

At the Crossroads

J.S. vs. Manheim Twp. Sch. Dist., 2021 Pa. LEXIS 3998 (November 21, 2021) Todd, Justice, was a discretionary appeal whose facts uniquely placed it at the crossroads of student free speech rights under the First Amendment as opposed to the duty of public schools to maintain a safe, effective and efficient educational environment.

Specifically, the Supreme Court of Pennsylvania reviewed the determination of Appellant Manheim Township School District (“School District”) that one of its students, Appellee J.S., made terroristic threats to another student through social media – outside of the school day and off school property – substantially disrupting the school environment, and leading to his expulsion.

The Pennsylvania Supreme Court allowed appeal to consider whether the School District denied J.S. due process during the expulsion process and to considered the proper standard by which to determine whether J.S. engaged in threatening speech that would be unprotected under the First Amendment of the United States Constitution. The School Board was tasked with the difficult job of determining whether the student created a substantial disruption of the school environment.

One of my first jobs as a lawyer, working for Nathan Stuart, a well-known lawyer representing school districts, was to set up “due process” hearings under recent federal legislation.

In the *J.S. vs. Manheim Twp. Sch. Dist.* Case, the Pennsylvania Supreme Court concluded that the School District improperly expelled J.S. and therefore it affirmed the Order of the Commonwealth Court.

The Supreme Court held that a reviewing tribunal must engage in the two-part inquiry: First examining the content of the speech, and then assessing relevant contextual factors surrounding the speech. These factors include, but are not limited to: (1) the language employed by the speaker; (2) whether the statement constituted political hyperbole, jest, or satire; (3) whether the speech was of the type that often involves inexact and abusive language; (4) whether the threat was conditional; (5) whether it was communicated directly to the victim; (6) whether the victim had reason to believe the speaker had a propensity to engage in violence; and (7) how the listeners reacted to the speech.

The Court came to the difficult conclusion that considering the totality of the circumstances, J.S. did not intend to communicate a serious expression of an intent to inflict harm, intimidate or threaten the recipient of the message. Not everyone would agree with the Court’s attitude in this case. The majority Justices noted that while mean-spirited, sophomoric, inartful, misguided, and crude, J.S.’s memes were clearly not intended to threaten Student One, Student Two, or any other person. Perhaps most important to the Court is that the repulsive statements by J.S. were not perceived as threatening by the sole recipient, Student One. Student One’s reaction was mild further supporting the conclusion by the Pennsylvania Supreme Court that there was a lack of intent on the part of J.S. to threaten. It appears even to the casual observer, that the

response of the recipient, who did not act threatened, was the crucial component on which this case turned.

This is supported by the Court's statement that J.S.'s "memes" did not constitute a true threat. What a true threat is as opposed to a threat on another level, is not easily discernable from this Opinion.

The take away bullet points are as follows:

- The Pennsylvania Supreme Court reversed expulsion of student.
- The student expelled made fun of other students and referred to them shooting up the school.
- The speech was protected by the First Amendment, even though it was crude and inappropriate, said Justice Todd.
- Considering the totality of the circumstances, the student did not intend to communicate a serious expression of an intent to inflict harm, intimidate, or threaten the recipient of the message.
- The memes were not intended to threaten other students and not perceived as threatening by the sole recipient, whose reaction to the communication was mild.

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