STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 2, 1999
v	No. 203826 Washtenaw Circuit Court
BERNARD PAUL KNASIAK, Defendant-Appellant.	LC No. 94-2969 FC

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

A jury convicted defendant of solicitation to commit first-degree murder, MCL 750.157b; MSA 28.354(2); MCL 750.316; MSA 28.548, and Washtenaw Circuit Judge Donald E. Shelton sentenced him to twenty-five years' imprisonment. Defendant appeals as of right. We affirm.

I

Defendant was arrested after he broke into the house where his estranged wife was staying and attempted to forcibly remove her from the premises. While jailed for this offense, defendant approached his cell mate, Vaughn, about making arrangements for a "hit man" to attack his wife. Vaughn notified his attorney, who in turn notified the police. With Vaughn's cooperation, the police arranged for an undercover officer to pose as a hired thug procured by Vaughn. Meanwhile, defendant approached other cell mates about assaulting his wife. In each contact with cell mates or the undercover officer, defendant's plans against his wife became increasingly violent, starting with beatings, and ultimately progressing to murder. Defendant gave the officer detailed information on where his wife could be murdered in a desolate area, and promised to pay $1500 for the killing. Sheriffs' deputies staged a fake murder consistent with defendant's planned attack, and the purported assassin showed defendant the mock crime scene photos. Defendant was subsequently charged with and convicted of solicitation of first-degree murder.

II

Defendant claims that the trial court erroneously found that defendant had not been entrapped. He is wrong.

Entrapment occurs when the police engage in impermissible conduct that would induce a law-abiding person to commit a crime in similar circumstances, or when the police engage in conduct so reprehensible that it cannot be tolerated. *People v Connolly*, 232 Mich App 425, 429; 591 NW2d 340 (1998). The defendant has the burden of proving entrapment by a preponderance of the evidence. *People v D'Angelo*, 401 Mich 167, 182; 257 NW2d 655 (1977).

With regard to the first prong of the entrapment test, the trial court found that the informant cell mate was not solicited by the police, but that defendant, on his own initiative, asked the informant for help in plotting the murder. Therefore, the police did not engage in impermissible conduct that would induce a law-abiding person to commit a crime under similar circumstances. This finding was not clearly erroneous. *Connolly, supra*, 428-429. Several of defendant's cell mates testified that defendant approached them about beating and murdering his wife, threatening her, and burning the marital home. The cell mate Vaughn, who contacted the authorities, testified that Officer Smith instructed Vaughn not to raise the subject with defendant, but to wait to see if defendant renewed his solicitation efforts. Vaughn also testified that the officers informed him from the outset of their contacts that they could not promise him leniency in exchange for his cooperation. This evidentiary record establishes nothing more than that the police provided defendant with an opportunity to commit a crime. The mere furnishing of such an opportunity does not constitute entrapment. *People v Ealy*, 222 Mich App 508, 510; 564 NW2d 168 (1997). Defendant failed to demonstrate by a preponderance of the evidence that the police engaged in impermissible conduct which would have induced a similarly situated person, otherwise law-abiding, to solicit murder.

The trial court also found that there was no entrapment under the second prong, reprehensible police contact. Again, this finding was not clearly erroneous. Reprehensible police conduct sufficient to satisfy the second prong of the entrapment analysis includes investigative measures designed by governmental authorities to use continued pressure, appeals to friendship or sympathy, threats of arrest, an informant's vulnerability, sexual favors, or procedures which escalate criminal culpability. *People v Jamieson*, 436 Mich 61, 89; 461 NW2d 884 (1990) (Brickley, J); *People v Fabiano*, 192 Mich App 523, 528; 482 NW2d 467 (1992). Additionally, entrapment can occur under this second prong if the furnishing of the opportunity for a target to commit an offense requires the police to commit certain criminal, dangerous, or immoral acts. *Connolly, supra*, 429.

The evidence summarized above fails to demonstrate that the police employed investigative measures that extended beyond tolerable levels and, therefore, fails to demonstrate that the police engaged in any reprehensible conduct that would support a finding of entrapment. Defendant has not identified any other instances of the police conduct here which qualifies as reprehensible or immoral. Accordingly, the trial court did not clearly err when he found that defendant had failed to satisfy the second prong of the entrapment analysis.

