

72121-6

72121-6

No. 72121-6

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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KATHERINE WALZ (DOB 7/12/2004),

Respondent

v.

JADEN SINGH (DOB 1/5/2004),

Appellant

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BRIEF OF APPELLANT

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7/21/2015  
10:13 AM  
COURT OF APPEALS  
DIVISION ONE  
STATE OF WASHINGTON

Linda Lillevik, WSBA # 17227  
Attorney for Appellant

CAREY & LILLEVIK, PLLC  
1809 7<sup>th</sup> Avenue, Suite 1609  
Seattle, WA 98101-1313

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**A. ASSIGNMENTS OF ERROR**

1. The lower court erred by granting the protection order against 10 year old Jaden Singh because there was insufficient evidence that Jaden was capable of committing harassment.

2. The lower court erred by granting the protection order against 10 year old Jaden Singh because there was insufficient evidence that Jaden's actions constituted harassment.

3. The lower court erred by considering Jaden's actions when he was 7 years old in evaluating this petition because a 7 year old is statutorily incapable of committing crime and that incident was too far removed in time to be considered as part of the same course of conduct as the two incidents three years later.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

RCW 9A.04.050 provides that a child under the age of 8 years old is incapable of committing crime and creates a presumption that a child between 8 and 12 years old is incapable of committing any crime. The presumption may be rebutted by clear and convincing evidence that child had sufficient capacity to understand act and to know that it was wrong. Under RCW 10.14.080(3) and RCW 10.14.020(2), a court may enter a protection order if it finds by preponderance of the evidence that the respondent has committed "unlawful harassment," which includes the

following elements: (1) a knowing and willful (2) course of conduct (3) directed at such specific person (4) which seriously alarms, annoys, harasses, or is detrimental to a person and (5) serves no legitimate or lawful purpose. Jaden was 7 years old during the first incident in this case and was 10 years old during the more recent two incidents, and he has a diagnosis for ADHD and has an IEP for social and emotional issues.

1. Where a 7 year old is statutorily incapable of committing crime, did the lower court err in considering the incident when Jaden was 7 years old as part of the same course of conduct as the two incidents when Jaden was 10 years old?

2. Was there insufficient evidence to rebut the presumption that Jaden was incapable of forming the knowing and willful intent necessary to commit harassment during the two incidents when he was 10 years old?

3. Did Jaden's actions constitute harassment?

### **C. STATEMENT OF THE CASE**

Jaden Singh is a 10 year old boy who attends Brookside Elementary School. RP 3.<sup>1</sup> A photo of Jaden with his family is attached at CP 12. At the time the petition in this case was filed, Jaden was about to finish the fourth grade. RP 3. Jaden was not represented by counsel at

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<sup>1</sup> One volume of the verbatim report of proceedings has been filed in this case and will be referred to as "RP."

the protection order hearing and his parents did not bring him to testify at the court hearing. RP 2-3.

Jaden has faced several significant challenges in the past couple years. Jaden's biological father recently decided, after a number of abuse investigations by Child Protective Services, to relinquish his parental rights to Jaden. See Declaration of Heidi Mann attached at CP 12.<sup>2</sup> Jaden has also had to adjust to life with a new sister born in July 2012, and was recently informed in April 2014 that his mother is pregnant with another child due in December 2014. *Id.* Jaden's parents have helped him through this difficult period in his life by providing counseling since 2012 and medication management to address ADHD. *Id.*; see also Letter from Mindful Therapy Group attached at CP 12.<sup>3</sup> Jaden's school has helped him by providing an Individualized Education Plan (IEP) to address emotional and social issues. See IEP attached at CP 12.<sup>4</sup>

Katherine Walz is another child about to finish fourth grade at Brookside Elementary School. RP 5. A photo of her with her family is also attached at CP 12. Katherine is six months younger than Jaden but

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<sup>2</sup> This declaration was filed prior to the protection order hearing and was attached at Exhibit 4 to Respondent's Motion for Reconsideration.

<sup>3</sup> This letter was filed prior to the protection order hearing and was attached as Exhibit 6 to Respondent's Motion for Reconsideration.

