

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

Z.J.D., a minor,

Appellant.

No. 41702-2-II

UNPUBLISHED OPINION

Hunt, J. — ZJD<sup>1</sup> appeals his juvenile court adjudication and manifest injustice disposition for felony harassment. He argues that (1) the evidence was insufficient to prove felony harassment because the State did not present any evidence that his threat to use a knife on his mother actually caused her to fear for her life; and (2) the record does not support his manifest injustice disposition. Holding that the evidence was not sufficient to show that ZJD's threat and conduct caused his mother to fear for her life, we reverse ZJD's felony harassment adjudication and vacate the corresponding manifest injustice disposition.

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<sup>1</sup> It is appropriate to provide some confidentiality in this case. Accordingly, it is hereby ordered that initials will be used in the case caption and in the body of the opinion to identify the parties and other juveniles involved.

## FACTS

In late 2010, then 14-year-old ZJD entered his family's kitchen with an "attitude." Report of Proceedings (RP) (Dec. 16, 2010) at 14. In response to his mother's comment, ZJD responded, "[D]on't F'ing touch me" and picked up a dirty butcher knife. RP (Dec. 16, 2010) at 14. "Shocked" by ZJD's conduct, his mother put him in a "lock," with her arm around his neck and his back against her chest to restrain his use of the knife. RP (Dec. 16, 2010) at 14. ZJD then turned the knife around, pointed the blade at his mother's face, and told her, "[I]f you piss me off enough, I'm going to use it." RP (Dec. 16, 2010) at 14.

ZJD's grandmother, who had been on the phone with his mother, overheard his statements through the phone, was startled, and said she was going to call the police. ZJD's mother did not want her to call law enforcement. ZJD's mother eventually took the knife away from ZJD, who then went to his room to calm down. According to ZJD's mother, she never feared for her life because she knew that ZJD was not going to kill her.

## II. Procedure

The State charged ZJD as a juvenile with felony harassment under former RCW 9A.46.020(1)(a)(i) and former RCW 9A.46.020(2)(b) (2003).<sup>2</sup> CP at 1. At trial, ZJD's mother testified that his conduct with the knife had "shocked" and "scared" her, that she had put him in a "lock" to restrain him, that her mother had wanted to call police, that she knew ZJD had simply

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<sup>2</sup> In 2011, the legislature amended RCW 9A.46.020 to include subsections for harassment against public officers and employees. These amendments are irrelevant here because the facts do not involve public officers or employees.

done something “stupid,” and that ZJD was not going to kill her because “that’s not him.” RP (Dec. 16, 2010) at 14, 15, 18.

When ZJD testified, he admitted holding the butcher knife in his hand, pointing it at his mother, and saying, “[I]f you piss me off enough, I will use it.” RP (Dec. 16, 2010) at 19. He further testified, however, that he was not going to hurt her, that he did not threaten to kill her, and that he was “just playing around.” RP (Dec. 16, 2010) at 19. He did not know whether his mother was “scared” by the incident, but he believed that she may have been angry about it. RP (Dec. 16, 2010) at 21.

Based on the evidence, demeanor, and credibility of the witnesses, the juvenile court concluded that (1) ZJD had threatened to “kill” his mother immediately or in the future; and (2) ZJD’s words and conduct had placed her in reasonable fear that the threat would be carried out. CP at 17 (Conclusion of Law 4 and 5). The juvenile court was “satisfied beyond a reasonable doubt that [ZJD was] guilty of” felony harassment with a threat to kill, noting:

[V]ery near the end of [ZJD’s mother’s] testimony *she said it scared her[,] and I understand why it would scare her. Her son had a—a very large knife in his hand, he had it pointed at her face, and he said that he was willing to use it if she made him angry enough and that scared her. I think that’s all that it requires.*

RP (Dec. 16, 2010) at 23 (emphasis added).

The juvenile court granted the State’s request for a psychological examination before the disposition hearing, to be performed by Dr. Keith Krueger. Based on this report and accepting the State’s recommendation, the juvenile court imposed a manifest injustice disposition of 30 to 40 weeks detention with 48 days credit for time served. ZJD appeals.

## ANALYSIS

ZJD argues that the evidence was insufficient to prove felony harassment because the State did not present evidence that his threat actually caused his mother to fear that he would kill her. The State responds that there was sufficient direct and circumstantial evidence that ZJD's mother feared for her life. We disagree with the State and agree with ZJD.

When reviewing a challenge to the sufficiency of the evidence, the test is whether, "after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Partin*, 88 Wn.2d 899, 906-07, 567 P.2d 1136 (1977), *abrogated on other grounds by State v. Lyons*, \_\_\_ Wn.2d \_\_\_, 275 P.3d 314, 319-20 (2012). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992) (en banc). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004) (citing *State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985)).

The following statutes were in effect at the time of ZJD's offense. Former RCW 9A.46.020(1) set forth the elements that the State needed to prove for harassment in general: A person is guilty of harassment if

(a) [w]ithout lawful authority, the person knowingly threatens: (i) [t]o cause bodily injury immediately or in the future to the person threatened or to any other person . . . and (b) [t]he person by words or conduct *places the person threatened in reasonable fear that the threat will be carried out.*

RCW 9A.46.020(1)(a),(b) (emphasis added). Former RCW 9A.46.020(2)(a) provided, “Except as provided in (b) of this subsection, a person who harasses another is guilty of a gross misdemeanor.” Former RCW 9A.46.020(2)(b)(ii) provided that the crime of harassment was elevated to a class C felony if “the person harasses another person under subsection (1)(a)(i) of this section by *threatening to kill the person* threatened or any other person.” (Emphasis added).

Here, even considering the evidence in the light most favorable to the State and deferring to the juvenile court’s assessment of the witnesses’ credibility, we hold that the evidence was insufficient to support that ZJD committed felony harassment. A threat to kill or ZJD’s mother’s reasonable belief that he would kill her with the knife was a necessary element to elevate the crime of harassment from a gross misdemeanor to a felony under former RCW 9A.46.020(2)(b)(ii). But the State produced no evidence that ZJD threatened to kill his mother; or that she reasonably believed he would carry out his threatened use of knife by killing her. Although “shocked” and “scared,” ZJD’s mother responded to his attitude, comments, and threat to use the knife by restraining him in “lock” and by wresting the knife away from him. RP (Dec. 16, 2010) at 14, 18. During this confrontation, she told ZJD’s grandmother over the phone *not* to call police. Afterwards, ZJD simply withdrew to his room. Most telling, however, was ZJD’s

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mother's later testimony that she never believed ZJD was going to use the knife to hurt her.

We reverse ZJD's felony harassment adjudication and manifest injustice disposition.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

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Hunt, J.

We concur:

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Worswick, A.C.J.

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Johanson, J.