ORIGINAL

IN THE SUPREME COURT OF OHIO

BRIAN WALLACE, ADMINISTRATOR OF THE ESTATE OF NORMAN E. WALLACE Plaintiff-Appellant, vs. BISWANATH HALDER, et al., Defendants-Appellees.	:	Supreme Court Case No. 2009-1817 Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District Court of Appeals Case No. CA-08-092046

APPELLEE CASE WESTERN RESERVE UNIVERSITY'S MEMORANDUM IN RESPONSE TO APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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EXPLANATION OF WHY THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

This case arises from a premises liability lawsuit in which Norman E. Wallace ("Wallace") was tragically and unexpectedly murdered on the campus of Appellee Case Western Reserve University ("CWRU") by a third-party whose actions were not reasonably foreseeable to the university. Though the senseless murder of Wallace was indeed tragic on its facts, the legal aspect of this case presents nothing more than a straightforward application of settled premises liability principles. As such, this case is not one of public or great general interest that warrants this Court's exercise of discretionary review.

The Cuyahoga County Court of Common Pleas and the Eighth District Court of Appeals properly applied established legal precedent in their analyses of the evidence and reached the same conclusion that CWRU did not owe a duty to protect against the criminal acts of Biswanath Halder ("Halder") because his conduct was not reasonably foreseeable as a matter of law. Appellant Brian Wallace ("Appellant") acknowledges and concedes that the lower courts employed the appropriate legal test of "totality of circumstances" in determining whether the criminal conduct of a third-party was foreseeable. But Appellant does not like the lower court's application of the undisputed facts to the very legal standard he contends is appropriate.

Although Appellant tries to pique this Court's interest by contending that the appellate courts are split on the appropriate foreseeability analysis – he cites cases in which a court has applied a "prior similar acts" test and others in which courts have applied a "totality of circumstances" test – there is no meaningful split among the districts. Rather, the case law shows that the foreseeability analysis depends upon the underlying facts and circumstances of a given case. Notably, however, even a cursory reading of Appellant's jurisdictional memorandum

shows that this alleged conflict is not the basis upon which he urges this Court to accept jurisdiction. Indeed, Appellant cannot assert a true "conflict" basis for jurisdiction because the lower courts applied the very "totality of circumstances" analysis that Appellant urges as the proper legal standard. In other words, the lower courts applied the legal standard that Appellant advocates in his appeal.

This case presents nothing more than a case-specific application of summary judgment principles to the law of premises liability, which is primarily of interest only to the parties and is not a matter of public or great general interest. See, *State v. Urbin*, 100 Ohio St.3d 1207, 2003-Ohio-5549, at ¶ 5 (Moyer, C.J., concurring) (a "case specific" issue is not of "general interest" within the meaning of § 2(B)(2)(e), Article IV, Ohio Constitution). The Trial Court and the Court of Appeals found, based on the undisputed facts and as a matter of law, that CWRU could not have foreseen the terrible acts committed by Halder almost three years after he left the campus in August 2000. Appellant urges this Court to accept this case in order to get one more bite at the appellate apple in hopes that this Court will substitute its judgment on the facts for that of the lower courts. This Court, of course, should not do so, especially here, where Appellant's reckless rendition of the "facts" in his jurisdictional memorandum is unsupported by any evidence and not borne out by the decisions at any level of this litigation.

"This Court reserves its jurisdiction over cases of 'public or great general interest' to those matters 'involving principles the settlement of which is of importance to the public as distinguished from that of the parties.'" *Williamson v. Rubich* (1960), 171 Ohio St. 253, 259, quoting *Layne & Bowler Corp. v. Western Well Works, Inc.* (1923), 261 U.S. 387, 393, 67 L.Ed. 712, 43 S.Ct. 422. This Court should decline to accept jurisdiction of Appellant's appeal in this case because there are no such principles of law requiring this Court's attention.

