NO. 90496-1

E CRF

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MEGAN MOLLET,

Petitioner.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION I
Court of Appeals No. 71433-3-I
Kitsap County Superior Court No. 12-1-00262-1

ANSWER TO PETITION FOR REVIEW

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SERVICE		
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I. IDENTITY OF RESPONDENT

The respondent is the State of Washington. The answer is filed by Kitsap County Deputy Prosecuting Attorney Jeremy A. Morris.

II. COURT OF APPEALS DECISION

The State respectfully requests that this Court deny review of the Court of Appeals published decision in *State v. Mollet*, No. 71433-3-I (June 9, 2014), a copy of which is attached to the petition for review.[1]

III. COUNTERSTATEMENT OF THE ISSUES

The Court of Appeals, in conformity with Washington law held that the evidence below was sufficient. The question presented is thus whether this Court should decline to accept review when none of the criteria set forth in RAP 13.4(b) are met, since:

1. The Court of Appeals decision does not conflict with any decision of this Court or the Court of Appeals; and

2. The petition fails to present any issue of substantial public interest that should be determined by this Court?

[1] *See also, State v. Mollet*, __Wn.App. __, 326 P.3d 851 (2014).

IV. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The Defendant, Megan Mollet, was charged by amended information filed in Kitsap County Superior Court with one count of Rendering Criminal Assistance in the First Degree and one count of Making a False or Misleading Statement to a Public Servant. CP 1-2. A jury found the Defendant guilty on both counts and the trial court imposed a standard range sentence. RP 377-82; CP 4. The Court of Appeals subsequently affirmed the conviction. The Defendant then filed a Petition for Review.

B. FACTS

Late at night on February 23, 2012 Washington State patrol Trooper Tony Radulescu stopped a vehicle on Highway 16 in Gorst, Washington. RP 108-09. Trooper Radulescu radioed in that the vehicle he was pulling over was a green F-350 pickup with license plate "B60564F." RP 118.

A few minutes later Kitsap County Sheriff's Deputy David "Rob" Corn heard the State Patrol dispatcher calling Trooper Radulescu via radio to check on his status. RP 107-09. Deputy Corn was nearby, so he went to check on the Trooper. RP 110. When he approached the scene Deputy Corn saw Trooper Radulescu's patrol car on the shoulder of the road with

its overhead blue lights flashing. RP 110. There was, however, no "violator vehicle" in front of the patrol car. RP 110. Deputy Corn pulled in behind Trooper Radulescu's patrol car and got out to check on him. RP 110. After finding that the patrol car was empty, Deputy Corn immediately began looking up and down the highway and found Trooper Radulescu lying on the shoulder of the road. RP 111. Deputy Corn found that Trooper Radulescu was obviously deceased and that he had been shot in the head with an entry wound on his left cheek and an exit wound on the back of his head. RP 111-12.

Numerous officers from multiple agencies rapidly responded to the scene and began searching for the green F-350 pickup, which the police quickly learned was registered to Josh Blake. RP 117-19. Sergeant Billy Renfro of the Bremerton police department was one of the officers that arrived at the scene. RP 117-19. Sergeant Renfro and Officer Greenhill began searching for the suspect vehicle by checking the route that they thought a suspect seeking to avoid the police might take. RP 118. The officers took the first exit off of Highway 16 and began searching side streets and every parking lot or place that a vehicle might have gone. RP 120.

After searching for approximately thirty minutes, Sergeant Renfro found the green truck parked in a patch of brush at 4299 Sidney in Port

Orchard. RP 120. The brush was as tall as the cab of the truck, and Sergeant Renfro thus felt that it was "obvious that it had been ditched there." RP 121. Sergeant Renfro could not tell if the truck was occupied or not, so he illuminated the truck with a spotlight and confirmed via the license plate that this was in fact the truck registered to Josh Blake. RP 122-23. Sergeant Renfro then waited for other officers to arrive, and eventually the truck was "cleared" and was found to be unoccupied. RP 122.

