's concurrence, the trial court instructed the jury on this offense using the elements of first-degree murder. Defendant argues on appeal that this Court should apply its decision in *People v Richendollar*, 85 Mich App 74; 270 NW2d 530 (1978), in which the Court held that the trial court was required to sua sponte instruct the jury on the lesser offense of incitement to commit second-degree murder where the defendant was

charged with incitement to commit first-degree murder. However, after *Richendollar* was decided, the Legislature rewrote the incitement statute and created the current offense of solicitation. Under the new statute, the crime no longer carries the same penalty as the offense that is incited, but instead provides in subsection (2) for the specific crime of solicitation to commit murder with a penalty of life or any term of years. The division of this offense into degrees confers no benefit on defendant since the penalty remains the same and the prosecutor is effectively given an additional theory upon which to convict. Thus, the primary policy rationales for this Court's decision in *Richendollar* have been removed. The legislative revision of this offense has transformed it into an inchoate crime similar to the crime of conspiracy, MCL 750.157a; MSA 28.353, of which this Court has held that there is no lesser offense of conspiracy to commit second-degree murder. *People v Hammond*, 187 Mich App 105, 107-109; 466 NW2d 335 (1991). For these reasons, the trial court had no duty to sua sponte instruct the jury on solicitation to commit second-degree murder, and defendant has failed to demonstrate manifest injustice.

#### IV

Defendant finally contends, and the prosecutor agrees, that this case must be remanded for correction of the judgment of sentence. The judgment incorrectly indicates that defendant was convicted of first-degree murder. This case is therefore remanded so that an amended judgment of sentence showing a conviction for solicitation of murder may be entered. The correction of errors in the judgment of sentence on remand is a ministerial act which may be accomplished without a formal resentencing. *People v Miles*, 454 Mich 90, 98-99; 559 NW2d 299 (1997).

We affirm but remand for entry of an amended judgment of sentence.

/s/ Jane E. Markey

/s/ Donald E. Holbrook, Jr.

/s/ Janet T. Neff