



# CIRCUIT COURT OF OREGON

FIFTH JUDICIAL DISTRICT  
CLACKAMAS COUNTY COURTHOUSE  
OREGON CITY, OREGON 97045

JEFFREY S. JONES  
CIRCUIT COURT JUDGE

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November 19, 2020

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RE: 20SK02242; Milone & Bailey

Counsel:

The petitioner presented lengthy testimony about on-line postings by respondent and others which contributed to her fear of the respondent. However, the court bases this decision on what did or did not happen on the date in question – August 25, 2020. More specifically, the ultimate questions are whether the respondent pointed a gun at petitioner that afternoon and whether she drove by again several hours later near midnight and said, “Hey girl, hey.” Furthermore, this decision is not based on what group, club or individuals either the petitioner or respondent associate with.

The stalking statute requires proof of at least two unwanted contacts by a person which are alarming or coercing. A petitioner must also prove that it is objectively reasonable for a person in the petitioner’s situation to have been alarmed or coerced by the contacts. Finally, the contacts must cause the petitioner reasonable apprehension for her or his personal safety.

The court makes the following findings of fact and conclusions of law:

## FINDINGS OF FACT

1) On August 25, 2020, the respondent was a passenger in a vehicle which drove near petitioner’s residence. The petitioner was exiting her car when the respondent pointed a gun at her while also holding a cell phone. During this event, the respondent said, “I got you girl, I got you girl, I got you girl.” The respondent also threatened to shoot the petitioner’s dogs who were barking. The petitioner then called 911 and contacted friends to come over to her home to comfort and protect her.

2) Approximately ten hours later, the respondent returned in the same black pick-up and saw the petitioner sitting outside. The respondent looked toward petitioner and said, “Hey girl, hey.” This was witnessed by petitioner’s friend Shelly Heyward. Ms. Heyward observed that the petitioner acted scared by the events of August 25 and at times was physically shaking.



After these incidents, the petitioner asked her friend, Timothy Cornish, to stay near her at work. Mr. Cornish, who did not witness the August 25 events, but who was aware of them, provided support for petitioner by remaining at petitioner's restaurant for 4 to 6 hours in the evenings. He observed that petitioner was distressed, distracted and nervous about what had happened and what could happen.

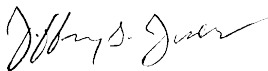
## CONCLUSIONS OF LAW

Respondent's pointing a gun at petitioner clearly qualifies as an unwanted contact under the statute. The drive-by several hours later when respondent said to petitioner, "Hey girl, hey" would not, standing alone, qualify as an unwanted contact. However, as stated in *Boyd v. Essin, 170 Or App 509 (2000)*, benign conduct when viewed in isolation can take on a different character when viewed either in combination with or against the backdrop of one party's assaultive behavior toward the other. In *J.L.B. v. Braude, 250 Or.App. 122 (2012)* the court used the words "against the backdrop of one party's aggressive behavior."

The court concludes that the second incident, occurring close in time with the gun pointing, qualifies as a second unwanted contact. Furthermore, it would be reasonable for a person to experience apprehension for her or his personal safety. All of the elements of the stalking statute are met.

It is important to note that the burden of proof in this case is "proof by a preponderance of the evidence". This means that a petitioner can prevail if the finder of fact concludes that it is more likely than not that the petitioner's version of events is true. This level of proof is sometimes explained as a showing that the 'greater weight of the evidence' is in favor of one party. Two higher standards of proof are recognized under Oregon law – "proof beyond a reasonable doubt" which applies in criminal cases and "clear and convincing evidence" which applies in cases such as termination of parental rights. The evidence in this case was conflicting (the respondent and her husband deny petitioner's claims about what happened on August 25) and an analysis of it, at times, leads to some unanswered questions. If the requisite burden of proof was higher, the result in this case might have been different. However, when applying the lower standard of proof of "proof by a preponderance of the evidence," the facts from trial lead to the conclusion that it is more likely true than not true that respondent engaged in the acts described above.

Accordingly, the stalking order originally issued on August 28, 2020 shall continue.



Signed: 11/19/2020 09:33 AM

Circuit Court Judge Jeffrey S. Jones

Jeffrey S. Jones  
Clackamas County Circuit Court Judge