<sup>4</sup> This letter was filed prior to the protection order hearing and was attached as Exhibit 5 to Respondent's Motion for Reconsideration.

she is significantly taller and heavier than Jaden – 5 feet 1 inch tall and 150 pounds compared with Jaden’s 4 feet 3 inches tall and 70 pounds. CP 12.

Katherine and Jaden do not get along at school. In first grade, when they were seven year old children, they were competitive with each other and teased each other frequently. CP 12. Katherine’s mother, Denise Walz, testified that she saw Jaden push Katherine against the wall and tell her, “Nobody likes you.” RP 12-13. Mrs. Walz described seven-year-old Jaden as “terrifying” and immediately told the teacher about the incident. RP 12-13. The teacher responded by moving the children’s desks in order to separate them. CP 12. The teacher reported to Jaden’s mother, Heidi Mann, that this seemed to solve the issue. *Id.*

On June 13, 2011, at the end of the first grade year, Jaden’s mother attended a field trip with Jaden, Katherine, Katherine’s father, and other children and parents. CP 12. Ms. Mann observed that Katherine constantly complained to her father about Jaden’s behavior on the hike (e.g., stepping on the wrong rock, hiking ahead of her, picking a leaf off a tree). *Id.* During lunch, Katherine teased Jaden because her lunch was better than his. *Id.* Jaden wanted to tell his teacher about what Katherine was doing, but Jaden’s mother told him to let it go. *Id.* Ms. Mann did not

feel it was appropriate to bring up this issue with the teacher in light of the fact that the school year was almost over. *Id.*

The school did not report any issues to Jaden's mother while Jaden and Katherine were in second and third grades. *Id.* However, Katherine's father, James Walz, testified that Katherine told him that she had to be separated from Jaden due to "Jaden's continued harassment" that "wasn't physical, it was all verbal." RP 8-9.

When the children were in fourth grade, their teacher assigned Jaden and Katherine to share a cubby and sit in desks next to each other. RP 9. Katherine informed her parents that Jaden had pushed her, and Katherine's parents demanded that the teacher separate the children again. RP 9; CP 12. According to Mr. Walz, the teacher "immediately had their desks separated and changed cubbies." RP 9.

Mr. Walz testified that in May 2014, the children's teacher asked the entire class to write down occasions where Jaden physically assaulted them. RP 10. He stated that, in response, Katherine reported that Jaden "physically assaulted" her. *Id.* On May 27, 2014, Mr. Walz went to the school to confront the principal about why they had not responded to Katherine's report. *Id.* When Mr. Walz came out of the meeting with the principal, Katherine informed him that Jaden had pushed her during that meeting. *Id.* In response to Katherine's May 27, 2014 report that Jaden

pushed her, the teacher reprimanded Jaden and moved his desk to sit next to the teacher's desk. CP 12.

On May 28, 2014, Katherine's father approached Jaden and yelled, "Hey Jaden, don't you get close to my daughter, stay 10 feet away from her, or else!" CP 12. Jaden told his mother about this and explained that Katherine had been antagonizing him. *Id.* Ms. Mann reminded Jaden that there was only one month left of school, and asked him to let it go or to tell his teacher if Katherine continued to antagonize him. *Id.* Ms. Mann also contacted Mindful Therapy Group to request services for Jaden including weekly individual therapy and medication management. CP 12.

On May 29, 2014, the principal met with Jaden's parents and later informed Mr. Walz that she expected that there would not be any further issues. RP 11; CP 12. On the same day, Katherine approached Jaden's desk and he stepped on her foot. RP 11 (Katherine informed her father that Jaden approached her), RP 13 (teacher informed Ms. Mann that Katherine approached Jaden); CP 12. In response, the school suspended Jaden for 3 days. RP 13-14.