STATEMENT OF THE CASE AND FACTS

A. Statement of the Case

On May 9, 2003, Halder used a sledge hammer to break through the secured back door of the Peter B. Lewis Building on the CWRU campus and, within thirty seconds, indiscriminately murdered the first person he encountered, Wallace. Halder went on to shoot and wound two other people and hold the building and its occupants hostage for seven hours. Halder was subsequently arrested, charged, and found guilty of the murder of Wallace.[1]

Three years later, Appellant refiled a Complaint against Defendants Halder and CWRU[2] (T.d. 1).[3] Appellant asserted survivorship and wrongful death claims based on premises liability and negligent hiring, supervision and performance of security. At the close of discovery, CWRU filed its Motion for Summary Judgment asserting that Halder's criminal acts on May 9, 2003 were not reasonably foreseeable and, therefore, there was no duty to protect Norman Wallace. Appellant filed a Brief in Opposition to Defendant's Motion for Summary Judgment attaching thereto the Affidavit of Steven Miller, Ph.D., a previously unidentified expert witness (T.d. 114). The trial court granted CWRU's Motion to Strike and Exclude the Affidavit of Miller because Appellant failed to timely identify Miller as an expert pursuant to the Trial Court's Order, even though he previously had been granted five extensions of time to disclose his experts (T.d. 148).

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[1] Halder was charged and convicted of his crimes and will spend the rest of life in prison. See, *State of Ohio v. Biswanath Halder,* Cuyahoga County Court of Common Pleas, Case No. CR-03-437717-ZA. The claims against Halder in the case at bar have been stayed pending this appeal.

[2] The original Complaint was dismissed on May 6, 2005.

[3] The cites to the evidence in this Memorandum are from the appellate court record and refer to the Trial Docket ("T.d.") which includes depositions, criminal trial testimony and exhibits.

The trial court granted summary judgment in favor of Appellee CWRU on the grounds that the actions of Halder were not reasonably foreseeable and therefore Appellant's premises liability claim failed as a matter of law. The Trial Court concluded that; "The facts and circumstances which form the chronology of events involving Halder and CWRU are not "somewhat overwhelming" and do not create a duty on the part of CWRU to protect against Halder's criminal actions on May 9, 2003." *Wallace v. Halder* (Aug. 27, 2008), Cuyahoga C.P.No. CV-06-591169, ¶ 20 ("C.P. Opinion, ¶__"). The Trial Court also found in favor of CWRU on the claim for negligent hiring, supervision and performance of security because the opinion of Appellant's security expert, Ralph Witherspoon, was "...conclusory, unsupported by the facts and...beyond the scope of Mr. Witherspoon's expertise." C.P. Opinion, ¶ 21.

On appeal, the Eighth District Court of Appeals affirmed the Trial Court's summary judgment in favor of CWRU. The Court of Appeals confirmed that the special relationship that applies to colleges and their students is the same as between a business owner and an invitee. *Wallace v. Halder,* 8th Dist. App. No. 94026, 2009-Ohio-3738, at ¶ 32 ("C.A. Opinion, ¶ _") Applying the "totality of the circumstances" standard urged by Appellant, the Court found that the actions of Halder were not reasonably foreseeable as a matter of law. Id., ¶ 34. The Court of Appeals also determined that the Trial Court did not abuse its discretion by excluding Appellant's expert, Miller, because Appellant failed to comply with court orders and the applicable Local Rules. Id., ¶ 21.

B. <u>Statement of the Facts</u>

1. Facts Regarding Lower Courts' Decision that Halder's Murder of Wallace Was Not Reasonably Foreseeable to CWRU.

In its long history, CWRU never had a violent event which resulted in the murder of a student (T.d. 108, Ex. A, ¶ 4). Biswanath Halder, born in 1940, had been a graduate student in

CWRU's Weatherhead School of Management from August 1996 until May 1999 when he obtained his MBA (T.d. 108, Ex. B, ¶ 6). He continued his education by enrolling in the MBA-Plus program for the Fall 1999 and Spring 2000 semesters (T.d. 108, Ex.B, ¶¶ 6-7). Halder never enrolled in any CWRU class after June 2000 and never lived in CWRU housing. Although he was known to cause problems in the computer labs, Halder had no disciplinary or student judiciary problems.

