NO. 5-00-0178

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	) Appeal from the
	) Circuit Court of
Plaintiff-Appellee,	) Madison County.
	)
v.	) No. 99-CF-634
	)
JAMES A. EVANS,	) Honorable
	) James Hackett,
Defendant-Appellant.	) Judge, presiding.

RULE 23 ORDER

James A. Evans (defendant) appeals from his convictions following a jury trial for two counts of solicitation of murder (720 ILCS 5/8-1.1(a) (West 1998)), one count of conspiracy to commit murder (720 ILCS 5/8-2(a) (West 1998)), and one count of unlawful sale of firearms (720 ILCS 5/24-3(d) (West 1998)). Subsequently, defendant was sentenced to prison terms of 20 years on one count of solicitation of murder, 20 years on the second count of solicitation of murder, and 7 years on the conspiracy count, with the sentences to run consecutively to each other. No sentence was imposed on defendant's conviction for unlawful sale of firearms. On appeal, defendant contends that (1) he was denied a fair trial by the admission of other-crimes evidence, (2) he was not proven guilty beyond a reasonable doubt of conspiracy to commit murder, (3) the sentencing provision for solicitation of murder is unconstitutional because it creates a disproportionate penalty, (4) the consecutive sentences violate defendant's right to due process, and (5) the court considered an improper factor in aggravation at sentencing. We affirm.

BACKGROUND

Defendant was the victim of a home invasion in April 1995. Defendant subsequently discovered that the home invasion was committed by Nekemar Pearson. On June 24, 1995, a barbecue was held at Judy Huff's home, where both defendant and Nekemar were present. Nekemar disappeared that day, and his skeletal remains were found in December 1995. Defendant was tried and convicted of Nekemar's murder, and we affirmed the judgment. *People v. Evans*, No. 5-01-0088 (July 30, 2002) (unpublished order under Supreme Court Rule 23 (166 Ill. 2d R. 23)).

Clifton Wheeler and Brian Warr were eyewitnesses to Nekemar's murder. Brian Warr was murdered soon after he made a statement to the police implicating defendant in the murder.

While awaiting his trial for Nekemar's murder, defendant solicited Tommie Rounds to murder Lester Warr, Brian's father, and Clifton Wheeler. It is for these acts that defendant was prosecuted in the case *sub judice*.

FACTS

At the trial, the following evidence was adduced. Tommie Rounds testified that he is defendant's cousin. Rounds was in jail in December 1998 for retail theft charges. Detective Bradley Wells questioned Rounds regarding his knowledge of Nekemar's murder in December 1998, but Rounds knew nothing about the crime at that time.

After defendant's arrest, defendant and Rounds became cellmates. Defendant told Rounds he was in jail for the murder of Nekemar, related details of Nekemar's murder to Rounds, and told Rounds that the only witnesses who could implicate defendant in Nekemar's murder were Wheeler and Brian and Lester Warr. Rounds knew that Brian was dead, so only Wheeler and Lester were available to testify against defendant. Defendant was aware that Wheeler had made a statement to the police about Nekemar's murder.

Defendant asked Rounds in late January or early February 1999 to murder Lester. Rounds agreed. Defendant proposed the following plan. Rounds was to sign a statement against defendant so that Rounds could get out of jail. A girl was to take Rounds to the No Doubt Tavern, owned by Lester, and gain admittance through the locked doors. The girl was to find out who was present inside the tavern and use a cellular phone to relay the information to Rounds outside the tavern. Then she would let Rounds inside as she left, and upon admittance, Rounds was to kill Lester. Defendant was to make arrangements for Rounds to obtain a gun.

Rounds was to be paid for Lester's murder. Rounds was to go to Dallas, Texas, and pick up $50,000 of defendant's money and defendant's Cadillac. Rounds was to keep half the money, hold defendant's car, and give the other half of the money to defendant's mother for defendant's attorney fees. Rounds agreed to do that.