Two homes were located about 50 yards from the truck. RP 121. Approximately twenty to thirty patrol cars and one air unit responded to the scene. RP 123. Officers could see movement inside one of the residences and some of the officers set up a "containment" area around the property in case anyone tried to flee the scene. RP 122, 132-33. At this point the police were obviously searching for Josh Blake as a suspect in a homicide, and the officers did not know where he was. RP 122, 132-33.

The police ultimately contacted the six or so people that were in the home. RP 122. One of the occupants of the house was the Defendant, Megan Mollet. RP 136. Deputy Manchester contacted the Defendant and two other people from the house and explained what was going on that it was obviously a very serious situation. RP 137. Deputy Manchester asked the Defendant about the truck and asked if she knew Josh Blake.

RP 137-8. The Defendant said she did not know Josh Blake. RP 139. The Defendant further stated that she had gone to Belfair earlier that night to help a friend move, and that she had returned to the Sydney residence around 1:00 am. RP 139. Deputy Manchester reminded the Defendant about the seriousness of the situation, and the Defendant again stated that she didn't know Josh Blake. RP 139-40.

Detective Doug Dillard arrived on the scene and also spoke to the Defendant. RP 156-59. Detective Dillard again informed the Defendant that they were investigating a serious incident involving the shooting of a Washington State Patrol trooper. RP 160. Detective Dillard asked the Defendant where she had been that night, and the Defendant replied that she had been helping a friend named Andrew Bartlett move from a place in Belfair. RP 161. She also said that she had returned to the residence around 11:00 and went straight to bed. RP 161. The Defendant also said that she didn't know Josh Blake and did not know anything about the shooting of an officer. RP 162. Detective Dillard showed the Defendant a picture of Josh Blake and the Defendant again stated that she did not know him. RP 163. Detective Dillard also asked the Defendant if Josh Blake had been at the residence and the Defendant replied that he had not been there. RP 163.

The following day the police had learned that the Defendant had

been present during the shooting, and several officers (including Detective Ray Stroble) went to an apartment in Port Orchard and arrested the Defendant. RP 196, 201. Detective Stroble explained that he wanted to hear her side of the story, but the Defendant declined. RP 201-02. Later, however, the Defendant (who was by then in the Kitsap County Jail) filled out a request asking to speak with the detectives. RP 202. The Defendant was then brought from the jail down to a detective's office where she answered a number of questions and also gave a taped statement. RP 202-05; CP 21-31. The Defendant said she wanted to be truthful and that she was scared and didn't want to spend time in prison. RP 203.

The Defendant then explained what had occurred on the night of the shooting. RP 203. The Defendant first explained that she and Josh Blake had been using methamphetamine and drinking beer at Josh Blake's house in Gorst. RP 204; CP 21. The Defendant and Josh Blake later left and headed for "Dan and Corrine's"[2] house, but they were pulled over by Trooper Radulescu on the way. RP 204; CP 22. Trooper Radulescu walked up to the passenger side of the truck and asked for the license and registration. RP 204. Josh Blake acted as if he was going to reach into the glove box for paperwork, and the Defendant then saw a handgun in Blake's hand and heard a loud shot. RP 204. Blake then started to drive

[2] The record later shows that Corrine was Corrine Nelson. *See* RP 256.

away and told the Defendant that he had shot the officer in the head and that he was dead. RP 204.

Blake and the Defendant then drove to "Dan and Corrine's" on Sydney. RP 205; CP 24-25. The Defendant explained that she had known Corrine since she (the Defendant) was a baby and that Dan was Josh Blake's best friend. CP 28, 30. When Blake and the Defendant arrived at the house the Defendant went up to the smaller house and met with Corrine. CP 25, 30. Dan was initially in a shed or workshop, but he came down to the residence as well, and Blake told Dan what had happened. CP 25, 27-28. Blake then left the Sydney residence with Corrine Nelson and Andrew Bartlett. CP 25-26, RP 260.