Halder was developing a website which was not affiliated with CWRU, but was hosted by a company located in Cleveland.[4] On July 13, 2000, Halder alleged – erroneously it turns out – that Shawn Miller ("Miller"), a CWRU computer lab clerk, left a derogatory message in his website guestbook and also hacked into his website and deleted files (T.d. 101-106, pp. 3065-3066). Shortly thereafter, Halder met with Roger Bielefeld, Director of Information Technology at the Weatherhead School of Management, to address this matter (T.d. 93, pp. 9–10, 13). After meeting with Halder, Bielefeld spoke with Miller who denied Halder's allegations (T.d. 93, p. 13). Halder then met with David Kovacic, CWRU Manager of Network Engineering, who gave him as much information as he was able to provide (T.d. 101-106, pp. 6406-6407; 6418).

Halder also met with Michael Goliat, Investigator for the CWRU Security Department. Goliat met with Halder, conducted an investigation and determined that there was no evidence that the alleged hacking occurred at CWRU or with the use of CWRU property (T.d. 101-106, pp. 3063; 3065; 3068-3069). (The results of Goliat's investigation, as it turns out, were accurate and correct.) During their interactions, Goliat recalls Halder always acted appropriately (T.d. 101-106, pp. 3071-3072). When Goliat determined that investigation beyond his authority and

[4] As was established at both Halder's criminal trial in December 2005 and his civil suit against Miller, Halder had a personal Unix account housed off site at a company called Apk.net. Any unlawful entry into Halder's Unix account was not done at CWRU or using CWRU's computer network. (T.d. 101-106, pp. 6435-6436.)

jurisdiction was needed, he referred the matter to local police, specifically to Lt. John Serrao of the University Circle Police Department ("UCPD") (T.d. 101-106, pp. 3068-3072; 6430, 6431, 6436). While the matter remained unresolved as far as Halder was concerned, CWRU personnel - contrary to Appellant's assertions – conducted a formal investigation. C.A. Opinion, ¶_3. In fact, based on the evidence of record, the Court of Appeals rejected Wallace's argument that CWRU failed to take Halder's accusations of computer hacking seriously. Id., ¶ 40.

In late August of 2000, Halder sent a mass email claiming that Miller hacked into his website and that Miller was "an evil man" (T.d. 88, pp. 25-26). In response to this spam email, Associate Dean Julia Grant considered whether Halder's computer privileges should be revoked, and decided to wait a week to see if Halder registered for the Fall 2000 semester. If Halder failed to register for classes, his computer privileges would automatically lapse (T.d. 88, pp. 27-28). Halder never registered for the Fall 2000 semester and, as far as CWRU knows, never returned to CWRU until May 9, 2003, almost three years after his website files had been deleted (T.d. 108, Ex.I). "The last known occasion that Halder used the CWRU computer system or was on campus was in August 2000." C.A. Opinion, ¶ 4.

From information obtained later at Halder's criminal trial in December 2005, Lt. Serrao of UCPD determined that the hacking and theft occurred at the internet provider which hosted Halder's website. Lt. Serrao referred Halder to Detective Arvin Clar of the Cleveland Police Department ("CPD") (T.d. 101-106, pp. 6435-6436; 6341-6343). Lt. Serrao was never concerned about Halder being dangerous or potentially violent, nor did he feel the need to refer him for psychiatric evaluation (T.d. 101-106, p. 6437). In late 2000, Det. Clar continued to meet with Halder but his investigation ended with no charges or arrests (T.d. 101-106, pp. 5286-5287;

5294). Again, Det. Clar testified that he never considered Halder as a potential threat of harm to anyone (T.d. 101-106, pp. 5294-5295).