Defendant also wanted Wheeler murdered. Wheeler was incarcerated in prison, and defendant asked Rounds, who had gang ties in prison, to help him have Wheeler murdered. Rounds agreed.

Sometime later, Rounds told Detective Wells that he would make a statement regarding Nekemar's murder but that he was concerned for his safety if he remained in jail with defendant. After Rounds' release, he participated in the investigation of the plan to kill Lester and Wheeler.

Before leaving jail, Rounds was wired so that his conversation with defendant could be recorded. The day Rounds left jail, March 4, 1999, defendant gave Rounds a letter with Ed Klaeger's name and telephone number in Dallas, Texas, and the name and telephone number for LaKisha Steele, defendant's girlfriend. The letter explained that Klaeger was to give Rounds all of Craig Willis's money and his car. Rounds stated that Craig Willis is defendant's alias. Defendant stated in the letter that Rounds was not to use his own name.

Rounds eventually turned the letter over to Detective Wells.

On the evening of March 4, Rounds went to the home of Charles Berry, defendant's brother. Rounds was again wired for eavesdropping. Rounds talked to defendant on the telephone from Berry's house. Rounds informed defendant that it would cost $4,000 for Wheeler to be murdered. Rounds also talked to LaKisha, who came over to Berry's residence that night. LaKisha was to contact Ed Klaeger. To Rounds' knowledge, LaKisha was unable to contact Klaeger. LaKisha came up with the alias "Tyler Brownley" for Rounds.

When LaKisha was unable to contact Klaeger, defendant devised a second plan to obtain money for Rounds. Defendant told Rounds to go to California and get money from a man named Hank. LaKisha was to contact Hank.

Rounds also talked to LaTosha White at Berry's residence the night of March 4. On March 7, 1999, LaTosha met Rounds and gave Rounds a gun. Rounds turned the gun over to Detective Wells.

Detective Bradley Wells, a detective with the Madison County sheriff's department, testified that he obtained court-ordered eavesdrops on defendant, LaTosha, and LaKisha. Detective Wells enumerated the various conversations tape-recorded between March 4 and March 15, 1999.

Detective Wells testified that he conducted surveillance of Rounds' meeting with LaTosha on March 7 and that the meeting was both tape-recorded and videotaped. Detective Wells stated that a black Nissan with a loud muffler picked up Rounds at 12:30 a.m. and drove to an adjacent parking lot, where Rounds got out of the car. Rounds immediately gave Detective Wells a shoe box that contained a loaded .25-caliber automatic handgun. The recordings of the various taped conversations and the videotape of Rounds' meeting with LaTosha were played for the jury.

Charles Berry, defendant's brother, corroborated that Rounds came to his house in March 1999 and that defendant called his home that night and talked to Rounds, as well as LaKisha and LaTosha. When Berry testified on behalf of defendant, he admitted on cross-examination that defendant asked Berry to arrange to have LaKisha and LaTosha at Berry's residence that night.

LaKisha Steele testified that she has been charged with conspiracy to commit murder but that she was granted immunity if she testified in the case *sub judice*. LaKisha began living with defendant in 1996. When she and defendant lived in California, defendant was employed by Ed Klaeger selling stocks and bonds; however, LaKisha admitted she never saw a paycheck or any other income statement for defendant.

LaKisha corroborated that she saw Rounds at Berry's residence on March 4, 1999, and that she talked to defendant on the telephone that night. LaKisha attempted to call Klaeger, but she never talked to him. Subsequently, defendant told her to contact Hank in California for money for defendant. Hank told her that he did not have defendant's money. LaKisha admitted that she wrote the name Tyler Brownley at the bottom of the letter that defendant wrote and gave to Rounds.

LaTosha White testified that she has been charged with conspiracy to commit murder and unlawful delivery of a firearm. LaTosha met Rounds for the very first time at Berry's residence on March 4, 1999. LaTosha also talked to defendant on the telephone that night. According to LaTosha, defendant asked her to give Rounds money. Although LaTosha denied that defendant told her to give Rounds a gun, she admitted that after picking up Rounds in the parking lot, she gave Rounds a loaded gun in a shoe box.