That night, Mr. Walz called Jaden's mother and yelled at her and threatened to get a restraining order against Jaden and to call the police. CP 12. Ms. Mann hung up the phone and Mr. Walz called back and left a threatening message. *Id.* On June 2, 2014 – two days before Jaden's

suspension would have ended – Mr. Walz filed a petition for a protection order. *Id.* On June 3, 2014, Ms. Mann was served with a temporary protection order prohibiting Jaden from attending his school. *Id.* By the time of the protection order hearing on June 10, 2014, Jaden had missed eight days of school. RP 14. At the time of the hearing, there were eight days remaining of the school year. *Id.*

After hearing testimony by both of Katherine’s parents, Katherine, and Jaden’s mother, the Court concluded, “there has been harassment by Jaden against Katherine” and ordered Jaden to transfer schools. RP 15. The Court reasoned, “they haven’t been able to work it out even going to different classrooms, and they’re not likely to work it out.” *Id.* Ms. Mann pointed out that the school had not had a chance to separate the children into different classrooms yet as a result of the 3-day suspension and the temporary protection order. RP 15-16.

However, the Court ordered the school to transfer Jaden to another school and explained:

I think children are impulsive by nature. We don't expect them to think things through like adults do, and I don't want Jaden in the Juvenile Court system, charged with assaulting Katherine or harassing her or charged with assaulting some other child. I don't want him in that system. And I am afraid that if they go to the same school, and even if they're in different classrooms, there are going to be problems. He is going to have – he is going to try to encourage one of his friends to bother her, or he's going to find a way to annoy

her because he's annoyed. I just don't think it's a healthy situation. It's gone on for several years. This is not just a temporary matter. Katherine's mother's seen the incident in the first grade. That's gone for a long time. I think there needs to be a break, and Jaden just needs to go to a different school this year and next.

RP 16-18.

**D. ARGUMENT**

1. THERE WAS INSUFFICIENT EVIDENCE THAT 10-YEAR OLD JADEN SINGH WAS CAPABLE OF HARASSMENT OR THAT HIS ACTIONS CONSTITUTED HARASSMENT.

The legislature enacted the civil anti-harassment statutes in 1987. *See* Laws of 1987, ch. 280, §§ 1-22. They authorize a court to enter a civil anti-harassment order if it finds by a preponderance of the evidence that “unlawful harassment” exists. RCW 10.14.080(3).

The elements of “unlawful harassment” are (1) a knowing and willful (2) course of conduct (3) directed at such specific person (4) which seriously alarms, annoys, harasses, or is detrimental to a person and (5) serves no legitimate or lawful purpose. RCW 10.14.020(1); *Burchell v. Thibault*, 74 Wash.App. 517, 521, 874 P.2d 196 (1994).

Course of conduct means a pattern and series of acts “evidencing a continuity of purpose,” and includes either contact or conduct, but not constitutionally protected activity. RCW 10.14.020(2); *Burchell*, 74

Wn.App. at 521. The course of conduct must be such that it would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner or cause a reasonable parent to fear for the well-being of his or her child. RCW 10.14.020(1); *Burchell*, 74 Wn.App. at 521.

Under RCW 10.14.030, in determining whether a respondent's course of conduct serves any legitimate or lawful purpose, the court should consider whether:

- (1) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;
- (2) The respondent has been given clear notice that all further contact with the petitioner is unwanted;
- (3) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;
- (4) The respondent is acting pursuant to any statutory authority, including but not limited to acts which are reasonably necessary to:
  - (a) Protect property or liberty interests;
  - (b) Enforce the law; or
  - (c) Meet specific statutory duties or requirements;
- (5) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner;
- (6) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

Because the respondent in this case is a 10 year old child who could face detention if he violates the court order by attending his school, the Court's evaluation of whether the he committed harassment requires an analysis of whether the respondent was even capable of harassment.<sup>5</sup>

RCW 9A.04.050 provides in relevant part,

Children under the age of eight years are incapable of committing crime. Children of eight and under twelve years of age are presumed to be incapable of committing crime, but this presumption may be removed by proof that they have sufficient capacity to understand the act or neglect, and to know that it was wrong.

