NO. 96739-3
COA No. 50136-8-II
50746-3-II

IN THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

CHARLES EDWARD PASCHAL,
Appellant.

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

PETITION FOR REVIEW

Charles E. Paschal
Appellant, Pro se

Stafford Creek Corr. Ctr.,
191 Constantine Way,
Aberdeen, WA., 98520

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TABLE OF AUTHORITIES

A. STATUS OF PETITIONER

Petitioner, Mr. Charles Edward Paschal, the appellant below, asks this Court to review the following court of appeals decision.

B. COURT OF APPEALS DECISION

Appellant seeks review of division two's consolidated decision in STATE V. PASCHAL, No. 50136-8-II, and IN RE PERSONAL RESTRAINT OF PASCHAL, No. 50746-3-II, attached as APPENDIX - A. [2]

C. ISSUES PRESENTED FOR REVIEW

In 2014, Paschal was sentenced to 360-months confinement after jury trial. He was convicted of assault in the first degree, and unlawful imprisonment, inter alia. The jury also returned special verdict findings that the alleged offenses were aggravated domestic violence offenses. CP 131-135.

1. Does the court of appeals decision conflict with this Court's decision in Suleiman, infra, where the lower court affirmed appellant's conviction absent suffficient evidence to support exceptional sentence?

2. Does the court of appeals decision conflict with this Court's decision in Peterson, infra, where the court of appeals affirms the first degree assault conviction absent sufficient evidence to support the conviction?

[2] APPENDIX - B, [VRP 260-262]

D. STATEMENT OF THE CASE

Mr. Paschal, and Ms Katherine Martin had two children together. RP 236. They lived, and worked together but their relationship fell on lower ground. RP 237-38, 243.

After agreeing to live together, Mr. Paschal set up a barbershop in the adjacent garage, and worked assembling the items bought at IKEA. RP 245, 694. Ms. Martin, and the children made, and ate dinner. RP 245-45; 693-95. The children then watched television in Martin's bedroom. RP 171-172, 695.

At one point in the evening, Martin turned the argument physical by slapping Paschal in the face. RP 705. Paschal warned Martin not to do it again. However, Martin attempted to slap Paschal again, and Paschal slapped Martin five-times in the face. RP 706-07. The couple had been drinking alcoholic beverages at the time of this incident. Id.

Charlise Paschal, petitioner's minor daughter, testified that on the night in question, she fell asleep during a movie at the residence in question. RP 745. Even though it was nearly a year ago, Charlise remembered all who were present: "me, my dad, my brother, my sister, and my dad's girlfriend, [Ms. Martin]." RP 750 [Emphasis added].

Charlise testified that her dad picked her up from her mothers' residence, and took her over to Ms. Martins' house to have a sleep-over with her siblings. id. When Charlise heard thumping, and a loud argument, she stepped outside the-

door, and merely saw Ms. Martin on the floor. Mr. Paschal directed Charlise to go back inside Martins' room, and Charlise insisted that she wanted to retrieve and hold her baby brother. RP 752.

When Paschal made an attempt to leave Martins' residence with his two minor children, Ms. Martin grabbed, and tore petitioner's shirt, and insisted that Charlise, and Chanelle stay over night with her. RP 752.

Chanelle Paschal, petitioner's other minor daughter, testified she did not remember anything that happened during the time of the incident on the night in question. None of the children testified that they saw, or heard any of the incidents described by Ms. Martin at trial.

The court of appeals, Division Two's unpublished opinion, affirmed Paschal's first degree assault conviction despite insufficient evidence of first degree. Appendix-A, [Unpublished Op., at 8-9].

The court of appeals also affirmed Paschal's exceptional sentence despite no evidence that the alleged assault occurred within sight or sound of Paschals' two minor children. [Unpublished Op., at 9-10]. The court of appeals clearly made an objectively unreasonable determination in light of the evidence presented at trial. See [Unpublished Op., at 10], [Martin supposedly testified that when the two children in the bedroom opened the door, the two children started screaming while Paschal strangled Martin].

To the contrary, Martin testified as follows:

> A."Our kids opened up the door."
>
> Q. "Okay. And that was Charlise and Chanelle?"
>
> A. "Charlise and Chanelle opened the door, I got up and ran to my patio and I just booked it." RP 260.

When Ms. Martin was asked if she remembered saying anything to the children that night, Martin replied "I can't remember. I was -- I was so concerned about saving myself." Id.

The prosecutor attempted to ask Martin leading questions to change her testimony at trial:

> Q. "Okay. So you -- he had gone towards the bedroom: is that right?"
>
> A. "Yeah."
>
> Q. "Okay. And that's when the door had opened is that right?"
>
> A. "I remember when this happened -- but I can't remember anything specific right now. I can't remember the word they used back and forth or what he told them." RP 261.
>
> ...
>
> A. "Oh yeah, because I remember the kids being really upset and screaming." Id.

The reason why Charlise and Chanelle were "upset and screaming" was because Martin attempted to prevent petitioner from leaving with them, and tore petitioners' shirt in the process. RP 752.

In light of the record presented above, the court of appeals decision was based on an unreasonable determination of the facts.

E. ARGUMENT WHY RELIEF SHOULD BE GRANTED

1. PETITIONER'S EXCEPTIONAL SENTENCE WAS NOT SUPPORTED BY THE RECORD, THEREBY DEPRIVING HIM OF RIGHTS TO DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED-STATES CONSTITUTION

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Salinas, 119 Wash.2d 192, 201, 829 P.2d 1168 (1982). Circumstantial and direct evidence are deemed equally reliable. An appellate court defers to the jury on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Thomas, 150 Wash.2d 821, 874-75, 83 P.3d 970 (2004), (citing, State v. Cord, 103 Wash.2d 361, 367, 683 P.2d 81 (1985)).

An appellate Court reviews the evidence "in the light most favorable to the State." State v. Varga, 151 Wash.2d 179, 201, 86 P.3d 139 [2004]. Evidence is sufficient to support an aggravating circumstance if it allows any rational trier of fact to find the aggravating circumstance beyond a reasonable doubt. Jackson, Id.; State v. Chanthabouly, 164 Wash. App. 104, 142, 262 P.3d 144 2011), ("We review a jury's special verdict finding the existence of an aggravating circumstance under the sufficiency of the evidence standard").

When jurors find aggravating circumstances, the trial court is bound by those findings, and thereafter, must decide "[w]hether the facts alleged and found were sufficiently substantial and compelling to warrant an exceptional sentence." State v. Suleiman, 158 Wash.2d 280, 290-91, 143 P.3d 795 (2006); State v. Williams-Walker, 167 Wash.2d 889, 899, 225 P.3d 913 [2010]; RCW 9.94A.537[6].

An offense involving domestic violence occurring within the sight or sound of an alleged victims' child is a statutorily recognized aggravating factor supporting an exceptional sentence. RCW 9.94A.535[3][h][ii].

Here, Mr. Paschal had assigned error to the trial court's finding that the alleged offenses occurred within the sight or sound of his two minor children, and argues that they were not present during the alleged offense. RP 260-262.

In this regard, no evidence corroborates the jury's special verdict findings, and therefore, the trial court's reason for imposing an exceptional sentence of 360-months is not supported by the record. Therefore, Paschal argues that the court of appeals holding that the two children in the bedroom opened the door and started screaming while Paschal strangled Ms. Martin amounts to an unreasonable determination of the facts in light of the evidence presented at trial.

Further, the evidence, and testimony do not support a findings that the petitioner's two children heard the crimes or seen any crime occur on the night in question.