III

Defendant contends that the trial court abused its discretion by admitting into evidence an audiotape recording of the July 1, 1994 telephonic conversation between Vaughn, defendant and Smith.[1] We disagree.

The authenticity of an audiotape is governed by MRE 901. *People v Berkey*, 437 Mich 40, 50; 467 NW2d 6 (1991). A knowledgeable witness can authenticate an audiotape by identifying the voices on the audiotape. *Id.*, 50, 52. "MRE 901 requires no more." *Id.*, 50.

Here, Smith testified that he recorded the July 1, 1994 telephonic conversation between himself, defendant, and Vaughn. He gave the original recording of this conversation to Washtenaw County Sheriff's detective Dieter Heren to take to a company known as Audio Team, which is located in Toledo, Ohio, to determine if the company could "bring out the conversation clearer." After the Audio Team created an enhanced recording from the original audiotape, Heren picked up the recordings and returned them to Smith. Smith further testified that he did nothing to alter any of the recordings. He then testified that both the original tape and the enhanced tape fairly and accurately represent the conversation he had with Vaughn and with defendant on July 1, 1994. Finally, Smith testified that after he received the July 1, 1994 call, he went to the jail and placed himself in a position so that he could overhear defendant speaking to other inmates and to jail staff. After overhearing defendant talk, Smith was certain that the person he talked to over the telephone on July 1, 1994 was defendant. On this record, the prosecutor satisfied the authenticity requirement of MRE 901 by eliciting Smith's testimony identifying the voices on the original and enhanced recordings and confirming the accuracy of these recordings. *Berkey*, 437 Mich 50, 52.

Defendant argues, however, that the recording was inadmissible because the prosecutor failed to authenticate the recording under the seven part test set forth in *People v Taylor*, 18 Mich App 381, 383-384; 171 NW2d 219 (1969), which preceded the adoption of the Michigan rules of evidence. *Berkey*, *supra*, 437 Mich 48-49. In order to authenticate a recording under *Taylor*, there must be:

> "(1) a showing that the recording device was capable of taking testimony, (2) a showing that the operator of the device was competent, (3) establishment of the authenticity and correctness of the recording, (4) a showing that changes, additions, or deletions have not been made, (5) a showing of the manner of the preservation of the recording, (6) identification of the speakers, and (7) a showing that the testimony elicited was voluntarily made without any kind of inducement." [*Taylor*, 18 Mich App 383-384, quoting 58 ALR2d 1024, 1027.]

In *Berkey*, *supra*, 437 Mich 52, where our Supreme Court explained that authentication is controlled by MRE 901, it stated that it did "not exclude the possibility that, on other facts or upon a different record, elements of the seven-part test (or other relevant considerations) might lead to the exclusion of recorded conversations, notwithstanding testimony that identifies the voices on the tape." *Id.*, 53. Nevertheless, defendant is still not entitled to relief because he has not shown that the recording failed to satisfy any of the *Taylor* retirements. We therefore conclude that the trial court did not abuse its discretion by admitting the tapes, and that manifest injustice will not result absent this Court's grant of defendant's requested relief.

IV

Defendant avers that the trial court erred in failing to instruct the jury on the affirmative defense of renunciation; however, he failed to request an instruction on renunciation. We will not overturn a conviction for failure to instruct the jury on any point of law unless the defendant requests such instruction. *People v Hendricks*, 446 Mich 435, 440-441; 521 NW2d 546 (1994). In any event, the trial court is not required to give a requested instruction where the theory is not supported by the evidence, which was not the case here. *People v Mills*, 450 Mich 61, 81; 537 NW2d 909 (1995). The defense of renunciation may be asserted where, "under circumstances manifesting a voluntary and complete renunciation of his or her criminal purpose, the actor notified the person solicited of his or her renunciation and either gave timely warning and cooperation to appropriate law enforcement authorities or otherwise made a substantial effort to prevent the performance of the criminal conduct commanded or solicited, provided the conduct does not occur." MCL 750.157b(4); MSA 28.354(2)(4); see also *People v Crawford*, 232 Mich App 608, 617; 591 NW2d 669 (1998). In the instant case, defendant offered no evidence that he took any steps to notify Smith and call off the solicited killing or that he contacted law enforcement authorities and warned them about the solicited killing after the July 18, 1994 telephone conversation. On such a record, defendant was not entitled to the instruction. *Id.*, 619.

