

73337-1

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NO. 73337-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

M.R.,

Appellant,

v.

M.D.,

Respondent.

**BRIEF OF AMICI CURIAE
KING COUNTY SEXUAL ASSAULT RESOURCE CENTER AND
WASHINGTON COALITION OF SEXUAL ASSAULT
PROGRAMS**

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2018 APR 30 11:19:38
STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I

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A. IDENTITY AND INTEREST OF AMICI

Amici Curiae King County Sexual Assault Resource Center (“KCSARC”) and Washington Coalition of Sexual Assault Programs (“WCSAP”) are organizations with extensive experience advocating for the rights of sexual assault victims.

KCSARC is a non-profit organization founded in 1976 that serves victims of sexual assault and their families. As the largest sexual assault services organization in the state of Washington, we provide advocacy to over 1,700 victims each year. Our services also include a 24-hour resource line, trauma-focused therapy, parent education, and prevention education.

WCSAP, founded in 1979, is the only statewide organization linking 42 community sexual assault programs throughout the State of Washington. WCSAP engages in legislative and systems advocacy toward improving the legal response, both civil and criminal, to survivors of sexual violence.

Through working with victims and organizations that serve victims for nearly four decades, *amici* recognize some of the unique difficulties faced by victims that file for Sexual Assault Protection Orders (SAPOs). *Amici* are greatly interested in the outcome of this case as it may impact the law governing what a petitioner must prove in order to protect herself

from her offender, and thus, will directly impact sexual assault victims statewide that are seeking this critical protection.

B. ISSUES ADDRESSED BY AMICI

1. Did M.R. sufficiently allege a “reasonable fear of future dangerous acts” in her petition?
2. Should M.R.’s delay in filing for a Sexual Assault Protection Order have been a basis for its dismissal?

C. STATEMENT OF THE CASE

On January 14, 2015, M.R., a student at the University of Washington, filed for a sexual assault protection order in King County Superior Court. CP 1. The petition alleged nonconsensual sexual conduct and penetration perpetrated by the respondent on May 9, 2014. CP 4. M.R. certified under penalty of perjury that M.D. penetrated her vagina with his fingers and mouth, including biting her vagina, that he attempted to penetrate her vagina with his penis, and that he forced his penis into her mouth causing her to feel as if she was choking. CP 4. M.R. also stated that the sexual assault caused her to bleed—that there was blood the size of a basketball hoop under the sink, and that her clothing was soaked with blood. CP 4. Eight declarations were also submitted in support of M.R.’s

petition, where the declarants noted the distress that the sexual assault had caused to M.R. CP 15-31. One stated that she was afraid to walk on campus for fear that she would run into M.D., and that when she did encounter him occasionally, she was so upset that she began shaking. CP 18. It states that M.R. experienced nightmares, got very little sleep, and sometimes did not eat because she was so nervous. CP 18.

Shortly after the sexual assault, M.R. left the Seattle area for summer break. CP 18. When she returned for fall quarter, M.R. reported the rape to the University of Washington Police Department on September 10, 2014. CP 34. The investigation was submitted to the King County Prosecuting Attorney's Special Assault Unit, and the charges were declined. CP 34. Subsequent to the decline decision, M.R. filed a complaint with the University of Washington Office of Community Standards and Student Conduct, which issued a No Contact Order. CP 35. Because she encountered the Respondent several times after the No Contact Order was in effect, M.R. decided to apply for a Sexual Assault Protection Order. CP 4.

When the case was set for a full hearing on the protection order, M.D.'s attorney made a motion for judgment in favor of the respondent (to dismiss the petition) because M.R. did not prove by a preponderance of the evidence a "reasonable fear of future dangerous acts." CP 42-43. The

court granted the dismissal, citing that “[t]he petitioner failed to establish that she had any reasonable fear of future dangerous acts from the respondent and therefore the temporary order was invalid.” CP 116. The trial court also found that the delay in M.R. filing for a SAPO was too long: “But under the peculiar facts of this case, where eight months had gone by before this petition was filed, I just don’t think we’ve got a statutory basis for the procedure here.” VRP 77-78.

D. ARGUMENT

1. M.R.’S ACCOUNT OF THE SEXUAL ASSAULT IN HER PETITION WAS SUFFICIENT TO DEMONSTRATE A “REASONABLE FEAR OF FUTURE DANGEROUS ACTS.”

Sexual offenses are inherently violent. In passing the Sexual Assault Protection Order Act, our legislature recognized the psychological injuries sustained by victims of sexual assault, as well as the heinous nature of the crimes: “Sexual assault inflicts *humiliation, degradation, and terror* on victims” (emphasis added). RCW 7.90.005.

In addition to legislative recognition of the detrimental impact of sexual assault on victims, research shows that victims of sexual assault experience significant psychological distress. Common effects of trauma include nightmares, flashbacks, depression, difficulty concentrating, post-

traumatic stress disorder (PTSD), anxiety, eating disorders, substance use or abuse, phobias, and low self-esteem. National Sexual Violence Resource Center, *Impact of Sexual Violence, Fact Sheet*. One study, for example, found that 73-82% of survivors experienced fear and/or anxiety post-sexual assault. Campbell, R., Dworkin, E. & Cabral, G. “An ecological model of the impact of sexual assault on women’s mental health.” *Trauma, Violence & Abuse*, 10(3) (2009). Another study found that over the two-year period following the assault, victims had significantly lower self-esteem than non-victims. P.A. Resnick & P. Nishith, “Sexual Assault” 39, *Victims of Crime*, 2nd edition, eds. R.C. Davis, A.J. Lurigio, & W.G. Skogan (Sage 1997) at 30.

