

68228-8

68228-8

No. 68228-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

ELIZABETH ANN BEIMER,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Barbara A. Mack

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

There was insufficient evidence to support the jury's verdict that Ms. Beimer was guilty of solicitation of first degree murder.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Due process requires the State prove each element of the offense beyond a reasonable doubt. An essential element of solicitation to commit murder is that the defendant offered or agreed to offer something of value in exchange for the murders with the intent to facilitate or promote the murders. The "hitman" here suggested Ms. Beimer pay him \$500 to help reimburse him for his travel expenses. Where the amount Ms. Beimer agreed to pay did not promote or facilitate the murders, is the jury's verdict supported by the evidence necessitating reversal of Ms. Beimer's conviction with instructions to dismiss?

C. STATEMENT OF THE CASE

Robert Davis and Elizabeth Beimer met in 2000 and soon thereafter began a romantic relationship. RP 480. The relationship produced a child, T.B., who was nine years old at the time of trial. RP 481. At some point not long after T.B. was born, the relationship between Mr. Davis and Ms. Beimer ended. RP 484. Mr. Davis moved

out of Washington and stayed in contact with T.B. but was not involved in raising her. RP 485. Between June 2003 and September 2005, Mr. Davis had no contact with T.B. RP 488.

In September 2005, Mr. Davis and his wife, Ruby, moved to Washington. RP 487-88. Mr. Davis attempted to reinsert himself into T.B.'s life, which made Ms. Beimer uncomfortable. RP 489-92. In August 2007, Mr. Davis took a paternity test to confirm he was the father of T.B., when he discovered he was not named as the father on T.B.'s birth certificate. RP 493. The relationship between Ms. Beimer and Mr. Davis and his family became contentious. In 2007, Ms. Beimer accused Mr. Davis of molesting T.B. RP 501. Following an investigation, Mr. Davis was not charged. RP 501-05.

In 2002 or 2003, Ms. Beimer met Tammy Howell and her husband, Richard Howell. RP 750-54. Ms. Howell and Ms. Beimer became close friends. RP 754. In 2007, the Howells moved to Arizona, but Ms. Beimer kept in touch. RP 753-54. Because of Ms. Beimer's frustration in dealing with the Davises, and at his wife's behest, Mr. Howell came back to Washington to assist Ms. Beimer in moving her and T.B. to Idaho to escape the Washington courts. RP

755-56. In the interim, Mr. Davis obtained a temporary restraining order barring either party from taking T.B. out of state. RP 512.

Howell continued to reside at Ms. Beimer's residence and would accompany her when she and Mr. Davis met to exchange custody of T.B. during Mr. Davis's visits. RP 512. According to Mr. Davis, Howell was an intimidating presence during these visitations and was openly hostile to Mr. Davis. RP 512, 761.

According to Howell, in September 2008, Ms. Beimer spoke about wanting Ruby and Robert Davis dead. RP 759. In October 2008, the Davises discovered the school T.B. was attending, which upset Ms. Beimer further. RP 767. Ms. Beimer became afraid of losing custody of T.B. and, according to Howell, Ms. Beimer asked Howell to find someone to kill the Davises. RP 768-71. According to Howell, Ms. Beimer discussed killing the Davises several times, and insisted that either he find someone to do it or she would do it herself. RP 771.

Howell was not a member of a motorcycle club but knew some members of the Hell's Angels motorcycle club. RP 771. Mr. Howell also dressed like a member of a motorcycle club. RP 771. Howell claimed that to placate Ms. Beimer and stop her from pestering him about finding someone to murder the Davises, he told her he had found

someone but that it would cost \$10,000. RP 775-78. Ms. Beimer stated she simply did not have that much money. RP 775.

Howell claimed he had a change of heart about Mr. Davis when he learned the investigation into the child molestation allegation cleared Mr. Davis. RP 763-64. Howell also claimed he saw how Mr. Davis reacted with T.B., which further changed his outlook. RP 762-63. On October 20, 2008, Mr. Howell contacted the Davises and set up a meeting, where he disclosed that Ms. Beimer was attempting to hire someone to kill them. RP 782. At the conclusion of the meeting, the Davises and Howell went to the Auburn Police and Howell disclosed to the police the alleged plot. RP 783.

The next day, October 21, 2008, Auburn Police Detective Randy Clark interviewed Howell, then he, Howell and Clark's supervisor met with the King County Prosecuting Attorney's Office. RP 243-44. Pursuant to Detective Clark's direction, Howell placed two calls to Ms. Beimer that were recorded.<sup>1</sup> In the conversations, Howell related to Ms. Beimer that the prospective "hitman" was flying into Seattle from Spokane to meet with her. RP 260-61.

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<sup>1</sup> The police obtained a warrant authorizing one party consent prior to the calls being made. RP 264

Auburn Police recruited Deputy Mark Hayden of the King County Sheriff's Office to play the role of the "hitman." RP 961-62. Deputy Hayden was to play the role of a member of an outlaw motorcycle group. RP 963.<sup>2</sup> At Auburn Police direction, Deputy Hayden called Ms. Beimer twice to determine if she was still interested; both calls were recorded. RP 966-69. The two agreed to meet at the Auburn Motel. RP 971.

On October 24, 2008, Deputy Hayden, acting as the prospective "hitman," and Ms. Beimer met at the Auburn Motel. RP 970-76. This meeting was video and audio recorded. CP Supp \_\_\_\_, Sub No. 159, Exhibits 4, 30; RP 282, 925. The deputy and Ms. Beimer had a long discussion about the plan to murder the Davises, at the end of which the deputy asked for some money to defer his travel costs and suggested \$500. CP Supp \_\_\_\_, Sub. No. 159, Exhibit 4, 30. Ms. Beimer noted that she did not have much money but she could try to pay \$500. *Id.* Shortly thereafter, Ms. Beimer was arrested. RP 283.

