

In its sole proposition of error, the State contends that the District Court abused its discretion when it determined that the State had presented insufficient evidence as to the offense of solicitation for murder in the first degree in Count One.¹

In appeals brought to this Court pursuant to 22 O.S.2011, § 1053, this Court reviews the trial court's decision to determine if the trial court abused its discretion. *Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d at 1193-94; *State v. Hooley*, 2012 OK CR 3, ¶ 4, 269 P.3d 949, 950. An abuse of discretion has been defined as a clearly erroneous conclusion and judgment, one that is clearly against the logic and effect of the facts presented or, stated otherwise, any unreasonable or arbitrary action taken without proper consideration of the facts and law pertaining to the matter at issue. *State v. Nelson*, 2015 OK CR 10, ¶ 11, 356 P.3d 1113, 1117.

At preliminary hearing the State is required to present sufficient evidence to establish (1) probable cause that a crime was committed, and (2) probable cause to believe that the defendant committed the crime. *State v. Heath*, 2011 OK CR 5, ¶ 7, 246 P.3d 723, 725; *McCracken v. State*, 1994 OK CR 68, ¶ 8, 887 P.2d 323, 327. The State is not required to present evidence at the preliminary hearing which would be sufficient to convict at trial as there is a presumption

¹ On November 2, 2015, Appellee filed her Motion to Set for Hearing requesting that this Court "set this matter on a docket for hearing and ruling." As Appellee has failed to file a brief containing legal authority in support of her motion, Appellee's motion is **DENIED**. Rule 3.10, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015) (requiring brief in support of motion to contain statement of facts and legal authorities in support of the motion).

that the State will strengthen its evidence at trial. *Turner v. State*, 1976 OK CR 108, ¶ 6, 549 P.2d 1346, 1348.

In the present case, the District Court found that Appellee had asked her boyfriend to drive her to the intended victim's home so she could kill the victim. However, the District Court determined that this evidence was insufficient to constitute the offense of solicitation for murder in the first degree because Appellee had not solicited her boyfriend to kill the victim but only urged him to aid in the murder by transporting her to the victim's home.

The State argues that the District Court abused its discretion because Appellee solicited her boyfriend to be a principal to the crime of murder in the first degree. We agree.

Oklahoma does not have a general solicitation statute. *Moss v. State*, 1994 OK CR 80, ¶ 30, 888 P.2d 509, 517. The crime of Solicitation for Murder in the First Degree is set forth in 22 O.S.2011, § 701.16. Section 701.16 provides that it is "unlawful for any person or agent of that person to solicit another person or persons to cause the death of a human being by the act of murder in the first degree as is defined Section 701.7."

The elements of soliciting another to commit murder in the first degree are:

First, soliciting;

Second, another;

Third, to kill a human by an act of murder in the first degree;

Fourth, with the intent that the murder be committed;

Fifth, the elements of murder in the first degree are:

Inst. No. 4-89, OUJI-CR(2d) (Supp.2015).

“The heart of the crime is the solicitation.” *Moss*, 1994 OK CR 80, ¶ 30, 888 P.2d at 517. “Soliciting is urging, requesting or commanding another to commit a criminal act.” Inst. No. 4-89, OUJI-CR(2d) (Supp.2015).

The offense of solicitation to commit murder is separate from the offense of first degree murder. *Stohler v. State*, 1988 OK CR 52, ¶ 11, 751 P.2d 1087, 1091. “[A] solicitation is not necessary to commit murder in the first degree, and a death is not necessary to commit the offense of solicitation for murder.” *Id.*

“All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, are principals and are equally culpable with other principles.” *Conover v. State*, 1997 OK CR 6, ¶ 18, 933 P.2d 904, 910, *citing* 21 O.S.1991, § 172. A person is guilty of first degree murder pursuant to 21 O.S.2011, § 701.7 if the individual committed the murder, *i.e.*, was the perpetrator, or aided and abetted the perpetrator in the commission of the murder. *Id.*, 1997 OK CR 6, ¶ 44, 933 P.2d at 915.