The presumption that child between eight and 12 years of age is incapable of committing any crime may be rebutted by clear and convincing evidence that child had sufficient capacity to understand act and to know that it was wrong. RCW 9A.04.050; *State v. Q.D.*, 102 Wn.2d 19, 26, 685 P.2d 557 (1984); *State v. Linares*, 75 Wn.App. 404, 410, 880 P.2d 550

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<sup>5</sup> The penalties for violating an anti-harassment order are set forth in RCW 10.14.120, which provides in relevant part:

Any respondent under the age of eighteen years who willfully disobeys the terms of an order issued under this chapter may, in the court's discretion, be found in contempt of court and subject to the sanction specified in RCW 7.21.030(4).

RCW 7.21.030(4), in turn, provides:

If the court finds that a person under the age of eighteen years has willfully disobeyed the terms of an order issued under chapter 10.14 RCW, the court may find the person in contempt of court and may, as a sole sanction for such contempt, commit the person to juvenile detention for a period of time not to exceed seven days.

(1994); *State v. Erika D.W.*, 85 Wash. App. 601, 605, 934 P.2d 704, 706 (1997).

The determination of whether a child lacks capacity to commit crime is fact-specific and must be in reference to the specific act charged. *State v. Ramer*, 151 Wn.2d 106, 86 P.3d 132 (2004). The relevant inquiry is whether child appreciated quality of his or her acts at time act was committed. *State v. T.E.H.* (1998) 91 Wash.App. 908, 960 P.2d 441.

There are seven factors to consider in determining child's capacity to commit crime: (1) the nature of the crime, (2) the child's age and maturity, (3) whether the child evidenced a desire for secrecy, (4) whether the child told the victim, if any, not to tell, (5) prior conduct similar to that charged, (6) any consequences that attached to that prior conduct, and (7) whether child had made an acknowledgment that the behavior is wrong and could lead to detention. *Id.*

In this case, there was not sufficient evidence of capacity to rebut the presumption that 10 year old Jaden was not capable of committing a crime. The Court found there was a course of conduct over a long period of time based on Katherine's mother's testimony that Jaden pushed Katherine and told her "nobody likes you" when they were both in first grade. RP at 17. However, Jaden was seven years old at the time and not

capable of committing a crime under RCW 9A.04.050. Because Jaden was not legally competent at the time, this incident should not have factored into the Court's evaluation of whether harassment occurred. Further, because the first grade incident is so far removed in time from the recent incidents and is separated by two years of no unwanted physical conflict, this incident is not relevant to showing the continuity of purpose necessary to prove harassment.

Regarding the more recent events, there is no dispute that Jaden pushed Katherine while her father was meeting with the principal about Jaden on May 27, 2014, and that Jaden stepped on Katherine's foot on May 29, 2014. However, there is no evidence that Jaden was capable of or possessed the willful, directed *mens rea* required to commit harassment. Instead, the evidence shows that Jaden is an impulsive and emotional little boy who has been diagnosed with ADHD and has an IEP for social and emotional issues. Consequences for Jaden's behavior always involved the school separating him from the other child or the threat of suspension. It never entered his young mind that stepping on another child's foot would result in a court prohibiting him from going to his school for an entire year.

It is understandable that Katherine's parents and the Court were concerned that Jaden stepped on Katherine's foot so soon after he was

reprimanded by the school for pushing Katherine. But, the Court must consider the context of Jaden's actions. Rather than leave it to the school or Jaden's parents to deal with the problem, Katherine's father approached Jaden directly and yelled at him, "Hey Jaden, don't you get close to my daughter, stay 10 feet away from her, or else!" CP 12. Jaden told his mother about this and reported that Katherine was antagonizing him. Rather than responding in kind to Katherine's father's aggression toward her son, she told Jaden to let it go. The next day, according to the children's teacher, Katherine approached Jaden and he stepped on her foot. CP 12.

*She approached him.* Jaden's actions were not willful and directed at harassing Katherine. He was responding to what he reasonably perceived as a threat: a girl twice his size coming within 10 feet of him so she would have an excuse to tell her father to follow through with his threats.

