

2015

## State of Utah, in the Interest of w.e.m. A Person Under 18 Years of Age.

Utah Court of Appeals

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No. 20150681

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THE UTAH COURT OF APPEALS

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STATE OF UTAH, in the interest of W.E.M.  
A person under 18 years of age.

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BRIEF OF APPELLANT W.E.M.

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On appeal from the Third District Juvenile Court, Salt Lake County, Salt Lake  
Honorable Mark May, Juvenile District Court No. 1108641

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## **JURISDICTIONAL STATEMENT**

This Court has jurisdiction pursuant to Utah Code Ann. §78A-4-103(2)(c), which gives the Utah Court of Appeals jurisdiction over appeals from juvenile court decisions.

## **STATEMENT OF ISSUES / STANDARDS OF REVIEW / PRESERVATION OF ISSUES**

**Issue 1:** Did the juvenile court err in determining beyond a reasonable doubt that, because WEM knew prior to the day of the incident in question the alleged victim was an employee of a public school, even though on the day in question WEM did not even see the alleged victim until he was pushed into her, WEM committed assault of a public school employee under Utah Code Ann. §76-5-102.3(1)?

**Standard of Review:** The standard of review for factual findings in nonjury juvenile cases involving criminal violations is the “clearly erroneous” standard. *In Interest of R.L.I.*, 771 P.2d 1068, 1070 (Utah 1989). This standard “requires that if the findings (or the trial court’s verdict in a criminal case) are against the clear weight of the evidence, or if the appellate court otherwise reaches a definite and firm conviction that a mistake has been made, the findings (or verdict) will be set aside.” *Id.* (citation omitted); *see also In re S.Y.T.*, 2011 UT App 407, ¶11, 267 P.3d 930.

The standard of review for conclusions of law based on the facts is correctness. “[U]ltimately, the legal effect of [the] facts is the province of the appellate courts.” *State v. Levin*, 2006 UT 50, ¶22, 144 P.3d 1096 (citation omitted); *see also State ex rel. A.C.M.*,

2009 UT 30, ¶8, 221 P.3d 185 (“We review the juvenile court’s interpretation of the Termination of Parental Rights Act for correctness.”); *State ex rel. D.K.*, 2006 UT App 461, ¶7, 153 P.3d 736 (“The proper interpretation and application of a statute is a question of law [that] we review for correctness, affording no deference to the [juvenile court’s] legal conclusion.”); *State ex rel. R.A.*, 2010 UT App 71, ¶4, 231 P.3d 808 (“We grant no deference to the trial court’s application of the law to the facts and review the decision regarding voluntariness for correctness.”); *State in Interest of M.J.*, 2011 UT App 398, ¶19, 266 P.3d 850 (“[W]e review the juvenile court’s conclusions of law for correctness and afford the juvenile court ‘some discretion in applying the law to the facts.’”) (citation omitted).

**Preservation:** This issue was presented to the court both in Appellant’s motion for a directed verdict (R. 24 [Transcript] at 59-62) as well as in the closing arguments (R. 24 [Transcript] at 103-115).

**Issue 2:** Did the juvenile court error in finding beyond a reasonable doubt that on the morning in question the “bumping” activities of KJJ and WEM were directed toward a school employee?

**Standard of Review:** Same as for Issue 1.

**Preservation:** This issue was presented to the court both in Appellant’s motion for a directed verdict (R. 24 [Transcript] at 59-62) as well as in the closing arguments (R. 24 [Transcript] at 103-115).



**Issue 3:** Did the juvenile court err in finding beyond a reasonable doubt that WEM was actively and intentionally engaged in the so-called bumping game at the time the alleged assault occurred?

**Standard of Review:** Same as for Issue 1.

**Preservation:** This issue was presented to the court both in Appellant's motion for a directed verdict (R. 24 [Transcript] at 59-62) as well as in the closing arguments (R. 24 [Transcript] at 103-115).

**Issue 4:** Was the court in error in finding beyond a reasonable doubt that WEM solicited, requested, commanded, encouraged, and/or intentionally aided KJJ in the latter's plan to engage in the so-called bumping game on the morning in question?

**Standard of Review:** Same as for Issue 1.

**Preservation:** This issue was presented to the court both in Appellant's motion for a directed verdict (R. 24 (Transcript) at 59-62) as well as in the closing arguments (R. 24 [Transcript] at 103-115).

**Issue 5:** Was the court in error in finding beyond a reasonable doubt that WEM should have been aware of or disregarded a substantial and unjustifiable risk that KJJ would bump WEM into a school employee on the morning in question?

**Standard of Review:** Same as for Issue 1.

**Preservation:** This issue was presented to the court both in Appellant's motion for a directed verdict (R. 24 [Transcript] at 59-62) as well as in the closing arguments (R. 24 [Transcript] at 103-115).

**Issue 6:** Did the court error in the way it applied the "beyond a reasonable doubt" standard when weighing the evidence?

**Standard of Review:** The standard of review for factual findings in nonjury criminal matters is generally the "clearly erroneous" standard. However, in juvenile court criminal cases, the appeals court may "otherwise reach[] a definite and firm conviction that a mistake has been made." *In re D.V.*, 2011 UT App 241, at ¶6. "[B]efore we can uphold a conviction it must be supported by a quantum of evidence concerning each element of the crime as charged from which the [factfinder] may base its conclusion of guilt beyond a reasonable doubt." *State v. Larsen*, 2000 UT App 106, ¶10, 999 P.2d 1252. "Under this less deferential standard, the likelihood that a defendant's conviction will be reversed following a bench trial, as opposed to a jury trial, is increased." *State v. Goodman*, 763 P.2d 786, 787 (Utah 1988).

**Preservation:** This issue was presented to the court in the closing arguments (R. 24 [Transcript] at 103-115).

## **DETERMINATIVE LAW**

### **Utah Code Ann. §76-1-601(1):**

"Act" means a voluntary bodily movement and includes speech.

### **Utah Code Ann. §76-1-601(3):**

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

### **Utah Code Ann. §76-2-102:**

Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state and the offense does not involve strict liability, intent, knowledge, or recklessness shall suffice to establish criminal responsibility. An offense shall involve strict liability if the statute defining the offense clearly indicates a legislative purpose to impose criminal responsibility for commission of the conduct prohibited by the statute without requiring proof of any culpable mental state

### **Utah Code Ann. §76-2-103:**

A person engages in conduct:

- 1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

3) Recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

**Utah Code Ann. §76-2-202:**

Every person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.

**Utah Code Ann. §76-5-102.**

- 1) Assault is: (a) an attempt, with unlawful force or violence, to do bodily injury to another; or (b) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.
- 2) Assault is a class B misdemeanor.
- 3) Assault is a class A misdemeanor if:
  - (a) the person causes substantial bodily injury to another; or
  - (b) the victim is pregnant and the person has knowledge of the pregnancy.
- 4) It is not a defense against assault, that the accused caused serious bodily injury to another.