V

Defendant also avers that the trial court erroneously refused to instruct the jury on the lesser included offense of "solicitation of second-degree murder". We find no error. The trial court correctly concluded that there is no such offense as "solicitation of second-degree murder", because such an offense cannot logically exist.

Defendant relies on *People v Richendollar*, 85 Mich App 74, 78-79; 270 NW2d 530 (1978). In *Richendollar*, this Court held that the trial court erroneously failed to sua sponte instruct the jury with regard to solicitation of second-degree murder where the defendant was charged with solicitation of first-degree murder. However, we decline to follow *Richendollar* because the two rationales behind the Court's decision have been superseded by statutory amendment and subsequent case law.

The *Richendollar* Court's conclusion was partially based on an anomaly in the solicitation statute, MCL 750.157b; MSA 28.354(2), as the statute was then written. The version of this statute then in effect required that a person convicted of solicitation of murder be punished as though he had committed first degree murder, regardless of whether the murder actually took place. *Id.*, 77, 80, & n 3. However, following our Supreme Court's decision in *People v Rehkopf*, 422 Mich 198, 205; 370 NW2d 296 (1985), and a legislative amendment to § 157b effective July 1, 1986, this is no longer a viable concern. *Rehkopf* held that a defendant whose utterances did not result in the commission of an offense can be held guilty only for the common law offense of solicitation. *Id.*, 205. The legislative amendment, 1986 PA 124, authorized the trial court to sentence a person convicted of soliciting murder to "life or any term of years." MCL 750.157b(2); MSA 28.354(2)(2). Hence, there is no longer any

reason to issue a "solicitation of second-degree murder" instruction in order to avoid a first-degree murder sentence for a defendant where no murder was committed.

In its second rationale, the *Richendollar* Court analogized that if second-degree murder is a necessarily-included lesser offense of first-degree murder, then solicitation of second-degree murder must be a necessarily-included lesser offense of solicitation of first-degree murder. *Id.*, 79-80. This rationale has been rejected by this Court in cases decided after November 1, 1990.[2] In *People v Hammond*, 187 Mich App 105, 107-109; 466 NW2d 335 (1991), this Court held that a conspiracy to commit second-degree murder is not a criminal offense because such a conspiracy is logically inconsistent. The Court observed that first-degree murder requires premeditation, whereas second-degree murder requires no premeditation, and does not necessarily require a specific intent to kill. *Id.*, 107-108, citing MCL 750.316; MSA 28.548, MCL 750.317; MSA 28.549; *People v Aaron*, 409 Mich 672, 728-729; 299 NW2d 304 (1980). The Court also observed that "[c]riminal conspiracy is a specific intent crime which arises from a mutual agreement between two or more parties to do or accomplish a crime or unlawful act." *Id.*, 107-108. Considering these principles together, the Court concluded that it was "analytically consistent" to plan to commit first-degree murder, but "logically inconsistent" to "plan" to commit second-degree murder. *Id.*, 108, quoting *People v Hamp*, 110 Mich App 92, 103; 312 NW2d 175 (1981). The *Hammond* Court stated:

> "To prove a conspiracy to commit murder, it must be established that each of the conspirators have [sic] the intent required for murder and, to establish that intent, there must be foreknowledge of that intent. Foreknowledge and plan are compatible with the substantive crime of first-degree murder as both the crime of conspiracy and the crime of first-degree murder share elements of deliberation and premeditation. Prior planning denotes premeditation and deliberation. The elements of conspiracy, conversely, are incompatible and inconsistent with second-degree murder. One does not 'plan' to commit an 'unplanned' substantive crime. It is not 'absence' of the elements but the 'inconsistency' of the elements which lead us to conclude that one conspires to commit first-degree murder but not second-degree murder." [*Id.*, 108, quoting *Hamp*, *supra*.]

