

Court seeks medical info in retrial bid by molester

Lawyer: Asperger illness was a factor

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BY JIM O'NEILL, [Star-Ledger](#) Staff

An appeals court ruled yesterday more information on the medical condition of a piano teacher is needed before deciding whether to overturn his conviction and grant a new trial on charges that he molested a 9-year-old female student in Edison two years ago.

The ruling does not clear Franklin "Jack" Burr II of wrongdoing, but allows the 61-year-old teacher to present medical testimony his attorneys contend shows he suffers from Asperger syndrome, a mild form of autism.

Vincent J. Sanzone Jr., an Elizabeth attorney representing Burr on the appeal, said the jury in the trial should have been told about the illness. People afflicted with the malady are usually highly intelligent, but lack an appreciation for social cues.

Middlesex County Assistant Prosecutor Simon Rosenbach countered that the medical testimony was not a legitimate defense that could be used to excuse Burr for fondling the student.

Superior Court Judge Philip Lewis Paley barred references to the ailment during Burr's October 2004 trial in New Brunswick. Paley ruled it was not relevant to charges that Burr fondled the girl during classes in 2002 and 2003.

The appeals panel said it could not weigh Paley's decision without knowing more about the disorder. The appeals court ordered the prosecution and defense attorneys to take testimony from Burr's doctor and submit it for review within 45 days.

"I'd be shocked if they don't overturn the conviction and give him a new trial," said **Sanzone**.

Burr, of East Brunswick, was convicted Oct. 28, 2004 of sexual assault and child endangerment. He was sentenced to serve six years in prison and would not be eligible for parole for five years.

Burr was arrested and charged after the girl's mother arrived to pick up the youngster following a lesson and found the student and teacher close together in a position the mother called "compromising."

The child testified during the trial that Burr began slapping and squeezing her buttocks when she was 8 years old. After classes were moved from a piano store to a community center where Burr rented space, Burr would pull the girl onto his lap and fondle her, the girl said.

Burr was on probation for child endangerment at the time for purchasing inappropriate clothing -- a blouse, bra and panties -- for one of his students to wear at a recital, according to court records.

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