

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

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In the Matter of Azizuddin Mujtabaa-el, Minor.

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PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

AZIZUDDIN MUJTABAA-EL,

Respondent-Appellant.

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UNPUBLISHED

March 8, 2002

No. 234828

Berrien Circuit Court

Family/Juvenile Division

LC No. 99-000436-DL

Before: Griffin, P.J., and Holbrook, Jr., and Hoekstra, JJ.

PER CURIAM.

Respondent appeals as of right an adjudication of delinquency by reason of his jury conviction for criminal sexual conduct in the first degree in violation of MCL 750.520b(1)(b). We affirm.

Respondent's first assignment of error stems from the court bailiff's response to a question of jurors who, on the second day of trial, after being instructed by the court that the case was a juvenile proceeding to be tried by jurors, asked the bailiff why there were six rather than twelve jurors, and whether respondent was being tried as a juvenile or as an adult. The bailiff replied that respondent was being tried as a juvenile; he did not respond to the question regarding the reason for a six-person jury. Respondent moved for a mistrial and asked the court to instruct the jury that it should not concern itself with whether respondent was being tried as a juvenile or as an adult. On appeal, respondent does not suggest that there should have been a mistrial because of the bailiff's improper communication, but does contend that the trial court committed error warranting reversal by not giving the requested curative instruction.

We review appeals concerning improper communications between the court – in this case, an officer of the court – and the jury to determine whether a party was prejudiced by the communication. *Meyer v City of Center Line*, 242 Mich App 560, 565, 565, n 1; 619 NW2d 182 (2000). In this case, no prejudice occurred. The jury had repeatedly been told that the case involved a juvenile. Hence, the jury already had the information it received from the bailiff.

As for the requested instruction, a trial court is not only permitted to inform a jury about the nature of the proceedings before it but it is mandated to do so. MCR 2.516(B)(1). Had the

trial court told the jury that it should not be concerned whether it was hearing a juvenile or an adult criminal matter, it would have violated this duty. It also, arguably, would have prejudiced respondent, by suggesting to the jury, erroneously, that respondent was being tried as an adult, and therefore was regarded as having committed a particularly serious offense. The rules require evidence that a juvenile to be tried as an adult has engaged in misconduct well beyond the typical juvenile offense. MCR 5.9523(C)(3). Had the jury received this impression, there might have been unfair prejudice to respondent. The trial court avoided this prejudice, and also observed the rules, by not giving the requested instruction. Additionally, as far as respondent's concern that the jurors might have concluded that a juvenile matter was not a serious concern requiring their full attention, the court instructed the jurors repeatedly and in very strong terms that they were undertaking an extremely serious responsibility, one of the most important in our system of justice. To the extent that respondent is concerned that the jury might somehow have received the impression that respondent would not face a serious penalty and therefore that the jury might have treated the matter lightly, the trial court instructed the jury not once but twice not to be influenced in its deliberations by speculating as to what the penalty might be. We find that the trial court acted correctly in not giving the requested instruction, and that respondent was not prejudiced either by the lack of such an instruction or by the underlying improper communication between the bailiff and the jury.

Respondent also claims that the trial court committed error warranting reversal by not instructing the jury that the fact that a medical witness who did not appear should give rise to a negative inference regarding petitioner's case. However, as we held in *People v Snider*, 239 Mich App 393, 422; 608 NW2d 502 (2000), such an instruction should not be given simply because the prosecution failed to present a witness familiar with some of the facts regarding the case as long as the prosecutor told the defense about the witness. Here, respondent does not claim that petitioner failed to inform him of the medical witness, and indeed the record, which indicates that there were repeated discussions (some off the record) between respondent's counsel and the court regarding this witness, makes clear that respondent was well aware of the witness. Although respondent suggests that this witness would have testified in a fashion favorable to the defense and that the court should have so instructed the jury, respondent cites nothing in the record to support this supposition, nor does he offer any basis from which we can conclude that the trial court would have been engaging in anything other than pure speculation had it told the jury what the testimony of an absent witness would have been. We find no error in the trial court declining to give the requested instruction.

Finally, respondent asserts that the trial court should have granted a new trial because the evidence for conviction was inadequate, given the lack of what respondent refers to as "physical evidence" of improper sexual contact, and the alleged immaturity and lack of credibility of the victim, upon whose testimony petitioner largely relied. However, there is no requirement that the testimony of a victim of criminal sexual conduct be supported by corroborating evidence. MCL 750.520h; *People v Smith*, 149 Mich App 189, 195; 385 NW2d 654 (1986). Moreover, a jury verdict may not be overturned on the basis of credibility determinations. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). The trial court did not err in declining to order a new trial.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Donald E. Holbrook, Jr.  
/s/ Joel P. Hoekstra