

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

LATANYA K. CLEMMONS,

Appellant.

No. 40847-3-II

UNPUBLISHED OPINION

Armstrong, J. — Latanya Clemmons¹ appeals her convictions for two counts of rendering criminal assistance in the first degree with aggravating factors. Among other issues, Latanya argues that the State failed to prove beyond a reasonable doubt that she rendered criminal assistance to Darcus Allen, an alleged accomplice to four murders. The rendering criminal assistance statute and the “to convict” instructions required the State to prove that Latanya either (1) knew Allen committed aggravated first degree murder or (2) knew the police sought Allen for aggravated first degree murder. We hold that the State failed to present sufficient evidence to support either of those options; thus, the evidence was insufficient to support the rendering criminal assistance charges. We hold that the evidence was insufficient to support the rendering criminal assistance charges. Accordingly, we reverse and remand for dismissal of the charges with prejudice.

FACTS

Early on Sunday, November 29, 2009, Maurice Clemmons walked into the Forza coffee

¹ Because several Clemmons family members are involved in the case, we refer to each by his or her first name.

shop in Parkland and shot and killed four Lakewood police officers. Maurice left the coffee shop and walked to a car wash several blocks down the street. He entered the passenger side of a white truck, which quickly left the scene. Maurice's friend and co-worker, Allen, was driving the truck when it left the car wash. The murders triggered a massive manhunt for Maurice that ended on December 1, 2009, when a police officer shot and killed Maurice in Seattle.

Approximately one hour after the shooting, Detective Ed Troyer, the public information officer for the Pierce County Sheriff's Office, began issuing statements to the media. Detective Troyer provided updates approximately every 15 minutes for several hours on the first day and then provided them every 30 minutes until December 1.

The police soon located the white truck at a Saar's Market. After learning that Maurice owned the truck, police focused on him as the probable shooter. Law enforcement also sought the driver of the truck for which they had only a vague description. One officer testified that the driver was described as a white male, and another officer testified that he was described as a black male. In addition, the police had difficulty identifying Allen as the driver because he occasionally used the name Randy Huey. The police did not identify Allen as the truck driver until late on November 31 or early on December 1.

When detectives learned that Allen was the driver of the truck, they also learned he was staying at the New Horizons Motel in Federal Way. A SWAT (special weapons and tactics) team arrived at the motel at approximately 4:00 a.m. on December 1. Latanya answered the door in response to the officers' knock, and Allen, who was in the room, commented that he knew the "[police] would be coming hard." Report of Proceedings (RP) at 633. Latanya agreed to talk

with the law enforcement officers at the precinct and gave a recorded interview that same morning.

The manager of the New Horizons Motel testified that Huey (a/k/a Allen) checked in on November 29, 2009, between 9:30 and 11:30 a.m. Allen paid cash for the room. Although Allen arrived alone, the manager followed his usual practice of recording two guests because he does not want to later charge the guest for extra persons in the room.

In the meantime, on November 30, Detectives Jennifer Quilio and Jason Brooks contacted Maurice's relatives at a house in Pacific, Washington (Pacific house). Detective Brooks interviewed Cicely Clemmons (Maurice's cousin), while Detective Quilio interviewed Letricia Nelson (Maurice's aunt). On December 1, Detective Quilio went back to the Pacific house to re-interview Letricia and Cicely. During the second interview, Cicely revealed that Maurice had arrived at the Pacific house shortly after the shooting, at around 9:00 a.m. The family helped patch up a gunshot wound he sustained at the coffee shop and gave him money and the keys to a car. Maurice admitted to the family that he had shot four police officers.

Cicely told the officers that soon after Maurice left, Latanya and Allen arrived. The family then watched the news. Detective Quilio testified further about Cicely's taped interview:

Q: Did she [Cicely] indicate whether Latanya Clemmons was present when they talked about the white truck being recovered?

A: Yes.

Q: Did Darcus say anything about the white truck?

A: He said, "We were there; we were there," and they're saying [the news coverage] that was Maurice's truck and Darcus told him [*sic*] of their involvement; that he had been with Maurice and that they had gone to wash the truck and the whole story from there . . . and he said Maurice dropped me [Darcus] back at the house and he and Latanya came to the house in Pacific.

RP at 602. Also in regards to Cicely's interview, Detective Quilio testified:

A: I said, "Okay. What happened next?" And Cicely said, "My cousin said that she was going to take Darcus to a motel so he can go back to Arkansas for a while." And I said, "Okay." And I think we were kind of talking over each other, and I said, "To kind of lay low until this blew over?" and she said, "Yes."

