

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of ANGELO ARTHUR SANTINI.

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PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

ANGELO ARTHUR SANTINI,

Respondent-Appellant.

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UNPUBLISHED

May 15, 2008

No. 271491

Emmet Circuit Court

Family Division

LC No. 06-005341-DL

Before: Donofrio, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Respondent was adjudicated responsible, following a jury trial, of first-degree criminal sexual conduct. MCL 750.520b(1)(g).<sup>1</sup> He was sentenced to twelve to eighteen months of juvenile probation, with thirty to ninety days of secure detention. He now appeals and we affirm in part, reverse in part, and remand.

Respondent first argues that there was insufficient evidence to support the adjudication for CSC-1. We agree. The charge against respondent was based upon causing personal injury to the victim and the victim being mentally incapable. Respondent challenges the sufficiency of the evidence on both the personal injury and the mentally incapable elements.

Turning to the mentally incapable element, MCL 750.520a(i) defines “mentally incapable” as meaning “that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.” We review a claim of insufficient evidence by looking at the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find each element of the

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<sup>1</sup> The jury had adjudicated respondent responsible for both first-degree and third-degree criminal sexual conduct. But because the third-degree charge was in the alternative to the first-degree charge, the trial court set it aside after trial.

offense proven beyond a reasonable doubt. *People v Cox*, 268 Mich App 440, 443; 709 NW2d 152 (2005).

In *Cox*, a significant amount of evidence was presented establishing the victim's mental incapability. For example, there was testimony from a psychologist that the victim had borderline intelligence, just above mental retardation, lacked self-insight or self-awareness, and was easily manipulated and vulnerable to exploitation. Moreover, the psychologist opined that the victim could not appreciate the social or moral significance of his acts, nor could he make an informed decision regarding sexual activity. *Id.* at 444-445. Furthermore, a counselor testified that, regarding the victim's vulnerability to manipulation, the victim functioned emotionally at the eight-year-old level and intellectually at the fourth or fifth grade level. *Id.* at 445.

By contrast in the case at bar, the prosecutor points to no such evidence to establish the victim's mental incapability. The prosecutor points to the victim's own testimony that he suffers from Asperger's Syndrome, though no expert presented any such diagnosis, and that he had difficulty picking up on some social cues. The prosecutor also refers to the victim's testimony regarding a lack of familiarity with the term "blow job" and that he thought what respondent wanted was "a little weird." Indeed, the prosecutor points to the victim's testimony that he was confused about what happened and that he did not think that he should have engaged in such conduct. But that actually undermines petitioner's position because it actually supports the conclusion that the victim could appreciate the social or moral significance of his actions.

On the other hand, the limited expert testimony that was presented regarded the evaluation of the victim for the need for special education services at school, with no such need being found. There was no testimony to the effect that the victim was easily manipulated or controlled. Indeed, a school evaluation presented by petitioner as an exhibit concluded that while the victim "has some characteristics of Asperger's Syndrome, these are not impacting extensively on his ability to progress within the general curriculum without special education services."

In sum, we do not believe that petitioner presented sufficient evidence from which the jury could reasonably conclude that the victim was mentally incapable. However, because a conviction for CSC-3 does not require such a finding because of the victim's age, the jury's adjudication of responsibility on that charge was adequately supported. Accordingly, we conclude that the trial court erred in setting aside the adjudication of responsibility for third-degree criminal sexual conduct instead of the adjudication on first-degree criminal sexual conduct. Therefore, on remand, the trial court shall enter an order reinstating the adjudication for CSC-3 and setting aside the adjudication for CSC-1.

Because of our resolution of the sufficiency of the evidence regarding the "mentally incapable" element, we need not consider whether there was sufficient evidence regarding personal injury.

Next, respondent argues that the trial court erred by admitting other-acts evidence under MCL 768.27a(1). We disagree. That statute provides that where a person is charged with an offense that is included in the Sex Offenders Registration Act, MCL 28.722, with a minor victim, evidence that the accused committed another offense against the minor that is included in the Sex Offenders Registration Act is admissible if it is relevant.

Respondent raises a number of arguments regarding why the evidence should have been excluded. First, respondent argues that the evidence should have been excluded under MRE 404(b). But this Court has specifically held that MRE 404(b) does not apply where evidence is admitted under MCL 768.27a. *People v Pattison*, 276 Mich App 613, 618-619; 741 NW2d 558 (2007). Similarly, we reject respondent's argument that the evidence should have been excluded as more prejudicial than probative under MRE 403. MCL 768.27a clearly requires the admission of all such evidence that is relevant. MRE 403 is a rule that provides for the exclusion of relevant evidence if it is more prejudicial than probative. Accordingly, we conclude that MRE 403 is not applicable to evidence admitted under MCL 768.27a.

Next, respondent argues that the allegations regarding the prior conduct were not substantiated by a preponderance of the evidence. They were, however, supported by the testimony of the victim in the prior incident. That testimony was sufficient to allow the jury to determine whether or not the incident happened and to determine the weight to be accorded those allegations.

Finally, respondent argues that admission of the evidence violated the corpus delicti rule. Because this was not evidence of respondent's confession to the charged crime, the corpus delicti rule is inapplicable. See *People v Schumacher*, 276 Mich App 165, 180-181; 740 NW2d 534 (2007).

Respondent next argues that the trial court erred by admitting hearsay evidence. While it does appear that at least some, if not all, of the complained of testimony was, in fact, inadmissible hearsay, any error was harmless. The same evidence was introduced through other, proper means. Therefore, the hearsay testimony was at most cumulative and not particularly significant in light of the surrounding testimony. Because it was not outcome determinative, it does not merit reversal. *People v Osantowski*, 274 Mich App 593, 607; 736 NW2d 289 (2007).

Finally, respondent argues that he was denied a fair trial because of an intemperate and prejudicial remark by the prosecutor referring to respondent as a sexual predator. Respondent, however, has not preserved this issue for appeal by a timely objection and we are not persuaded that plain error has occurred. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Respondent's adjudication for first-degree criminal sexual conduct is reversed and the matter is remanded to the trial court for entry of an adjudication of responsibility for third-degree criminal sexual conduct and the entry of a new order of disposition as appropriate. In all other respects, this matter is affirmed. We do not retain jurisdiction.

/s/ Pat M. Donofrio  
/s/ David H. Sawyer  
/s/ Mark J. Cavanagh