

Court of Appeals, State of Michigan

ORDER

People of MI v Jonathan Cervi

Docket No. 276927

LC No. 04-008607

Helene N. White
Presiding Judge

Kurtis T. Wilder

Karen M. Fort Hood
Judges

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the March 2, 2007, order of the Wayne Circuit Court hereby is REVERSED. The issues defendant raised in the circuit court in 2007 were raised by defendant in conjunction with the prosecution's 2005 appeal in this case, see Docket No. 262331. As clearly delineated in this Court's resulting published opinion in that case, *People v Cervi*, 270 Mich App 603; 717 NW2d 356 (2006), the prosecution need not prove beyond a reasonable doubt either the elements of a crime of criminal sexual conduct or an attempt to commit criminal sexual conduct. See *id.* at 618-619. Further, defendant may not raise the defense of abandonment at trial. "[V]oluntary abandonment is an affirmative defense to a prosecution for criminal attempt." *People v Kimball*, 109 Mich App 273, 286; 311 NW2d 343 (1981). Defendant here has not been charged with a criminal attempt. The case is REMANDED to the circuit court for further proceedings consistent with this order.

The Court retains no further jurisdiction. This order is to have immediate effect, MCR 7.215(F)(2).



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

JUL 23 2007

Date

Sandra Schultz Mengel
Chief Clerk