Halder enrolled in classes at Cleveland State University ("CSU") in September 2000 and remained a student there through the Spring semester of 2003 (T.d. 108, Ex. L). CSU administration had no disciplinary concerns about Halder.

In June 2001, almost one year after he left CWRU, Halder hired an attorney, Robert Stein, who filed a lawsuit on behalf of Halder against Shawn Miller (T.d. 101-106, pp. 6361, 6369; T.d. 108, Ex. D). Contrary to Appellant's misstatement, Halder did not assert any claims against CWRU (T.d. 101-106, pp. 6369-6371). Through the discovery process, Stein determined that the break-in to Halder's website originated from Strongsville, Ohio (T.d. 101-106, pp. 6338, 6347). In September 2001, Stein took the deposition of Miller who denied having anything to do with the hacking incident (T.d. 101-106, pp. 6350-6351).

Stein advised Halder that Miller was not the culprit (T.d. 101-106, p. 6359). Stein also advised that someone else could be responsible and that he wanted to pursue that avenue, but Halder refused (Id.) Stein never considered that Halder posed a threat of danger to anyone (T.d. 101-106, pp. 6375-6376). The evidence obtained through the criminal trial of Halder confirmed Stein's determination that CWRU never destroyed any of Halder's files. Contrary to Appellant's false assertion, *Stein testified that the hacking did not occur on CWRU's property or with their knowledge* (T.d. 101-106, pp. 6370-6374).

At Halder's criminal trial (more two years after the shooting incident and five years after he left the CWRU campus), Miller identified for the first time who he believed hacked into Halder's website – Christopher Fenton. Miller also testified he never shared this belief about Fenton with anyone associated with CWRU (T.d. 111; T.d. 108, Ex. N). Thus, to the extent

Appellant suggests Fenton's alleged actions made the shooting foreseeable to CWRU, this argument is a red herring. No one, including Halder himself, thought that Fenton was involved in the hacking at the time of the shooting (T.d. 101-106, 6353; T.d. 108, Ex. M).

Phil Helon, who lived near Halder from September 2001 to July 2002, had numerous conversations with Halder about his case against Miller. Helon knew Halder was angry with Miller, but at no time did he consider that Halder would be violent and shoot and kill someone, despite vague threats (T.d. 95, pp. 26–27). Even Miller did not report any concerns about the potential for Halder to hurt someone (T.d. 91, pp. 43–44). Miller testified that he believed the more likely scenario, which he did not report to anyone at CWRU, was that Halder would come to his house and cause property damage (T.d. 91, pp. 36-37). C.A. Opinion, ¶ 36.

In sum, the relevant witnesses were consistent in their perception that Hader was not violent or dangerous as he pursued his administrative and legal remedies. Neither Bielefeld nor Kovacic, who interacted with Halder at CWRU in 2000, considered him to be threat (T.d. 93, pp. 21,39; T.d. 101-106, p. 6406). Nor did Goliat who also interacted with Halder at CWRU, consider him to be a threat (T.d 101-106, pp. 3071-3072). This perception was not limited to CWRU personnel. At least two law enforcement officers, Lt. John Serrao of UCPD and Det. Clar of the CPD, had contact with Halder and did not deem him to be violent or a potential threat to anyone (T.d. 101-106, pp. 6433-6434, 6437; T.d. 101-106, pp. 5294-5295). Moreover, Mr. Stein, Halder's attorney until January 2002, did not view Halder as potential violent threat (T.d. 101-106, pp. 6375-6376).