RP at 613. Detective Quilio conceded that, according to Cicely, Allen consistently told Latanya and her family that he did not know of or participate in the killings; he only drove Maurice to and from the car wash.

Latanya's Taped Interviews²

Latanya has a daughter, born in 2003, whom she supported by working three jobs. She lived in a house on Asotin Street in Tacoma (Asotin house) that she rented from her brother Maurice.

Allen was a friend of Maurice's and lived in a studio apartment in the garage of the Asotin house. Allen also worked with Maurice in his "little lawn service." Ex. 112. Latanya and Allen were friends and had a casual sexual relationship. But they were not in a committed relationship. Latanya's roommate, Mary Arnold, confirmed that Allen and Latanya were not dating.

The police arrested Maurice in May 2009, apparently for assaulting his wife and Latanya. When the police pressed Latanya in her December 1 interview to admit that she was present at the Pacific house when Maurice arrived, she adamantly denied it, claiming that if she had been there, she would not deny it. She pointed to the May incident, stating that she was "the one that was there when it [the assault] happened," that she told the police Maurice had "mental issues," and

² Exhibit 112 is Latanya's taped interview from December 1. Exhibit 113 is Latanya's taped interview from December 4. Both were played in full for the jury.

that something “clicked in his head.” Ex. 112. She asked in May to “please have somebody . . . talk to him.”³ Ex. 112. In discussing the November shootings, she said that Maurice had “made his bed, now he got to lay in it” and she was not going to help him escape his bad behavior. Ex. 112.

On the morning of the shootings, Latanya finished her graveyard shift at Swedish Medical Center in Seattle at 4:30 a.m. and went home to sleep. Allen woke her up sometime after 8:00 a.m. and told her to watch the news. As the two watched the news of the shootings at the coffee shop, Allen said, “[O]h my God, oh my God, oh my God.” Ex. 113. He then said that the truck pictured in the news looked like Maurice’s truck.

After Latanya learned that the truck was likely Maurice’s, she decided to go to her Aunt Letricia’s house in Pacific. Letricia is like a mother to her, and, because Latanya was scared, she wanted to be with her family. Allen said he did not want to stay at the Asotin house because the police would certainly be searching it for Maurice. So, Allen accompanied Latanya to the Pacific house.

Before leaving the Asotin house, Latanya saw Eddie Davis (Maurice’s cousin) and Doug Davis (Maurice’s friend) talking with Allen in the garage. When she asked what they were talking about, Eddie and Doug responded that they needed a key to a studio apartment where they and Maurice hung out. Latanya did not question them further and went back inside to get ready to leave for the Pacific house. Although Eddie and Doug took Maurice to the Pacific house that

³ Latanya elaborated that in May, Maurice was “act[ing] like he could fly, he was God and he run around naked at night . . . sayin’ stuff like . . . Barack Obama was gonna come to his house . . . Barack Obama and them, Oprah Winfrey were gonna be there and they were gonna be barbecuin’” Ex. 112.

morning, Latanya repeatedly denied that the three were there when she arrived. Cicely confirmed that Maurice, Eddie, and Doug left the Pacific house before Latanya arrived. When Latanya and Allen arrived at the Pacific house, the news was on and Allen said something to the effect of “we was just up there.” Ex. 113. He later mentioned that he had been in the truck.

Latanya had to work the night of November 29, and she intended to leave her daughter at the Pacific house with Letricia. She told Allen that he was not allowed to stay at the Pacific house. Allen did not have a car, so Latanya agreed to take him to a motel; she also gave him \$50 to pay for the room. The next night, she gave Allen \$300 for a bus ticket to Arkansas because his grandmother had just passed away and Allen wanted to visit his family.

Latanya denied knowing that Allen was involved in the shootings. She said that on the drive to the Pacific house, Allen told her he had talked with Maurice that morning. Later, while watching the news, Allen said, “[W]e was just up there,” and he told her that Maurice wanted him to go to the car wash that morning. Latanya explained that Allen was talking as if he was not around Maurice when the shootings occurred. And because Allen had a record, she did not find it unusual that he wanted to go with her to the Pacific house to avoid police questioning.

Latanya explained that she first learned the details of Allen’s involvement in Maurice’s Sunday morning activities late on November 30 when she returned to the motel. She asked Allen whether he played a role in the shootings. Allen stated that Maurice called him early on the morning of November 29 to go wash the truck. Allen explained that they drove to the car wash and when they arrived, Allen told Maurice he did not have money to run the car wash. Maurice gave Allen money and told him to get change from the Arco station across the street. Allen went

to the Arco, bought a cigar, and took the change for the car wash. When Allen returned to the car wash, Maurice was not there, so Allen prepared to wash the truck. Just as he started to put money in the coin operator, Maurice rapped on the truck and told Allen they had to leave. Allen questioned why they were leaving when he had not yet washed the truck. Maurice told him not to worry about it, they would wash the truck later, and Allen could take himself home. Maurice dropped Allen off at the Asotin house. Latanya knew that Maurice had been shot at the coffee shop, so she asked Allen if he saw any blood. Allen said he had not. Allen explained that he was at the car wash when the shooting happened, and he did not see what happened at the coffee shop.