The Defendant also testified at trial and explained that she and Blake had been driving to the Sidney Road residence when they were pulled over by the trooper, and that Blake had then shot Trooper Radulescu. RP 222. After the shooting she and Blake had gone to the Sidney Road residence and after about 15 minutes Blake got a ride and left the residence with Corrine Nelson and Andrew Bartlett. RP 223-24, 260. She also specifically acknowledged that that on the night of the shooting she was aware that Josh Blake had driven the truck to the Sydney residence and she also knew that Blake had left the residence with Corrine Nelson ad Andrew Bartlett, but that she lied about these facts to the police.

RP 260.

V. ARGUMENT

A. THIS COURT SHOULD DENY REVIEW OF THE COURT OF APPEALS DECISION BECAUSE THE COURT OF APPEALS' DECISION WAS CONSISTENT WITH WASHINGTON LAW.

1. None of the considerations governing acceptance of review set forth in RAP 13.4(b) support acceptance of review.

RAP 13.4(b) sets forth the considerations governing this Court's acceptance of review:

> A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision by the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This Court should decline to accept review because none of these considerations support acceptance of review. The Defendant, however, claims that the Court of Appeals' decision conflicts with this Court's decision in *State v. Budik*, 173 Wn.2d 727, 272 P.3d 816 (2012). Pet. For Rev. at 5. As explained below, however, the Court of Appeals' decision was consistent with *Budik*. The Defendant's claim to the contrary, therefore, is without merit.

2. ***The Defendant's claim that the Court of Appeals' decision conflicts with Budik is without merit because the decision was consistent with Budik and held that the Defendant's statements to the police in the present case (unlike in Budik) went beyond mere false disavowals of knowledge and included affirmative misrepresentations that were sufficient to prove the essential elements of the charged offense beyond a reasonable doubt.***

The Defendant argues that the evidence below was insufficient to support the guilty verdict on the charge of Rendering Criminal Assistance because the Defendant's statements were limited to mere false disavowals of knowledge, which this Court held in *Budik* were insufficient. Pet. For Rev. at 5. This claim is without merit because, as the Court of Appeals carefully noted, the Defendant's statements in the present case went beyond mere false disavowals of knowledge and included affirmative misstatements of fact.

Evidence is sufficient if, taken in the light most favorable to the State, it permits a rational jury to find each element of the crime beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 643, 904 P.2d 245 (1995), *cert. denied*, 518 U.S. 1026 (1996); *State v. Green*, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *State v. Moles*, 130 Wn.App. 461, 465, 123 P.3d 132 (2005), *citing State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The relevant inquiry, therefore, is "whether, after viewing the evidence in the

light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Scoby*, 117 Wn.2d 55, 61, 810 P.2d 1358, 1362 (1991), *citing State v. Baeza*, 100 Wn.2d 487, 490, 670 P.2d 646 (1983).

The Defendant in the present case was charged with Rendering Criminal Assistance in the First Degree pursuant to RCW 9A.76.070(1), which provides that a person is guilty of that crime if he or she renders criminal assistance to a person who has committed or is being sought for murder in the first degree or any class A felony. CP 1; RCW 9A.76.070(1). RCW 9A.76.050 defines the phrase "renders criminal assistance" and provides that a person "renders criminal assistance" if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime or is being sought by law enforcement officials for the commission of a crime, he or she:

> (1) Harbors or conceals such person; or
>
> (2) Warns such person of impending discovery or apprehension; or
>
> (3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or
>
> (4) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or
>
> (5) Conceals, alters, or destroys any physical evidence

that might aid in the discovery or apprehension of such person; or

(6) Provides such person with a weapon.

RCW 9A.76.050.

In the present case the State relied on the first prong: that the Defendant "harbored or concealed" Josh Blake. RP 15-16. On appeal, the Defendant argues that the State's evidence was insufficient and cites to *State v. Budik*, 173 Wn.2d 727, 272 P.3d 816 (2012). Pet. For Rev. at 5.

