



MINNESOTA JUDICIAL TRAINING UPDATE



JUDICIAL MISTAKE #1: WHEN DEFENDANTS STIPULATE TO ELEMENT OF OFFENSE

PROBLEM: THERE ARE A FEW COMMON JUDICIAL MISTAKES THAT JUDGES TEND TO REPEAT YEAR AFTER YEAR, RESULTING IN A LARGE NUMBER OF APPEALS. ONE OF THE MOST COMMON OF THESE MISTAKES IS FAILURE TO OBTAIN A “PERSONAL WAIVER” OF THE RIGHT TO JURY TRIAL WHEN A DEFENDANT STIPULATES TO AN ELEMENT OF THE CHARGED OFFENSE. A SIMPLE MISTAKE TO CORRECT!

For Example: In Certain Enhanced Gross Misdemeanor Or Felony Prosecutions Such As: DUI's, Assaults, OFP, No Insurance, Possession Of Firearm Or Controlled Substance Offenses, One Element The State Must Prove Is That Defendant Was Previously Convicted Of A Qualifying Offense (i.e. Prior DUI, Assault, OFP, Prior Felony, Etc). In Many Such Cases Defendants Are Willing To Stipulate To The Prior Conviction In Order To Remove That Issue From Jury Consideration.

MANDATORY RULE: BECAUSE DEFENDANT'S RIGHT TO A JURY TRIAL INCLUDES THE RIGHT TO BE TRIED ON EACH AND EVERY ELEMENT OF THE CHARGED OFFENSE, IN ORDER TO STIPULATE TO AN ELEMENT OF THE OFFENSE THE DEFENDANT MUST PERSONALLY WAIVE HIS TRIAL RIGHT EITHER ORALLY OR IN WRITING.

Note: It Is Surprising How Often Judges Overlook This Mandatory Requirement.

JUDICIAL RULE OF THUMB: DON'T THINK OF IT AS ACCEPTING A STIPULATION. RATHER, THINK OF IT AS DEFENDANT PLEADING GUILTY TO A SPECIFIC ELEMENT OF THE OFFENSE. IF YOU TREAT IT LIKE A PLEA OF GUILTY, YOU'RE MORE LIKELY TO REMEMBER THAT DEFENDANT MUST PERSONALLY WAIVE HIS RIGHT TO A JURY TRIAL.

QUESTION: MUST THE COURT ACCEPT DEFENDANT'S OFFER TO STIPULATE TO A PRIOR CONVICTION? **In most cases – YES:** In the vast majority of such cases the potential for unfair prejudice clearly outweighs its probative value. As a result our appellate courts have reversed convictions in circumstances where a district court refused to accept such a stipulation. However, the court may refuse to accept the stipulation in cases where the probative value of the conviction outweighs its potential for unfair prejudice, for example:

- i) **SPREIGL EVIDENCE:** One such case might be where the facts underlying the prior conviction are relevant to some disputed issue, making the evidence admissible under Minn. R. Evid. 404(b), or;
- ii) **IMPEACHMENT:** Depending on the circumstances, the prior conviction may still be admissible under Minn. R. Evid. 609 to impeach the defendant if he testifies.

QUESTION: WHAT ABOUT STIPULATIONS TO ELEMENTS NOT INVOLVING PRIOR CONVICTIONS? Clearly, defendants have the right to offer to stipulate to certain facets of the state's case (in addition to a prior conviction) for the purpose of admitting the obvious and holding down unwarranted prejudicial overtones, however:

- (1) As a general rule, a criminal defendant may not stipulate his way out of the full evidentiary force of the state's case as the prosecution chooses to present it. In assessing the potential prejudicial impact of admitting evidence that defendant is willing to stipulate to, the court must look at the relevance of the evidence to additional issues that the state must prove or that otherwise furthers the state's case;
- (2) For example: A defendant may want to stipulate to 'great bodily harm' to avoid the introduction of graphic photographs of the victim's injuries. However, *see State v. Durfee*, 322 N.W.2d 778, 786 (Minn.1982) affirming district court's decision to admit photographs, despite defendant's offer to stipulate that victim suffered great bodily harm, because photographs were relevant on issue of whether defendant intentionally caused harm.

CAUTIONARY NOTE ON JURY INSTRUCTIONS: In cases where defendant stipulates to an element of the offense, such as a prior conviction, the court has a responsibility to provide balanced jury instructions. Remember, the purpose of stipulating to a defendant's prior conviction (or any other element) is to remove that fact from jury consideration. Be careful not to violate the intent of the stipulation thru an in-artfully worded jury instruction.

SOURCES: *State v. Bible*, 2011 WL 691628 (Minn.App.,2011)(Unpublished); *State v. Hinton*, 702 NW2d 278 (Minn.App. 2005); *State v. Hensley*, 2003 WL 22078662 (Minn.App. 2003)(Unpublished); *State v. Greenfield*, 622 NW2d 403 (Minn.App. 2001); *See State v. Olson*, 482 N.W.2d 212, 216 (Minn. 1992); *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984).