Pertinent Procedural History

The State charged Latanya with four counts of rendering criminal assistance in the first degree under former RCW 9A.76.050(3) (1982)⁴ and former RCW 9A.76.070(2)(a) (2003)⁵. For each count the State included two aggravating factors: (1) “the offense involved a destructive and foreseeable impact on persons other than the victim” based on former RCW 9.94A.535(3)(r) (2008)⁶; and/or (2) “the offense was committed against a law enforcement officer who was performing his or her official duties . . .” based on former RCW 9.94A.535(3)(v) (2008)⁷. Clerk’s

⁴ In 2011, the legislature changed the statute to be gender neutral. The legislature did not make any substantive changes to the statute.

⁵ In 2010, the legislature changed this offense from a class C felony to a class B felony.

⁶ The legislature’s amendments have not made any substantive changes to subsection (3)(r) of this statute.

⁷ The legislature’s amendments have not made any substantive changes to subsection (3)(v) of this statute.

Papers at 1-3. The jury found Latanya guilty of count I (transporting to the motel) and count II (providing money for the motel), but acquitted her of count III (harboring at the motel) and count IV (providing money for a bus ticket). The jury found both aggravating factors for each conviction.

ANALYSIS

I. Sufficiency of the Evidence

Latanya argues that the State failed to prove that she rendered criminal assistance to Allen. We agree. Because this issue is dispositive, we do not address Latanya's other claims on appeal.

We test the sufficiency of the evidence by asking whether, viewing the evidence in the light most favorable to the State, the jury could have found guilt beyond a reasonable doubt. *State v. McKague*, 172 Wn.2d 802, 805, 262 P.3d 1225 (2011). In reviewing a challenge to the sufficiency of the evidence, we draw all reasonable inferences from the evidence in favor of the State. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977). We defer to the jury to resolve issues of conflicting testimony, credibility of witnesses, and the persuasive force of the evidence. *State v. Raleigh*, 157 Wn. App. 728, 736-37, 238 P.3d 1211 (2010), *review denied*, 170 Wn.2d 1029 (2011).

A. Criminal Assistance Statute

Former RCW 9A.76.070(1) sets forth the crime of first degree rendering criminal assistance: "A person is guilty of rendering criminal assistance in the first degree if he or she renders criminal assistance to a person who has committed or is being sought for murder in the first degree." "Rendering criminal assistance" is defined by former RCW 9A.76.050, which states

in pertinent part:

As used in RCW 9A.76.070, 9A.76.080, and 9A.76.090, a person “renders criminal assistance” if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he knows has committed a crime . . . or is being sought by law enforcement officials for the commission of a crime . . . , he:

(1) Harbors or conceals such person; or

. . . .

(3) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension.

As pertinent here, a person renders first degree criminal assistance if she (1) knows that another person (a) has committed murder or (b) is being sought by law enforcement officials for the commission of murder; (2) intends to prevent, hinder, or delay the apprehension or prosecution of that other person; and (3) undertakes one of the specified actions. *See State v. Budik*, ___ P.3d ___, 2012 WL 503643, *3 (Wash. Feb. 16, 2012); *see also State v. Anderson*, 63 Wn. App. 257, 260, 818 P.2d 40 (1991) (a renderer must know *the* crime the principal committed, but need not know the facts constituting the degree of the crime). And here, the State charged Latanya with rendering criminal assistance to Allen, “a person who committed or was being sought for Aggravated Murder in the First Degree.” CP at 1-3. Also, the trial court instructed the jury in the to-convict instruction that the following elements must be proved beyond a reasonable doubt: “(2) That Darcus Allen had committed or was being sought for Aggravated Murder in the First Degree; (3) That the defendant [Latanya] knew that Darcus Allen had committed or was being sought for Aggravated Murder in the First Degree.” CP at 1408.

B. Latanya’s Knowledge

The State can prove a crime either through direct or circumstantial evidence or some combination of both. *See State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). But

criminal intent may be inferred only where the conduct of the defendant is “‘plainly indicated as a matter of logical probability.’” *State v. Johnson*, 159 Wn. App. 766, 774, 247 P.3d 11 (2011) (quoting *Delmarter*, 94 Wn.2d at 638).