This Court should have considered the context of Jaden's actions in evaluating whether Jaden harassed Katherine. Under RCW 10.14.030(1), "the court should consider whether any current contact between the parties was initiated by the respondent only or was initiated by both parties." The evidence shows that Katherine's father (a physically intimidating and aggressive person) threatened Jaden if he came within 10

feet of his daughter, and then Katherine came within 10 feet of him the next day at school. Jaden felt threatened and acted impulsively.

Because there is insufficient evidence of harassment and insufficient evidence that Jaden is even capable of committing harassment, this Court must vacate the protection order and dismiss this case.

**2. THE ANTI-HARASSMENT ORDER WAS UNNECESSARY TO PREVENT FURTHER UNWANTED CONTACT BETWEEN THE CHILDREN BECAUSE THE SCHOOL HAD ALREADY RESPONDED WITH A 3-DAY SUSPENSION AND A PLAN TO SEPARATE THE CHILDREN INTO DIFFERENT CLASSROOMS.**

It appears from the Court's ruling that the Court's primary purpose for entering this highly unusual protection order against a 10 year old was to protect Jaden from being involved in the juvenile justice system in the future. RP 16-18. Besides the fact that this paternalistic approach is inconsistent with the legislative intent of the protection order statute, this reasoning is problematic because the Court completely ignored the efforts by the school and by Jaden's parents to deal with the conflict between these two children, and entered the protection order without allowing the school to attempt to address the conflict first.

The school responded to complaints by Katherine and her parents in the first grade by separating the children. This solution prevented unwanted physical contact until the fourth grade year when the teacher –

who was unaware of the conflict between the children – assigned them to share a cubby and sit next to each other in class. When the children experienced conflict in that situation, the school dealt with it by assigning separate desks and cubbies. When Katherine reported that Jaden had pushed her, the school responded by reprimanding Jaden and speaking with his parents. Jaden’s mother signed him up for weekly therapy. When Jaden stepped on Katherine’s foot, the school attempted to address the problem by suspending Jaden from school for three days and by dividing the children into separate classes for the remainder of the school year. However, this Court’s order interfered with that attempt before it could have any effect.

This protection order serves only to further stigmatize Jaden and vindicate Katherine’s parents for their overly aggressive actions against Jaden. This case should have been handled by the school, and the Court should have allowed the school the opportunity to do so.

#### **E. CONCLUSION**

For these reasons, Jaden Singh respectfully asks this Court to reverse the protection order in this case and allow him to attend school at Brookside Elementary.

RESPECTFULLY SUBMITTED this 12 day of September

2014.



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LINDA LILEVIK, WSBA #17227  
Attorney for Appellant

CAREY & LILLEVIK, PLLC  
1809 Seventh Ave., Suite 1609  
Seattle, WA 98101-1313  
(206) 859-4550

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5 **IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
6 **DIVISION I**

7 James Walz,  
8 obo Katherine Walz (7/12/2004)  
9 Respondents,  
10 vs.  
11 Jaden Singh (1/5/2004)  
12 Petitioner.

Case No. 72121-6-I

**AFFIDAVIT OF SERVICE**

13 I, Lee Glidewell, hereby declare as follows:

- 14 1. I am over the age of eighteen and am employed as a legal assistant at Carey & Lillevik.
- 15 2. September 12, 2014, I did the following:
- 16 a. I sent a copy of the Brief of Appellant to James Walz and Katherine Walz at 2017  
17 NE 177<sup>th</sup> St, Shoreline, Washington, 98155 via USPS 1<sup>st</sup> class mail;
- 18 b. I sent a copy of the Brief of Appellant to James Walz and Katherine Walz, at 2017  
19 NE 177<sup>th</sup> St, Shoreline, Washington, 98155 via USPS Certified Mail, return receipt  
20 requested;

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

23 DATED this 12th day of September, 2014 in Seattle, Washington.

24   
25 Lee Glidewell

26  
27  
28 **DECLARATION OF MAILING**

Page 1 of 1

**CAREY & LILLEVIK, PLLC**  
1809 Seventh Avenue, Suite 1609  
Seattle, WA 98101  
Tel.: (206) 859-4550  
Fax: (206) 829-2086