The childrens' testimony reflects that Charlise fell asleep while watching television in a separate room at the residence. RP 745. Chanelle testified she did not recall what happened on the night in question. RP 307. Viewed in the light most favorable to the State, this evidence was not sufficient to support a finding by the jury that the alleged domestic violence aggravating circumstance was present in this case under the theory alleged. Therefore, the trial court's decision to rely on this factor was clearly erroneous as a matter of law. Clearly, the trial court erred by imposing an exceptional sentence as no evidence from the record shows that Paschal committed the alleged offense within the sight or sound of his two minor children.

The court of appeals' contrary conclusion conflicts with the U.S. Supreme Court decision of Jackson v. Virginia, supra, and Suleiman, 158 Wash.2d, at 290-91. This Court should grant review, RAP 13.4[b][1],[4].

2. PETITIONER'S CONVICTION WAS A DIRECT RESULT OF INSUFFICIENT EVIDENCE, THEREBY DEPRIVING PETITIONER OF DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

"A claim of insufficiency admits the truth of the States evidence and all inferences that reasonably can be drawn therefrom." State v. Salinas, 119 Wash.2d 192, 201, 829 P.2d 1068 [1992]. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 [1979].

Circumstantial and direct evidence are deemed equally reliable. An appellate court defers to the jury on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Thomas, 150 Wash.2d 821, 874-75, 83 P.3d 970 [2004], [Citing, State v. Cord, 103 Wash.2d 361, 367, 693 P.2d 81 [1985].

Here, Paschal first argues that the prosecution failed to present evidence that he intended to inflict "great bodily harm' as the record lacks evidence of first degree assault.

The court of appeals held that despite Ms. Martins' minor injuries, in viewing the evidence in the light most favorable to the State, "a reasonable fact finder could have easily found beyond a reasonable doubt that Paschal intended to inflict great bodily harm on Martin and he assaulted her by force or means likely to produce bodily injury which created a probability of death." Appendix-A, [Unpublished Op., at 8-9]. Paschal contends that this holding conflicts with this Court's holding in State v. Peterson, 133 Wash.2d 885, 948 P.2d 381 [1997], infra.

First, 'intent' is present when a person 'acts with the objective or purpose to accomplish a result which constitutes a crime.'" RCW 9A.08.010. The WPIC states that a person commits the crime of first degree assault with intent to inflict great bodily harm when he or she assaults another, and inflicts 'great bodily harm.'" 11 Wash. Prac., Crim. 26.03 [2008].

"Great bodily harm' is defined as bodily injury which-

creates a probability of death, or which causes significant serious permanent disfigurement or which causes significant permanent loss of impairment of the function of any bodily part or organ. RCW 9A.04.110 [4][c].

"Assault" is not defined in the criminal code, and in this regard, our Washington Courts have turned to the common law for it's definition. State v. Aumick, 73 Wash. App. 375, 382, 869 P.2d 421 [1994].

Specific intent cannot be presumed, but may be inferred as a logical probability from all the facts and circumstances. State v. Wilson, 125 Wash.2d 212, 217, 883 P.2d 320 [1994].

Here, the court of appeals decision was based on an unreasonable determination of the facts in light of the evidence presented at trial. For instance, the court of appeals held that Ms. Martin was "punched" five times in the face "and head," "slammed her head into the staircase," "and held his hand over her face to prevent her from breathing." Appendix - A, [Unpublished Op., at 8-9]. Ms. Martin sustained her minor injuries by her own actions of jumping over fences, and bushes with hardly no clothing to protect her. 3VRP 208-209.

American Medical Response, ["AMR"], who responded to the 911 call involving Ms. Martin, testified that Martin had abrasions to both legs, and lacerations to her arms which were sustained by climbing over fences, and bushes. id.

The medic testified that there were absolutely no internal injuries or fractures that were sustained -- "basically bruises." 3VRP 218. Martin suffered no head, neck, or back pain. 3VRP 224; no extreme injuries, 3VRP-225. No weapons were involved. 3VRP 225-26.

