

COA Opinion: Evidence of Defendant's Prior Sex Crime Properly Admitted

9. April 2010

On April 8, 2010, the Michigan Court of Appeals published its opinion in *People v. Mann*, No. 288329. A jury convicted Mann of three counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. The court of appeals held that (1) the trial court properly admitted evidence of Mann's prior conviction of attempted first-degree criminal sexual conduct under MCL § 768.27a; and (2) the prosecutor's brief statement regarding Mann's failure to testify did not violate Mann's due-process rights or right against self-incrimination.

MCL § 768.27a provides that evidence of a defendant's past sex-crime convictions may be admitted in his trial for another sex crime. Here, Mann had previously been convicted of attempted first-degree criminal sexual conduct, and the trial court admitted evidence of this conviction. Mann argued that this violated his due-process rights. The court of appeals disagreed, holding the evidence properly admitted because the evidence met MCL § 768.72a's requirements and the evidence's unfair prejudice did not outweigh its value under MRE 403.

Intent is an element of criminal-sexual conduct. While discussing this element in her closing, the prosecutor noted that Mann had not testified as to his intent and explained to the jury that his testimony was not necessary for conviction. Mann objected, and the trial court instructed the jury that it could not consider Mann's failure to testify in reaching its verdict. On appeal, Mann argued that the prosecutor's statement violated Mann's due-process rights and his right against self-incrimination. The court of appeals held that the curative jury instruction mitigated any prejudice resulting from the prosecutor's statement and upheld Mann's convictions.