**Utah Code Ann. §76-5-102.3(1)**

Any person who assaults an employee of a public or private school, with knowledge that the individual is an employee, and when the employee is acting within the scope of his authority as an employee, is guilty of a class A misdemeanor.

## **STATEMENT OF THE CASE**

### **Proceedings Before the Juvenile Court**

Appellant was charged in the juvenile court of violating Section 76-2-102.3(1), specifically that he had assaulted a school employee. Appellant pled not guilty. The matter was tried to the court on July 31, 2015. After presentation of evidence and argument, the court found appellant guilty and imposed a sentence. The court's findings of fact and verdict were filed on August 7, 2015. R. at 48-53. Appellant filed his appeal on August 19, 2015. R. at 54-55.

### **Facts:**

1. The incident in question took place on December 9, 2014 in the morning before school started and took place at Eisenhower Jr. High School, located in Salt Lake County. (R. 24 [Transcript] at 10, 23)

2. At the time of the incident, WEM was a student at Eisenhower Jr. High. (R. 24 [Transcript] at 9).

3. Because WEM took the bus to school, he arrived each morning with roughly one half hour to literally waste before he could go into his classroom. The school provided no study rooms and they had the choice of being outside (the incident occurred in mid-December), walking the halls, or going to the lunchroom to eat something from their lunch. (R. 24 [Transcript] at 23-24, 63-64).

4. As would be expected from junior high students who have a half hour to kill with no structured supervision or activity, there was sometimes a little horseplay among the students, sometimes consisting of a little bumping of each other as they walked the halls. (R. 24 [Transcript] at 30–31).

5. The court characterized this horseplay the “bumping game.” (R. 24 [Transcript] at 116).

6. KJJ called it “messaging around” and “random.” (R. 24 [Transcript] at 27, 34).

7. From time to time prior to December 9, 2014 WEM participated in bumping other students, but only with his friends. (R. 24 [Transcript] at 71–72).

8. On the morning in question WEM never intended to bump or shove anyone. (R. 24 [Transcript] at 56, 65.)

9. On the morning in question, WEM was walking with two other classmates along the crowded school halls when, in the course of less than one minute, he was bumped or shoved three times by his classmate KJJ into oncoming foot traffic. (R. 24 [Transcript] at 64–66.) See also Exhibit A.

10. The first time the surveillance video provided by the prosecution (Exhibit A) shows WEM and KJJ is at 7:31:52 on the video clock. See Exhibit A.

11. Other than Exhibit A, Officer Dial did not provide any surveillance video of either WEM or KJJ the morning of the incident. (R. 24 [Transcript] at 55-56.)

12. Exhibit A is not as clear and focused as the film Officer Dial reviewed. (R. 24 [Transcript] at 56-57.)

13. Officer Dial reviewed the clearer surveillance film he had available very closely. (R. 24 [Transcript] at 57.)

14. In reviewing the surveillance video of the morning in question, Officer Dial did not see any incidences of WEM shoving KJJ or purposely bumping into others. (R. 24 [Transcript] at 56.)

15. Officer Dial, who carefully reviewed the best surveillance film available of the incident, believed that WEM had been bumped by KJJ. (R. 24 [Transcript] at 59.)

16. There was no pushing incident at all between, or involving, WEM or KJJ prior to 7:32:02, as recorded on the clock in the surveillance video. (R. 24 [Transcript] at 49-51.) See also Exhibit A.

17. The first pushing incident involving WEM and/or KJJ on December 9, 2014 occurred at 7:32:02, the second at 7:32:17, and the third at 7:33:01, according to the clock in the surveillance video. See Exhibit A.

18. On the second of these incidents, WEM ended up being bumped into Brenda Zimmerman, an interim vice principal. (R. 24 [Transcript] at 10, 28.)

19. Immediately before the incident, Ms. Zimmerman had come around a corner going from C hall to B hall. (R. 24 [Transcript] at 13-14, 21-22, .)



20. Neither WEM nor KJJ saw Ms. Zimmerman until the bumping occurred.  
(R. 24 [Transcript] at 40, 65.)

21. KJJ never intended to bump WEM into any school employee at any time.  
(R. 24 [Transcript] at 40.)

22. WEM did not initiate the bumping and was caught by surprise each time he was bumped, being thrown off balance each time. (R. 24 [Transcript] at 50, 65.) See also Exhibit A.

23. WEM did not bump or push KJJ back at any time on the morning in question. (R. 24 [Transcript] at 64.) See also Exhibit A.

24. WEM felt embarrassed by the incident at the time. (R. 24 [Transcript] at 65.)

25. The court found that the incident in question was a continuation of the earlier "bumping game." (R. 24 [Transcript] at 116.)

26. Had WEM attempted to push or bump KJJ on the morning in question, it would have resulted in KJJ bumping into his girlfriend on his right and not into oncoming foot traffic. (R. 24 [Transcript] at 32.) See Exhibit A.

27. At the moment of contact between Ms. Zimmerman and WEM, Ms. Zimmerman claimed she was knocked back a little and further claimed she felt some pain.  
(R. 24 [Transcript] at 11.)

28. Even though Ms. Zimmerman was walking with a teacher directly on her right side when she was bumped, which she says knocked her back, she did not bump into anyone in the crowded hall, included that teacher immediately at her right side. (R. 24 [Transcript] at 10, 16.)

29. Ms. Zimmerman stated WEM “lowered his shoulder” just before she was bumped. (R. 24 [Transcript] at 15.)

30. Ms. Zimmerman’s testimony may infer she thought that WEM’s “lowering his shoulder” was intentional although she also admitted it was “all one continuous action.” (R. 24 [Transcript] at 14–15.)

31. Ms. Zimmerman turned her head immediately afterwards to see who it was that had bumped into her. (R. 24 [Transcript] at 11.) See Exhibit A.

32. Ms. Zimmerman did not stop walking after being bumped but continued to walk down the hall. See Exhibit A.

33. Ms. Zimmerman did not go back and question WEM or KJJ at the time of the incident. (R. 24 [Transcript] at 15.)

34. WEM was not questioned about the matter by any school official until later that afternoon, even though Ms. Zimmerman was an intern vice-principal and had dealt with WEM before. (R. 24 [Transcript] at 15, 66.)

35. WEM did know who Ms. Zimmerman was from prior involvement with her, but did not see her on the morning in question until after he was pushed into her. (R. 24 [Transcript] at 65.)

### **Marshaling Evidence**

The main area where WEM takes issue with the court as to the facts found by the court is whether the bumping by KJJ on the morning in question was a continuation of what the court described as the bumping game from previous days. WEM takes the position that on the morning in question, WEM was not engaged in horseplay with KJJ but rather KJJ took it upon himself to bump or push WEM without any involvement by WEM at all.