Ms. Martin admitted that she attacked petitioner first, and that she was under the influence of cocaine, and alcohol. 3VRP 248-49. When Martin ran, and attempted to jump over fences, she testified she could not see where she was going. 3VRP 262-63. She only sustained minor injuries. 3VRP 264.

Here, Paschal argued before the court of appeals that that the jury may not infer criminal intent from evidence that is patently equivocal, State v. Vasquez, 178 Wash.2d 1, 14, 309 P.3d 318 (2013); [Appellants' Reply Brief, at 4]. Paschal further argued that the State failed to show " great bodily harm," an element of first degree assault.

Moreover, Paschal relied on this Court's holding in State v. Peterson, 133 Wash.2d 885, 948 P.2d 381 [1997], an assault one case. [PRP, at pp. 7].

Peterson, and the victim, Julie T. Mathews, spent the day together drinking alcohol, and driving around looking for a place to target shoot. Thereafter, Peterson drove to the shores of Banks Lake. While the victim had been sitting on a protruding rock overlooking the lake, Peterson approached the victim from behind, and pushed her off the rock into the water that was two feet deep. Peterson-

then walked out into the water where the victim had landed, grabbed her by the neck, and head, and held her head under the water. The victim flailed her arms in an attempt to get free. At one point, her head emerged above the water, and she screamed "I can't swim!"

Shortly thereafter, Peterson left her head under water continuously for 10 to 15-seconds until he finally released, and she scrambled up to the bank to the car. While under water, the victim did not know if she was going to drown or survive. She felt the burning of water in her nose, and in her lungs. She was terrorized.

Peterson pursued the victim to the car, where, while she cowered on the ground, the defendant beat her with his fists, and kicked her until he was ordered to stop by witnesses who had arrived in response to the victims' screams. 133 Wash.2d, at 886-887.

Finally, at the close of the evidence, Petersons' counsel argued that the State had failed to show "grievous bodily harm," an element of first degree assault. Id. The State conceded, and the trial court found that Peterson's actions were not likely to, nor had they in fact, caused "grievous bodily injury." Id.

In the instant case, like Peterson, Paschal inflicted only minor injuries to the victim, when he, as the States' theory, "punched" Martin five times with his "closed fist." Any and all other testimony regarding this incident that-

amounted to only minor injuries, do not rise to the level of "grievous bodily injury," or "great bodily harm," to support Paschal's first degree assault conviction. Peterson, 133 Wash. 2d, supra at 887.

Since intent may not be inferred "as a logical probability from all the facts and circumstances" of this case, and given the extent and nature of Martins' minor injuries, the court of appeals decision conflicts with this Court's decision in Peterson, supra, and the U.S. Supreme Court's decision in Jackson v. Virginia, supra. This Court should grant review. RAP 13.4[b][1],[4].

F. CONCLUSION

For the reasons set forth above, the Court should grant review. RAP 13.4(b), 13.6.

DATED this 9th. day of January, 2019

Respectfully submitted,

/s/Charles Paschal
Petitioner, Pro se

APPELLANT'S

Appendix A

[COA. UNPUBLISHED OPINION]

COA. No. 50136-8-II
No. 50746-3-II
PETITION FOR REVIEW
CHARLES EDWARD PASCHAL

Filed
Washington State
Court of Appeals
Division Two

December 18, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CHARLES EDWARD PASCHAL, Appellant.	No. 50136-8-II Consolidated with:
In re the Personal Restraint of: CHARLES EDWARD PASCHAL, Petitioner.	No. 50746-3-II UNPUBLISHED OPINION

Lee, J. — Charles E. Paschal appeals his exceptional sentence on remand, arguing that the sentencing court violated the appearance of fairness doctrine by not decreasing the length of his sentence following his successful appeal and that the sentencing court's failure to decrease his imposed sentence created a presumption of vindictiveness. In a consolidated personal restraint petition (PRP), Paschal challenges the sufficiency of the evidence to support his first degree assault conviction and the aggravating circumstance that he assaulted his girlfriend within sight and sound of their minor children. We affirm Paschal's sentence and deny his PRP.

