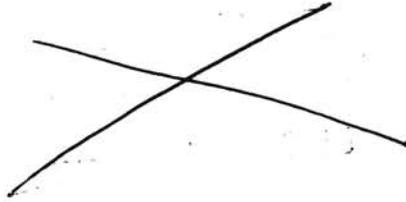


68228-8

68228-8



NO. 68228-8-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ELIZABETH ANN BEIMER,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA A. MACK

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Evidence is sufficient if, considered in a light most favorable to the State, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Here, Beimer met with a policeman who she thought was a hitman, and agreed to pay him \$500 to cover the expenses involved in murdering her daughter's father, his wife, and his parents. Beimer thought the "hitman" wanted to commit murder in order to advance himself in a motorcycle gang, and she offered him this opportunity. She provided him with photographs of the intended victims, a hand-drawn layout of their home, and the intended murder weapon. In the light most favorable to the State, was there sufficient evidence for a reasonable jury to convict Beimer of Solicitation to Commit Murder in the First Degree.

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The defendant, Elizabeth Beimer, was charged with Solicitation to Commit Murder in the First Degree, occurring between October 17 and October 24, 2008. CP 1. The State alleged that Beimer had met with an undercover policeman,

believing him to be a Hells Angels prospect willing to commit murder in order to advance in his club, and agreed to pay him \$500 for any expenses incurred, if the "hitman" murdered her daughter's father, his wife, and his parents. 1RP 212-27¹. Beimer was convicted after a jury trial and sentenced to the low end of the standard range, 180 months. CP 148, 312.

2. SUBSTANTIVE FACTS.

In 2002, Elizabeth Beimer and Robert Davis had a baby girl named T.B. 1RP 481. Davis and Beimer separated sometime thereafter, and Davis moved to California, remaining in loose contact with his daughter, who stayed in Washington with her mother. 1RP 485. Eventually, the letters and phone calls lessened, and starting in June of 2003, Davis had no contact with his daughter for over two years. 1RP 488.

In September of 2005, Davis returned to Washington with his new wife, Ruby Davis. 1RP 487-88. Once he returned, he attempted to rebuild his relationship with T.B. causing friction with Beimer. 1RP 489-92. The tension culminated in 2007, when

¹ This brief will refer to the successively paginated Reports of Proceedings from September 13, 21-22, 26-28, 2008 and October 11 -13, and 17, 2008 as 1RP.

Beimer accused Davis of sexually molesting T.B. 1RP 501. After a police investigation in which Davis took a polygraph test and T.B. was subjected to a child interview, Davis was not charged with any crimes. 1RP 501.

In 2007, Davis initiated custody proceedings for T.B. 1RP 754-62. Beimer, with the help of her friend, Richard Howell, attempted to move to Idaho with T.B. to avoid the Washington courts. 1RP 755-56. Howell had arrived from Arizona to help with the move that same year. 1RP 755-56. To stop Beimer from moving to Idaho with his daughter, Davis obtained a temporary restraining order barring either party from taking T.B. out of Washington. 1RP 512.

In the meantime, Howell, who was married to a woman living in Arizona, lived with Beimer, and began an intimate relationship with her. 1RP 769-70, 781-82. Howell looked and dressed like a member of the Hells Angels motorcycle club, and his arms, neck and back were emblazoned with tattoos prototypical of a motorcycle club member. 1RP 807-09. While not an active member of the Hells Angels, Howell sympathized with their movement and had connections in the gang. 1RP 770-72. Howell accompanied Beimer during the custody battles over T.B., and was

openly hostile toward Davis, at one point physically confronting him and calling him a child molester. 1RP 761-62. Davis testified at trial that he was concerned that Howell posed a danger to him. 1RP 552-53.

In October of 2008, Davis and his family discovered where T.B. was attending school, something that upset Beimer. 1RP 768. As Davis, his wife, and his parents began to push for more contact with T.B., Beimer became increasingly concerned that she was going to "lose her kid." 1RP 771. That month, Beimer asked Howell if he knew anyone who would kill Davis and his family for her to ensure she retained custody of T.B. 1RP 770-71.