The State establishes knowledge by proving,

- (i) [the defendant] is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
- (ii) [the defendant] has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

RCW 9A.08.010(b).

1. Knowledge of Allen’s Guilt

The State argues that circumstantial evidence shows that Latanya knew Allen was an accomplice to murder before his apprehension by police.

First, the State points to the following: (1) Latanya knew that Maurice had cut off his GPS (global positioning system) bracelet and had threatened to kill anyone who came after him; (2) she knew early on the morning of the murders that Maurice and someone else had used Maurice’s truck to travel to and from the site of the shootings; (3) she knew that Eddie and Doug were at her home early that morning and that a short time later they showed up at the Pacific house with Maurice, who was bleeding from a gunshot wound; (4) Allen admitted being with Maurice at the shooting site that morning; and (5) she took Allen to the motel and gave him money so he could “lay low” under an assumed name.⁸ Br. of Resp. at 42-44.

⁸ The State presented no evidence that Latanya knew Allen registered under an assumed name. And the “lay low” admission came not from Latanya but from Cecily in response to the officer’s leading question. Latanya does not dispute, however, that she took Allen to the motel at least in part to avoid talking with the police.

We can easily infer from the above evidence that Maurice was capable of and did commit the four murders. We can also infer that Allen was with Maurice on the drive to the car wash and that he drove Maurice away from the car wash after the shootings. But this evidence does not prove that Latanya knew Allen actively participated in the murders as an accomplice.⁹ Accomplice liability follows only where the State proves the accomplice has general knowledge of *the* specific crime the principal intends to commit, rather than general knowledge that the principal intended *a* crime.¹⁰ *State v. Roberts*, 142 Wn.2d 471, 512-13, 14 P.3d 713 (2000) (accomplice liability follows only where the State proves the accomplice has general knowledge of *the* specific crime the principal intends to commit, rather than general knowledge that the principal intended *a* crime); *see also State v. Cronin*, 142 Wn.2d 568, 578-79, 14 P.3d 752 (2000). When talking with Latanya and her relatives, Allen consistently denied that he knew what Maurice was doing when he left the car wash that morning. Allen’s exclamations, “[O]h my God, oh my God, oh my God,” are consistent with his story, suggesting that he first learned of the murders from the news, not because he participated in them. Ex. 113.

Further, Allen’s explanation to Latanya of his interaction with Maurice on the morning of November 29 gave no hint that he knew of Maurice’s intentions or helped murder the officers.

⁹ A person is guilty as an accomplice where:

- (a) [w]ith knowledge that it will promote or facilitate the commission of the crime, he: (i) solicits, commands, encourages, or requests such other person to commit it; or (ii) aids or agrees to aid such other person in planning or committing it.

Former RCW 9A.08.020(3) (1975). In 2011, the legislature made the statute gender neutral.

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Former RCW 9A.08.020(3) (1975). In 2011, the legislature made the statute gender neutral.

Allen explained that when he and Maurice arrived at the car wash, neither had coins to operate the car wash machine. So, Maurice gave Allen money to make change at the Arco across the street. When Allen returned from the Arco to start washing the truck, Maurice was no longer there. Maurice showed up just before Allen started the car wash and demanded that they leave immediately, which Allen questioned since he had yet to wash the truck. This description is completely consistent with Allen's claims to Latanya that he did not know what Maurice planned to do or had done at the coffee shop.

Additionally, Allen's conduct on the day of the murders did not suggest that he participated as an accomplice. Unlike Maurice, who fled until the police shot him in Seattle two days after the murders, Allen returned home – to a residence connected both with Latanya and Maurice – and then accompanied Latanya to the Pacific house, which was also connected to the Clemmons family. In short, nothing that Allen said or did on the day of the shootings was inconsistent with his insistence to Latanya that he did not actively participate in a plan to kill four police officers.

Nor can we say that Allen's reluctance to speak with police or return to the Asotin house would cause Latanya to believe that he was guilty of murder. Some “individuals [] mistrust law enforcement officials and refuse to speak to them not because they are guilty of some crime, but rather because ‘they are simply fearful of coming into contact with those whom they regard as antagonists.’” *State v. Burke*, 163 Wn.2d 204, 219, 181 P.3d 1 (2008) (quoting *People v. De George*, 73 N.Y.2d 614, 618-19, 541 N.E.2d 11, 543 N.Y.S.2d 11 (1989)). Allen knew police would want to talk with him because he was Maurice's friend and co-worker and he was

connected to the truck. This knowledge still did not give Latanya a reason to suspect Allen was an accomplice to the murders.