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<sup>2</sup> Deputy Hayden was to claim that he was not a full member, but by carrying out the murders of the Davises, he would obtain full membership in the outlaw motorcycle group. RP 962-65.

Ms. Beimer was charged with one count of solicitation to commit first degree murder. CP 1. Following a jury trial, Ms. Beimer was convicted as charged. CP 148.

D. ARGUMENT

THE STATE FAILED TO PROVE MS. BEIMER  
GAVE OR OFFERED TO GIVE THE UNDERCOVER  
OFFICER MONEY OR ANYTHING OF VALUE  
WITH THE INTENT TO FACILITATE THE  
MURDERS

1. The State bears the burden of proving each of the essential elements of the charged offense beyond a reasonable doubt. The State is required to prove each element of the crime charged beyond a reasonable doubt. U.S. Const. amend XIV; *Apprendi v. New Jersey*, 530 U.S. 466, 471, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The standard the reviewing court uses in analyzing a claim of insufficiency of the evidence is “[w]hether, 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.” *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). A challenge to the sufficiency of evidence

admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

2. There was insufficient evidence presented that Ms. Beimer gave or offered to give money or anything of value with the *specific intent* to facilitate or promote the murders. Ms. Beimer undoubtedly agreed to try to pay the Deputy Hayden \$500 to reimburse him for his travel expenses, but this agreement by Ms. Beimer was not done with the specific intent to facilitate or promote the killings.

A conviction for solicitation to commit murder in the first degree required the State to prove: (1) that Ms. Beimer offered to give value to another to engage in specific conduct; (2) that the offer was made with the intent to promote or facilitate the crime of murder in the first degree; (3) that the conduct would constitute murder in the first degree; and (4) the acts occurred in Washington. RCW 9A.28.030. Murder in the first degree is defined as causing the death of another with premeditated intent to cause that death. RCW 9A.32.030(1)(a).

RCW 9A.28.030(1) requires that the solicitation occurred: that a person offers money or something of value to another person to commit

a crime. *State v. Varnell*, 162 Wn.2d 165, 169, 170 P.3d 24 (2007);  
*State v. Constance*, 154 Wn.App. 861, 883-84, 226 P.3d 231 (2010).

“Solicitation involves no more than asking someone to commit a crime in exchange for something of value.” *State v. Jensen*, 164 Wn.2d 943, 952, 195 P.3d 512 (2008). The purpose of criminalizing solicitation is not to deter a person from committing the contemplated crime: that purpose is served by the penalties fixed for the contemplated crime. Rather, the solicitation statute aims to deter a person from enticing another person to commit a crime. *Id.* at 953. The language of the solicitation statute focuses on a person's “intent to promote or facilitate” a crime rather than the crime to be committed. Thus, the harm of solicitation is fully realized when the solicitor offers something of value to another person *with the intent to promote or facilitate a target crime* or crimes. *Jensen*, 164 Wn.2d at 953.

The State's theory at trial as voiced in the prosecutor's closing argument, was that the \$500 Ms. Beimer agreed to pay the “hitman” for the murders was the evidence that fulfilled the element of solicitation:

It does not mean that she did not offer and agree to come up with the \$500 cash only, as she agreed, to pay for the hitman's expenses after the killing was completed.

RP 1252.

The flaw in this argument is there was no nexus between the \$500 and the killings. Ms. Beimer did not agree to pay the \$500 with the intent to facilitate or promote the crime. The \$500 figure was provided by the “hitman” solely for his expenses and was discussed well after the negotiations regarding the murders had already been completed. Ms. Beimer’s “agreement” to pay the \$500 was reluctant at best, since she noted she had no money and was only agreeing to placate the “hitman.” The State failed to link the \$500 with Ms. Beimer’s intent to promote or facilitate the murders. As a consequence, Ms. Beimer’s conviction fails.

It may be argued that the hitman’s ability to obtain full membership in the motorcycle club as a result of committing the murders also constituted something of value offered by Ms. Beimer. This argument is without support. Whether or not the hitman gained full membership would not have been something Ms. Beimer could offer. Ms. Beimer had no control over whether full membership would have been granted, assuming this was true to begin with. Further, full membership in the motorcycle club was valueless since the State failed to provide any monetary figure to it. The State failed to prove all of the elements of the charged offense.

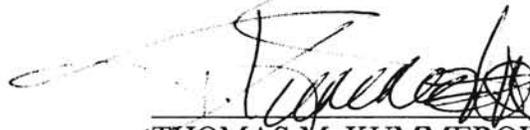
3. Ms. Beimer is entitled to reversal of her conviction with instructions to dismiss. Since there was insufficient evidence to support the conviction, this Court must reverse the conviction with instructions to dismiss. To do otherwise would violate double jeopardy. *State v. Crediford*, 130 Wn.2d 747, 760-61, 927 P.2d 1129 (1996) (the Double Jeopardy Clause of the United States Constitution “forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding.”), *quoting Burks v. United States*, 437 U.S. 1, 9, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978).

E. CONCLUSION

For the reasons stated, Ms. Beimer requests this Court reverse her conviction with instructions to dismiss.

DATED this 5th day of October 2012.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 68228-8-I
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	)	
ELIZABETH BEIMER,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 5<sup>TH</sup> DAY OF OCTOBER, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> ELIZABETH BEIMER 355787 WASHINGTON CC FOR WOMEN 9601 BUJACICH RD NW GIG HARBOR, WA 98332	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 5<sup>TH</sup> DAY OF OCTOBER, 2012.

X \_\_\_\_\_ *Am*

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