In *Budik*, the Defendant was one of two victims who had been shot while inside a car. *Budik*, 173 Wn.2d at 729. At the scene of the shooting several officers had asked the Defendant who was responsible for the shooting and the Defendant consistently responded that he did not know. *Id* at 730. Later, after detectives discovered that the defendant must have necessarily seen who the shooters were (based on their proximity to the car), the detectives came to the defendant's hospital room and again asked him about the shooting. *Id* at 731. The defendant, however, said that he did not see anything and eventually asked the detectives to leave when they persisted in asking him about the identity of the shooters. *Id.*

Based on the defendant's repeated disavowals of knowledge of the shooters' identities, the defendant was convicted or first degree rendering criminal assistance. *Budik*, 173 Wn.2d at 732. Budik appealed and argued that the evidence was insufficient. *Id.*

This Court held that mere false disavowals of knowledge were insufficient under the fourth prong of the statute:

> The deception contemplated by RCW 9A.76.050(4) requires an affirmative act or statement; it does not encompass mere false disavowals of knowledge. *Cf. [People v.]Plengsangtip*, 148 Cal.App.4th [825] 839, 56 Cal.Rptr.3d 165 [2007] ("Affirmative statements of positive facts are distinguishable from ... a denial of knowledge that a crime occurred."). While the term "deception" may be literally broad enough to include false disavowals, such an interpretation would ignore the statutory scheme and past interpretations of the principles underlying the crime.

Budik, 173 Wn.2d at 737. This Court thus ultimately concluded that:

> In sum, proving that an individual rendered criminal assistance by "preventing or obstructing, by use of ... deception, ... an act that might aid in the discovery or apprehension" of another who has committed, or is sought for commission of, a crime or juvenile offense, RCW 9A.76.050(4), requires an affirmative act or statement that raises a defense for the other person . . . or which, in itself, indicates an effort to shield or protect the other person. A mere false disavowal of knowledge is insufficient.

Budik, 173 Wn.2d at 737-38, *citing, Plengsangtip*, 148 Cal.App.4th at 838; *People v. Duty*, 269 Cal.App.2d 97, 104, 74 Cal.Rptr. 606 (1969).

It is worth noting that the *Budik* opinion repeatedly cited and quoted from a California case, *People v. Plengsangtip*, 148 Cal.App.4th 825, 838, 56 Cal.Rptr.3d 165 (2007) as persuasive authority. Specifically, this Court cited the California case for its holding that "Affirmative

statements of positive facts are distinguishable from ... a denial of knowledge that a crime occurred." *Budik*, 173 Wn.2d at 737, *citing Plengsangtip*, 148 Cal.App.4th at 839).

In *Plengsangtip*, the government had alleged that the defendant, with knowledge of a murder, "did harbor, conceal, and aid" a third person with the intent that the third party might avoid and escape from arrest, trial, conviction, and punishment for his crime. *Plengsangtip*, 148 Cal.App.4th at 828. The court explained that the government's evidence showed that the defendant had been present in the office of a food processing company when another person had murdered the victim and that it was inconceivable that the defendant was unaware of the assault. *Id* at 837-38. Nevertheless, when the Defendant was subsequently interviewed by the police he claimed that did not see the victim in the office and that he did not see an assault or "anything unusual." *Id* at 838.

In addressing the defendant's claims on appeal, the California court explained that,

> "The offense of accessory is not committed by passive failure to reveal a known felony, by refusal to give information to authorities, or by a denial of knowledge motivated by self-interest. On the other hand, an affirmative falsehood to the public investigator, when made with the intent to shield the perpetrator of the crime, may form the aid or concealment denounced by section 32." *[People v.] Duty*, 269 Cal.App.2d [97,] 103–104, 74 Cal.Rptr. 606 [1969]. Thus, a person generally does not

> have an obligation to volunteer information to police or to speak with police about a crime. If the person speaks, however, he or she may not affirmatively misrepresent facts concerning the crime, with knowledge the principal committed the crime and with the intent that the principal avoid or escape from arrest, trial, conviction, or punishment.