WEM believes he has marshaled all of the evidence bearing on the facts where there is a dispute as to what the true facts are or what they prove. Further, *State v. Nielsen*, 2014 UT 10, ¶41, 326 P.3d 645 speaks clearly on this subject: “We therefore repudiate the default notion of marshaling sometimes put forward in our cases and reaffirm the traditional principle of marshaling as a natural extension of an appellant’s burden of persuasion. Accordingly, from here on our analysis will be focused on the ultimate question of whether the appellant has established a basis for overcoming the healthy dose of deference owed to factual findings and jury verdicts—and not on whether there is a technical deficiency in marshaling meriting a default.”

Thus WEM has marshaled the evidence in a way such as to show that by taking the evidence in the light most favorable to the prevailing party in this case, the State of Utah, there is still no basis for the court to have found the facts concerning the continuation of the "bumping game" the way it did. However, so that there is no question, WEM notes the following additional testimony found in the Transcript:

1. Page 10, lines 3-21:

Q Thank you. Were you involved with an incident with W on December 9, 2014?

A Yes.

Q Could you please describe what happened?

A I was walking down B hall with a teacher and he was walking towards me -

Q When you say he, you're referring to?

A WM, W was walking towards me and when we passed he ducked his shoulder down and shoulder bumped into me.

Q Okay, so I see you're kind of making some movement as you're sitting there on the stand. We're doing an audio recording -

A Right.

Q - so if you could try and describe that again. You said as W was passing you he lowered his shoulder down?

A Yeah, so he lowered his left shoulder down and then bumped his shoulder into my left shoulder.

Q And you said that this happened in the B hall?

A B hall.

2. Page 11, lines 1-5:

Q And so what happened after W lowered his shoulder and bumped into your shoulder?

A Well, it knocked me off balance, it knocked me kind of towards the wall and then I looked back to make sure I knew who did that and saw W and his friends walking.

3. Page 15, lines 5-16:

Q It was instantaneous?

A What he did as we were passing, he lowered his shoulder and he bumped into me.

Q I know and from the time you saw him lower his shoulder until he hit you, how long was that?

A I don't know. I don't -

Q Was it instantaneous?

A It was all one act. He lowered his shoulder and bumped into me.

Q Okay. And so as he was lowering his shoulder he was hitting you at the same time, is that fair to say?

A It was all one motion.

4. Page 27, lines 14-24:

We weren't like intentionally like trying to harm anybody. We didn't have a target or anything....We were just goofing off...what we were doing was like I'd bump into him and he'd bump into somebody else or like he'd bump into me and I'd bump into somebody else. It was that kind of game and like we weren't, like I said, we weren't like aiming for anybody. We were just kind of going around doing it.

5. Page 28, lines 10-22:

Q . . . But why don't you just tell the Judge what happened, what you did do?

A I was bumping into W and he'd bump into somebody else and that's the case of this right now.

Q Okay. Was one of the people that W bumped into after you bumped into him an employee of the school?

A Yeah.

Q Who was that?

A Ms. Zimmerman.

Q Okay. This - you called it a game you and W were doing bumping into each other, is that -

A I mean it wasn't really a game but like we didn't think - I don't know, it wasn't a game but like it was just goofing off.

6. Page 29, lines 6-7

Q Okay, so this game that you were doing, was this something that you had done to other people that day besides Ms. Zimmerman?

A We were walking around the school kind of doing it to everybody.

7. Page 29, lines 11-12:

Q You weren't bumping W into lockers?

A I might have. I'm not positive but I might have.

8. Page 31, lines 14-18:

Q And as you were walking, who was on your right and who was - well, how were these two walking by your side?

A I believe W was on the left and I know either way I was in the middle but I don't know what side W was actually on. But I was in the middle for sure.

Q All right, and whose to your left?

A W.

Q And whose to your right?

A T.

Q All right. So as you're walking down if W had bumped you, who would you have bumped?

A Nothing right here. We're doing it in other halls too but right here it was me bumping into W.

Q All right. But on this particular - as you're going in this particular place, if W had bumped you who would you have bumped into?

A T.

9. Page 33, line 25, page 34, lines 1-6:

Q And did you see Ms. Zimmerman before you bumped W come (inaudible)?

A That, I mean I might have, I'm not sure. It was awhile ago and like I said we were just kind of doing it to random people, we weren't really targeting anybody.

Q That's the question, did you target Ms. Zimmerman?

A No.

10. Page 36, lines 8-9:

Q In any of that film did you see W bumping into you?

A No.

11. Page 40, lines 3-17:

Q No, I meant that morning, that morning as you were - well, just seconds before this incident occurred, when was the first time you saw her?

A Probably that time when we were going through that hall.

Q Okay. And did you see her before you pushed or bumped W?

A Ummm, obviously not because I wouldn't have bumped him if I would have seen her.

Q Would you ever intentionally yourself bump into a school employee?

A Like what do you mean?

Q Would you purposely shoulder check a school employee?

A No.

12. Page 64, lines 19-25, page 65, lines 1-20:

Q Okay. And on the day in question would you describe what you were doing just prior to the incident with Ms. Zimmerman?

A Walking the halls.

Q Okay. And had you shoved anybody that day?

A No.

Q All right. And as you were getting started for school, had you talked with K about 1 pushing anybody?

A No.

Q Was it your desire to bump into anybody that day, that is to say jostle one into the other?

A No.

Q All right. Do you recall what happened as you were walking down B hall that morning?

A K shoved me into Ms. Zimmerman.

Q At what point did you see Ms. Zimmerman?

A When I bumped into her.

Q All right. And had you had any pre-arrangement to be bumped into people?

A No.

Q And as you bumped into Ms. Zimmerman, how long before you bumped into her did you first see her?

A When I bumped into her. I turned around to see who it was.

Q All right. So at the time you were being bumped had you seen Ms. Zimmerman?

A No.

13. Page 71, line 16-21:

Q Okay. So when K testified - and you were here when he testified, you heard him talking about this game that you play where he shoves you into somebody or you shove him into somebody, that was correct that you guys had done this in the past, right?

A I have never shoved anyone.

### SUMMARY OF ARGUMENT

WEM, the appellant in this case, was charged with the crime of assault of a school employee. The sole basis for the claim was that WEM was pushed into a school employee by a fellow student, with whom he had participated in horseplay acts of pushing and bumping between students on earlier occasions but not on the day in question. As part of that claim, the State further claimed that even though WEM did not even see, much less recognize the school employee until the incident had occurred, because he knew who she was from prior encounters, the crime was committed.

It is WEM's position that neither the facts, even when viewed from the standpoint of the State, nor the law provide support for a finding of assault of a school employee by WEM. There was no evidence presented that WEM had any intent, either on that day or earlier, to ever assault a school employee or be involved with any conduct that would result in an assault of a school employee. Moreover, with regard to the specific incident, neither WEM nor KJJ, the student who pushed WEM, saw the school employee until after the incident occurred. Because KJJ in pushing WEM was not at any time targeting school employees and did not even see the school employee in question until the incident occurred, that conduct does not meet the requirements of Section 76-5-102.3(1).

