

COA Opinion: Defendant lacked standing to challenge the legal presumption that he was the legitimate son of his mother's ex-husband.

27. July 2011 By Kristina Araya

On July 26, 2011, the Court of Appeals released its opinion in *People v Zajaczkowski*, No. 295240. The Court affirmed defendant's conviction for first-degree criminal sexual conduct under MCL 750.520b(1)(b)(ii), finding that the defendant was related by blood to the victim as a matter of law. The victim was the daughter of defendant's mother's ex-husband, a man long believed to be defendant's biological father until genetic testing revealed otherwise. The court further held that defendant lacked standing to challenge the legal presumption that he was the legitimate son of his mother's ex-husband, which arose because he was conceived and born during their marriage.

Defendant pled guilty to first-degree criminal sexual conduct under MCL 750.520b(1)(b)(ii) on the condition that he be permitted to appeal whether, due to lack of a relationship with the victim by blood or affinity to the fourth degree, he could only be guilty of third-degree criminal sexual conduct. Defendant was born during the marriage of Walter and Karen Zajaczkowski, and the family believed that Walter was defendant's father. Walter and Karen's judgment of divorce referred to defendant as "the minor child of the parties," and Walter testified that although he was not sure that he was defendant's father, he always referred to defendant as his son.

The victim was Walter's daughter with another woman, who was born several years after Walter and defendant's mother divorced. The criminal sexual conduct occurred in 2007, when defendant was approximately 30 and the victim was approximately 15; the victim gave birth to defendant's child in 2008.

To be guilty of criminal sexual conduct under MCL 750.520b(1)(b)(ii), a person must be related to the victim by blood or affinity to the fourth degree. Defendant argued that he was not related to the victim by blood or affinity to the fourth degree. Specifically, defendant argued that he was not related to the victim by blood because genetic tests proved that Walter was not defendant's father. He further argued that he was not related to the victim by affinity, defined as a relationship "existing as a consequence of marriage between each of the married persons and the blood relatives of the other," because Walter and Karen's divorce terminated any relationship by affinity that could have existed.

The prosecution conceded and the court acknowledged that defendant and the victim were not related by affinity at the time the criminal sexual conduct occurred, because no marital ties connected defendant's family to that of the victim. The prosecution also conceded that Walter was not defendant's biological father. But the prosecutor argued, and the court agreed, that Walter was defendant's legal father despite their lack of a biological relationship. First, the 1979 judgment of divorce between Walter and Karen identified Walter as defendant's legal father. Second, because defendant was conceived and born during Walter and Karen's marriage, he is presumed to be Walter's son. The Court of Appeals held that defendant lacked standing to challenge this presumption that he is Walter's legitimate

son because only “his mother and his legal father may rebut the presumption with clear and convincing evidence in a proper legal proceeding.”

Therefore, even though Walter was not defendant’s biological father, the Court of Appeals confirmed that defendant was Walter’s legal son. Consequently, he was related “by blood” to Walter’s legal daughter as a matter of law, because defendant and the victim were descended from a common legal ancestor. And the court confirmed that defendant and the victim were related by blood to the fourth degree, as required by MCL 750.520b(1)(b)(ii), because Michigan uses the civil law method for calculating degrees of consanguinity, which defines legal siblings as related to the second degree.