The lack of a perceived threat was also corroborated by Helon who testified that Halder never did anything that caused him to even question whether Halder was dangerous (T.d. 95, p. 15). If he thought Halder was intending to do damage to the university or its students, he would

have reported it (T.d. 95, p. 25). Nor did Miller feel physically threatened by Halder (T.d. 91, pp. 46-47). Notably, Dean Julia Grant never received any information suggesting that Halder was potentially violent or that he would commit a criminal act (T.d. 88, p. 22). Simply put, nobody was on notice prior to May 9, 2003 that Halder could commit vicious and lethal acts.

At all times prior to the shooting on May 9, 2003, Halder demonstrated a consistent pattern of "...seeking redress through lawful and legitimate avenues." C.A. Opinion, ¶ 35. This pattern of legal, non-violent behavior coupled with the fact that Halder had not been on the campus since August 2000 made it reasonable for CWRU to not foresee the acts of Halder on May 9, 2003. Indeed, no one, not even the law enforcement officials, lawyers, the Judge, administrators at CSU, and everyone else who had direct contact with Halder after August 2000, could have predicted the violent attack on the Peter B. Lewis Building.

2. Facts Regarding the Exclusion of the Affidavit of Stephen Miller, Ph.D.

The Court of Appeals determined that the Trial Court's exclusion of Dr. Miller's expert report was not an abuse of discretion recognizing that "[a]fter numerous extensions of time, the trial court imposed a final deadline of January 18, 2008 for submission of expert reports." C.A. Opinion, ¶¶ 17, 20.

During the proceedings below, the Trial Court ordered Appellant to identify experts and produce expert reports by August 1, 2007 (T.d. 15). The Trial Court extended this date multiple times at Appellant's request, ultimately ordering production of expert reports by January 18, 2008. (T.d. 47, 48, 69, 74, 83). Four days after the finl deadline set by the court, Appellant filed the "Preliminary Analysis and Report of Ralph W. Witherspoon" (T.d. 85).

On February 1, 2008, CWRU filed its Motion for Summary Judgment (T.d. 108). Two weeks later, and nearly a month after the deadline to produce expert reports, Appellant, filed a

Brief in Opposition to the Motion for Summary Judgment which attached the affidavit of Steven Miller, Ph.D., a previously unidentified expert witness (T.d. 114). The Trial Court granted CWRU's Motion to Strike and Exclude Miller because his affidavit was submitted after the deadline for submission of expert reports (T.d. 148). The Court of Appeals affirmed the Trial Court's exclusion of Miller's untimely affidavit, finding no abuse of discretion in light of the numerous extensions that the parties had received for the submission of expert reports. C.A.Opinion, ¶ 20.

RESPONSE TO PROPOSITIONS OF LAW

Appellant's Response to Proposition of Law No. 1: In a premises liability action, a university is not liable for a criminal act committed by a third person against an invitee of the university when the criminal act committed by the third person was not reasonably foreseeable under the totality of the circumstances.

The Appellant asks this Court to review the lower courts analysis of the "duty" element of negligence in the context of a premises liability action against a university. But this Court should note that there is no disagreement as to the applicable legal analysis, a circumstance cutting firmly against this Court's exercise of discretionary review.

It is well settled that the existence of a duty depends on the foreseeability of the harm. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St.3d 75. Foreseeability of harm usually depends on a defendant's knowledge. *Id.* at 77. See, also, *Hetrick v. Marion-Reserve Power Co.* (1943), 141 Ohio St. 347, 358-359. In the premises liability context, this Court has determined that "an occupier of premises for business purposes is not an insurer of the safety of his business invitees while they are on his premises." *Howard v. Rogers* (1969), 19 Ohio St.2d 42, paragraph two of the syllabus. "Where a business owner does not, and could not in the exercise of ordinary care, know of a danger which causes injury to his business invitee, he is not liable therefore." *Id.* at

paragraph three of the syllabus. *See, also Simpson v. Big Bear Stores Co.* (1995), 73 Ohio St.3d 130, 652 N.E.2d 702.