Applying the *Hammond* reasoning to solicitation, we conclude that there is no such offense as solicitation to commit second-degree murder. Solicitation, like conspiracy, is a specific intent crime. *People v Vandelinder*, 192 Mich App 447, 450; 481 NW2d 787 (1992). Solicitation, again like conspiracy, involves actual advance planning and foreknowledge, as is reflected by the solicitor's deciding to have some criminal act performed by a third party on the solicitor's behest, searching out an individual to engage in a criminal act, and acting to engage the third party to commit the criminal act. See e.g., *id*., 450-451. Further, the solicitation statute, like the conspiracy statute, punishes the actual advance planning and the acts taken in preparation for committing the substantive criminal acts and not the carrying out of the planned criminal acts. *Id*., 450. As with the planning involved in a conspiracy, the planning involved in solicitation connotes premeditation and deliberation. Accordingly, solicitation of murder shares the elements of premeditation and deliberation with first-degree murder. As such, solicitation of murder is inconsistent with second-degree murder for the same reason that conspiracy is

inconsistent with second-degree murder, that being that "[o]ne does not 'plan' to commit an 'unplanned' substantive crime."

VI

Defendant challenges his sentence on the grounds of proportionality, and violation of the constitutional guarantee against cruel and unusual punishment. We find no sentencing error.

We review proportionality issues for abuse of discretion. A sentencing court abuses its sentencing discretion if the sentence imposed violates the principle of proportionality by being disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *People v Paquette*, 214 Mich App 336, 344-345; 543 NW2d 342 (1995). Defendant's fifteen-year minimum sentence does not violate the principle of proportionality in light of the danger he posed to his wife, evinced by his solicitation conviction, his persistence in asking jail inmates to further his scheme to harm her and destroy her property, and the history of abuse he inflicted upon her. His sentence is also justified by the trial court's determination that he lied on the witness stand, the fact that he committed the solicitation offense while he was jailed on two other domestic violence offenses, and his inability to manage his anger and accept responsibility for his actions. *Milbourn, supra*.

Because defendant's sentence does not violate the principle of proportionality, his sentence also does not violate the prohibition against cruel or unusual punishment. *People v Williams (After Remand)*, 198 Mich App 537, 543; 499 NW2d 404 (1993).

Finally, with respect to defendant's argument that he must be resentenced because he will be unable to serve his minimum sentence during his natural lifetime, his reliance on *People v Moore*, 432 Mich 311; 439 NW2d 684 (1989) is misplaced. *Moore* was implicitly overruled by *People v Merriweather*, 447 Mich 799; 527 NW2d 460 (1994). *People v Kelly*, 213 Mich App 8, 13; 534 NW2d 538 (1995).

VII

Defendant argues that the trial court violated his Fifth Amendment due process rights by violating the spousal privilege. However, defendant failed to preserve this issue with a timely objection in the trial court. He therefore waived the privilege. *People v Brownridge*, 225 Mich App 291, 306; 570 NW2d 672 (1997), rev'd in part on other grounds 459 Mich 456; 591 NW2d 26 (1999). In any event, the spousal privilege, which bars a witness from testifying against his or her spouse without the spouse's consent, does not apply in "a cause of action that grows out of a personal wrong or injury done by one [spouse] to the other . . ." MCL 600.2162(1)(d); MSA 27A.2162(1)(d). Solicitation of a wife's murder, of course, qualifies as a personal wrong against her. Therefore, the privilege does not apply here.

VIII

Defendant argues that the trial court improperly admitted evidence of prior bad acts. We review a trial court's decision to admit evidence under MRE 404(b) for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). Here, we find no grounds for reversal.

MRE 404(b)(1) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

To be admissible under MRE 404(b), bad acts evidence must satisfy three requirements: (1) it must be offered for a proper purpose, (2) it must be relevant under MRE 402, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice under MRE 403. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). The relationship of the elements of the charge, the theories of admissibility and the defenses raised govern what is relevant and material. *Id*., 75. "Where the only relevance is to character or the defendant's propensity to commit the crime, the evidence must be excluded." *Crawford*, *supra*, 458 Mich 385. "Where, however, the evidence also tends to prove some fact other than character, admissibility depends upon whether its probative value outweighs its prejudicial effect, taking into account the efficacy of a limiting instruction in cushioning the prejudicial effect of the evidence. *Id.* A general denial of guilt puts all elements of the offense at issue. *VanderVliet*, 78. According to the trial court's limiting instruction, the prior bad acts evidence under MRE 404(b) was properly admitted to for the purposes of establish motive and intent.