Howell testified that Beimer was insistent that he find someone to murder Robert Davis for her or she would do it herself. 1RP 771. When Howell warned that Davis' death could traumatize T.B., Beimer responded, "she'll get over it." 1RP 772. Finally, Howell attempted to placate Beimer by telling her that he had found a hitman, but that it would cost her \$10,000. 1RP 775-78. Beimer said that this was too expensive. 1RP 775.

On October 18, 2008, Howell had one of his biker friends, Jeff Scofield from California, speak to Beimer on the phone. 1RP 778-79. Scofield testified at trial that he told her that she

would have to use the court system to deal with her issues.

1RP 746-47. Howell testified that after the telephone conversation, Beimer appeared depressed and told Howell that she “was on her own, that no one’s going to help her do this.” 1RP 780. That same night, Beimer began to plot the murder herself, saying that she was going to slash Davis’ tires and if he came outside, she would stab him. 1RP 780-81.

Three days later, Howell decided to come clean. 1RP 782. He had already told his wife, who had reunited with him in Washington, about his affair with Beimer, and on October 20, 2008, he met with the Davises and told them about Beimer’s murder plans. 1RP 781-82. That same day, Howell and the Davises reported the murder plot to Auburn police. 1RP 782.

After taking a statement from them, Auburn Police Detective Randey Clark asked Howell to call Beimer on speaker phone in his presence, to gauge whether or not she was “as cordial with the conspiracy theory” to murder the Davises as Howell seemed to believe. 1RP 252. Detective Clark testified that he heard Howell tell Beimer that “he had recontacted Jeff Scofield,” and that Jeff now “knew of a prospect.” 1RP 252. At trial, Detective Clark explained to the jury that a “prospect” in this context “is a term for

somebody who is connected with a biker gang but does not yet have his colors; his colors meaning not yet a full member.”

1RP 252. Howell told Beimer that this prospect “might be interested in doing it” and “if she wanted him to, he could make contact with the prospect.” 1RP 252. Beimer said that, while she was nervous about the plan “backfiring,” that he should go ahead with it. 1RP 252. Following this conversation, Detective Clark planned a sting operation with an undercover officer. 1RP 253.

For the sting, Auburn Police Officer Hayden was assigned the role of the “hitman.” 1RP 965. At trial, Hayden described the plan:

...I would take on a persona as a prospect for the Hell’s Angels, looking to establish my credibility with the club as well as trying to establish a full patch² membership with the club. There would be a conversation involving Elizabeth that I would be solicited to commit the murder of four people. Once that was accomplished, it would go towards my credibility towards the club and hopefully would assist me in becoming a full patch member of the Hells Angels.

² “Full patch membership,” Hayden explained, involves full initiation into a motorcycle club, identified by a large patch on the back of the riding leathers, and indicates complete membership in the club. 1RP 963-64.

1RP 965. Beimer would be led to believe that Hayden had travelled from Spokane to get “patched in,” and would meet her in a motel room to prepare the details. 1RP 869.

In a recorded telephone conversation on October 23, 2008, Mark Hayden, posing as the hitman, called Beimer. This recorded call was admitted and published to the jury as State’s Exhibit’s 2.³ 1RP 285; Ex. 11, Hayden Call, 1-8. There, Hayden told Beimer that he would like to meet her in person to arrange the “details.” Ex.11, Hayden Call at 1. Beimer offered to drive Hayden to the Davis house ahead of time to ensure that he find the exact road, and offered to provide him a photograph of the front of the house. Ex. 11, Hayden Call at 4. She told him that his primary targets were the “child molesters” who lived in the trailer on the house property, presumably referring to Robert and Ruby Davis. Ex. 11, Hayden Call at 4. Beimer offered to draw the trailer and a diagram of the house where Robert Davis’ parents slept. Ex. 11, Hayden

³ State’s Exhibit 2 was admitted and played to the jury. It contained the 10/23/2008 and 10/24/2008 phone calls between Howell and Beimer and Hayden and Beimer, respectively. A transcript was marked as Defendant’s 11, but not admitted. This brief will refer to the transcript, designated by the State in this appeal, as Ex. 11, Howell Call, or Ex. 11, Hayden Call, to differentiate between the two.

