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COURT OF APPEALS
DIVISION II

No. 36734-3-II

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COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON
BY [Signature]

DEPUTY

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RENEE A. FIELD,

Appellant.

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable Toni A. Sheldon, Judge
Cause No. 07-1-00129-8

BRIEF OF RESPONDENT

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PRM 1-ded-08

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COUNTERSTATEMENT OF ISSUES

- 1.) Whether there is sufficient evidence to support the convictions? (Assignments of Error 1).
- 2.) Whether the trial court properly imposed a sentence that included both incarceration near the statutory maximum and the required period of community custody? (Assignment of Error 2)

A. STATEMENT OF THE CASE

1.) Procedural Facts

Field was charged by amended information with assault in the third degree – domestic violence, contrary to RCWs 9A.08.020, 9A.36.031(1)(d) and 10.99.020, on July 17, 2007. (CP 62-63).

Trial to a jury commenced on July 12, 2007, with the Honorable Toni A. Sheldon presiding. (RP 7). No pre-trial motions were filed nor heard regarding either a CrR 3.5 or 3.6 hearing. (RP 3)

The jury returned a verdict of guilty as to the charge of assault in the third degree, but did not find that the crime was committed against a household or family member. (CP 29, 31). Field was sentenced within the standard range. (CP 4-20). Timely notice of this appeal followed.

2. Substantive Facts

Fifteen-year-old A.M. returned home on November 12, 2006, after being gone for four days. (RP 85, 127.) She had attempted to check in with her father, Dorsey Moody, and his live-in girlfriend, Renee Field, but

was not successful (RP 127, 136). Moody decided that A.M.'s punishment would be a spanking, so Moody, who was yelling and screaming at this point, told A.M. to "get to her f'ing room" while he went to fetch a large wooden stick that had previously been a sledgehammer handle. (RP 86, 89, 127). When Moody began striking A.M. on her buttocks with the wooden sledgehammer handle, A.M. struggled with him. (RP 88, 129). Moody then called on Field to help him restrain A.M. while he was hitting A.M. (RP 89). Field lifted A.M. up off the floor by her ponytail, threw her on the bed, then held down A.M.'s head and arms while Moody continued to beat A.M. with the wooden sledgehammer handle on her buttocks, back and the back part of her thighs. (RP 91, 130, 133, 139). A.M. sustained bruising, red welts and marks on her back as a result of the beating. (RP 131, 133). Photographs of A.M.'s injuries were admitted as evidence. (RP 154-158).

Shortly after Moody finished, A.M. left the residence and called the police from a neighbor's house. (RP 134). Field admitted to grabbing A.M.'s hands and holding them over A.M.'s head while Moody spanked A.M., but denied intentionally pulling A.M.'s hair. (RP 236). Moody likewise testified that "[a]ll [Field] did was hold her hands out of the way so that I would not hit her [A.M.'s] hands." (RP 91).

B. ARGUMENT

1. IN THE LIGHT MOST FAVORABLE TO THE STATE, THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JURY FINDINGS.

State v. Holt, 119 Wn.App. 712, 82 P.3d 688 (2004) succinctly sets out the considerations when sufficiency of the evidence is raised on appeal:

Evidence is sufficient if, viewed in the light most favorable to the State, it permits any rational trier of fact to find all of the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wash. 2d 333, 338, 851 P.2d 654 (1993). A claim of insufficiency admits the truth of the State's evidence and requires that all reasonable inferences be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wash.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is accorded equal weight with direct evidence. *State v. Delmarter*, 94 Wash.2d 634, 638, 618 P.2d 99 (1980). In reviewing the evidence, we give deference to the trier of fact, who resolves conflicting testimony, evaluates the credibility of witnesses, and generally weighs the persuasiveness of the evidence. *State v. Walton*, 64 Wash.App. 410, 415-16, 824 P.2d 533 (1992) *review denied*, 119 Wash.2d 1011, 833 P.2d 386 (1992).

To convict Field of the crime of assault in the third degree, the State must prove that Field, acting either personally or as an accomplice, with criminal negligence, caused bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm. RCW 9A.36.031(d), RCW 9A.08.020.