We also consider the reasonable inferences that a jury could draw from Latanya's statements to the police and her manner of disclosing what she knew. In doing so, we are mindful that "[a]n accused's failure to disclose every detail of an event when first contacted by law enforcement officials is not per se an inconsistency." *Burke*, 163 Wn.2d at 219 (addressing why prior inconsistent statements may only be used for impeachment, not substantive guilt). The prosecutor argued in closing that he originally thought the question was "what did she [Latanya] know and when did she know it?" RP at 989. But he then decided the true question was "why wasn't she truthful to the police about what she knew and when she knew it?" RP at 989. Indeed, that was the State's strategy for prosecuting Latanya; lacking evidence that Latanya knew Allen participated knowingly in Maurice's plan, the State emphasized inconsistencies in her statements to the police.

During the December 1 interview, Latanya said she did not know on the day of the shootings that Allen was driving the truck; Allen told her only that he had talked with Maurice on the phone that morning. Later in the same interview, she said Allen mentioned that Maurice wanted him to go wash the truck, but Allen provided no additional details until the last night at the motel just before police arrived. At her second interview, on December 4, Latanya again maintained that Allen provided no details of the car wash trip until the last night at the motel. Near the end of the interview, she conceded that Allen told her on November 29 that he was in the truck with Maurice that morning and went to the car wash with him. She also admitted that

Allen wanted to go to the motel because the police would certainly look at the Asotin house in connection with the shootings. Additionally, the State showed, through Cicely's statement, that Latanya was present when Allen told the family the whole car wash story on November 29.

These inconsistencies are sufficient for a jury to find Latanya knew more of the story than she originally told the police. But they do not support the further inference that Latanya knew Allen was an accomplice to the murders. The story Latanya concealed was the same story Allen told her from the beginning – he did not know what Maurice was doing while he was away from the car wash that morning. The evidence does not show that Allen ever told Latanya or her relatives that he knew Maurice intended to kill the police officers and helped or offered help in committing the murders. And nothing that Allen did (in Latanya's presence) on the day of the shooting was inconsistent with his story or would give Latanya information that “would lead a reasonable person in the same situation to believe” Allen knew of the intended murders and actively participated in them.¹¹ See RCW 9A.08.010(b)(ii); see *Dugger*, 75 Wn.2d at 692 (circumstantial evidence must be inconsistent with any reasonable theory establishing innocence).

Even if we assume that Latanya should have suspected that Allen knew Maurice was shot when he returned to the truck, the assumption would not prove she knew Allen was an accomplice. The State conceded at oral argument that if Allen learned of the murders after the fact because of Maurice's wound, he would not be an accomplice to first degree murder but instead would have rendered criminal assistance. See *State v. Robinson*, 73 Wn. App. 851, 857-

¹¹ We also note that Latanya believed that Maurice was acting “crazy,” that something “clicked in his head” (apparently referring to the May assault), and that he needed help. Ex. 112. A reasonable person in Latanya's situation could easily conclude that Maurice was capable of an unplanned, deadly assault on four police officers without any warning to those around him.

58, 872 P.2d 43 (1994). Moreover, Allen's presence in the truck before the killings would not alone make him guilty as an accomplice; rather, the State would have to prove that Allen knew the specific crime or crimes Maurice intended to commit. *Robinson*, 73 Wn. App. at 857 (holding that the defendant could not be an accomplice to a robbery where he did not know the principal would jump out of the defendant's car, forcefully take a bystander's purse, and jump back into the car for a quick getaway; rather, the defendant's actions in driving the principal away could show only rendering criminal assistance); *see also Roberts*, 142 Wn.2d at 512 (holding that a person is not guilty under accomplice liability unless the person has "general knowledge of [the] specific crime" the principal intends to commit).

Finally, the State argued to the jury that Allen was an accomplice to the murders because (1) he went to the car wash on November 29; (2) he waved a waterless wand around the truck before Maurice returned to the wash stall, suggesting that he was at the car wash for some purpose other than actually washing the truck; (3) when Maurice returned to the truck after the shootings, Allen quickly drove him away; and (4) he and Maurice drove away from the car wash in a route more likely to take them to Saar's Market than the Asotin house.¹² But the State did not prove that Latanya knew about the waterless wand, the speeding away, the indirect route to her house, or the State's theory that Allen and Maurice had "dumped" the truck. Thus, even if this evidence supports the State's theory concerning Allen's guilt, it does not support Latanya's

¹² The State argued that Allen and Maurice traveled to Saar's Market to "dump" the "getaway truck," thereby allowing the jury to infer that the two planned the murders in advance and left another car at Saar's Market to facilitate their escape. The State presented no direct evidence that Allen actually drove to Saar's Market rather than to the Asotin house. And, the police did not discover the truck at Saar's Market until at least 30 - 40 minutes after the shooting, which would have allowed Maurice enough time to drop Allen off at the Asotin house and go to Saar's Market by himself or with help from others.