William Jenkins testified that he was in the same cellblock as Rounds and defendant. Jenkins had no prior acquaintance with either Rounds or defendant. Defendant asked Jenkins how much it would cost to kill someone in the penitentiary, and Jenkins told defendant it

would cost $1,000 to $1,500. Jenkins overheard defendant talking to Jeffrey Ewing, who was in another cellblock, about Wheeler. Defendant said he wanted Wheeler killed because Wheeler had signed a statement against defendant.

Defendant told Jenkins that Robert Fletcher killed Brian Warr. Defendant also wanted Lester killed. Defendant told Jenkins that Rounds was to go to Lester's club, get guns from behind the bar, and shoot Lester. Defendant told Jenkins that Rounds was to get a gun from one of defendant's girlfriends, LaTosha. Defendant told Jenkins that Rounds wanted $4,000 to kill Lester, so defendant's other girlfriend was to get the money from a guy named Ed in Texas. Jenkins relayed the information defendant gave him to the sheriff's office.

Jenkins explained that defendant dictated a letter to him that was to be sent to defendant's lawyer. The letter was to appear to come from Jenkins. Jenkins partially wrote the letter, and defendant finished it. Jenkins then copied the entire letter over in Jenkins' handwriting. Jenkins gave the two letters to Detective Wells and identified the two letters at the trial. Jenkins stated that the information in the letters, incriminating Rounds, was a lie.

Ed Klaeger testified that he is an investment banker and that Craig Willis (identified as defendant by Klaeger at the trial) is his friend and business associate. Klaeger denied that defendant worked for him, but he stated that defendant invested $50,000 to $56,000 in some of Klaeger's deals. Klaeger testified that defendant initially invested $3,600 with him and that the largest amount of cash he received from defendant was $30,000. Defendant also left a Cadillac with Klaeger. Klaeger had no written contract or account for defendant's investments. Klaeger knew that defendant had no visible means of support, but because defendant was introduced to him as being the grandson of the founders of the Pepperidge Farm Company and defendant told him that he owned a couple of nightclubs, Klaeger did not see why defendant would need a job.

Steven McKassen, a document examiner for the Illinois State Police, testified that he

examines and compares handwriting as a part of his job duties. McKassen analyzed known writing exemplars of defendant and the various documents turned over to Detective Wells by Rounds and Jenkins. McKassen stated that the documents identified as written by defendant were written by defendant.

Defendant testified that he goes by the names of Craig Willis and Rory Jackson. Defendant explained that he first purchased stock with $3,500, which was a part of a settlement from a car accident, through a company that had offices in St. Louis and Los Angeles. Over a three-year period, defendant stated he received $85,000 to $89,000 from his investments.

Defendant denied that he wanted Lester killed. Defendant has known Lester since he was a child. Defendant described Brian as his best friend, and he was upset when Brian was murdered. Defendant denied that he had Brian killed. Defendant stated that he became angry with Lester when defendant heard that Lester thought that he had something to do with Brian's murder.

Defendant corroborated that Rounds is his cousin and that he saw Rounds in jail. According to defendant, Rounds informed defendant that the police wanted Rounds to make statements about defendant's involvement with Nekemar's murder. Defendant told Rounds to tell defendant's attorney. Rounds told defendant that he had no money or place to live, so defendant told Rounds to get money from LaTosha. Defendant denied he told Rounds to get a gun from LaTosha. Defendant stated that when he talked to LaTosha on the telephone on March 4, he told her to help Rounds because he was broke and homeless.

Defendant explained that he wanted Rounds to contact Klaeger to obtain money to pay defendant's attorney. Defendant told Rounds to take his Cadillac to his mother's house or to LaKisha.

Defendant identified a letter that he wrote to LaTosha. According to defendant, that

letter was stolen from his cell, along with a list of witnesses and notes regarding what his attorney should ask the witnesses.