It is not disputed that WEM was pushed and did no pushing. Thus he can only be convicted of the assault if his behavior meets the requirements of Utah Code Ann. §76-2-202, namely that he solicited, requested, commanded, encouraged, or intentionally



aided KJJ to engage in that pushing activity. No such proof exists, much less proof beyond a reasonable doubt. At most there was some horseplay on earlier days involving KJJ, WEM and some other students, but not on the day in question. Thus because WEM had no active involvement in bringing about the contact between himself and the school employee, because he did not encourage KJJ to do so, and because neither WEM nor KJJ were targeting any school employee, there was no basis to find WEM guilty of an assault of a school employee.

Finally, the court's findings are totally lacking in identifying what conduct of WEM, when measured by the reasonable doubt standard, supported the guilty verdict.

Therefore, the finding that WEM assaulted a school employee should be reversed and the case should be dismissed with prejudice.

## ARGUMENT

### **I. There Was no Intent By KJJ or WEM to Assault a School Employee**

This case was brought solely under Utah Code Ann. §76-5-102.3(1). The court in making its findings and order did not identify any other statute on which it rested its finding of guilt of an assault of a school employee. However counsel for the State, in arguing in response to WEM's motion for a directed verdict as well as in the closing argument, did identify several statutes which supposedly explained the basis why WEM, although not the actor but the one acted upon, could be determined to have the requisite mens rea to permit a finding of assault of a school employee. Presumably the court accepted those statutory references and the interpretation given them by the prosecutor. Therefore, it is important for this court to review the various sections of the Utah Code cited to the juvenile court and the interpretation given them by the prosecutor.

As noted, the specific and only charge was pursuant to Utah Code Ann. §76-5-102.3(1). There appears to be no case law interpreting or applying Section 76-5-102.3(1), which was enacted in the 1992 session of the Legislature and has not been amended since. Thus this case appears to be one of first impression as to this statute. There are, however, approximately 30 states which have statutes that pertain to assault of a school employee (either specifically or as a school employee being a public official). The vast majority of these statutes have an intent element expressly stated or have been found to

require an intent element.<sup>1</sup> No intent by WEM to assault the school employee in question was ever established.

To address the issue of intent, the court referred to WEM's earlier involvement with a "bumping game" which was directed against other students. To find the necessary intent element, the court concluded that the earlier participation in the bumping game, involving only students, was sufficient intent to prove assault of a school employee. However, that finding completely ignores the doctrine of transferred intent. In a New York case directly on point, the court found that intent by a student to cause physical injury to another student did not transfer to a teacher whom the student did injure. Specifically the court addressed "transferred intent" as follows: "The doctrine of transferred intent 'serves to ensure that a person will be prosecuted for the crime he or she intended to commit even when, because of bad aim or some other 'lucky mistake,' the intended target

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<sup>1</sup> The following is a sampling of similar statutes in other jurisdictions:

Ala Code 13A-6-21(a)(5)  
Ariz Rev State 13-1204(A)(8)(d)  
Cal Penal 243.6  
Ga Code Ann 16-5-23(i)  
Haw. Rev. Stat. 707-711(1)(e)  
720 Ill. Comp State. 5/12-4(b)(3)  
Ind. Code 35-42-2-1(a)(2)(G)  
Kan Stat Ann 21-3443(a)  
Mass Gen Laws ch. 265, §13D  
Minn Stat 609.2231, subd 5  
Nev Rev. Stat 200.471(2)(c)  
N.M. Stat. Ann 30-3-9(B)(1)  
Ohio Rev Code Ann 2903.13(C)(2)(e)  
Okl St Ann tit 21, §650.7(C)  
18 Pa. cons. Stat §2702(a)(5)  
R.I. Gen Laws 11-5-7  
Va Code Ann 18.2-57(D)  
W. Va. Code 61-2-15(b)(2)

was not the actual victim' (*People v. Fernandez*, 88 N.Y.2d 777, 781, 650 N.Y.S.2d 625, 673 N.E.2d 910). Here, the evidence is legally insufficient to establish that respondent's intended target was the teacher, and thus there is no basis under the doctrine of transferred intent for prosecuting respondent for the crime of assaulting a teacher." *In re Jenna V.*, 55 A.D.3d 1341, 1342, 864 N.Y.S.2d 637 (2008).

It is clear from the facts that prior to WEM being bumped into Ms. Zimmerman, neither KJJ nor WEM saw her coming around the corner from C hall to B hall, walking in their opposite direction. Even Ms. Zimmerman's testimony confirms this fact. She said that immediately before the incident she had been coming around a corner, that the incident was "all one motion" and "all one act," and that she had to look back to see who did it. R. 24 [Transcript] at 10-11, 15.

Note that Ms. Zimmerman herself did not know who it was who bumped into her until after the incident. Thus even though she knew WEM quite well from having met with him previously, she did not know on the morning in question who bumped into her until the incident was completed. This fully supports the contention of WEM about Ms. Zimmerman not being a target.

The reasoning of *In re Jenna V.* applies to the claim against WEM. There is no question that the intended targets of KJJ were other students, but never a school employee. Moreover, WEM had no intended targets at all. Thus the intent by KJJ to bump WEM into other students cannot be transferred to a bump into a school employee. For the same

reason, there can be no intent ascribed to WEM to assault a school employee. Assuming, but not admitting, that at the time WEM was indeed playing the “bumping game,” it was directed only against other students and not against school employees. Thus no violation of Section 76-5-102.3(1) occurred.

## **II. It was Improper for the Court to Tie WEM’s Prior “Bumping Activity” to His Being Bumped into a School Employee**

In order to apply Section 76-5-102.3(1) to WEM, the court had to find a connection between WEM’s prior “bumping” activity and the bumping of the school employee on involved. To do so, the court started from the position that any bumping activity could have unintended consequences, namely that other persons might end up getting bumped in the process. Then because WEM knew Ms. Zimmerman from prior involvement with her, when WEM got bumped into her on the day in question, and because his getting bumped into her was “part of the bumping game” which had taken place on earlier days, the court found WEM guilty of assault of a school employee. That is an interpretation which can only be made if the plain language of the statute is construed beyond its clear meaning.

In oral argument, the prosecutor argued that it is sufficient to find assault if a school employee is bumped, regardless of the mens rea or the intent of the actor to direct any conduct against a school employee. See argument at pages 62 and 115 of the Transcript. Specifically at page 62 the prosecutor said: “I don’t think that there’s anything in the statute that says they need to specifically target a school employee, it’s just that it’s an assault of a school employee.” Essentially the same argument was then remade in the

closing argument by the prosecutor. In denying the motion for directed verdict, the court did not discuss the argument by either side or otherwise provide any reason at all for denying the motion. The court also did not explain how the fact that neither KJJ nor WEM targeted the school employee still allowed a finding of guilt.

Utah Code Ann. §76-5-102.3(1) does not involve strict liability. Therefore under Utah Code Ann. §76-2-102, there must be proof of intent, knowledge, or recklessness. Utah Code Ann. §76-2-103 defines those three terms. Presumably the juvenile court intended to apply the recklessness standard because there clearly was no suggestion, much less proof, of intent or knowledge.