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guilt, as it does not prove she knew Allen actively and knowingly participated in the murders.

We conclude that the State's evidence failed to prove, as the to-convict instruction required, that Latanya knew Allen "committed . . . Aggravated Murder in the First Degree." CP at 1408; *see also* CP at 1-3.

2. Knowledge of Police Intent to Arrest Allen for Murder

We next consider whether the State nonetheless proved that Latanya knew the police were seeking Allen for the murders.

Latanya admitted that she watched the news all day on November 29 before she left to report to work. Detective Troyer, the media liaison for the police, testified that he advised the media at 2:00-3:00 p.m. the day of the shootings that Maurice was a “person of interest.” RP at 536. Detective Troyer testified that early in the investigation it was unclear how many people the police were actually looking for, but they “knew . . . at least two people that were involved one way or the other.” RP at 532. He also testified that he relayed to the media the description of the truck and the “suspects.” RP at 533. But he did not specify what they suspected the driver of; specifically, he never testified that he reported to the media that the police were looking for the truck driver as a *murderer*. In fact, his testimony shows that the police were interested in speaking with many people for possibly aiding Maurice before or after the murders as persons “involved one way or the other.” RP at 532.

Detective Troyer did testify that police were looking for the “person driving the truck for murder.” RP at 538. But he did not testify that he released that information to the media. In fact, he testified that after police identified Allen as the driver (on December 1), “I [Troyer] couldn’t tell you what exactly the charges they were looking for him [Allen] for were” RP at 538. Troyer explained that police believed a large group of people were helping “these people” and that he wanted to communicate to the group through the media that police would “come looking for you too.” RP at 539. But, this generalized statement to the media does not prove

that Latanya should have known from the news coverage that police sought Allen as an *accomplice to murder*. In fact, the only actual news coverage entered into evidence was a short excerpt played by Latanya's counsel from an interview with Diane Sawyer on November 30, where the information presented was that the police sought only Maurice because he was the suspect shooter.¹³ Ultimately, this evidence is insufficient to show that police released to the media that they were seeking the driver for "the commission of" a murder. Former RCW 9A.76.050, .070.

Additionally, Detective Brian Byerly, the lead for the team that contacted Latanya and Allen at New Horizons Motel, testified:

Q: And what were you looking for him [Allen] for?

A: Because he was allegedly the driver who drove Maurice Clemmons from the shooting.

Q: Was there a particular crime you had in mind or you just wanted to talk to him?

A: Just wanted to talk to him.

RP at 632. This further confirms that any information released to the media regarding Allen did not clearly convey that he was sought by police as an accomplice to the murders.

Latanya's only other source of information regarding whether police sought Allen for the murders was Allen himself. But, as discussed above, Allen consistently denied he aided Maurice in commission of the murders or even knew the murders occurred until later. And his conduct and statements while the news unfolded on television were consistent with his denial. Detective Troyer's characterization of disclosing the description of the "suspects" must be viewed against

¹³ Detective Troyer testified that the national coverage, such as the interview with Diane Sawyer, was more limited than the local coverage, and he could not affirmatively state whether the short clip was the only information disseminated to the media at that point on November 30.

this backdrop of what Latanya knew—that Allen could be a “suspect” for driving Maurice away from the crime scene, not for having participated in the shootings. Thus, the State failed to present any evidence that Latanya knew the police were seeking Allen for committing the murders.

In conclusion, the State failed to prove that Latanya knew Allen was an accomplice to the murders Maurice committed. At most, the State proved that Latanya knew Allen rendered criminal assistance to Maurice by driving him away from the scene. Similarly, the State failed to prove that Latanya knew the police sought Allen for the murders. The evidence showed that Latanya could have known only that the police sought Allen *in connection* with the crimes.¹⁴ Accordingly, we hold that the evidence was insufficient to support Latanya’s conviction. We reverse and remand for dismissal with prejudice.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Armstrong, J.

I concur:

Penoyar, C.J.

¹⁴ The State phrases the statute as requiring proof only that Latanya knew the police were “looking for Allen in connection with the murder.” Br. of Resp. at 45. The statute’s plain language, however, requires the State to prove that the police were looking for Allen for the “commission” of the murders. Former RCW 9A.76.050, .070.

