COURT OF APPEALS
DECISION
DATED AND FILED

April 16, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 96-3531-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANIEL W. HARR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: JACK F. AULIK, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Roggensack, J.

PER CURIAM. Daniel W. Harr appeals from a judgment convicting him of one count of solicitation to commit first-degree intentional

homicide, contrary to §§ 939.30 and 940.01(1)(c), STATS. The issues are whether the trial court properly admitted certain evidence.[1] We affirm.

Harr first argues that the court erroneously admitted evidence of acts outside the two-month period for the crime set forth in the information. However, the brief includes no citation to any authority which prohibits or controls the admission of such evidence. Harr discusses how the prosecution used that evidence, but he does not specifically argue how the court erred by admitting it. We regard the issue as inadequately briefed and do not consider it further. *See* ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

Harr also argues that the court erred under § 904.04(2), STATS., by admitting a variety of testimony about other acts by Harr. The State argued at trial that the evidence was admissible to show the context of the crime and Harr's motive and intent, and the trial court agreed. Harr's brief does not specifically argue that the testimony was inadmissible for such purposes, and therefore he has failed to show that the trial court erred.

Harr also argues that certain testimony by John Sapp was inadmissible. Anthony Stelter was alleged to be the person that Harr solicited, and Sapp was a counselor to whom Stelter reported that information. Over Harr's objection, Sapp testified that Stelter did not seek any special favors or consideration when he reported this information. The trial court concluded that Sapp's testimony was admissible as a prior consistent statement under § 908.01(4)(a)2, STATS., because it was consistent with Stelter's statement.

[1] Although Harr's brief also raised an issue about his sentencing, he later advised the court that he was withdrawing that argument.

However, Stelter actually testified that he told Sapp he wanted some consideration.

The State concedes that this was not admissible as a prior consistent statement, but argues instead that it was admissible as a prior *in*consistent statement under § 908.01(4)(a)1, STATS. Harr did not file a reply brief, and therefore he did not respond to this argument. We take that as a concession. *Cf.* ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis.2d 97, 109, 279 N.W.2d 493, 499 (Ct. App. 1979) (respondent cannot complain if appellant's propositions are taken as confessed when respondent does not refute them).

Furthermore, Harr has not argued, and we do not see, how the admission of this testimony was harmful. The jury might have concluded that Sapp was correct in saying that Stelter did not ask for consideration, and therefore Stelter had less reason to report falsely. However, this conclusion would also have the effect of causing the jury to believe that Stelter, the State's most important witness, did not accurately recall or describe his meeting with Sapp, thereby calling into doubt the accuracy of the remainder of Stelter's testimony.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.