



New trial ordered on molestation charge

Defense asserts defendant didn't know actions were inappropriate

Thursday, June 12, 2008

BY TOM HESTER

Star-Ledger Staff

In a unanimous decision yesterday, the state Supreme Court ordered a new trial for a 60-year-old East Brunswick piano teacher convicted of molesting a 9-year-old girl, saying he should have been allowed to have a psychiatrist testify that he has Asperger syndrome and did not have the ability to realize that his actions were inappropriate.

The high court upheld an appeals court decision handed down last year in the case of Franklin "Jack" Burr. The appeals court ruling vacated Burr's six-year prison sentence for sexual assault and child endangerment after he had served six months in a state prison.

"The proffered expert testimony on (Burr's) diagnosis of Asperger's Disorder was relevant and material to his explanation of himself and his conduct," Justice Jaynee LaVecchia wrote for the court. "Preclusion of that evidence constituted reversible error necessitating a new trial." Chief Justice Stuart Rabner did not participate in the decision.

Dealing with another issue, the justices said that if the jury wants to see a videotape of the 9-year-old girl's pretrial testimony, the judge must determine whether the panel should hear any related testimony that is necessary to provide the proper context for the video.

Burr's lawyer, Vincent Sanzone, said the ruling is only the second of its type in the nation in which Asperger syndrome is being allowed to be used as a defense. He said the first ruling was made by the Missouri Supreme Court.

Burr was arrested after the girl's mother arrived to pick up the youngster after a piano lesson at an Edison community center where he rented space and found him and the child close together in a position the woman described as compromising. The girl testified that Burr began touching her inappropriately when she was 8 years old. Burr was on probation for child endangerment at the time of his arrest.

At Burr's trial in state Superior Court in New Brunswick in 2004, his attorneys wanted to call Richard Kleinmann, a psychiatrist at the Ann Klein Forensic Center, a state institution in Trenton, to testify. Burr was sent there for a mental evaluation before his trial because Judge Phillip Paley was concerned about his odd appearance and demeanor.

Kleinmann, according to the decision, found that Burr suffers from Asperger syndrome, a form of autism. Sufferers are usually intelligent but lack an appreciation of social skills.

But when Burr's attorneys wanted to call Kleinmann as a defense witness to testify that the disorder may have kept Burr from understanding that it is inappropriate for a man to have young children on his lap, Paley denied the request.

"The expert would have testified to the effect that persons with Asperger's Disorder generally do not have the ability to manipulate people easily because of their weakness in detecting social cues that other persons readily recognize," LaVecchia said.

Sanzone said Burr speaks five languages, is a biblical scholar and a math expert, but that because of his disorder, "interacts terribly with other people."

"I think this is a very progressive decision," Sanzone said.