Quinn-Brintnall, J. (dissenting) — Because properly applying the appropriate standard of review makes clear that sufficient evidence supports Latanya Clemmons’s first degree rendering criminal assistance convictions, I respectfully dissent.

Evidence is sufficient if, viewed in a light most favorable to the jury’s verdict, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201. Circumstantial evidence is no less reliable than direct evidence and “specific criminal intent of the accused may be inferred from the conduct where it is plainly indicated as a matter of logical probability.” *State v. Johnson*, 159 Wn. App. 766, 774, 247 P.3d 11 (2011) (quoting *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). Our role as a reviewing court is not to reweigh the evidence and substitute our judgment for that of the jury. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Instead, we defer to the jury’s resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

To convict Latanya¹⁵ of first degree rendering criminal assistance, the State must prove that she (1) intended to (2) prevent, hinder, or delay (3) the apprehension or prosecution of another person (4) who she knew law enforcement sought for committing a crime. RCW 9A.76.050; former RCW 9A.76.070 (2003). The State must also prove Latanya assisted that

¹⁵ The first names of Latanya Clemmons and Maurice Clemmons are used for clarity.

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person by harboring, concealing, warning, or providing money or transportation. RCW 9A.76.050(1)-(3). A renderer need not know the degree of the crime for which police seek the assisted person; knowledge of the police search alone is sufficient. *See State v. Anderson*, 63 Wn. App. 257, 260, 818 P.2d 40 (1991) (citing former RCW 9A.76.070), *review denied*, 118 Wn.2d 1021 (1992).

Here, the State charged Latanya with four counts of first degree rendering criminal assistance to Darcus Allen, who drove Maurice Clemmons away from a car wash moments after Maurice had shot and killed four police officers at a nearby Forza coffee shop. On November 29, 2009, Allen woke Latanya at 8 am to watch a news report showing Maurice's truck in connection with the shootings. After the news report, en route to Latanya's aunt's home, Allen admitted he had spoken with Maurice that morning and that Maurice had wanted him to go to the car wash. Allen later admitted to Latanya and her family that he had been in Maurice's truck and that he had been at the car wash near the Forza coffee shop displayed in the news.

Latanya watched news reports the entire day of the shootings. Within 10 minutes of the shooting the baristas who had witnessed the murders reported to police that they had seen the shooter walk from the Forza coffee shop to a white pickup truck parked in the car wash. They told police that the shooter got into the passenger side of the vehicle which then raced out of the car wash with tires squealing. The police notified the media that the driver of Maurice's truck was a "person of interest" at 2 pm or 3 pm. Hours later, Latanya gave him \$50 and took him to a motel to avoid police questioning rather than return to the room he rented from Maurice where the police were likely to find him. Latanya confronted Allen late the following day regarding his

specific involvement in the shootings and learned Allen had driven Maurice away from the crime scene after the event.

The majority holds that this evidence is insufficient to “prove that Latanya knew Allen actively participated in the murders as an accomplice.” Majority at 11. But RCW 9A.76.050 and former RCW 9A.76.070 do not require the State to prove Latanya knew of Allen’s “active participation” in the shooting. Rather, former RCW 9A.76.070 requires the State prove only that Latanya knew law enforcement officials sought Allen for committing a crime when she assisted him in avoiding law enforcement. *Anderson*, 63 Wn. App. at 260.

In addition, the State need not prove “that Allen ever told Latanya or her relatives that he knew Maurice intended to kill the police officers and helped or offered to help in committing the murders.” Majority at 14. A confession to a defendant charged with rendering assistance is not a required element under RCW 9A.76.050. Whether Allen deceived or withheld information from Latanya during the hours after the shooting is irrelevant to proper appellate review of the legal sufficiency of the evidence supporting the jury’s finding that Latanya herself knew the police sought Allen “for the commission of the” murders. RCW 9A.76.050; *Salinas*, 119 Wn.2d at 201.

The majority cites *Anderson* for the proposition that “a renderer must know *the* crime the principal committed,” and that “here, the State charged Latanya with rendering criminal assistance to Allen, ‘a person who committed or was being sought for Aggravated Murder in the First Degree.’” Majority at 9. Although this is an accurate statement of the posture of this case, the majority misapplies *Anderson* and disregards the State’s burden of proof under RCW 9A.76.050. The *Anderson* court held that a renderer must know that an assisted person committed robbery,

i.e., the underlying crime, and may be convicted of first degree rendering criminal assistance even if he did not know the facts showing the degree of the crime. 63 Wn. App. at 260. But a person renders criminal assistance if she knows the assisted person *either* committed a crime “*or* is being sought by law enforcement officials for the commission of a crime.” RCW 9A.76.050 (emphasis added).