Testimony regarding defendant's alleged sexual assault against his stepdaughter.

Defendant claims he is entitled to a new trial because both his wife and stepdaughter testified that defendant sexually assaulted his stepdaughter. In response to the prosecutor's question about her decision to leave defendant, defendant's wife replied that defendant "had progressed to the state that he was trying to have sex with my daughter." Because defendant did not object to this testimony, the error is not preserved, and we review for manifest injustice. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996). Here, we find no manifest injustice because the testimony did not actually reference a sexual assault, and because the testimony was an unresponsive, volunteered answer to a proper question. *People v Gonzales*, 193 Mich App 263, 266-267; 483 NW2d 458 (1992).

Defendant did raise a timely objection, on relevance grounds, to the stepdaughter's testimony that defendant put his hand down her pants. While evidence of misconduct directed at the stepdaughter was not relevant to defendant's motive in soliciting the murder of his wife, MRE 401, any error was cured by the trial court's prompt action in striking the impermissible testimony and giving the jury a cautionary instruction. *People v James*, 182 Mich App 295, 297-298; 451 NW2d 611 (1990). Defendant is not entitled to a new trial on the basis of the stepdaughter's testimony.

Testimony that defendant started a fire.

Defendant challenges the admission of his son's testimony that defendant lit a fire in the basement of the marital home and stated something to the effect that he did not want his wife to have the home. This testimony was properly admitted. The prosecutor offered this testimony for a proper purpose, i.e. as evidence of motive and intent. MRE 404(b)(1); *Vandelinder, supra*, 192 Mich App 454. This testimony was relevant to the issues of motive and intent, demonstrating defendant's degree of animosity toward Mara after she left him. Evidence that defendant harbored such feelings toward Mara made it more probable than not that he had a reason to want Mara dead and that he intended that she be killed. MRE 401. The probative value of this evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. Although the evidence was certainly damaging to defendant, it was not of such a shocking nature as to have given rise to a tendency that the evidence would be given undue or preemptive weight by the jury. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995).

Testimony of defendant's abusive acts against his wife

Defendant's stepson and stepdaughter testified to several instances in which defendant abused and harassed his wife, usually on occasions when she tried to leave him. Defendant's wife also described several instances of abuse. This evidence was properly admitted. Evidence of prior abuse inflicted upon or abusive threats made to the victim by the defendant is admissible in solicitation of murder cases pursuant to MRE 404(b)(1) to show the defendant's motive and intent. *Vandelinder, supra*, 192 Mich App 454. The probative value of this evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. The alleged conduct is not of a gruesome or shocking nature such that the jury would have given it undue or preemptive weight and convicted defendant solely on this evidence, particularly in light of the repeated limiting instructions given by the trial court. *Mills, supra*, 450 Mich 75. Accordingly, the judge did not abuse his discretion when he admitted this testimony.

For the same reasons, we find no error in the admission of defendant's former wife's testimony. This evidence was sufficiently probative because it established past discord in the marital relationship, which would provide motive for the solicitation of murder. We further note that the former wife specifically testified that she would not swear to having heard a gunshot during one of these altercations.

IX

Defendant contends that the trial court should have quashed the information because the district court improperly bound him over for trial. Defendant maintains that evidence presented at the preliminary examination failed to demonstrate the existence of an "offer" or "promise" as required by MCL 750.157b; MSA 28.354(2). He is wrong.

The district court must bind over the defendant for trial if, at the conclusion of the preliminary examination, the district court finds probable cause to believe that a crime has been committed and that the defendant committed that crime. *People v Hunt*, 442 Mich 359, 362; 501 NW2d 151 (1993); *People v Orzame*, 224 Mich App 551, 558 570 NW2d 118 (1997). "Probable cause exists where the court finds a reasonable ground of suspicion, supported by circumstances sufficiently strong in

themselves to warrant a cautious person to believe that the accused is guilty of the offense charged." *Orzame, supra*.