The issue in this case has to do with the foreseeability that Halder would go on a murderous rampage on CWRU's campus. The foreseeability of a criminal act by a third person on a business owner's premises turns on whether a reasonably prudent business would have anticipated that an injury was likely to occur. *Reitz v. May Co. Department Stores* (1990), 66 Ohio App.3d 188. In addition, because criminal acts by third parties are inherently difficult to predict (indeed, in this case, Halder's victim was chosen at random), the totality of the circumstances must be "somewhat overwhelming" before a business will be held to be on notice of, and therefore, under the duty to protect against, the criminal acts of others. *Id.*

The courts below expressly applied the "totality of the circumstances" standard to assess whether CWRU was under a duty to protect against the possibility that Halder would commit a violent crime on its campus. Based on the undisputed evidence, the lower courts concluded that Appellant failed to show "somewhat overwhelming" circumstances that would support a reasonable conclusion that CWRU should have foreseen Halder's evolution from law-abiding citizen to murderer.

Appellant does not challenge that the totality of the circumstances test is the correct standard. Rather, his jurisdictional argument asserts that the lower courts simply applied the legal standard incorrectly. In particular, Appellant contends that the courts below should have taken into account the "special nature of the academic enterprise." Memorandum in Support of Jurisdiction, at p.9. Aside from the larger question of whether Appellant's proposed application of an undisputed legal standard to particularized facts is truly a question of public or great general interest, Appellant's characterization of the lower court's analysis is simply wrong.

In the case at bar, the lower courts applied the totality of the circumstances test and considered all of the relevant factors. Contrary to the Appellant's implication, the courts recognized that the test applies regardless of whether the business owner is a university. See, C.A. Opinion at ¶ 32; C.P. Opinion at ¶ 13. Indeed, courts that have had occasion to examine a university's premises liability have applied general premises liability law to university campuses, including the legal determination of whether a criminal act was foreseeable under the "totality of the circumstances" test. See, e.g. *Shivers v. Univ. of Cincinnati,* Franklin App. No. 06AP-209, 2006-Ohio-5518. A university has a duty to warn or protect its students from the criminal conduct of third persons, but the university is not an insurer of its students' safety. See, *Kleisch v. Cleveland State University,* Franklin App. No. 05AP-289, 2006-Ohio-1300, and *Baldauf v. Kent State University* (1988), 49 Ohio App.3d 46, 550 N.E.2d 517. This standard is the same as that applied to other premises owners.

Appellant provides no support for the argument that the lower courts did not consider the character of CWRU, *i.e.* that it is a university. As evidenced by the application of the broader test of totality of the circumstances, the focus of both lower courts was on the specific facts of this case, including the relationships between the different parties, the university campus setting, and the lack of foreseeability that Halder would commit a completely random act of violence in the absence of any criminal background or history or a specific threat of violence. Rather, a reading of the Trial Court's opinion shows that it took into account the very university-related circumstances that Appellant argues in his jurisdictional memorandum. C.P. Opinion, ¶¶ 5-11, 16-19. And in any event, regardless of the setting, there is no common law duty to anticipate and foresee criminal activity. See, *Williams v. Prospect Mini Mart*, Lake App. No. 2002-L-84, 2003-Ohio-2232.

Appellant argues that the knowledge of people who were distantly affiliated, and regarding information that only they arguably might have possessed, should be imputed to CWRU and then somehow gathered and put together to create a picture of impending harm. Appellant cites to *American Financial Corp. v. Fireman's Fund Ins. Co.* (1968), 15 Ohio St.2d 171; 239 N.E.2d 33 to argue that this knowledge should be imputed to CWRU administrators. Appellant's position, however, is not supported by the record.