FACTS

One evening in March 2013, Paschal and his then girlfriend, Katherine Martin, got into an argument in Martin's home. According to Martin, Paschal assaulted her for several hours that night.

Paschal first slapped Martin's face with an open hand. He then began punching her face and head with his closed fist. Martin described the blows as constant and could not keep count of the number of individual punches that Paschal levied. As he punched her, Paschal repeatedly told Martin that he was going to "rape [her], kill [her], and take all [of her] money." 3 Verbatim Report of Proceedings (VRP) (May 20, 2014) at 254. At one point, Paschal repeatedly slammed Martin's head into the staircase.

Later, Paschal forced Martin to perform oral sex on him. Afterward, he placed her in a "wrestling-type hold" and strangled her. 3 VRP (May 20, 2014) at 258. Paschal continued to tell Martin that he was going to rape her, kill her, and take her money. Paschal strangled Martin so tight that she could not move her legs or fingertips. He also placed his hand over Martin's mouth and nose, periodically letting go to allow Martin to take a couple of breaths, but then covered her face again and resumed strangling her.

During this entire incident, Paschal and Martin's two minor children, and Paschal's four year old daughter from a prior relationship, were inside the house. Two of the children were in the upstairs master bedroom. Martin and Paschal's infant son was asleep downstairs. All of the children were within earshot of Paschal and Martin the entire night.

As Paschal strangled Martin, the two children in the master bedroom opened the door and began screaming. Paschal released Martin and ran to the bedroom door. Martin got up and ran

out the back door to a neighbor's house. The neighbors called 911. Martin lost consciousness twice during the 911 call. One of the responding paramedics who treated Martin knew her socially, but he did not recognize her that night because the injury to Martin's face was so severe.

At trial, Martin testified to the facts discussed above. Paschal also testified and admitted that he hit Martin out of anger "five times with [his] back hand, pow, pow, pow, pow, pow." 5 VRP (May 22, 2014) at 706-07. He denied hitting Martin anywhere else aside from her "face and head area." 5 VRP (May 22, 2014) at 707.

A jury found Paschal guilty of first degree assault,[1] first degree rape,[2] unlawful imprisonment,[3] and two counts of second degree assault.[4] The jury also found that the special allegation that the offense involved domestic violence and occurred within sight or sound of either the victim or offender's minor children applied.[5]

The trial court sentenced Paschal to an exceptional sentence of 360 months confinement on the first degree rape conviction and 360 months confinement on the first degree assault conviction, with the sentences to run concurrently.[6] The court found that a sentence above the

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[1] RCW 9A.36.011(1)(a).

[2] RCW 9A.44.040(1)(c).

[3] RCW 9A.40.040.

[4] RCW 9A.36.021

[5] RCW 9.94A.535(3)(h)(ii). RCW 9.94A.535 has been amended since the events of this case transpired. However, the amendments do not materially affect the statutory language relied on by this court. Accordingly, we refrain from including the word "former" before RCW 9.94A.535.

[6] The trial court found that Paschal's two second degree assault convictions merged with Paschal's first degree assault conviction and vacated the two second degree assault convictions. The trial

standard range was justified for both the first degree rape and first degree assault convictions based upon the aggravating circumstance that the offenses involved domestic violence and occurred within sight or sound of the victim or offender's minor children. The court stated, "If this case were sentenced just on Rape I or just on Assault I, the sentence would be the same. It's 360 months." 7 VRP (Aug. 18, 2014) (Sentencing) at 926.

Paschal appealed, and we held that the trial court improperly admitted prior domestic violence evidence under ER 404(b). We also held that this error was harmless as to the first degree assault and unlawful imprisonment convictions, but not harmless as to the first degree rape conviction. As a result, we reversed and remanded Paschal's first degree rape conviction.