This Court set forth the following pertinent discussion of the offense of solicitation of murder in *Crawford, supra*, 232 Mich App 608:

> Pursuant to MCL 750.157b; MSA 28.354(2)(1), "'solicit' means to offer to give, promise to give, or give any money, services, or anything of value, or to forgive or promise to forgive a debt or obligation." Solicitation to commit murder is a specific intent crime that requires proof that the defendant intended that a murder would in fact be committed. *People v Vandelinder*, 192 Mich App 447, 450; 481 NW2d 787 (1992). Solicitation to commit murder occurs when (1) the solicitor purposely seeks to have someone killed and (2) tries to engage someone to do the killing. *Id*. Solicitation is complete when the solicitation is made. *Id*. . . . Actual incitement is not necessary for conviction. *People v Salazar*, 140 Mich App 137, 143; 362 NW2d 913 (1985).

In the instant case, Smith testified that he received a collect call from Vaughn on July 1, 1994. During this telephone call, Smith talked with both Vaughn and defendant, but mostly Vaughn. Smith testified that he knew that he talked with defendant on July 1st because he was able to later identify defendant's voice through additional contact with defendant. According to Smith, he could overhear defendant telling Vaughn that he wanted Mara "hit." Smith also overheard defendant tell Vaughn his wife's address, a description of defendant's wife, the best time to do the "hit" and how to get into defendant's wife's bedroom. On August 18, 1994, Smith again received a telephone call from Vaughn. Vaughn put defendant on the telephone. Defendant was adamant that he wanted his wife's throat cut that very day. Smith testified that during this conversation he asked defendant how much the "hit" was worth to him. Defendant responded, "a nickel." Smith understood the term "nickel" to mean $5,000. Smith then indicated that he would do the "hit" for $1,500. Defendant agreed to this price.

On this record, the prosecutor presented sufficient evidence to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of defendant's guilt. *Crawford, supra*, 232 Mich App 616-617; *Orzame, supra*, 224 Mich App 558. Accordingly, because the prosecutor presented sufficient evidence to establish probable cause that the crime of solicitation of murder was committed and that defendant committed this crime, the district court did not abuse its discretion when it bound over defendant for trial. The trial court correctly denied the motion to quash.

X

Defendant argues that the verdict was against the great weight of the evidence. This argument has no merit.

This Court reviews for an abuse of discretion a trial court's grant or denial of a motion for a new trial premised on a claim that the verdict was against the great weight of the evidence. *People v Herbert*, 444 Mich 466, 477; 511 NW2d 654 (1993), overruled in part on other grounds in *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). A new trial may be granted if the verdict is against

the great weight of the evidence. *Herbert, supra*, 444 Mich 475. A new trial should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *Lemmon, supra*, 456 Mich 642.

Defendant argues that the guilty verdict was against the great weight of the evidence because the prosecution failed to present any evidence demonstrating at least "an attempt of the urged offense." Defendant relies on our Supreme Court's decision in *Rehkopf, supra*, 422 Mich 205, which held that MCL 750.157b did not subject a person to criminal responsibility for utterances that do not result in the commission of the offense sought to be committed. What defendant fails to point out, however, is that the *Rehkopf* holding is premised on the Court's construction of the statute as the statute was worded in 1985. Immediately following the *Rehkopf* decision, the Legislature rewrote the entire statute effective July 1, 1986. 1986 PA 124. Under MCL 750.157b, as rewritten, the offense of solicitation of murder is complete upon the soliciting of the murder. *Crawford, supra*, 232 Mich App 616; *Vandelinder, supra*, 192 Mich App 450. Accordingly, the prosecutor need not have presented evidence of an attempt to murder defendant's wife in order to secure a conviction. Defendant's great weight claim fails for lack of legal support.

Defendant next argues that the guilty verdict was against the great weight of evidence because the prosecutor failed to present evidence that defendant offered valuable consideration to Smith in exchange for the murder. For purposes of MCL 750.157b; MSA 28.354(2) the term solicit means "to offer to give, promise to give, or give any money, services, or anything of value, or to forgive or promise to forgive a debt or obligation." Defendant's argument is frivolous, given Smith's testimony that defendant indicated that he wanted his wife killed, specified that the killer should cut her throat, and stated that he would pay Smith $1,500 for the killing. Additionally, Vaughn testified that during the August 18, 1994 telephone conversation, he heard defendant tell Smith that he wanted his wife killed right away. Although Vaughn was not absolutely certain that defendant and Smith discussed money during this call, he testified that defendant told him that he wanted both his wife and her alleged paramour killed and that defendant used the phrase "two for fifteen," meaning two killings for $1,500. Finally, Vaughn testified that defendant told him that "your boy [Smith] would do a two for $1,500."