Utah courts make a critical distinction between criminal negligence, which “attaches where the defendant ‘*ought to be aware* of a substantial and unjustifiable risk,’” and “criminal recklessness, knowledge, and intent[, all of which] require actual knowledge or awareness.” *State v. Martinez*, 2000 UT App 320, ¶ 12 n.5, 14 P.3d 114, 125 *aff’d*, 2002 UT 80, 52 P.3d 1276; *see also State v. Liti*, 2015 UT App 186, ¶ 16, 355 P.3d 1078 (“Our case law recognizes that the nature of the risk involved in both criminal negligence and recklessness is the same; “the only difference between the two is whether the defendant was *aware* of that risk.”) (emphasis added.) In order to find WEM guilty in this case, the juvenile court was required to find beyond a reasonable doubt that WEM had knowledge or was aware of the substantial and unjustifiable risk that he would be pushed into a school employee. No such awareness can be shown or even inferred from the facts

of the case, particularly when measured by the standard of beyond a reasonable doubt. Because WEM was not actually aware that he was going to be pushed into a school employee, he cannot be found guilty. *See State v. Herrera*, 1999 UT 64, ¶ 4 n.1, 993 P.2d 854 (“[A] crime consists in the concurrence of prohibited conduct [the bad act] **and a culpable mental state** [the mens rea].”) (emphasis added) (citation omitted).

It is submitted that the plain elements of the law were not met when there was no evidence that either KJJ or WEM targeted Ms. Zimmerman and indeed did not even know she was walking around the corner. The motion for directed verdict should have been granted and the finding of guilt should be reversed.

### **III. The Association Element Was Never Established.**

The juvenile court determined that on the morning in question, WEM was associating with KJJ in the “bumping game.” Although the court did not cite any authority for that finding, and even though multiple witnesses testified that WEM himself did not do any pushing, he was apparently convicted on the basis of Section Utah Code Ann. §76-2-202 which requires the one being charged with the offense to have solicited, requested, commanded, encouraged, or intentionally aided another person to engage in conduct which constitutes the offense. But the record is totally devoid of proof of any such solicitation, requests, commands, encouragement, or intentional aiding on the morning in question and specifically at the time in question. Note further the unequivocal language of Section 76-2-202 which requires WEM to have been “acting with the mental

state required for the commission of an offense.” No such mental state was proven by testimony from anyone. Moreover, Section 76-2-202 also uses the significant requirements of “solicits, requests, commands, encourages, or intentionally aids.” That is not language describing the situation at hand. The statute requires some clear involvement by WEM. None was established. WEM did not solicit, request, command, encourage or intentionally aid KJJ in the pushing incident.

At best WEM knew that it was possible KJJ might on a given morning push him into other students. However, that knowledge is not active involvement with KJJ and is insufficient to meet the requirements of Section 76-2-202. “To show that a defendant is guilty under accomplice liability, the State must show that an individual acted with both the intent that the underlying offense be committed and the intent to aid the principal actor in the offense.” *State v. Briggs*, 2008 UT 75, ¶13, 197 P.3d 628.” (citing *State v. Schreuder*, 726 P.2d 1215, 1220 (Utah 1986) (“Prior knowledge does not make a person an accomplice when that person does not have the mental state required and does not solicit, request, command, encourage, or intentionally aid in perpetration of the crime.”)) The court went on to say: “An accomplice must therefore have the intent that the underlying offense be committed.” *Id.* at ¶14. There is nothing in the record which shows WEM had any idea that on the morning in question he would be bumped into anyone, much less a school employee. Nor did WEM have the intent that such be done.



Precedence clearly shows that the "[m]ere presence, or even prior knowledge, does not make one an accomplice to a crime absent evidence showing--beyond a reasonable doubt--that [a] defendant advised, instigated, encouraged, or assisted in perpet[r]ation of the crime." *In re V.T.*, 2000 UT App 189, ¶ 11. The *V.T.* case is directly on point. There, this court concluded that a juvenile defendant's presence during and after a theft did not support a conclusion that he was an accomplice because no evidence suggested his active involvement." WEM's prior activities and his presence on the day in question walking with KJJ is not enough for him to be found as an accomplice, particularly when there is no evidence of an active involvement by him.

#### **IV. WEM Engaged in no Voluntary Act of Pushing**

"An individual must act willfully to be criminally liable ... This means that the prosecution must prove beyond a reasonable doubt that the accused 'desire[d] to engage in the conduct or cause the result.' *State v. Larsen*, 865 P.2d 1355, 1360 (Utah 1993) (citation omitted). For WEM to be found guilty, he would have had to act willfully; and act is defined as a voluntary bodily movement. Utah Code Ann. §76-1-601(1). As is abundantly clear in this case, WEM did not voluntarily get pushed into a school employee. There is also a serious question whether he even understood he would be pushed at all. He and KJJ had walked the halls that morning without incident. Then in the space of 15 seconds he was pushed twice, with the second push knocking him into Ms. Zimmerman. That does not translate to voluntarily engaging in a "bumping game." There is no

evidence at all that he knew he would be pushed that morning and more specifically that he would be pushed into a school employee.

#### **V. The Court Misinterpreted the Law of Assault of a School Employee**

The ultimate ruling was that if students are engaged in friendly pushing with friends and in the process one of the students is bumped into a school employee, such conduct constitutes assault of a school employee. Assuming, but not conceding, such is the case<sup>2</sup>, the further question is whether, and aside from the transferred intent argument made above, if one does not know that at the time of the action the person being assaulted is a school employee, whether that can constitute an assault under Utah Code Ann §76-5-102.3. For example, if the lights in the school suddenly went out, and one student pushed another student as a form of game and in the process the person being pushed then bumped into a school employee who had just come into the room unseen, does that constitute a violation under the statute? WEM would strongly argue that because there was no way for the students to know that a school employee would be ultimately bumped, the elements of the statute have not been met. That is true even if the student being pushed was actively engaged in a “bumping game.”

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<sup>2</sup> Judge May made it clear he felt he was bound to find WEM guilty because of what he thought the law said. His exact words were: “And I do sympathize and agree with Mr. Rust that this doesn’t seem like a Class A Misdemeanor. It’s - anyone who’s dealt with 13-year old boys knows what the bumping game is. I think any by [sic] who’s been 13 has either played it or been part of it. Nevertheless, this is what the elements of law have been met.” Transcript page 117. However, as Charles Dickens’ character Mr. Bumble said in the book of *Oliver Twist*: “If the law supposes that, the law is a ass—a idiot.”