Call at 5. She said that there may be a dog inside and that she did not care whether the dog survived. Ex. 11, Hayden Call at 6.

In that phone call, Hayden assured her that he was not going to “rat,” that he had “aspirations of doing [his] own thing” after this, and he did not want to “fuck that up.” Ex. 11, Hayden Call at 7.

Beimer told Hayden that she was worried she was getting “set up,” and Hayden reassured her that he knew better than to screw over one of “[Howell]’s friends.” Ex. 11, Hayden Call at 7. Beimer agreed to bring photographs of the house and the intended victims, and Hayden told her that he would call her the next day to give her the address and room number of his motel. Ex. 11, Hayden Call at 8.

On October 24, 2008, Detective Hayden called Beimer again in a phone call, admitted as State’s Exhibit 2. 1RP 968. Hayden told her that he had rented a room at the Aurora Motel, and gave her the room number. 1RP 968-70; Ex. 30,⁴ Phone Call at 1-2.

When Beimer arrived at the motel, Auburn police detectives had

⁴ The transcript of this audio and video was marked but not admitted as State’s Exhibit 30. Exhibit 30 contains two transcripts, the first is from the October 24, 2008 phone call between Hayden and Beimer (Ex. 30, 1-3) and the second is the motel meeting between Hayden and Beimer (Ex. 30, 1-23). This brief will refer to the transcript, already designated by Beimer, as Ex. 30, and designate the transcript of the phone call with the title “Phone Call,” and to the transcript of the motel meeting as Ex. 30.

already set up surveillance cameras and microphones in the room, and were watching the entire meeting from their adjacent room in the same motel. 1RP 971. The video and audio recording of this meeting was admitted as State's Exhibit 3. 1RP 972.

Hayden, who looked the part with his long hair and biker tattoos, turned off the television and tried to make Beimer comfortable. 1RP 988; Ex. 30 at 1. Beimer began by showing Hayden photographs of the people she wanted him to murder. Ex. 30 at 1. She instructed Hayden to kill the Davises first, and then showed him the layout of the house that she had prepared for the meeting, a layout that was admitted as State's Exhibit 8. Ex. 30 at 2; 1RP 288. When Beimer referred to Robert Davis, her primary target, she called him the "baby raper." Ex. 30 at 4. To facilitate the murders, she revealed Davis' schedule and the house and trailer sleeping arrangements, and described Davis' height and weight. Ex. 30 at 1-2, 9-11. When Hayden asked how she wanted them killed, Beimer responded, "I don't care." Ex. 30 at 4.

A few minutes into their meeting, Beimer pointed to a photograph of Robert Davis and warned Hayden, "now he's a quick runner," and added that Hayden should watch out for Ruby Davis because she has a "mouth on her." Ex. 30 at 4. They arranged to

have Hayden call Beimer after "it's done." Ex. 30 at 8. Beimer wanted Hayden to commit the murders that very night. Ex. 30 at 10. Then, the following day, Beimer, who had a scheduled visitation with Davis and T.B., planned to simply go to their drop-off point "like usual" and "just sit there and wait." Ex. 30 at 9. After Davis failed to appear, Beimer said that she would leave a contrived message on the now-dead Davis' cell phone saying, "It's your visitation, dipshit, where are you?" Ex. 30 at 9. Beimer suggested to Hayden that nobody would ever suspect her of any role in the homicides, saying that this is "something nobody expects" – "this is Beth goody two shoes." Ex. 30 at 10.

After the details were arranged, Hayden asked her for \$500 to help him pay for the hotel, rental car, and other expenses he had incurred in coming to Auburn. Ex. 30 at 12. Beimer told him that she could "try to come up with that." Ex. 30 at 12. Hayden clarified that he would need cash, not a check or money order, and Beimer said, "okay." Ex. 30 at 12. He told her that he wasn't going to use the money for a gun or ammunition, because that could be traced back to him. Ex. 30 at 12.