On remand, the State declined to proceed to a new trial on the first degree rape count. The judge who presided over Paschal's original sentencing again presided over his resentencing. The resentencing court vacated Paschal's rape conviction and resentenced him only on the first degree assault and unlawful imprisonment convictions. The court sentenced Paschal to an exceptional sentence of 360 months confinement on the first degree assault conviction and 12 months on the unlawful imprisonment conviction, to be served concurrently, for a total of 360 months confinement. The resentencing court entered findings of fact and conclusions of law supporting the exceptional sentence, again finding that a sentence above the standard range was warranted based on the aggravating circumstances that the offense involved domestic violence and occurred within sight or sound of the victim or offender's minor children.

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court also sentenced Paschal to 366 days on the unlawful imprisonment conviction, to be served concurrently with the rape and assault sentences.

Paschal appeals his judgment and sentence. He also challenges the sufficiency of the evidence against him in a PRP.[7]

ANALYSIS

A. APPEARANCE OF FAIRNESS DOCTRINE

Paschal argues that the resentencing court violated the appearance of fairness doctrine when it imposed the same sentence following remand as it imposed prior to his first appeal. We disagree.

Paschal is correct that " '[t]he law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial.' " *In re Pers. Restraint of Swenson*, 158 Wn. App. 812, 818, 244 P.3d 959 (2010) (internal quotation marks omitted) (quoting *State v. Post*, 118 Wn.2d 596, 618, 826 P.2d 172 (1992)). However, we presume that a judge acts without prejudice or bias. *Id.* "Without evidence of actual or potential bias, an appearance of fairness claim cannot succeed and is without merit." *Post*, 118 Wn.2d at 619.

Here, Paschal cites to no evidence showing that the judge who sentenced him was biased or prejudiced against him. And the record does not contain any evidence of bias or prejudice. Paschal's sole basis for his appearance of fairness claim appears to depend on his vindictive sentencing claim, which as explained below, is without merit. Therefore, Paschal's challenge under the appearance of fairness doctrine fails.

B. VINDICTIVE SENTENCE

Paschal next argues that the presumption of vindictiveness applies here because the resentencing court did not reduce his sentence on remand even though it vacated his first degree

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[7] We consolidated Paschal's PRP with his appeal.

rape conviction. Because the resentencing court did not increase Paschal's sentence on remand, we hold that the presumption of vindictiveness does not apply.

Increased sentences motivated by a judge's vindictive retaliation after reconviction following a successful appeal is proscribed by the due process clause of the Fourteenth Amendment to the United States Constitution. *State v. Franklin*, 56 Wn. App. 915, 920, 786 P.2d 795 (1989), *review denied*, 114 Wn.2d 1004 (1990). The *Franklin* court acknowledged that the United States Supreme Court has held that a more severe sentence on remand establishes a rebuttable presumption of vindictiveness. *Id.* Washington courts have applied this presumption, but have held that it does not arise when there is no increase in the sentence on remand. *See id.*; *State v. Larson*, 56 Wn. App. 323, 326, 783 P.2d 1093 (1989), *review denied*, 114 Wn.2d 1015 (1990).

Here, on remand, the resentencing court imposed the same sentence on Paschal's first degree assault conviction as it had prior to his successful appeal—360 months confinement. Contrary to Paschal's unsupported assertion, the resentencing court's failure to decrease his sentence does not equate to increasing it. At Paschal's original sentencing, the presiding judge explained, "If this case were sentenced just on Rape I or just on Assault I, the sentence would be the same. It's 360 months." 7 VRP (Aug. 18, 2014) at 926. Paschal's sentence remained the same, and therefore, there is no presumption of vindictiveness here. We affirm.

C. ATTORNEY FEES

Paschal asks that this court decline to impose appellate costs if the State prevails on appeal. The State represents that it will not seek appellate costs. We accept the State's representation and decline awarding appellate costs to the State.