It must be remembered that Section 76-5-102.3 is in the general criminal code and therefore applies to adult as well as to juvenile court cases. Thus, the Legislature must have been concerned that school employees were being singled out to be assaulted, perhaps by irate parents, and as a result needed special protection. This special protection status should, however, be coupled with a strict and narrow interpretation rule. Statutes “giving special privileges must be construed strictly.” *Moran v. Miami Cnty. Comm'rs*, 67 U.S. 722, 723, (1862); *see also Asbury v. Town of Albemarle*, 78 S.E. 146, 148 (N.C. 1913) (“Statutes ... conferring special privileges are to be construed liberally in favor of the public and strictly against those specially favored.”); *Mechanics' & Traders' Bank v. Rowly*, 2 La. Ann. 372, 373 (La. 1847) (“[S]pecial statutes, those granting peculiar privileges to certain classes or persons ... are to be strictly construed...”); *Aycrigg v. United States*, 124 F. Supp. 416, 417 (N.D. Cal. 1954) (“It is hornbook law that any statute which grants a special privilege is to be strictly construed against the grantee.”).

The statute in question not only gives special protection to teachers but also provides for heightened penalties. The law under which WEM was charged classifies the crime as a Class A misdemeanor. The general law on assault, which gives no special treatment to school employees, classifies the crime a Class B misdemeanor unless the perpetrator “causes substantial bodily injury to another.” Utah Code Ann. §76-5-102. There is no question that Ms. Zimmerman was not substantially injured. Seconds later she showed no pain as she continued down the hall, nor did she seek medical help. Rather she

felt momentary pain, which she described as “when someone hits your arm hard.” R. 24 [Transcript] at 11.

Because WEM was tried and found guilty under Utah Code Ann. §76-5-102.3(1), a Class A misdemeanor, rather than under Utah Code Ann. §76-5-102, a Class B misdemeanor, he was required as part of his sentence to be fingerprinted and provide a DNA sample, a condition the prosecutor specifically called to the attention of the court. R. 24 [Transcript] at 118. Because of that special status given the law under which WEM was charged and found guilty, the court should have given strict interpretation to it. In this case a strict interpretation of the statute would have barred the claim brought against WEM. That law should apply only when at the time of the incident the actor knows his conduct is being directed towards a school employee. Since that was not the case here, the ruling from the juvenile court should have been not guilty.

## **VI. The Court Failed to Find Evidence Beyond a Reasonable Doubt**

A finding of assault is a serious matter, whether it involves adults or juveniles. Such findings should be made only on the basis of evidence beyond a reasonable doubt. In that regard, the decisions of trial courts conducting bench criminal trials are given less deference than the decisions of juries deciding criminal trials. Nowhere did the juvenile court address the evidence in light of the beyond a reasonable doubt burden. WEM strongly argues that this burden was never met by the State and the case should be overturned, particularly in light of the clear facts of this case.

In the case of *In re D.V.*, 2011 UT App 241, the court held: "When reviewing a bench trial for sufficiency of the evidence we must sustain the trial court's judgment unless it is against the clear weight of the evidence, or if [we] otherwise reach[] a definite and firm conviction that a mistake has been made." *Id.* at ¶6. In that regard it is important to note that "before we can uphold a conviction it must be supported by a quantum of evidence concerning each element of the crime as charged from which the [factfinder] may base its conclusion of guilt beyond a reasonable doubt." *State v. Larsen*, 2000 UT App 106, ¶10, 999 P.2d 1252. "Under this less deferential standard, the likelihood that a defendant's conviction will be reversed following a bench trial, as opposed to a jury trial, is increased." *State v. Goodman*, 763 P.2d 786, 787 (Utah 1988).

This court can look in vain at the record and the findings of the juvenile court to find evidence that creates reasonable doubt as to whether the crime being charged was committed. Thus, as in *In re D.V.*, this court should find that "the evidence was not sufficient to support a finding of [guilt] beyond a reasonable doubt." *In re D.V.* at ¶21.

## **VII. Justice Requires a Reversal of This Case**

As noted, WEM fits into that category of socially challenged persons, known as adolescents. By any standard, such individuals are trying to find a way to cope with moving from being children to becoming adults. They are faced with dealing with their peers who sometimes bully them and who sometimes they bully. They are often shy but

seek acceptance and attention. In this whole process they should not find themselves being treated as criminals by school officials simply because of their youthful exuberance.

The law being applied in this case is criminal law, applicable to people of all ages. The Legislature has seen fit so far not to make any distinction in the standards in the law between adults and juveniles. However, justice requires this court to at least consider the age and background of WEM when applying matters of intent, particularly considering the standard of beyond a reasonable doubt. Justice requires that in a case such as this, reasonable doubt should play a major role.

The school saw fit to send this case to the juvenile court when by all educational standards it should have been handled in the school system. The school chose to not provide any meaningful activity for the students in the roughly 30 minutes they were in the school until classes started. Students were not even given a warning about the bumping game. However, apparently the school expected these students not to engage in any type of "messaging around" activities among friends while walking the halls with nothing to do.

The only reason WEM was convicted of assaulting a school employee was that he was an instrument used by another student, KJJ, to carry out what in KJJ's mind was a harmless game between students with no intention to involve or hurt school employees. WEM did not actively participate in the pushing game on the morning in question. He did not push any other students into oncoming traffic. He was a victim of a game being

carried out by another student. As a matter of justice, his conduct cannot constitute an assault of a school employee.

#### **VIII. There was No Basis For the School to Refer This Case to the Juvenile Court**

This case is as much an indictment of the education system as it is of the criminal and juvenile court system. The juvenile court in its ruling admitted that young people in junior high sometimes engage in horseplay. It is also instructive to note that the person who claims to be a victim was at the time acting as a vice-principal with responsibility for discipline. If Ms. Zimmerman thought there was a problem in the way a student bumped into her, she should have immediately turned around, confronted the students involved, and sought to resolve the matter in an administrative but constructive manner. Instead, as she testified, she had no conversation whatsoever with the students involved, but rather filed some kind of complaint with the principal. This led to a meeting with another vice-principal with a police officer present, all before the students even had a chance to explain themselves.

This kind of knee-jerk reaction, turning a simple student incident of, at worst, horseplay into a criminal action was recently addressed by the Tenth Circuit Court of Appeal in *Hawker v. Sandy City*, 10<sup>th</sup> Cir. Ct. App, 2014, case No. 13-4139. In that unpublished but instructive decision, Justice Lucero stated: “Referral of students to law enforcement—so that even minor offenses are often dealt with and punished by police rather than school officials—is a key and growing feature of modern school disciplinary

policies.” He noted further: “Strict disciplinary policies coupled with the involvement of the criminal justice system in schools have recently gained a name: the school-to-prison pipeline. . . . Over the last two decades, experts from many fields have documented the myriad negative consequences of the school-to-prison pipeline. In addition to missing school when they are suspended or expelled, students who experience the harsh effects of these policies are more likely to struggle in classes, drop out, and suffer other negative effects on their educations. . . . Our present jurisprudence is sending the wrong message to schools. It makes it too easy for educators to shed their significant and important role in that process and delegate it to the police and courts.”

Ironically since the trial of this case, the “clock boy case” has attracted nation-wide attention. That was the incident where a school in Texas and the local police probably overreacted when a high school student brought his homemade clock to school. After the media outburst, even the President of the United States invited him **and his clock** to come to the White House. Appellant does not ask for a White House visit, but he does ask that his being pushed by a fellow student should not rise to the level of a crime.