In rebuttal, Jenkins testified that after Rounds left, defendant asked him to share his cell. Defendant told Jenkins that he paid Robert Fletcher money to kill Brian. Defendant also developed a plan whereby he would slit his wrists so that he could be sent to the mental health ward where his mother worked. Defendant carried out the plan. Before defendant left his cell, he gave Jenkins papers to send to defendant's lawyer. Jenkins delivered the papers to Detective Wells.

Jody Wesley testified that he was incarcerated in a segregation cell and that defendant occupied another segregation cell. Defendant asked Wesley to address an envelope to LaTosha with Wesley's return address on it and to send a letter defendant wrote to LaTosha inside the envelope. The envelope and a copy of the letter were admitted into evidence.

Wesley stated that defendant admitted that he killed Nekemar and that he paid Fletcher to kill Brian. Defendant also told Wesley that Rounds was to go to Texas and get defendant's money, give defendant's mother some of the money, "take care of the witnesses," and then "lay low" at Rounds' sister's home in California. One of the witnesses Rounds was supposed to kill was Lester.

The jury found defendant guilty of two counts of solicitation of murder (Lester Warr and Clifton Wheeler), one count of conspiracy to commit first-degree murder, and unlawful sale of firearms. As noted previously, defendant was sentenced to 20 years on each count of solicitation of murder and 7 years on the count of conspiracy, with the sentences to run consecutively to each other and consecutively to the 60-year prison sentence defendant received on his murder conviction (*People v. Evans*, No. 5-01-0088 (July 30, 2002) (unpublished order pursuant to Supreme Court Rule 23)). Defendant appeals.

ANALYSIS

1. Admission of Other-Crimes Evidence

Defendant contends that he was denied a fair trial because evidence of other crimes was admitted into evidence, unduly prejudicing him. Specifically, defendant claims that the evidence that defendant made large amounts of money and that he engaged in "laundering" the money, that defendant gave Rounds a gun on another occasion, and that defendant paid someone to kill Brian was prejudicial evidence of other crimes, requiring a reversal of his convictions. The State contends that defendant waived this issue because he failed to object at the trial and failed to raise the issue in a posttrial motion.

Generally, evidence of other crimes in which a defendant might have participated is not admissible to show a propensity to commit crime; however, the evidence is admissible if relevant for any other purpose, such as to prove *modus operandi*, motive, intent, identification, or absence of mistake. *People v. Coleman*, 158 Ill. 2d 319 (1994). "In fact, evidence of other crimes is admissible if relevant for any purpose other than to show propensity to commit crime." *Coleman*, 158 Ill. 2d at 333.

A failure to object at the trial and to raise the matter in a posttrial motion waives the issue. *People v. Enoch*, 122 Ill. 2d 176 (1988). However, Supreme Court Rule 615(a) allows an unpreserved issue to be considered on appeal under the plain error doctrine. 134 Ill. 2d R. 615(a). For the plain error doctrine to apply, either the evidence must be closely balanced or the error must be of such magnitude that a defendant is denied a fair trial. *Coleman*, 158 Ill. 2d at 333. Because the waiver rule applies, we must consider whether defendant's claims can be considered under the plain error doctrine.

Defendant first claims that Klaeger's testimony allowed the jury to speculate that defendant was involved in some kind of illegal activity that produced large sums of cash and that Klaeger was defendant's conduit for "laundering" the money. As the State notes,

defendant failed to object to this evidence at the trial and did not raise this issue in a posttrial motion. The evidence against defendant was overwhelming. Even though the witnesses had agreements to testify or had prior convictions, the jury was aware of these facts and resolved the credibility issues against defendant. Thus, for defendant to avoid a waiver of the issue and for the error to be considered under the plain error doctrine, the error must have denied defendant a fair trial. See *Coleman*, 158 Ill. 2d at 333.

