

[CAPTION]

**DEFENDANT'S OFFER OF STIPULATION AND MOTION IN LIMINE
CONCERNING EVIDENCE REGARDING DEFENDANT'S DRIVING RECORD OR
HISTORY**

The Defendant, by counsel, in support of his Offer of Stipulation and Motion in Limine Concerning Documentary or Testimonial Evidence Regarding Defendant's Driving Record or History, states the following:

1. The Defendant is prepared to stipulate as follows: "[Insert Defendant's name] stipulates that his driving privileges were validly suspended on [insert date], under Ind. Code 9-30-10-4, and that he knew of such suspension."
2. "While it is generally true that the State is entitled to prove its case by evidence of its own choice, and that a criminal defendant may not stipulate his or her way out of the full evidentiary force against him or her, the United States Supreme Court has determined that this general rule has virtually no applicability where the point at issue is a defendant's legal status that is independent of criminal behavior later charged against him or her." Hines v. State, 794 N.E.2d 469, 473 (Ind.Ct.App. 2003), *aff'd*, 801 N.E.2d 634 (Ind. 2004) (quoting Old Chief v. United States, 519 U.S. 172, 186-187, 117 S.Ct. 644 (1997)).
3. In Old Chief, the United States Supreme Court refined the reasoning concerning a stipulation, holding that where a defendant offers to stipulate his status as a felon in a prosecution for being a felon in possession of a firearm, the trial court abuses its discretion under Evidence Rule 403 by permitting the prosecution to introduce the full record of the defendant's prior felony conviction. The Supreme Court found that where the prior conviction was being used only to prove status, the introduction of the record for the prior conviction was more prejudicial than probative. Old Chief, 519 U.S. at 191, 117 S.Ct. at 656.

4. The principles of Old Chief were incorporated into Indiana law in Sams v. State, 688 N.E.2d 1323, 1326 (Ind.Ct.App. 1997), *trans. den.*, 698 N.E.2d 1184 (Ind. 1998). The Sams Court, citing Old Chief with approval and noting the identical nature of Fed.R.Evid. 403 and Ind.R.Evid. 403, held that the trial court abused its discretion when it admitted into evidence the Defendant's entire driving record to prove that his license had been suspended. Id. The Indiana Court of Appeals, although noting it was extending the holding of Old Chief, followed the Supreme Court's reasoning and found that, because the Defendant was willing to admit the suspension, the probative value of the driving record, which contained many serious driving offenses, was substantially outweighed by the danger of unfair prejudice to the Defendant. Id.; see also Herrera v. State, 710 N.E.2d 931 (Ind.Ct.App. 1999) (agreeing with the reasoning in Sams and Old Chief, but finding the facts distinguishable).
5. In the instant case, the State of Indiana has disclosed in its prior discovery answers that it intends to introduce into evidence Defendant's Certified Driving Record (which contains pages of references to prior license suspensions, convictions of traffic violations, and similar notations) and the "HTV packet," which contains, among other things, the Notice to the Defendant of the Habitual Traffic Violator determination (which references three prior convictions for Driving While Suspended as a Felony) and the various Abstracts of Court Record (Forms SR-16), which led to such determination. The State has further listed a Bureau of Motor Vehicles employee as a potential witness.
6. The issue in this case is whether Defendant was operating a motor vehicle while his driving privileges were validly suspended under [Ind. Code 9-30-10 *et seq.*], and that he knew that his driving privileges were suspended. Ind. Code 9-30-10-16. Defendant is willing to stipulate that his driving privileges were validly suspended under Ind. Code 9-30-10-4, and that he knew of such suspension.

7. Defendant is willing to concede his license status. “The jury, faced with the responsibility of determining the facts and weighing the credibility of witnesses, [would be] subjected to highly prejudicial evidence of [Defendant]’s driving record, consisting of numerous offenses. This evidence of extrinsic offenses and bad acts [would be] substantial and would undoubtedly focus the jury’s attention on [Defendant]’s character and his propensity to commit driving offenses rather than the conduct for which he [stands] charged.” Sams, 688 N.E.2d at 1327 (Darden, J. dissenting).

WHEREFORE, the Defendant, by counsel, requests that this Court determine that the State of Indiana should accept Defendant’s proposed stipulation and grant his Motion in Limine. The Defendant further requests this Court to order the State of Indiana, through its prosecutors and its witnesses, not to mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner, either directly or indirectly any documentary or testimonial evidence regarding Defendant’s driving record or driving history without the permission of this Court, outside the presence and hearing of the jury; and further instruct the State of Indiana and its witnesses not to make any reference to the fact that this Motion has been filed and granted, and to warn and caution each and every one of its’ witnesses to strictly follow these same instructions and to grant all other relief just and proper in the premises.

(Signature)

NOTE

An offer to stipulate may be used with other status offense in order to avoid prejudicial evidence of prior crimes. See, e.g., McClain v. State, 898 N.E.2d 409 (Ind.Ct.App. 2008) (in trial for failure to register as sex offender, trial court abused its discretion when it admitted sex offender registration form into evidence over Defendant's objection and despite his offer to stipulate to his sex offender status; form contained prejudicial details of Defendant's prior sexual battery conviction; in light of Defendant's offer to stipulate, the probative value of the registration form was outweighed by the danger of unfair prejudice).