Plengsangtip, 148 Cal.App.4th at 837 (some internal citations omitted).

The California court then applied the law to the facts of the case and rejected the defendant's claim of insufficient evidence. *Plengsangtip*, 148 Cal.App.4th at 838. The court acknowledged that a statement that one knows nothing about a crime, even if false, is equivalent to a passive nondisclosure or refusal to give information, which would be insufficient to support an accessory charge. *Id* at 838. The court, however, found that the defendant had done more that merely tell the police that he knew nothing about the murder. Rather,

> The evidence showed that defendant was present in the Rama Foods office with [the victim] and that [the victim] was murdered in the office. But defendant told Detective Lee he did not see [the victim]in the office or at any other time; he did not witness any assault on [the victim]; and, indeed, he saw "nothing unusual" happen at Rama Foods on the afternoon of November 23. These statements were affirmative representations of positive facts: that [the victim] was not present at Rama Foods on the afternoon of November 23 and that no murder occurred at that time and place. These affirmative representations, if false, and if made with requisite knowledge and intent (i.e., with the knowledge that [the killer] murdered [the victim] and with the intent that [the killer] avoid prosecution for the murder) were an overt attempt to change the picture of what

> happened on November 23 at Rama Foods and thereby shield [the killer] from prosecution. As such, they are sufficient to support the accessory charge. Affirmative statements of positive facts are distinguishable from a passive refusal to provide information or a denial of knowledge that a crime occurred.

Plengsangtip, 148 Cal.App.4th at 838-39. The last sentence of the above passage was specifically quoted by this Court in *Budik*. *See, Budik*, 173 Wn.2d at 737, *quoting Plengsangtip*, 148 Cal.App.4th at 839. Viewing the passage in its full context demonstrates that the court clearly held that defendant's false statement that he had never seen the victim and did not see anything unusual were sufficient to support the charge, and that these statements were, in fact, *affirmative statements* of facts and not a mere disavowal of knowledge.

The Defendant's actions in the present case closely mirror the actions of the defendant in *Plengsangtip* and are distinguishable from the actions of the defendant in *Budik*. For instance, the Defendant in the present case claimed that she did not know Josh Blake and that he had not been present at the Sydney residence. This closely paralleled the defendant's statements in *Plengsangtip* where the defendant had told the police that the he had not seen the victim at the office in question (nor had he ever seen the victim).

The defendant in *Budik*, on the other hand, merely disavowed any

knowledge and claimed he did not know who had shot him. Furthermore, just as in *Plengsangtip*, the Defendant's statements in the present case that she had spent the evening with Andrew Bartlett and that Josh Blake had not been at the Sydney residence were an "an overt attempt to change the picture of what happened" on the night of the murder, and thus were "affirmative statements of positive facts" that are distinguishable from "a passive refusal to provide information or a denial of knowledge that a crime occurred."

Furthermore, the reasoning in *Plengsangtip* was incorporated into the *Budik* opinion, as the *Budik* court was quite clear that although a false disavowal of knowledge is insufficient, an *affirmative statement* that indicates, in itself, an effort to shied or protect the other person would be sufficient. *Budik*, 173 Wn.2d at 737-38 (the statute "requires an affirmative act or statement that raises a defense for the other person . . . or which, in itself, indicates an effort to shield or protect the other person").[3] The Defendant in *Budik*, of course, made no such statements. Rather, he merely disavowed any knowledge of the shooters' identities. The Defendant in the present case, however, did not merely disavow any knowledge regarding the shooting of Trooper Radulescu. Rather, the Defendant made multiple affirmative false statements that, in themselves,

indicated an effort to shield Josh Blake.