Finally, defendant argues that the jury's verdict was against the great weight of the evidence because the prosecutor failed to present evidence that defendant urged imminent action. Defendant's reliance on *People v Owens*, 131 Mich App 76; 345 NW2d 904 (1983), to support this claim is misplaced as *Owens* was vacated by our Supreme Court at 430 Mich 876 (1988). Additionally, defendant's reliance on *People v Salazar*, 140 Mich App 137; 362 NW2d 913 (1985), might also be misplaced as *Salazar* addressed a conviction for solicitation under the pre-1986 amended statute. In any event, to the extent that imminence must be shown, Smith testified that, during the August 18, 1994 telephone conversation, defendant was very insistent that the "hit" be done that same day. Additionally, Vaughn testified that defendant wanted the killing done immediately. In light of the foregoing, defendant's great weight argument fails.

XI

Defendant claims that the police violated his rights under the Fifth and Sixth Amendments to the United States Constitution, and Article 1, § 17 of the Michigan Constitution when they initiated contact with him via an informant. Defendant sets forth no facts from the record in his briefing of his claimed error, however and therefore has abandoned his claimed error on appeal by inadequately briefing the issue. *People v McClain*, 218 Mich App 613, 615; 554 NW2d 608 (1996).

Nevertheless, to the extent that defendant is referring to Vaughn's testimony about defendant's solicitation of murder, the claim lacks merit. The Sixth Amendment right to counsel, which is offense specific and cannot be invoked once for all future prosecutions, does not attach until adversarial judicial proceedings have been initiated. *People v Smielewski*, 214 Mich App 55, 60; 542 NW2d 293 (1995). Accordingly, incriminating statements pertaining to other crimes, as to which the Sixth Amendment right to counsel has not yet attached, are admissible at trial of those offenses. *Id*., 61; *Maine v Moulton*, 474 US 159, 180, n 16; 106 S Ct 477; 88 L Ed 2d 481 (1985). Here, Vaughn's testimony concerned the commission of a criminal offense for which the Sixth Amendment right to counsel had not yet attached, there being no adversarial judicial proceedings initiated. Therefore, neither defendant's Sixth Amendment right to counsel nor due process rights were violated by the admission of Vaughn's testimony.

XII

Defendant claims that the statements he made while incarcerated should have been suppressed because the police failed to inform him of his rights as required by *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). This argument provides no basis for relief.

As with the preceding issue, however, defendant has failed to set forth facts from the record in his briefing of this claimed error. Accordingly, defendant has abandoned this issue on appeal. *McClain, supra* 615. In any event, defendant's claim lacks merit because *Miranda* warnings are not required when a suspect is unaware that he is talking with an undercover law enforcement officer and gives a voluntary statement. *People v Anderson*, 209 Mich App 527, 533-534; 531 NW2d 780 (1995). Here, no evidence was presented from which it can be inferred that defendant knew that Smith was a law enforcement officer or that Vaughn was a police agent. Similarly, no evidence was presented from which it can be inferred that defendant's statements to Smith and Vaughn were anything but voluntary. Accordingly, defendant was not subjected to a police-initiated interrogation that would implicate the need to advise defendant of his *Miranda* rights. *Id*., 534.

XII

Finally, defendant contends that the prosecution failed to disclose evidence favorable to defendant, namely information that the undercover officer received a thirty-day suspension following an alcohol-related accident with his patrol vehicle. Although defendant makes the conclusory statement that he could have used this information to impeach Smith's credibility, he has failed to provide any citation to authority to demonstrate that this information could have been used as impeachment. The issue is thus effectively abandoned. *People v Hanna*, 223 Mich App 466, 475; 567 NW2d 12 (1997).

Affirmed

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Jeffrey G. Collins

[1] It is not clear to us whether defendant challenges the admission of the original July 1, 1994 audio tape, or the enhanced version. This does not matter, as defendant has failed to convince us that either tape was inadmissible.

[2] Under MCR 7.215(H)(1), this Court must follow the rule of law established by a prior published decision by this Court issued on or after November 1, 1990.