D. PERSONAL RESTRAINT PETITION

Paschal argues that insufficient evidence supported his conviction for first degree assault because the resulting injuries to Martin were "minor" and did not result in great bodily injury. PRP at 9. He also argues that insufficient evidence supported the aggravating circumstance that the assault occurred within the sight and sound of their minor children. We disagree on both accounts.

1. Standard of Review

To be entitled to relief on a PRP, a petitioner must show that he or she is under unlawful restraint. RAP 16.4(a). Restraint is unlawful when, "[t]he conviction was obtained or the sentence or other order . . . was imposed or entered in violation of the Constitution of the United States or the Constitution or laws of the State of Washington." RAP 16.4(c)(2). "A conviction based on insufficient evidence contravenes the due process clause of the Fourteenth Amendment and thus results in unlawful restraint." *In re Pers. Restraint of Martinez*, 171 Wn.2d 354, 364, 256 P.3d 277 (2011).

At the same time, "[a] PRP is not a substitute for a direct appeal and the availability of collateral relief is limited." *In re Pers. Restraint of Wolf*, 196 Wn. App. 496, 502, 384 P.3d 591 (2016). "Relief by way of a collateral challenge to a conviction is extraordinary, and the petitioner must meet a high standard before this court will disturb an otherwise settled judgment." *In re Pers. Restraint of Coats*, 173 Wn.2d 123, 132, 267 P.3d 324 (2011). A petitioner alleging a constitutional error must demonstrate " 'actual and substantial' " prejudice to obtain relief through a PRP. *In re Pers. Restraint Brockie*, 178 Wn.2d 532, 536, 309 P.3d 498 (2013) (quoting *In re Pers. Restraint of Cook*, 114 Wn.2d 802, 810, 792 P.2d 506 (1990)).

2. Sufficiency of Evidence

"The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An insufficiency claim admits the truth of the State's evidence and all reasonable inferences that can be drawn from that evidence. *Id.* All such inferences "must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.* Direct and circumstantial evidence are equally reliable. *State v. Farnsworth*, 185 Wn.2d 768, 775, 374 P.3d 1152 (2016). We defer to the trier of fact on issues of conflicting testimony, witness credibility, and the persuasiveness of evidence. *State v. Ague-Masters*, 138 Wn. App. 86, 102, 156 P.3d 265 (2007).

a. First degree assault conviction

Paschal contends that his restraint is unlawful because his first degree assault conviction rests on insufficient evidence. Specifically, he argues that the State failed to present evidence that he intended to inflict great bodily harm and that Martin only suffered "minor injuries." PRP at 8.

A person is guilty of first degree assault "if he or she, with intent to inflict great bodily harm . . . [a]ssaults another with a firearm or any deadly weapon or by any force or means likely to produce great bodily harm or death." RCW 9A.36.011(1)(a). "Great bodily harm" is defined as "bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ." RCW 9A.04.110(4)(c).

Here, the State presented evidence that over the course of several hours, Paschal repeatedly punched Martin's face and head, slammed her head into a staircase, strangled her, and held his

hand over her face to prevent her from breathing. Paschal strangled Martin so tight that she was unable to move her legs or fingertips. And as Paschal assaulted Martin, he repeatedly told her that he was going to kill her, rape her, and take her money.

Martin lost consciousness twice while waiting for help to arrive. And even though one of the responding paramedics knew Martin socially, he did not recognize her because the injury to Martin's face was so severe. Paschal might characterize these injuries as "minor," but viewing this evidence in the light most favorable to the State, a reasonable fact finder could have easily found beyond a reasonable doubt that Paschal intended to inflict great bodily harm on Martin and that he assaulted her by force or means likely to produce bodily injury which created a probability of death. PRP at 8.

b. Aggravating circumstance—within "sight or sound" of minor children

Next, Paschal argues that insufficient evidence supported the aggravating factor that the offense occurred within sight or sound of the victim or offender's minor children. He argues that the evidence was insufficient because the State failed to present any evidence that the minor children "saw or heard" him assaulting Martin. Motion to Amend PRP at 6.