The most significant reason to reject Appellant's position is that no one ever testified that they considered Halder to be a threat. As the Trial Court observed, summary judgment evidence showed that the only arguable "threat" from Halder came in the form of an off-campus, hearsay statement in June 2002, ten months before the shooting, in which Halder purportedly said he would "fuck those fuckers up." CP. Opinion, ¶20. The Trial Court found that the significance of such a statement, even if it was made, "...is diminished by the fact that it occurred some 10 months before the murder of [Wallace]" *Id.*, ¶ 22. And, in any event, the statement does little to advance Appellant's case. Though the statement would be admissible to indicate the mental state of Miller and whether he perceived this information as a legitimate threat id. at ¶ 20, fn.9, it is undisputed that "Miller was not concerned for his safety and did not believe Halder would harm him." C.A. Opinion, ¶ 36. Therefore, the doctrine of imputed knowledge is inapplicable.

> **Appellee's Response to Proposition of Law No. 2**: A trial court does not abuse its discretion to exclude a proposed expert witness affidavit that was not filed in compliance with applicable procedural rules or in accordance with the court's scheduling order.

The second proposition of law provides no issue worthy of this Court's review. The Appellant essentially requests this Court to review the Trial Court's determination on the admissibility of expert opinion that was not offered in compliance with the Trial Court's order regarding disclosure of expert witnesses. The trial court granted at least five extensions to

Appellant to produce expert reports. Yet the Appellant did not produce his expert's report in a timely manner. A trial court does not abuse its discretion by excluding an expert report that does not comply with the court's order and rules. Further, "[a]n expert report may properly be excluded for purposes of summary judgment where it has been excluded for trial as a discovery sanction." C.A. Opinion, ¶ 21.

The Trial Court determined that the exclusion of Dr. Miller's report was due to Appellant's failure to abide by it's Order. The Trial Court did not rely on Local Rule 21.1 as suggested by Appellant which, by the way, Appellant also happened to violate. An important detail, contrary to Appellant's assertion in his jurisdictional memorandum that Miller's report was "rebuttal" to CWRU' expert, is that CWRU did not submit an expert report in support of its Motion for Summary Judgment. Rather, CWRU submitted expert reports solely to comply with the Court's Order to preserve the right to call expert witnesses at trial. Appellant's reliance on *Stewart v. Cleveland Clinic Found.*(1999), 136 Ohio App.3d 244 is also misplaced as it does not stand for the proposition advanced.

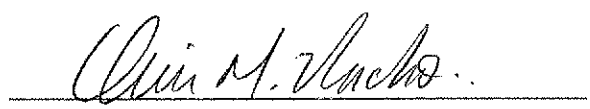
The issue of admissibility of evidence is reviewed under an abuse of discretion standard of review. See, e.g., *Barnett v. Sexten,* 10th Dist. No. 05AP-871, 2006-Ohio-2271. This Court need not accept this case to review the Trial Court's appropriate exercise of discretion.

CONCLUSION

The tragic murder of Norman Wallace was not reasonably foreseeable. Halder had followed all legal and appropriate remedies to seek redress for harm that he thought was committed by one particular person. A thorough investigation of Halder's complaints was conducted at CWRU and subsequently by law enforcement officials in two separate jurisdictions. In addition, the time period between when Halder was last on campus in August 2000 and the time he

reappeared on May 9, 2003 was sufficient to establish that, in fact, CWRU had no reason to predict that Halder would return and kill Norman Wallace. As the court of appeals determined: "We find that Halder's actions on May 9, 2003 were not reasonably foreseeable such that CWRU was on notice of, and under a duty to protect, Norman Wallace from Halder's shooting rampage." C.A. Opinion, ¶ 34. Therefore, Appellee CWRU respectfully requests this court to deny jurisdiction to hear Appellants appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Opposition to Appellant's Memorandum in Support of Jurisdiction has been sent via regular U.S. mail, postage prepaid, this 5th day of November, 2009 to:

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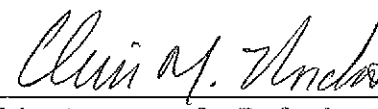

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