Criminal negligence is defined as follows:

A person is criminally negligent or acts with criminal negligence when he fails to be aware of a substantial risk that a wrongful act may occur and his failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable man would exercise in the same situation.

RCW 9A.08.010(1)(d)

“Credibility determinations are within the sole province of the jury and are not subject to review.” *State v. O’Hara*, 141 Wn.App. 900, 911, 174 P.3d 114, 119 (2007), citing *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997). Assessing discrepancies in trial testimony and weighing the evidence are also within the sole province of the fact finder. *Id.*, citing *State v. Longuskie*, 59 Wash.App. 838, 844, 801 P.2d 1004 (1990).

The totality of the circumstances in this case support the jury’s finding of guilt on the charge of assault in the third degree. There is undisputed evidence that Moody, aided by Field, struck A.M. on her buttocks, back and thighs with a wooden sledgehammer handle, resulting in welts and bruises on those parts of A.M.’s body. Field, by agreeing to assist Moody in holding down A.M., became an instrumental player in Moody’s beating of A.M. But for Fields’ assistance, Moody would probably not have had unimpeded access to A.M.’s backside and would probably not have been able to strike A.M. as hard or as accurately as he

did. There is no evidence to suggest that Field declined to assist Moody or intervened to stop Moody's anger-fueled assault on A.M. Rather, by her own admission, Fields actively participated in the event.

Furthermore, photographic evidence of A.M.'s injuries refuted testimony by Fields and Moody in which they downplayed the severity of the beating, suggesting that Moody only hit A.M. a few times. (RP 89, 239).

The jury evaluated the credibility of Moody and Fields' minimization of the incident and found it wanting.

2. THE TRIAL COURT DID NOT ERR BY IMPOSING A SENTENCE WHICH INCLUDED BOTH INCARCERATION NEAR THE STATUTORY MAXIMUM AND THE REQUIRED PERIOD OF COMMUNITY CUSTODY.

Fields cites to *State v. Sloan*, 121 Wn.App. 220, 87 P.3d 1214 (2004) in support of her argument that the trial court exceeded the statutory maximum for a class C felony by imposing both a 53 month sentence plus 9-18 months of community custody. However that is exactly the type of sentence upheld in *Sloan*. Tina Sloan was sentenced to 60 months (the maximum) plus 36-48 months community custody. The *Sloan* court recognized that a defendant may earn early release credits and that those credits could effect the time in custody and therefore the total time on community custody status. *Sloan* at 223.

The remedy in such a circumstance is clarification of the sentence, not resentencing.

To avoid confusion, therefore, when a court imposes community custody that could theoretically exceed the statutory maximum sentence for that offense, the court should set forth the maximum sentence and state that the total of incarceration and community custody cannot exceed that maximum.

Sloan at 223-224.

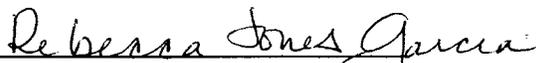
This court should remand for solely for clarification of the existing sentence by incorporating a statement “that the total of incarceration and community custody cannot exceed the maximum” as suggested by the *Sloan* court. There is no need under existing caselaw for any other change in the sentence as ordered.

C. CONCLUSION

Based on the foregoing, the State respectfully asks this Court to affirm the conviction and remand for clarification of the sentence as imposed.

DATED this 21st day of July 2008.

Respectfully submitted,


Rebecca Jones Garcia, WSBA # 27730
Deputy Prosecuting Attorney
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)
)
 Respondent,)
)
 vs.)
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 RENEE A. FIELD,)
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 Appellant,)
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No. 36734-3-II

DECLARATION OF
FILING/MAILING
PROOF OF SERVICE

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DIVISION II
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STATE OF WASHINGTON
BY DEPUTY

I, MARGIE OLINGER, declare and state as follows:

On July 22nd 2008, I deposited in the U.S. Mail, postage properly prepaid, the documents related to the above cause number and to which this declaration is attached (BRIEF OF RESPONDENT), to:

Thomas E. Doyle
Attorney For Appellant
P.O. Box 510
Hansville, WA 98340-0510

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

Dated this 22nd day of July, 2008, at Shelton, Washington.


Margie Olinger

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