The evidence presented by Klaeger was relevant to show defendant's ability to pay for the murders of Lester and Wheeler. The evidence was also relevant to show that there was a conspiracy to commit murder involving defendant, LaKisha, LaTosha, and Rounds, because LaKisha's attempt to obtain funds from Klaeger was an act in furtherance of the conspiracy. Klaeger's evidence was admissible. Defendant was not denied a fair trial by the admission of this evidence, and the plain error doctrine does not apply.

Defendant next claims that Rounds' testimony–that in 1995 defendant gave Rounds a gun to defend himself after someone drew a gun on Rounds–was prejudicial because this was the same type of offense for which defendant was on trial (unlawful sale of firearms) (720 ILCS 5/24-3(d) (West 1998)). Again, defendant failed to object at the trial and failed to raise the issue in a posttrial motion, thereby waiving the issue. See *Enoch*, 122 Ill. 2d at 186. To be considered on appeal, the error must deny defendant a fair trial, because the evidence was not closely balanced. *Coleman*, 158 Ill. 2d at 333-34.

Here, the relevance of Rounds' testimony concerning his receipt of a gun from defendant in 1995 is questionable. However, the reference to the incident was brief and not unduly emphasized, in contrast to the already determined overwhelming evidence against defendant. Any error in admitting the gun evidence did not rise to the standard of plain error and did not deny defendant a fair trial. See *People v. Bean*, 137 Ill. 2d 65 (1990).

Defendant also claims that Jenkins' and Wesley's testimony that defendant solicited

Robert Fletcher to kill Brian Warr was prejudicial evidence of another crime, which deprived defendant of a fair trial. Defendant again failed to object at the trial and failed to raise the issue in a posttrial motion, thereby waiving the issue. See *Enoch*, 122 Ill. 2d at 186. The error must deprive a defendant of a fair trial for the plain error doctrine to apply. *Coleman*, 158 Ill. 2d at 333-34.

Jenkins' and Wesley's testimony was presented in rebuttal after defendant denied that he killed Brian. The evidence was introduced to impeach defendant's testimony. The evidence that defendant solicited Fletcher to kill Brian and that the murder was carried out demonstrated defendant's motive to eliminate all witnesses who could incriminate him in Nekemar's murder. Because the evidence was relevant to show defendant's motive in soliciting the murders of Lester and Wheeler (*Coleman*, 158 Ill. 2d at 334), the evidence was admissible and defendant was not denied a fair trial. The plain error doctrine does not apply.

The alleged errors concerning the admission of evidence of other crimes does not rise to the level of plain error. Defendant has waived this issue.

2. Insufficient Evidence

Defendant asserts that the evidence was insufficient to prove beyond a reasonable doubt that he was guilty of conspiracy to commit murder. Specifically, defendant claims that because Rounds withdrew from the conspiracy when he agreed to participate in the investigation of the crime, there was no bilateral agreement to commit the crime. Under *People v. Foster*, 99 Ill. 2d 48 (1983), a conviction for conspiracy based upon a unilateral agreement cannot stand.

A challenge to the sufficiency of the evidence to support a criminal conviction requires a reviewing court to view the evidence in the light most favorable to the prosecution, and if any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt, a conviction will not be overturned on appeal. *People v. Smith*, 185 Ill.

2d 532 (1999). The credibility of the witnesses is the province of the trier of fact, and a jury's determination of credibility is entitled to great weight. *Smith*, 185 Ill. 2d at 542.

To prove a *prima facie* case for conspiracy, the State must show that two or more persons intended to commit a crime, that they engaged in a common plan to accomplish the criminal goal, and that an act was done or acts were done by one or more of them in furtherance of the conspiracy. *People v. Melgoza*, 231 Ill. App. 3d 510 (1992). A conspiracy agreement may be inferred from the surrounding facts and circumstances, including acts and declarations of the accused. *Melgoza*, 231 Ill. App. 3d at 521. Thus, a conspiracy can be proved by circumstantial evidence. *Melgoza*, 231 Ill. App. 3d at 521. "Conspirators need not have entered the conspiracy at the same time or have taken part in all its actions to be criminally accountable for acts in furtherance of the conspiracy." *People v. Buffman*, 260 Ill. App. 3d 505, 514 (1994).