### CONCLUSION

Because the charges against WEM, claiming an assault of a school employee, were never proven pursuant to the plain language of the law and the cases interpreting the law, particularly in light of the evidentiary burden of beyond a reasonable doubt, the verdict of the juvenile court should be overturned and the case should be dismissed with prejudice.



**CERTIFICATE OF COMPLIANCE WITH RULE 24(F)(1)**

Joseph C. Rust, as attorney for appellant WEM, hereby certifies that this brief complies with the type-volume limitation, meaning that the number of words in the brief are less than 14,000.

DATED this 6<sup>th</sup> day of November, 2015.

KESLER & RUST

  
Joseph C. Rust  
*Attorneys for Appellant W.E.M.*

**ADDENDUM**

THIRD DISTRICT JUVENILE COURT  
SALT LAKE COUNTY, STATE OF UTAH

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STATE OF UTAH, in the interest of : Appellate Case No. 20150681  
:   
M., W. E. 05-31, 2000 : Case No. 1108641  
:   
A person under the age of 18 years. : With Keyword Index

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BENCH TRIAL JULY 31, 2015

BEFORE

JUDGE MARK W. MAY

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CAROLYN ERICKSON, CSR  
CERTIFIED COURT TRANSCRIBER  
1775 East Ellen Way  
Sandy, Utah 84092  
801-523-1186

1 not doing that at all. By W's own testimony and by W's own  
2 admission he has admitted to misconduct. He admitted that  
3 people could get hurt in the behavior that he was engaging  
4 in. He admitted that it could cause pain. So at the very  
5 least, he's admitted to engaging in reckless conduct.

6 Someone being shoved, and as the Court has already  
7 pointed out, Mr. Rust is arguing that there's no indication  
8 that Ms. Zimmerman was specifically targeted but again, the  
9 State's response is she does not have to be specifically  
10 targeted. The fact is that an assault occurred on Ms.  
11 Zimmerman, W knew that she was a school employee, that  
12 conduct was, at the very least reckless and based on the law  
13 Your Honor, we'd ask that the law and the statutes the State  
14 has provided, we'd ask that Your Honor find the (inaudible).

15 THE COURT: Okay. Thank you. I just received a  
16 note that I have another protective order that I have to go  
17 take care of and then while I'm back there I'm going to go  
18 back over the exhibits. I want to make sure I have all of  
19 them. Are there any over there that I can't see? It seems  
20 like there's another page to this one somewhere. Okay.

21 And then I'll come back in and render a decision.  
22 So it'll be at least 20 minutes to do the protective order  
23 and go over everything. So...

24 (Whereupon a recess was taken)

25 THE COURT: Okay, thank you. I've had an

1 opportunity to go over my notes and the exhibits and also  
2 view the statutes involved. I find the following has been  
3 proved beyond a reasonable doubt.

4 Ms. Zimmerman was an assistant principal at  
5 Eisenhower Junior High. W knew Ms. Zimmerman was a school  
6 employee and had had dealings with her in the past in that  
7 capacity. W engaged in what I will call the bumping game  
8 with his friends on more than one occasion. W knew that the  
9 bumping game could result in someone getting hurt.

10 On December 9<sup>th</sup>, W and his friends were - maybe not  
11 friends at this point - K were playing the bumping game at  
12 the Eisenhower Junior High. At least three incidents of the  
13 bumping game occurred that morning, one before the incident  
14 involving Ms. Zimmerman, the incident involving Ms. Zimmerman  
15 and the one after that incident with Ms. Zimmerman. And  
16 while playing the bumping game W dipped his shoulder and  
17 struck Ms. Zimmerman. The force of the impact knocked her  
18 off balance. She felt as if she had been hit hard and caused  
19 her bodily pain.

20 The requirements for assault against a school  
21 employee is that any person who assaults a public employee.  
22 So we have to look at what assault is. The definition of  
23 assault is an act committed - one of the definitions - an act  
24 committed with unlawful force or violence that causes bodily  
25 injury to another or creates a substantial risk of bodily

1 injury and bodily injury is defined as pain. So there was an  
2 assault on an employee. W again had knowledge that the  
3 individual was an employee. The employee was acting in the  
4 scope of her authority as she's testified and I'll find also  
5 that she was walking up and down the halls as was one of her  
6 normal obligations as an assistant principal.

7 So I'll find that W, that you are guilty of assault  
8 against a school employee.

9 Now, the legislature has stated that this is a  
10 Class A Misdemeanor. It doesn't give me any discretion. It  
11 says it's a Class A Misdemeanor. Where I do have discretion  
12 is in sentencing. And I do sympathize and agree with Mr.  
13 Rust that this doesn't seem like a Class A Misdemeanor. It's  
14 - anyone whose dealt with 13-year old boys knows what the  
15 bumping game is. I think any boy whose been 13 has either  
16 played it or been part of it. Nevertheless, this is what the  
17 elements of law have been met. So I do have discretion again  
18 as I say as far as sentencing goes.

19 W, can you please stand?

20 This is your sentence W. You're going to write a  
21 letter of apology to Ms. Zimmerman. You're going to turn  
22 that in to the State within 10 days, does that give you  
23 enough time? Ten days. Normally for a Class A Misdemeanor  
24 the standard fine is \$375, 60 hours of community service and  
25 we talk about detention time. I'm going to give you 20 hours

1 of community service and you have to do that within 60 days.

2 I'll give you five suspended days of detention,  
3 meaning those days hang over your head. So you only go to  
4 detention if you refuse to follow my orders. That's it.

5 MS. DAUGHERTY: And Your Honor, given that this is  
6 a Class A DNA is mandatory.

7 THE COURT: He's 15. I thought he was a bit  
8 younger. I don't have discretion. You have to provide DNA,  
9 fingerprint and photographs. There's a \$150 collection fee,  
10 you'll have to pay that. I don't have discretion to waive  
11 it. But I'm not imposing any fines. You have 60 days to  
12 take care of that.

13 Anything else today?

14 MR. RUST: Yes, Your Honor, the community service,  
15 is that under anybody's particular direction?

16 THE COURT: Yes.

17 MR. RUST: It has to be under the probation  
18 officer's direction?

19 THE COURT: Well -

20 MR. RUST: In other words -

21 THE COURT: - normally what happens is you provide  
22 him with what you want to do and we'll let you know if it's  
23 appropriate. You can't babysit your sister. I mean, that's  
24 not community service. But anything else usually, just about  
25 anything else goes. But, yes, he needs to run it by the

Third District Juvenile Court  
FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, in the interest of	Minutes, Findings, and Order
McLachlan, Wyatt Eric 05-31-2000	Case No. 1108641
A person under the age of 18 years	

Before Judge Mark W. May on July 31, 2015

This case came before the Court for a hearing on the following:

Case Number 1108641, Wyatt McLachlan

2 - ASSAULT AGAINST SCHOOL EMPLOYE (Class A Misdemeanor) - Trial

MINUTES:

Present:

Wyatt Eric McLachlan, Minor

Alan M Milburn, Probation Officer

Joseph C Rust, Attorney -- On Behalf Of The Minor

Mikelle C Daugherty, Attorney -- On Behalf Of The State

Patty McLachlan, Mother

Weston McLachlan, Father

Steven Nelson - On Behalf of the State

Other interested parties

The matter came before the Court for trial.

