

## COA Opinion: Crime of solicitation to commit murder requires an actual intent to kill

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On May 18, 2010, the Court of Appeals issued its per curiam opinion in *People v. Fyda*, No. 288421, affirming defendant's jury conviction of solicitation of murder, and felony-firearm. This case arose out of defendant's expressed desire to kill his ex-wife. A friend of the defendant contacted the police when he believed that the ex-wife was in danger, after she filed a motion seeking to recover damages related to mortgage payments. The friend worked with the police to set up a meeting between defendant and an undercover officer posing as a killer for hire. At the meeting, defendant asked the officer to "pop" his ex-wife, and gave him a handgun, pertinent information regarding his ex-wife, and a down payment of \$200 on the total price of \$700.

The jury convicted defendant under MCL § 750.157b(2), finding him guilty of solicitation to commit murder. On appeal, defendant claimed ineffective assistance of counsel, due to his trial counsel's failure to object to the trial court's jury instructions, which included solicitation to inflict great bodily harm or act with a wanton and willful disregard of the likelihood that one's behavior is to cause death or great bodily harm. Relying on the same rationale as cases dealing with the crime of assault with intent to commit murder, the Court of Appeals held that a defendant cannot be found guilty of solicitation to commit murder without a finding of the necessary specific intent—an actual intent to kill. Although the Court of Appeals concluded that trial counsel should have objected to this incorrect jury instruction, the Court of Appeals also concluded that this error did not affect the outcome of the case because there was consistent testimony that indicated premeditation.

The Court of Appeals also affirmed the trial court's finding that the police did not entrap defendant. The Court of Appeals concluded that the police did not exploit the friendship between defendant and his informant friend; that the price of \$700 did not constitute an improper inducement because the officer had been willing to negotiate from his initial \$1,000 demand; that the friend was not motivated by personal benefit even though he avoided possible jail time for unpaid traffic tickets; and that the friend was not operating without regulation even though more direct supervision by the police was possible.

The Court of Appeals rejected defendant's claim that the prosecutor denigrated the defense by characterizing the defense as "a defense of distraction." The Court of Appeals also concluded that the prosecutor did not impermissibly shift the burden of proof to defendant despite a comment during closing that "[t]here's been no defense to the crime itself."