As defendant correctly notes, a unilateral agreement to commit a crime is insufficient to prove the crime of conspiracy (*Foster*, 99 Ill. 2d at 55). A bilateral agreement is one between a defendant and at least one other person where both parties actually intend to agree. *People v. Swerdlow*, 269 Ill. App. 3d 1097 (1995). "An agreement between a defendant and a government agent only feigning agreement is an agreement based on the unilateral theory." *Swerdlow*, 269 Ill. App. 3d at 1099.

Defendant claims that because Rounds withdrew from the conspiracy once he agreed to cooperate with the police in investigating this case, the agreement between defendant and Rounds to commit murder became a unilateral agreement rather than a bilateral agreement. Even if we were to hold that Rounds had withdrawn as a coconspirator because of his cooperation with the authorities, defendant overlooks the fact that LaKisha and LaTosha were also coconspirators and that the conspiracy continued even if Rounds was feigning participation. LaKisha furthered the conspiracy by attempting to obtain financing for the

murders as requested by defendant. LaTosha furthered the conspiracy by obtaining a gun for Rounds for the commission of the murder of Lester, which the jury could determine was at the request of defendant, even though LaTosha denied that defendant made the request. Because LaKisha and LaTosha were still involved in the conspiracy, even though they came into the conspiracy at a later time, the jury could have determined that both women agreed to and were part of the conspiracy and that there was a bilateral agreement between defendant and the women to commit murder. The evidence was sufficient to prove defendant guilty of conspiracy to commit murder beyond a reasonable doubt.

3. Disproportionate Sentence

Defendant argues that the minimum sentence mandated for solicitation of murder (15 years' imprisonment) (720 ILCS 5/8-1.1(b) (West 1998)) is unconstitutional because it creates a disproportionate penalty when compared to the penalties imposed for the more serious offenses of attempted first-degree murder (6 to 30 years' imprisonment) (720 ILCS 5/8-4(c)(1) (West 1998)) and conspiracy to commit first-degree murder (3 to 7 years' imprisonment) (720 ILCS 5/8-2(c) (West 1998)). We disagree.

Initially, we note that defendant did not raise this issue in the trial court. However, the constitutionality of a statute may be raised at any time. *People v. Christy*, 139 Ill. 2d 172 (1990).

The same argument was presented in *People v. Kauten*, 324 Ill. App. 3d 588 (2001). There, the Second District of the Illinois Appellate Court determined that the penalty for solicitation of murder was not unconstitutionally disproportionate to the penalties for attempted first-degree murder and conspiracy to commit first-degree murder. *Kauten*, 324 Ill. App. 3d at 594. The *Kauten* court noted that the Illinois Constitution requires that all penalties are to be determined according to the seriousness of the offense and that the constitution forbids disproportionate punishments for similar but not identical offenses. Ill.

Const. 1970, art. I, §11; *Kauten*, 324 Ill. App. 3d at 590. The *Kauten* court also stated that the legislature is in the best position to decide what conduct to criminalize and how severely to punish an offense and that courts normally defer to the legislature's conclusion that one offense is more serious than another. *Kauten*, 324 Ill. App. 3d at 590.

The *Kauten* court analyzed the three offenses involved and concluded that "a solicitation is the start of an enterprise that grows into a conspiracy or an attempt." *Kauten*, 324 Ill. App. 3d at 594. We find that the reasoning of the *Kauten* court is sound and follow the holding in that case. The sentencing mandated for solicitation of murder is not unconstitutionally disproportionate when compared to the penalties for conspiracy to commit first-degree murder or for attempted murder.