The Court addressed preliminary matters.

The Court invoked the Exclusionary Rule.

Ms. Daugherty gave opening statements.

Mr. Rust gave opening statements.

The State called Brenda Zimmerman to the stand. (1:43:55 -2:08:36 PM)



The witness was sworn and testified.

The witness identified Wyatt Eric McLachlan.

The witness was excused.

The State called Kaden Jensen to the stand. (2:08:51 - 2:37:28)

The witness was sworn and testified.

The witness identified Wyatt Eric McLachlan.

Mr. Rust moved the Court to admit Exhibit # 3 into evidence.

There were no objections.

Exhibit 3 was accepted into evidence.

Mr. Rust moved the Court to admit Exhibit 1B (pages 4 and 5) into evidence.

There were no objections.

Exhibit 1B (pages 4 and 5) were accepted into evidence.

The witness was excused.

The State called Lee Dial to the stand. (2:37:32 - 3:02:41)

The witness was sworn and testified.

The witness identified Wyatt Eric McLachlan.

Ms. Daugherty moved the Court enter exhibit A into evidence.

There were no objections.

Exhibit A was accepted into evidence.

The Court recessed. (2:49:55)

The Court resumed. (2:57:06)

The witness was excused.

The State rested.

Mr. Rust moved the Court for a directed verdict.

The Court denied Mr. Rust's motion.

Mr. Rust called Wyatt Eric McLachlan to the stand. (3:09:00 - 3:23:33)

The witness was sworn and testified.

Mr. Rust moved the Court to enter exhibit 2C into evidence.

There were no objections.

Exhibit 2C was accepted into evidence.

The witness was excused.

Mr. Rust called Jackson Graham to the stand. (3:24:06 - 3:28:02)

The witness was sworn and testified.

The witness was excused.

Mr. Rust called Kyle Wilkins to the stand. (3:28:09 - 3:32:28)

The witness was sworn and testified.

The State objected to the witness and gave basis.

The witness was excused.

Mr. Rust called Sherri Branch to the stand. (3:32:31 - 3:56:50 )

The witness was sworn and testified.

The witness was excused.

Mr. Rust rested.

The State gave closing arguments.

Mr. Rust gave closing arguments.

The Court recessed. (4:17:36)

The Court resumed. (4:53:38)

The Court addressed and accepted comments from all parties present.

Exhibits:

EXHIBIT Number 3 (Text Messages) was submitted by Joseph Rust and was received, reviewed, and accepted into evidence.

EXHIBIT Number 1B (pgs. 4 & 5) (Granite School District Statement) was submitted by Joseph Rust and was received, reviewed, and accepted into evidence.

EXHIBIT Number A (Security Video of Eishehower Jr. High) was submitted by Mikelle Daugherty and was received, reviewed, and accepted into evidence.

EXHIBIT Number 2C (Cigar Wrappers) was submitted by Joseph Rust and was received, reviewed, and accepted into evidence.

FINDINGS:

The Court finds the allegations contained in the petition to be true and correct as alleged beyond a reasonable doubt and that said juvenile comes within the jurisdiction of the Juvenile Court Act of the State of Utah as amended to date.

ORDERS:

Wyatt Eric McLachlan is to write a letter of apology to Brenda Zimmerman, due to the Court within 10 days.

Wyatt Eric McLachlan is to complete 20 community service hours on or before September 30, 2015.

Wyatt Eric McLachlan is committed to detention for 5 days. This order is hereby suspended upon compliance of the courts orders.

Wyatt Eric McLachlan is ordered to provide a DNA saliva specimen to a designated employee of this court within 120 days. Wyatt Eric McLachlan is ordered to pay a fee of \$150.00 for obtaining and processing a DNA sample. Fee is to be paid on or before September 30, 2015.

Wyatt Eric McLachlan is to be photographed by a designated Juvenile Court employee within 120 days of this order.

Wyatt Eric McLachlan is to be fingerprinted by a designated employee of Juvenile Justice Services at the local detention center within 120 days of this order. Wyatt Eric McLachlan may also be fingerprinted at a local law enforcement agency and pay any applicable fees. If fingerprinting is done at a local law enforcement agency, Wyatt Eric McLachlan must provide verification of the fingerprinting to the Court within 120 days of this order.

All previous orders of the Court consistent with this order are hereby continued.

A non appearance Exparte Review hearing is set for 10-02-2015.

Failure to comply with the above order may result in your being found in contempt of court, the loss of your driver license, and/or forfeiture of any or all of your Utah State Income Tax Refund.

Copy of this court order is your personal notice to appear for the above hearing. You will not receive further notice.

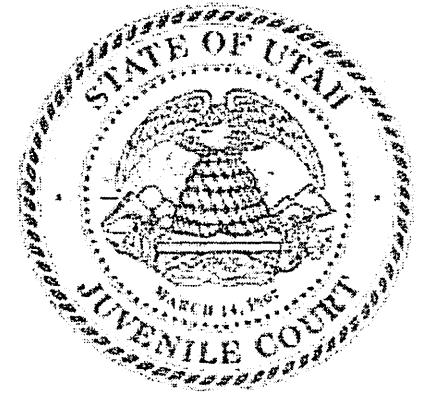
You may have the right to appeal this matter to the Utah State Court of Appeals. Appeals must be filed within 30 days from the date of this order.

BY THE COURT

*Digitally signed by  
Mark W. May  
and filed on 08-07-2015*

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Mark W. May, Judge



Recorded by M. Caffee

MWM 1:38:56 - 2:49:55; 2:57:06 - 4:17:36; 4:46:49

CC: Patty and Weston 4503 S 3200 W West Valley City UT 84119

DA

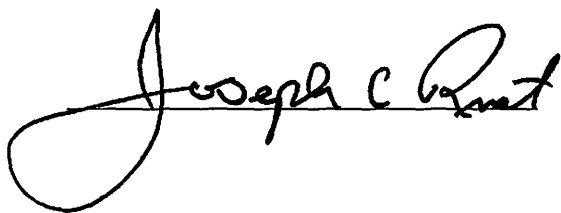
Joseph Rust, esq

Payments can be made at <http://www.utcourts.gov/epayments/>.

To access other case information obtain a PIN number from the court.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be delivered by U.S. Mail two true and correct  
copies of **BRIEF OF APPELLANT W.E.M.**, this 6<sup>th</sup> day of November, 2015 to:

A handwritten signature in black ink, appearing to read "Joseph C. Runt". The signature is written in a cursive style with a large, looping initial "J".

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