As the camera continued to roll, Hayden told Beimer that when he was done with his work, the funeral was going to have to

be a “closed casket”; Beimer replied, “that’s fine... I don’t really care.” Ex. 30 at 12. When Hayden told her that he would ransack the house, Beimer started to laugh, saying that T.B. told her the house was a “pit,” and thus it would not need much ransacking. Ex. 30 at 13. Afterward, Hayden reminded Beimer that he would need his \$500 in “cash only,” and she responded, “okay.” Ex. 30 at 14. Hayden reminded her to keep the plot between themselves, and that he was there to “win,” so keeping quiet was going to rest “on her shoulders.” Ex. 30 at 15. Beimer reassured him, saying that the police can “question [her] all they want.” Ex. 30 at 15.

The conversation returned to discussing the issue of payment for Hayden’s expenses – Hayden told Beimer that he would disappear for four or five days, but then, if she could give him the \$500, “that would be cool.” Ex. 30 at 17. Again, Beimer replied, “okay” and when Hayden told her that the cost should really be higher, but that he understood “money was tight,” Beimer agreed, adding “it’s really tight.” Ex. 30 at 17. Hayden asked whether, after he murdered all four of the Davises, Beimer would be guaranteed sole custody of T.B., and she responded, “[T]here is no doubt about that.” Ex. 30 at 17.

Near the end of their meeting, after assuring Hayden that the primary victims would be asleep in the same bed, she suggested a weapon she had in the van, a "thick re-bar." Ex. 30 at 19. Hayden told her that if she wanted "to make it personal, [he'd] use the re-bar." Ex. 30 at 19. As she laughed, Beimer said, "Go for it," but admonished him not to "leave it there." Ex. 30, 19. Hayden warned Beimer that the murder victims would "have marks on their head where some re-bar was laid." Ex. 30, 19. "Well then you know," Beimer responded, again laughing, "they can't trace it back to me I don't have that type of shit." Ex. 30, 20. "Like just make sure you silence her and him at pretty much the same time," Beimer insisted. Ex. 30, 20.

After some discussion about who Beimer could suggest to police as the murderer when they came questioning, Hayden accompanied her to her van to obtain the intended murder weapon. Ex. 30, 22-23; 1RP 976. Once at the van, Beimer opened the trunk and handed Hayden the re-bar she wanted him to use to murder the Davises that very night. 1RP 976. She was arrested moments later. 1RP 976. The actual re-bar was admitted as State's Exhibit 9, and was described as just under three feet long and weighing about five pounds. 1RP 288-89, 977.

3. FACTS REGARDING MOTION TO DISMISS, JURY INSTRUCTIONS, ARGUMENT AND JURY QUESTIONS.

After Beimer rested her case, her attorney moved to dismiss, arguing that “no reasonable trier of fact could find evidence beyond a reasonable doubt.” 1RP 1226. The State, the defense attorney contended, had failed to prove that Beimer “offered or provided money or a thing of value to anyone in order to facilitate the crime.” 1RP 1226. The prosecutor countered that, taken in a light “most favorable to the State, and drawing all reasonable inferences toward the State,” there was indeed evidence that Beimer had offered money or a thing of value to Hayden. 1RP 1227-28. First, the jury saw and heard Beimer tell Hayden on the video that she thought she could “come up” with the \$500 cash he had requested for expenses. 1RP 1228. Later, when Hayden requested that the \$500 payment be in cash only, Beimer responded, “okay.” 1RP 1228. The prosecutor’s second argument in response to the dismissal motion was that Beimer believed that the hitman was a “prospect looking for full patch membership” and she was providing him that “priceless opportunity.” CP 1228.

The trial court found that there was sufficient evidence to proceed, given the evidence before the jury:

Taking all of the inferences in a light most favorable to the State, as I must, I am denying the motion.

In preparing jury instructions, I went back and reviewed transcripts of the various recordings. There were several discussions about money. The first one was about \$5,000 to \$10,000, with Richard Howell and she said she couldn't afford that much.⁵

And then there were later discussions about \$500 several times, as the State has said, during the course of the discussion with Detective Hayden. That alone is enough to take it to the jury.

1RP 1229.

