

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KARRIE MUNLIN, JR.,

Defendant-Appellant.

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UNPUBLISHED

June 5, 2008

No. 272019

Washtenaw Circuit Court

LC No. 05-001976-FC

Before: Saad, P.J., and Murphy and Donofrio, JJ.

PER CURIAM.

A jury convicted defendant of first-degree criminal sexual conduct, MCL 750.520b(1)(f) (force or coercion). The trial court sentenced defendant to 108 to 240 months in prison. We reverse and remand for further proceedings consistent with this opinion.

Defendant dated the complainant in early 2005, and they remained in contact after their romantic relationship ended. According to the complainant, when she saw defendant in September 2005, defendant pushed her onto a bed and raped her. Defendant maintains that he and the complainant engaged in “rough,” but consensual sex. A nurse, Carla Ellis, found discoloration on the complainant’s wrist and small anal tears, but she testified that she could not rule out the possibility that these injuries resulted from consensual sex.<sup>1</sup>

Defendant maintains that the trial court violated his constitutional right to confront the witnesses against him when it prohibited him from asking the complainant about her history of schizophrenia. During cross-examination, defense counsel asked the complainant whether she was taking any medication. She replied that she was taking Clozapine, Paxil, and Zantac. Defense counsel then asked the complainant whether, at the time of the assault, she was under the care of a psychiatrist. The prosecutor objected to the question on relevancy grounds. Defense counsel then stated that he was finished with the topic, and the trial judge responded, “All right, overruled.”

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<sup>1</sup> Ellis is a “sexual assault nurse examiner” at St. Joseph Mercy Hospital and she examined the complainant at approximately 2:20 a.m. on September 4, 2005 .

At a later point during his cross-examination of the complainant, defense counsel requested a bench conference. At the bench, defense counsel stated that the prosecutor improperly objected to his question about whether the complainant was under psychiatric care at the time of the assault. Defense counsel also recalled that the trial court had sustained the prosecutor's earlier objection about this line of inquiry. He opined that the complainant's history of psychiatric care and her diagnosis of schizophrenia are relevant to her credibility. He further noted that he should be permitted to explore the issue because the prosecutor intended to introduce hospital records that, presumably, would reference the complainant's psychiatric history.

In response, the prosecutor stated that she no longer intended to introduce the hospital records. She also disputed that the complainant was diagnosed with schizophrenia and asserted that the complainant's psychiatric history is not relevant. Though the trial judge stated that he did not see a reason to change his prior ruling, he failed to make an affirmative ruling on the matter during the bench conference. Thereafter, defense counsel did not revisit the issue of the complainant's psychiatric history during his cross-examination of the complainant.

As noted, defendant contends that the trial court's decision to prohibit questions regarding the complainant's mental history denied him a fair trial. The trial court has the discretion to restrict a defendant's cross-examination. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993); *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995). However, relevant evidence is generally admissible at trial. *Lewis v LeGrow*, 258 Mich App 175, 199; 670 NW2d 675 (2003); MRE 402. Witness credibility is always relevant, and "a defendant is entitled to have the jury consider any fact that may have influenced the witness' testimony." *Minor, supra* at 685.

If there is a reasonable nexus between the complainant's alleged mental illness and her ability to perceive and understand events, the trial court erred in restricting defendant's cross-examination. This is particularly important when, as here, guilt or innocence hinges on a credibility contest between the accuser and the accused. In *Adamski, supra*, this Court held that a defendant's constitutional right to confront witnesses permitted him to impeach the complainant with statements she made to her mental health therapist, although such statements would otherwise be protected by the psychologist-patient privilege, MCL 330.1750. *Adamski, supra* at 136-137. The Court stated that the defendant's constitutional right of cross-examination outweighed the importance of the statutory privilege. *Id.* at 137. However, the Court explained that a trial court may impose reasonable limits on cross-examination and to exclude irrelevant evidence. *Id.* at 138.

The difficulty here is that the record does not fully reveal the extent of argument on this issue or the evidence that would establish the complainant's condition or its impact on her credibility. As noted, during the bench conference, the parties and the trial court seemed to agree that the trial court had sustained an objection to questions about the complainant's psychiatric treatment, but the court's only decision on the record was to overrule the prosecutor's objection during defense counsel's cross-examination. The record does not otherwise reveal whether the trial court made any additional rulings off the record about this issue. Accordingly, we are unable to thoroughly examine the basis for or extent of the trial court's ruling.

Moreover, in light of the limited transcript, and because the hospital records were not introduced into the record, we are also unable to determine whether defendant's desire to cross-examine complainant about her mental condition was based on a reasonable belief that it is relevant to her ability to understand and perceive what occurred during the assault and whether the medical records contain information that could have undermined the complainant's credibility. Defense counsel asserted on the record that the complainant suffers from schizophrenia but, because of the incomplete record, the basis for his assertion is unclear. On one hand, the complainant stated that she takes Clozapine, which is a medication prescribed for severe schizophrenia. See *Physicians' Desk Reference*, 2006 WL 383050. On the other hand, the complainant never had an opportunity to testify about her precise mental condition and merely stated on the record that she takes Clozapine for panic attacks. As discussed, it is not evident from the trial transcript whether defense counsel made a prior, unrecorded argument or offer of proof on this issue. However, without further development, there is an insufficient record for us to assess whether the complainant's condition or her medications might impair her ability to perceive or recall particular events and we cannot evaluate whether the trial court properly exercised its discretion in excluding questions regarding her mental history.

We therefore remand to the trial court to create a record. Defendant should have an opportunity to present an offer of proof, on the record, and the prosecutor should have the opportunity to respond. This record will enable this Court to review the trial court's decision.

Because resolution of this issue in defendant's favor would obviate the need to address the other issues that defendant raises in this appeal, it is premature to resolve them at this time. We will therefore defer our analysis until after the remand.<sup>2</sup>

Remanded for further proceedings in accordance with this opinion. We retain jurisdiction.

/s/ Henry William Saad

/s/ Pat M. Donofrio

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<sup>2</sup> Whether to remand or not to make a record on the issue of the complainant's alleged schizophrenia is a close question, but because this is purely a credibility contest and there appears to be some evidence of psychiatric history, we respectfully disagree with the dissent. If it turns out there is no more to defendant's contention about schizophrenia than appears before us now, then our remand at least clarifies this point. On the other hand, if there is more about this issue that was not placed on the record, then defendant's constitutional right to confrontation may have been compromised.

**Court of Appeals, State of Michigan**

**ORDER**

People of Michigan v Karrie Munlin Jr.

Docket No. 272019

LC No. 05-001976-FC

Henry William Saad  
Presiding Judge

William B. Murphy

Pat M. Donofrio  
Judges

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Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 28 days of the Clerk's certification of this order and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the trial court is directed to create a record. Defendant should have an opportunity to present an offer of proof, on the record, and the prosecutor should have the opportunity to respond.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN - 5 2008

Date

*Sandra Schultz Mengel*  
Chief Clerk