The sentencing court may impose a sentence outside the standard sentencing range if a jury finds the aggravating circumstance that the offense involved domestic violence and "occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years." RCW 9.94A.535(3)(h)(ii). Contrary to Paschal's assertion, the plain language of this statute does not require the State to prove that a minor child witnessed the offense; it only requires the State to prove that the offense occurred "within sight or sound" of the victim's or the offender's minor child. RCW 9.94A.535(3)(h)(ii).

Here, it is undisputed that the children were inside of the house within earshot of Martin and Paschal throughout the assault. And Martin testified that the two children in the bedroom opened the door and started screaming while Paschal strangled her. In fact, the only reason Martin escaped Paschal was because the minor children opened the bedroom door and Paschal ran toward them. Viewing this evidence in the light most favorable to the State, the jury could have found beyond a reasonable doubt that Paschal assaulted Martin within sight or sound of their minor children.

We hold that both of Paschal's sufficiency of the evidence challenges fail. Accordingly, we affirm Paschal's sentence and deny his PRP.

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.

Lee, J.

We concur:

Maxa, C.J.

Melnick, J.

APPELLANT'S

Appendix B

[VERBATIM REPORT OF PROCEEDINGS]
VRP 260-262

COA. No. 50136-8-II
No. 50746-3-II

A. (Nonverbal response)
Q. Okay. Did you, at any point, hear him say anything to them during the night?
A. I can't remember. I was -- I was so concerned about saving myself.
Q. And do you recall him having a discussion with Charlise or Chanelle about contacting the police or talking to anyone?
A. I really can't remember anymore.
Q. Okay. So you -- he had gone towards the bedroom; is that right?
A. Yeah.
Q. Okay. And that's when the door had opened; is that right?
A. That's when -- yeah -- well, yeah, and he -- I don't know if they started screaming or something happened to get him to run over there.
Q. And could you hear what they were saying or anything?
A. I remember when this happened -- but I can't remember anything specific right now. I can't remember the words they used back and forth or what he told them.
Q. So they were -- were they talking to each other?
A. Oh, yeah, because I remember the kids being really upset and screaming.
Q. Okay. And how could you tell they were upset?
A. They were screaming.
Q. Okay. Did they seem scared or upset?

A. I can say yes, but all of this happened so fast.
Q. Sure. How long was it that you saw them?
A. It would have been seconds, really. Because the moment that he got off me and I knew he got far enough away to that door, I knew that was the last -- my last chance.
Q. Okay. And so you indicated that you ran to the back door. What type of door is it?
A. It's a sliding glass door.
Q. Okay. And so were you able to get out the door?
A. I was able to get out the door.
Q. Okay. So where did you go then?
A. I ran -- so my deck on my outside has a straight pathway that goes to some grass, and then you have to go downstairs to get to my side gate to get out.

And I initially ran out and ran down the side -- to the side gate thinking I could unlatch it and run, but I could not -- it was a new house. I had not used that frequently, and I could not figure out where the latch was. And so, I mean, I was panicked. I remember just being panicked.

Q. What were you thinking?
A. Oh, I knew he was going to find -- I knew he was going to be right behind me. Oh, I knew it. And so my last hope, though, was to run back up the stairs -- so getting back closer to that situation, but I found a -- well, my stairs go up like this to the grass, and the fence is lining it,

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, CHARLES EDWARD PASCHAL, declare and say:

That on the 10th day of JANUARY, 2019, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. PENDING:

PETITION FOR REVIEW;

APPENDIX A: COURT OF APPEALS DECISION w/VRP 260-262.;

APPENDIX - B;

addressed to the following:

SUPREME COURT OF WASHINGTON
P.O. BOX 40929
OLYMPIA, WA., 98504-0929

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

DATED THIS 10th day of January, 2019, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Charles Paschal
Signature

Charles E. Paschal
Print Name

DOC 374765 UNIT H2-A-20
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520