4. Consecutive Sentences

Defendant contends that the consecutive sentences imposed for his convictions of two counts of solicitation of murder and one count of conspiracy to commit murder, which were imposed to run consecutively to each other and to his conviction for first-degree murder, obtained in a separate trial, were unconstitutional based on the United States Supreme Court's holding in *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000). Defendant argues that the sentences are unconstitutional because the provision of the sentencing statute allowing for consecutive sentencing (730 ILCS 5/5-8-4(b) (West 1998)) was not charged in the indictment, submitted to the jury, or required to be proven beyond a reasonable doubt. Defendant raised the same issue in his appeal from his murder conviction. *People v. Evans*, No. 5-01-0088, order at 8 (July 30, 2002) (unpublished order pursuant to Supreme Court Rule 23).

In our previous decision in defendant's murder case, we noted that the Illinois Supreme Court recently decided this issue in *People v. Wagener*, 196 Ill. 2d 269 (2001). The supreme court determined in *Wagener* that *Apprendi* concerns are not implicated by the

consecutive-sentencing scheme in section 5-8-4(b) of the Unified Code of Corrections (730 ILCS 5/5-8-4(b) (West 1998)). *Wagener*, 196 Ill. 2d at 286. We again adhere to the holding in *Wagener* and find that the imposition of discretionary consecutive sentences in defendant's case was not unconstitutional.

5. Improper Sentencing Factor

Lastly, defendant contends that the trial court considered an improper factor in aggravation–that his conduct caused or threatened serious harm, a factor inherent in the offense of solicitation of murder–when it sentenced defendant. Therefore, defendant claims that his sentences should be reversed and the cause remanded for resentencing.

As defendant correctly states, a factor implicit in an offense for which the defendant has been convicted cannot be used as an aggravating factor in sentencing for the offense, absent a clear legislative intent to accomplish that result (*People v. Ferguson*, 132 Ill. 2d 86 (1989)). "It is also well[-]settled, however, that the commission of any offense has varying degrees of harm or threatened harm, and this variance constitutes an aggravating factor even where serious bodily harm is implicit in the offense." *People v. Latona*, 268 Ill. App. 3d 718, 729-30 (1994). In *Latona*, the court held that a consideration of the factor in aggravation that the defendant's conduct threatened serious harm required a remand for resentencing. *Latona*, 268 Ill. App. 3d at 730. In contrast, the court in *People v. O'Toole*, 226 Ill. App. 3d 974 (1992), determined that a court can appropriately consider the threat of serious harm that the defendant caused, "*i.e.*, the nature and extent of his acts to effectuate the crime solicited, *** when imposing sentence" on a conviction for solicitation of murder for hire. *O'Toole*, 226 Ill. App. 3d at 993. The *O'Toole* court also noted that the court considered other factors in aggravation, including the defendant's criminal record and the facts that the defendant was on probation when he committed the offense and that the sentence was necessary to deter others from committing the same offense. *O'Toole*, 226 Ill.

App. 3d at 993.

We find defendant's case analogous to *O'Toole*. Although the trial court stated briefly that it considered that defendant's conduct threatened serious harm, the court was aware that defendant was most likely involved in soliciting Robert Fletcher to kill Brian Warr. The court also was aware that defendant told Jeffrey Ewing he wanted Wheeler dead, raising the inference that defendant was soliciting other persons in addition to Rounds to accomplish the murder of Wheeler. The evidence at the trial revealed that defendant was calculatingly planning the elimination of anyone that interfered with his actions, including the murder of Nekemar. This evidence would support the court's consideration that defendant's conduct threatened serious harm. Further, the court also stated at sentencing that defendant had a prior criminal conviction and that the sentences imposed were necessary to deter others from committing the same crime. The prison sentence imposed on each count of solicitation of murder (20 years) was only five years above the minimum sentence and was 10 years below the maximum. We do not find that the trial court considered an inappropriate sentencing factor when imposing defendant's sentences.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

Affirmed.

HOPKINS, J., with MAAG, P.J., and KUEHN, J., concurring.