The jury was instructed, via WPIC 105.01,⁶ on the definition of criminal solicitation:

A person commits the crime of criminal solicitation when, with intent to promote or facilitate the commission of a crime, he or she offers to give or gives money or other thing of value to another to engage in specific conduct which would constitute such crime or which would establish complicity of such other person in its commission or attempted commission had such crime been attempted or committed.

CP 137. The "to convict" instruction for the crime of Solicitation to Commit Murder in the First Degree included the following elements:

(1) That during a period of time intervening between October 17, 2008 through October 24, 2008, the

⁵ The court later clarified that this was heard via the testimony of Richard Howell, and was not in a transcript or recording. 1RP 1230.

⁶ Washington Pattern Jury Instructions Criminal.

defendant gave or offered to give money or other thing of value to another to engage in specific conduct;

- (2) That such giving or offering was done with the intent to promote or facilitate the commission of the crime of Murder in the First Degree.

CP 138-39.

Jury Instruction 18 addressed the various offers alleged in the State's case:

There are allegations that the defendant committed acts of giving or offering money or other thing of value to another to engage in specific conduct that promoted or facilitated murder. To convict the defendant of the charged offense, one particular act of giving or offering money or other thing of value to another to engage in specific conduct that promoted or facilitated murder must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of giving or offering money or other thing of value to another to engage in specific conduct that promoted or facilitated murder.

CP 145.

During her closing argument, the prosecutor argued that Beimer believed that Howell could find someone to murder the Davises for her because of his biker connections:

Over the course of the next two days, in Mr. Howell's words, [Beimer] badgered and badgered him, "Find someone. You've got to get them taken care of." [T]he defendant believed that Mr. Howell could do this believed he could find someone for her, and why?

Because, as Detective Hayden explained to you, and as was explained to Elizabeth Beimer once police were involved, a prospect or someone seeking full membership in a biker gang, like the Hell's Angel [sic], that Richard Howell openly affiliates with, killing someone will get you full patch membership, and killing someone is priceless.

1RP 1246-47.

In response to the mental defense raised at trial, the prosecutor conceded that Beimer had lived a "tough life," but countered that

[This] does not mean that she did not set out and go through with the act of hiring a hitman to kill the people that she despised, that she felt betrayed by.

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. It does not mean that she didn't want the Davises dead.

1RP 1252.

The prosecutor went on to argue that Beimer did not merely provide pictures of her intended victims to Hayden, she also brought an address, a floorplan of the prospective murder scene, and "offer[ed] up on her own a weapon that can be used to beat them to death." 1RP 1262.

In his closing argument, Beimer's attorney addressed his belief that no offer was ever made from Beimer to Hayden:

She never offered once to give him anything. She makes a noncommittal agreement to pay him after he says it. She doesn't offer or give him anything.

There is not a single bit of evidence anywhere where she actually offered or gave anybody anything.

...
This was not an offer. What this was was, sure, because, really, let's look at it from the State's perspective, she's just got a guy to agree to solve all of her problems, and he says, "And you're going to owe me \$500 if I do it, and I will get in touch with you later after it's all over." "Sure, yeah. I'll pay you. Of course. Why wouldn't I?"

Well, there are about a million reasons not to... You know, what are you going to do? Take her to small claim's court because she didn't – they didn't pay for a gruesome murder? No.

The issue is that's not an offer; that's an agreement, perhaps, although looking at the circumstances of that tape, it seems a noncommittal agreement at that. But it's not an offer.

...
And the State says, "well, you know, she... was giving him the opportunity to be a full patch membership in Hell's Angels [sic]. She is not a member of the Hell's Angels [sic]. She doesn't have anything to give anybody any credentials there. She has absolutely no control over it.

1RP 1299-1301.

On October 13, 2011, the same day that both parties concluded their closing arguments, the deliberating jury asked to see and view the video and hear the taped conversations again. CP 151. Less than an hour later, the jury was permitted to review and hear the tape of the meeting between Hayden and Beimer.

CP 151-52. Some time later, the jury submitted a second question, asking for the legal definition of the word “offer.” CP 149. Just under two hours later, the Court responded that they had been provided with all of the “instructions and definitions and must rely on what [they] have.” CP 150. This was the final question before the jury returned their guilty verdict. CP 148.