Research also confirms that sexual assault shatters a victim’s sense of safety. A survey of adult female victims in Washington found that 45% of those who were rape victims feared death or injury. Lucy Berliner, David Fine & Danna Moore, “Sexual Assault Experiences and Perceptions of Community Response to Sexual Assault: A Survey of Washington State Women,” at 19 (Seattle: Harborview Medical Center 2001). Furthermore, when a person experiences a traumatic event (e.g. a sexual assault), this can result in PTSD, which is a disorder where learned fear due to a traumatic event becomes generalized to situations that would normally be considered safe. Mahan, Amy L. & Ressler, Kerry J. “Fear Conditioning,

Synaptic Plasticity, and the Amygdala: Implications for Posttraumatic Stress Disorder.” *Trends Neurosci.* 2012 January; 35(1) at 24-25.

Thus, a sexual assault in and of itself is “sufficient” to give rise to a reasonable fear of future dangerous acts by the perpetrator. In the petition filed in this case, M.R. provided several specific examples of “nonconsensual sexual conduct or penetration” including that M.D. forcefully penetrated her mouth with his penis to the point that she started choking, and that he bit and penetrated her vagina so violently with his fingers and penis that it caused her to bleed significantly. CP 4. Based on M.R.’s account of the assault, as well as additional statements and supporting declarations that she continued to encounter M.D., that it caused her great distress, and that she did not know what he was capable of having had no relationship with him prior to the assault, M.R. did sufficiently demonstrate a “reasonable fear of future dangerous acts” in her petition.

2. M.R.’S DELAY IN FILING FOR A SEXUAL ASSAULT PROTECTION ORDER SHOULD NOT HAVE BEEN A BASIS FOR THE COURT’S DISMISSAL OF THE CASE.

The SAPO statute recognizes rape as “the most underreported crime” and the legislative intent was to provide victims who do not go through the criminal justice process with “protection from future

interactions with the offender.” RCW 7.90.005. Accordingly, there is no statute of limitations enumerated in the SAPO statute, nor is there any limitation on the number of times that a petitioner may have her SAPO renewed. RCW 7.90.121. Case law on protection orders also confirms that there does not need to be recent act of violence to qualify for a protection order. *See e.g., Muma v. Muma*, 115 Wn. App. 1, 60 P.3d 592 (2002) (the court granted a domestic violence protection order despite the fact that there were no recent acts of violence); *Spence v. Kaminski*, 103 Wn. App. 325, 12 P.3d 1030 (2000) (the court granted a domestic violence protection order based on violence that had occurred five years prior).

Many sexual assault victims may never report offenses committed against them, and others delay in reporting, often for significant periods of time. For example, a Washington study found that only 15% of women who were sexually assaulted reported their assault to the police. Berliner, Fine & Moore, “Sexual Assault Experiences and Perceptions of Community Response to Sexual Assault: A Survey of Washington State Women,” at 22. There are many reasons why a sexual assault victim may not immediately report the assault to law enforcement including fear of the stigma attached to rape victims; fear of retaliation by the offender; lack of support; fear that the offender will not be held accountable; or shock. R. Acerno et. al., “Prevalence rates: case identification and risk factors for

sexual assault, physical assault, and domestic violence in men and women,” 23(2) *Behav. Med.*, 53-64 (1997).

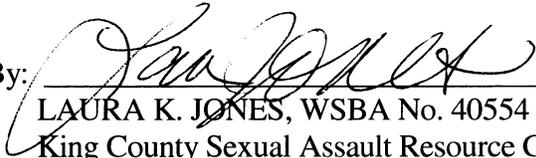
In this case, M.R.’s delay in filing for a SAPO is not “peculiar” as the court stated, and it should not have been a basis for dismissing the protection order. Not only does a denial on this basis demonstrate a fundamental misunderstanding of research-supported sexual assault dynamics, but it ignores the logical and practical reasons behind the timing of M.R.’s filing for her SAPO. In this case, she was sexually assaulted just prior to summer break, when she left the area. CP 18. It was only when she returned to campus and there was the possibility of running into M.D., that she reported the assault. CP 34. When criminal charges were not filed by the prosecuting attorney, and there was no accompanying protection or no contact order, she then reported M.D.’s conduct to the University of Washington’s Office of Community Standards and Student Conduct. CP 35. A no-contact order was issued, but after M.R. continued to encounter M.D. causing her fear and anxiety such that she would shake after seeing him, she then decided to apply for a Sexual Assault Protection Order. CP 4. This sequence of events is logical, and consistent with M.R.’s desire to protect her safety. Further, the fact that she filed a petition at the time she did also lends credibility to the severity of the impact that the sexual assault has had on M.R.

E. CONCLUSION

M.R. clearly alleged multiple acts of nonconsensual sexual conduct and penetration committed by M.D. in her petition. That account itself should be sufficient for her to show a “reasonable fear of future dangerous acts” by the respondent. Moreover, her decision to wait several months to apply for a SAPO should not have been grounds for her dismissal—not only is it common for sexual assault victims to delay in reporting, or to not report at all, but the timing of M.R.’s filing for the SAPO makes sense when put in context with the academic calendar, her report to law enforcement, and her report to the Office of Community Standards and Student Conduct.

Therefore, *amici* respectfully ask the Court to reverse the dismissal of M.R.’s sexual assault protection order case and remand to King County Superior Court for a full hearing on the evidence.

Respectfully submitted this 30th day of November, 2015.

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