Unlike *Anderson*, the question before us is not whether Latanya knew the facts to prove that Allen committed the first degree aggravated murders but whether sufficient evidence supports the jury’s finding that she knew police sought Allen for the murders when she rendered assistance. And although here, as in *Anderson*, the assisted person was later convicted of the crime for which he was sought, nothing in RCW 9A.76.050 indicates that such a conviction is a necessary prerequisite to convict a renderer who assists a person she knows is being sought by the police for the commission of that crime. Thus, to convict Latanya of first degree rendering criminal assistance, the State need only have proven that she knew police sought Allen for committing murder when she rendered assistance. *Anderson*, 63 Wn. App. at 260.

The majority notes the trial court instructed the jury that it must have found Latanya knew Allen “had committed or was being sought for Aggravated Murder in the First Degree” to return a guilty verdict. Majority at 9. In light of *Anderson*, I question whether this jury instruction actually raises the State’s burden to prove the rendering criminal assistance charge. Even assuming the majority is correct, given the undisputed evidence of premeditation and aggravating factors, our review of the sufficiency of the evidence in the instant case is the same. The evidence here is undisputed that the murder of the four officers was premeditated and aggravated.

Evidence of the presence and use of a weapon, here multiple gunshots from a firearm Maurice brought to the scene, is sufficient to support a finding of premeditated intent to kill. *State v. Ollens*, 107 Wn.2d 848, 851-53, 733 P.2d 984 (1987). Likewise, evidence of multiple victims connected by a common scheme or plan, RCW 10.95.020(10), and their status as law enforcement officers, RCW 10.95.020(1), amply supports a finding that the premeditated killings were aggravated. *State v. Kincaid*, 103 Wn.2d 304, 309-12, 692 P.2d 823 (1985).

The record is rife with proof that the police sought Allen as an accomplice to Maurice's premeditated murders of the four police officers. RCW 9A.32.030(1)(a). By the afternoon of November 29, when the media announced that police sought the driver of the pick-up truck that drove the shooter from the scene, Latanya knew Allen had met Maurice and was with the truck at the car wash near the Forza when Maurice murdered the officers.¹⁶ On these facts, any rational trier of fact could reasonably infer that Latanya knew the police sought Allen for the murders when she gave him \$50 and took him to the motel. *Salinas*, 119 Wn.2d at 201. She need not have known to what degree or in what capacity the police suspected he participated in those crimes only that they sought him. Sufficient evidence amply supports the jury's verdict finding Latanya guilty of count I (transporting to the motel) and count II (providing money for the hotel). *Johnson*, 159 Wn. App. at 774 (citing *Delmarter*, 94 Wn.2d at 638).

¹⁶ In fact, the evidence showed that Latanya knew the driver's identity before law enforcement did. And she knew Allen was not an innocent bystander forced at gunpoint to drive the escaping murderer from the scene. The majority gives great weight to Allen's reportedly telling Latanya of his lack of foreknowledge of Maurice's plan to shoot the officers. But a proper application of the sufficiency of the evidence standard requires that we review this self-serving report and all inferences in favor of the jury's verdict. In this case, that means the jury likely found Allen's self-serving statement, coupled with Latanya's initial lies about not having seen Allen, incredible and afforded it no weight, which, as the determiner of the credibility and weight of the evidence, it was entitled to do.

On review, an appellate court does not reweigh the evidence or supplant its judgment for that of a reasonable jury merely because it would have decided the case differently. *Green*, 94 Wn.2d at 221; *Walton*, 64 Wn. App. at 415-16. Nevertheless, the majority reverses Latanya’s convictions, reading into former RCW 9A.76.070 a requirement that she must have known Allen “actively participated” in the murders. No such requirement exists. The elements of the crime of rendering criminal assistance are established by the legislature and set out in RCW 9A.76.050. To read the statute as does the majority conflates the distinction between accomplice liability before the fact and accomplice liability after the fact contrary to Washington law. *Compare* RCW 9A.08.020(3) *with* RCW 9A.76.050; *State v. Budik*, 173 Wn.2d 727, 743-44, 272 P.3d 816 (2012) (Madsen, C.J., concurring/dissenting).

Because sufficient evidence supports the jury’s finding that Latanya knew law enforcement sought Allen for the commission of the murders of the Lakewood police officers, and because the State need not have proven Latanya knew the exact capacity, if any, of Allen’s participation, sufficient evidence supports the jury’s verdict as a matter of law. Accordingly, I would affirm her first degree rendering criminal assistance convictions.

QUINN-BRINTNALL, J.