C. ARGUMENT

VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, A RATIONAL TRIER OF FACT COULD FIND THAT BEIMER COMMITTED SOLICITATION TO COMMIT MURDER IN THE FIRST DEGREE.

Like her defense attorney in his dismissal motion, Beimer contends on appeal that the State did not prove that she offered anything of value to Hayden, and that the elements necessary to prove Solicitation of Murder in the First Degree were not satisfied. Because Beimer agreed to pay \$500 to the “hitman,” believed she was offering him an opportunity to rise in the ranks of a biker gang, and offered him the very weapon with which he should commit the deed, the evidence was sufficient to satisfy the elements of Solicitation to Commit Murder in the First Degree.

The State must prove every element of a crime beyond a reasonable doubt. State v. A.M., 163 Wn. App. 414, 419, 260 P.3d 229 (2011). When an appellant challenges the sufficiency of the evidence, the reviewing court views the evidence in the light most favorable to the State, drawing all reasonable inferences from the evidence in the State's favor and interpreting them "most strongly against the defendant." State v. Engel, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009).

In order to prove that Beimer committed Solicitation to Commit Murder in the First Degree, the State had to prove, among other things, that she "gave or offered to give money or other thing of value to another to engage in specific conduct." CP 138. Further, the State had to prove that the giving or offering was done with the "intent to promote or facilitate the commission of the crime of Murder in the First Degree." CP 138. Beimer argues that there was insufficient evidence that she gave or offered to give "money or anything of value with the *specific intent* to facilitate or promote the murders." Brief of Appellant at 7. Beimer concedes that she "agreed to pay Deputy Hayden \$500 to reimburse him for his travel expenses," but says that this agreement "was not done with the

specific intent to facilitate or promote the killings.” Brief of Appellant at 7.

Beimer further argues that there is “no nexus between the \$500 and the killings” because 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.” Brief of Appellant at 9. Her agreement to pay, she argues, was only to “placate the hitman.” Brief of Appellant at 9. This argument strains credulity.

First, Beimer points to nothing in statute or case law mandating that the requisite “offer” be made at the start of the negotiation. To satisfy the elements, the State need only show that money or a thing was offered with the intent to facilitate or promote the commission of a crime – there is no authority for attaching a temporal element.

Solicitation means a step toward the target crime but does not require a substantial, overt act toward its commission, as is required for the crime of attempt; solicitation involves “little more than asking or hiring someone to commit a crime.” State v. Gay, 4 Wn. App. 834, 839-40, 486 P.2d 341 (1971). Once the person is actually paid or given the thing promised to promote or facilitate the

commission of the crime, an overt act is committed that “goes beyond the sphere of mere solicitation and it may constitute the crime of attempt. Id. at 840. The actus reus of solicitation, then, is merely an “*attempt* to persuade another to commit a specific offense.” State v. Jensen, 164 Wn.2d 943, 951, 195 P.3d 512 (2008).

In this case, Beimer was charged specifically with solicitation, not with Attempted Murder. She never paid Hayden (she was arrested immediately after assuring him that she would), but she did agree to pay him after he asked for money to pay his expenses incurred because he remained in Auburn to commit her murders; this falls squarely within the realm of solicitation.

When Beimer arrived at the motel, she had already formed the requisite intent to facilitate the murder itself: she drove to a motel to meet Hayden under one pretense only – she believed that Hayden was looking for someone to murder in order to secure advancement in a motorcycle club and Beimer was looking for someone willing to murder T.B.’s father, his wife, and his parents. In furtherance of this goal, Beimer brought photographs of the intended victims, a hand-drawn layout of the home, a paper with the victims’ address readied for the hitman, and gave Hayden

detailed information regarding where the victims would be sleeping and whom to kill first. She warned him about Ruby Davis' loud "mouth," and she told Hayden she did not care if there had to be a "closed casket" funeral after he was finished with the bloody business. If there was ever any doubt as to her intent, Beimer provided the weapon itself, a re-bar she brought to the meeting and personally handed to the would-be-murderer after assuring him that it could not be "traced back" to her later, because she does not "have that type of shit." Ex. 30 at 20.

