

NJ top court allows suspect to show evidence of Asperger's

By JEFFREY GOLD | Associated Press Writer
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NEWARK, N.J. - A piano teacher convicted of molesting a young student can get a new trial so he can introduce evidence that he suffers from a form of autism called Asperger's Syndrome, the state Supreme Court ruled Wednesday.

The state's highest court said Franklin Jack Burr II can present expert testimony on the diagnosis in an effort to explain his conduct because it was "relevant and material."

The expert sought to "testify about the serious difficulties in social interaction, as well as the odd, even bizarre, actions and mannerisms that can be common to persons who have the disorder," the court said.

The Middlesex County Prosecutor's Office opposed the request, while Burr's defense said the testimony could "show the jury a full picture of what it is that (he) is suffering from and why he may make inappropriate social judgments, not criminal judgments, but inappropriate social judgments."

At trial in New Brunswick, state Superior Court Judge Phillip Lewis Paley barred the testimony after determining it would not prove that Burr had a mental defect that prevented him from understanding his actions. Burr was not pursuing a "diminished capacity" defense.

The female student testified at trial that in 2004 Burr touched her over her clothes and often pulled her onto his lap. Burr was convicted of sexual assault and child endangerment and sentenced in 2005 to six years in state prison.

Burr appealed, and the 6-0 Supreme Court decision upheld an appellate ruling that vacated Burr's conviction. Chief Justice Stuart Rabner did not participate.

Burr, 62, of East Brunswick, had been held at East Jersey State Prison but was released in August on bail.

Burr lawyer Vincent James Sanzone Jr. said, "I am very grateful for this progressive, unanimous decision, which affirmed and recognized the need for special consideration for people suffering from a mental handicap."

Burr never improperly touched the girl, Sanzone said, adding, "He could not have done what the state says he's done based on his mental handicap."

Assistant Middlesex County Prosecutor Simon Louis Rosenbach said he could accept the Asperger's ruling: "That's probably not wrong," he said.

The Supreme Court noted that the expert testimony could have assisted the defense by rebutting an assertion from the prosecution that the defendant was grooming her for future sexual assault by familiarizing her with such contact.

"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," Justice Jaynee LaVecchia wrote for the court.