

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

STATE OF WASHINGTON,)	
)	No. 66862-5-I
Respondent,)	
)	
v.)	
)	UNPUBLISHED OPINION
KURT CHARLES BOERNER,)	
)	FILED: January 30, 2012
Appellant.)	
)	

Per Curiam. Kurt Boerner appeals his conviction for second degree assault. His counsel contends, and the State concedes, that the trial court erred in imposing mental health treatment as a condition of community custody. A trial court may order a mental health evaluation and recommended treatment as a condition of community custody only if “the court finds, based on a presentence report and any applicable mental status evaluations, that the offender suffers from a mental illness which influenced the crime.” State v. Jones, 118 Wn.App. 199, 202, 76 P.3d 258 (2003). The State concedes “there was no presentence report for the trial court to consider and the court did not make the requisite findings.” We accept the concession and remand with directions to strike the mental health evaluation/treatment condition from Boerner’s sentence.

Boerner raises several additional claims in his statement of additional grounds

No. 66862-5-1/2

for review. He contends the State failed to prove the assault was intentional because he denied such intent when he testified at trial, because the victim “signed [a] release permission to show it wasn’t a violent stabbing,” and because the wound was too superficial to be intentional. It is well settled, however, that matters pertaining to the credibility of witnesses, conflicting testimony, and the persuasiveness of the evidence are the exclusive province of the jury. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

Boerner also criticizes his trial counsel but relies on matters outside the record and, in any event, fails to allege a prima facie case of ineffective assistance of counsel. His remaining claims do not sufficiently describe “the nature and occurrence” of the alleged errors. RAP 10.10.

We affirm Boerner’s conviction but remand for the court to strike the challenged condition of community custody.

FOR THE COURT:





