

Thursday, August 2, 2007

**Prior sex crimes inadmissible to show propensity for such crimes: Maryland.**

Photo from website of U.S. District Court (W.D. Mi.). On July 31, 2007, Maryland's highest court held that evidence of prior sex crimes is inadmissible at a criminal trial to show propensity for such crimes. However, the court left open the door for legislation to change this prohibition. *Hurst v. State*, \_\_ Md. \_\_ (July 31, 2007): "Contrary to the United States Congress, the [Maryland] General Assembly and this Court have determined that prior sex crimes evidence should not be admitted solely to demonstrate propensity in a trial involving a different complainant. If the Maryland Rule regarding propensity evidence in sex cases should be changed, the change should come from the Legislature or by this Court, sitting in its legislative capacity, exercising its authority to enact Rules of Practice and Procedure and Rules of Evidence. See e.g., *Trump v. State*, 753 A.2d 963, 972 n.43 (Del. 2000) (awaiting study of Federal Rule 413 et seq. by the Permanent Advisory Committee on the Delaware Rules of Evidence to determine what changes, if any, should be included in revising the Delaware Rules, which, in general, have been patterned after the Federal Rules of Evidence)." *Hurst*. Clearly, I do not want such a legislative change. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:05

I'm not a lawyer, but I do have a high school diploma. In high school, I learned about logical fallacies. It's been a few years, but I'm pretty sure that to claim, "The defendant has previously committed a sex crime, so he must be guilty of the current sex crime charges as well," qualifies as a fallacy. Certainly, some will say that a rule like the one the Maryland court rejected would only allow evidence of past sex offense convictions to suggest a propensity for committing sex crimes, rather than as absolute proof of the defendant's guilt. But let's be realistic - if a jury hears, "He's done it before," the jury thinks, "He's done it again." Further, consider how such a rule would treat Genarlow Wilson, who, as a 17-year old college-bound high school football player with 3.2 GPA and a bright future, was convicted of aggravated child molestation for receiving consensual oral sex from a 15-year-old girl. (See <http://sports.espn.go.com/espn/eticket/story?page=Wilson> and <http://www.cnn.com/2007/US/06/11/teen.sex.case/index.html>) Should his consensual sexual experimentation in high school be evidence of guilt if he were indicted for another sex offense? And what about people who have been previously, but wrongfully, convicted of sex crimes they did not commit? Should we imprison these defendants because of the poor judgment of the decision-maker in their previous sex offense case? Make no mistake: sex crimes are heinous offenses, and we must do what we can to prevent them. But kudos to the Maryland court for rejecting this rule as the wrong way to accomplish that goal.

Anonymous on Aug 2 2007, 19:21

Thanks, Steve. Please get the word out to your friends to oppose legislation anywhere that lets in prior sex crimes evidence. Jon  
Anonymous on Aug 3 2007, 06:53