Given the clarity of her intent, it is difficult to reasonably argue that her agreement to pay \$500 for the hitman's expenses, while he stayed in a motel specifically to commit the murders, was not connected to the murders themselves. After all, Hayden was explicit that he wanted the money in order to pay for the expenses he incurred in his stay at the hotel, and that, while those expenses did not involve buying "ammunition," he would still need some money to pay for his costs. Ex. 30 at 12.

By agreeing to pay him this \$500, Beimer was offering Hayden money to "facilitate or promote" the murders; this is the only reason Beimer found herself in a room at the Aurora Motel with a complete stranger, showing him photographs of Davis and

describing the details of a murder plot. Any money offered to cover Hayden's expenses while he remained in Auburn, away from his Yakima home, was inextricably connected to the murder Beimer solicited, which was the only context for their meeting in the first place.

But Beimer also offered the hitman something besides the reimbursement of costs incurred during his stay – she offered him an opportunity. Beimer arrived at that motel room believing that the reason this man was willing to slaughter four people whom he had never met was because the murders themselves were a “thing of value” to him. After all, she believed that Hayden was a prospect seeking to earn his colors in a motorcycle gang, and that murdering somebody would, as Hayden put it with Beimer, be a “win.” Ex. 30, 15. After all, he [had] aspirations of doing [his] own thing” after this and he doesn't want to “fuck that up.” Ex. 11, Hayden Call, 7.

While Beimer correctly states that advancement in the Hells Angels is not something she had the authority to provide, a solicitor only needs to “offer something of value to another person,” not actually provide it; actually payment is, under the case law, closer to an “overt act” rising beyond mere solicitation and into the sphere of Attempted Murder. Jensen, 164 Wn.2d at 953.

By offering the hitman an opportunity to commit a murder with impunity – complete with photographs, a layout of the scene, inside information on the victims' schedules, their sleeping arrangements, the dog, the physical attributes of Mr. Davis, the isolation of the house, and the myriad other details she provided – Beimer believed she was indeed offering a “priceless” opportunity to this stranger in the hotel room. In her eyes, she was offering him a thing of value, a murder that, bereft of motive or any contextual ties, could not be traced to him. It is this backdrop, coupled with her desperation to have the Davises murdered, that explains her willingness to believe that this man was willing to kill these people for so little in return; she believed she was offering him an opportunity to advance in a prominent gang.

With all inferences being in the State's favor, the fact also remains that Beimer not only offered money and an opportunity to Hayden, she also offered him the actual murder weapon, a piece of re-bar, which, while admittedly being of *little* value, is nevertheless “a thing of value.” She handed this to Hayden with every intention that he was going to “cave in” Davis' head. Ex. 30, 16.

This entire exchange was captured in State's Exhibit 30, which was admitted and reviewed by the jury during the

deliberations. Both the prosecutor and the defense attorney argued this very issue directly in their closing arguments, and the defense attorney raised the same arguments before the jury as Beimer raises today. But as their questions reveal, the jury carefully considered the instructions and the evidence, making a factual determination that Beimer had indeed offered money or a thing of value with the intention of promoting or facilitating murder, despite being presented with the defense attorney's arguments to the contrary. The jury found the requisite elements, and this Court should presume that jurors follow the court's instructions. State v. Steing, 144 Wn.2d 236, 27 P.3d 184 (2001).

As Judge Mack's ruling at the conclusion of Beimer's case informs, in a light most favorable to the State, Beimer's agreement to pay Hayden \$500 for expenses incurred during the murders is sufficient, on its own, to survive a sufficiency challenge. The offer of an opportunity to advance in the Hells Angels and the actual gift of the murder weapon provide additional avenues that a reasonable jury could have considered in their determination that Beimer was guilty. The evidence at trial supports the inference that Beimer offered a thing of value with the specific intent to promote the murder of the Davises, and her conviction should be affirmed.

D. CONCLUSION

For the foregoing reasons, the defendant's conviction should be affirmed.

DATED this 13 day of November, 2012.

Respectfully submitted,

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By: 

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Respondent's Brief, in STATE V. ELIZABETH BEIMER, Cause No. 68228-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name Bora Ly
Done in Seattle, Washington



Date