

A boyfriend approached a hitman and inquired about hiring someone to kill his girlfriend's parents. Unknown to the boyfriend, the hitman was an undercover police officer who pretended to agree to handle the job and secretly taped subsequent conversations with the boyfriend concerning plans and payment.

A few days before the payment was due, the boyfriend changed his mind and called the plan off. Nevertheless, the boyfriend was charged with solicitation to commit murder.

Should the boyfriend be acquitted or convicted of solicitation, as defined at common law?

- A. Acquitted, because he withdrew before payment and commission of the act.
- B. Acquitted, because no substantial acts were performed.
- C. Convicted, because the "hitman" agreed to commit the offense.
- D. Convicted, because the offense was completed before his attempt to withdraw.

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 is an inchoate crime that occurs when a person (1) **entices or encourages** another to commit a crime (2) with the **specific intent** that the solicited **crime be committed**. Solicitation is completed—regardless of whether the solicited party agrees to commit the crime or takes any step toward doing so—once these elements are met. Therefore, a complete and voluntary renunciation of one's criminal purpose (ie, **withdrawal**) is **no defense** to solicitation in common law (and most other) jurisdictions.

Here, the boyfriend's solicitation was complete the moment he inquired about hiring someone to kill his girlfriend's parents—regardless of whether the "hitman" agreed to handle the job (**Choice C**). And though the boyfriend later changed his mind and called off the plan before the hitman had been paid or committed the murder, withdrawal is no defense (**Choice A**). As a result, the boyfriend should be convicted of solicitation to commit murder.

(Choice B) Solicitation does not require a substantial act. Instead, this offense is complete the moment a person entices or encourages another to commit a crime with the requisite intent.

Educational objective:

Solicitation is complete once a person entices or encourages another to commit a crime with the specific intent that the crime be committed. And at common law (and in most jurisdictions), withdrawal is no defense.

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