Specifically, the Defendant repeatedly stated that she did not know Josh Blake. RP 137, 139, 162-63. The Defendant, however, went further and specifically stated to the police that Josh Blake had not been at the Sydney residence that night. RP 163. This statement was not a mere disavowal of knowledge, but rather was an affirmative false statement that directly provided misinformation to the police regarding Blake's activities after the shooting. As the California court noted, a person generally does not have an obligation to volunteer information to police or to speak with police about a crime, but if the person speaks "he or she may not affirmatively misrepresent facts concerning the crime." *Plengsangtip*, 148 Cal.App.4th at 837. Common sense dictates that the police officers in the present case wanted to know if Blake had been to the Sydney residence as this was critical to their efforts to trace his movements and locate him. Although the Defendant clearly knew that Blake had been at the residence and had left with Corrine Nelson and Andrew Bartlett, the Defendant lied to the police and stated that Blake had not been to the residence that night. This was an affirmative statement that, in itself, indicated an effort to shield or protect Josh Blake.

The Defendant, however, went still further. Although she was an eyewitness to the shooting and had been with Josh Blake before and after

the shooting, the Defendant gave additional affirmative false statements. For instance, the Defendant repeatedly lied to the police and affirmatively told them that she had been helping Andrew Bartlett move on the night of the shooting. RP 139, 161. Common sense dictates that police hunting for a fugitive murderer would clearly be interested in having an accurate picture of the fugitive's activities and companions both before and before and after the murder, yet the Defendant clearly gave the police false information about Josh Blake's activities since she lied and claimed that she had been somewhere other than with Blake. These statements constitute an affirmative misrepresentation of the facts and demonstrate an overt attempt to change the picture of what happened on the night of the shooting. *Plengsangtip*, 148 Cal.App.4th at 837-39.

In the present case the Court of Appeals acknowledged that the Defendant's statement that she did not know Blake and did not know anything about the shooting "were mere false disavowals of knowledge." *Mollet*, __ Wn.App.__, 326 P.3d at 856. The Defendant, however, went further and made actual false affirmative statements. For instance, she gave the police a false alibi and made false statements about where she had been that night and falsely stated that she did not see Blake at the residence that night. The Court thus held, that "Similar to *Plengsangtip*, Mollet's false alibi and statements that she had not seen Blake at the

Sidney Road residence were affirmative misrepresentations." *Mollet*, __ Wn.App.__, 326 P.3d at 857.

In short, the Defendant in the present case did not merely disavow any knowledge regarding the murder of Trooper Radulescu. Rather, the Defendant's affirmative statements created an entirely false picture to the police. Based solely on the Defendant's statements, the police were informed that: the Defendant did not know Josh Blake; the Defendant had spent the evening with Andrew Bartlett, not Blake; and that Blake had not been to the Sydney residence, when in fact Blake and the Defendant had driven there together and Blake had subsequently left with Corrine Nelson and Andrew Bartlett.

The affirmative false statements made by the Defendant in the present case are clearly distinguishable from the mere disavowal of knowledge made by the defendant in *Budik* who merely claimed that he did not know who had shot him. In addition, the Defendant's affirmative statement's closely mirror the statements made by the defendant in *Plengsangtip* which the court held were "affirmative misrepresentations" that were an "overt attempt to change the picture of what happened" on the night of the murder.

Viewing the evidence in a light most favorable to the State and drawing all reasonable all reasonable inferences from that evidence, the

Court of Appeals properly held that evidence was sufficient to permits a rational jury to find each element of the crime beyond a reasonable doubt. For all of the reasons stated above, the Defendant has failed to show that the Court of Appeals' opinion was inconsistent with *Budik*.

VI. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court deny Mollet's petition for review.

DATED August 7, 2014.

Respectfully submitted,
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Attached, please find the State's "Answer to Petition for Review" in the case of *State v. Megan Mollet*, No. 90496-1.

Sincerely,

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