In *Moss v. State*, 1994 OK CR 80, 888 P.2d 509, this Court recognized that it is a crime under § 701.16 for one person to solicit another to aid and abet the commission of a first degree murder. *Id.*, 1994 OK CR 80, ¶¶ 30-31, 888 P.2d at 517.

“[i]n the usual solicitation case, it is the solicitor's intention that the criminal result be directly brought about by the person he solicited; that is, it is his intention that the crime be committed and that the other commit it as a principal in the first degree, as where A asks B to kill C. However, it would seem sufficient that A requested B to get involved in the scheme to kill C in any way which would establish B's complicity in the killing were that to occur”

Id., quoting *State v. Furr*, 292 N.C. 711, 720-21, 235 S.E.2d 193, 199 (N.C. 1977).

Because there was probable cause to believe that Appellee solicited her boyfriend to be a principal to the crime of murder in the first degree, we find that the District Court abused its discretion when it sustained Appellee's motion to quash for insufficient evidence. The State's appeal is granted and the matter is reversed and remanded to the District Court for further proceedings consistent with this Opinion.

DECISION

The order of the District Court of Pittsburg County quashing Count One for insufficient evidence is **REVERSED**. The matter is **REMANDED** for further proceedings consistent with this Opinion. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2015), the **MANDATE** is **ORDERED** issued upon the delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF PITTSBURG COUNTY
THE HONORABLE JAMES BLAND, DISTRICT JUDGE

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OPINION BY: LUMPKIN, V.P.J.

SMITH, P.J.: Concur
A. JOHNSON, J.: Dissents
LEWIS, J.: Concur
HUDSON, J.: Concur

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JOHNSON, JUDGE, DISSENTING:

The majority concludes that the district court abused its discretion in sustaining the defense motion to quash for insufficient evidence the count of Solicitation for First Degree Murder charged in Count 1 of the Information. See *State v. Delso*, 2013 OK CR 5, ¶ 5, 298 P.3d 1192, 1194 (district court order granting motion to quash information for insufficient evidence reviewed for an abuse of discretion). Our standard of review of the district court's order is highly deferential. See *Young v. State*, 2000 OK CR 17, ¶ 109, 12 P.3d 20, 48 (applying "deferential abuse of discretion standard"). The district court considered the peculiar facts of this case and found the evidence at preliminary hearing that Bridge solicited her boyfriend to commit murder was lacking. The district court's conclusion was not a clearly erroneous conclusion that was against the logic and effect of the facts presented. For that reason, I dissent.

The preliminary hearing evidence showed that Bill Crenshaw, Bridge's brother-in-law, had asked her and her boyfriend, Jason Walters, to murder Nicole Lee; in exchange he promised to forgive debts they owed him. Crenshaw gave them a gun to use in committing the murder.¹ Although Walters never intended to carry through with the plan to murder Lee, he never communicated that fact to Crenshaw and Bridge. The day the murder was to take place Walters went to Lee's home to warn her of the plot. Walters and Lee contacted the Oklahoma State Bureau of Investigation and met with agents later that day. Crenshaw and Bridge became suspicious of Walters and called off the

¹ Bridge is charged in Count 2 with conspiring with her brother-in-law to kill Lee.

plan to murder Lee that night. The next day Walters relieved Bridge's suspicions and the two made plans to carry out the murder that evening. Bridge said she would contact Walters when she got off work and asked him to drive her to Lee's home.

The State charged Bridge with soliciting first degree murder by asking Walters to drive her to Lee's home so she could commit the murder. The district court viewed Bridge's request as part of the overall conspiracy to murder Lee rather than a separate act of solicitation because the two had already been solicited to murder Lee by Crenshaw. The district court's conclusion was a fair interpretation of the evidence. Based on the record, I find the district court did not err in granting Bridge's motion to quash Count 1.