



1997

Recent Developments: Old Chief v. United States: Abuse of Discretion to Admit the Full Record of Prior Judgment of Conviction When Defendant Offers to Stipulate

Karen L. Sterner

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/lf>



Part of the [Law Commons](#)

Recommended Citation

Sterner, Karen L. (1997) "Recent Developments: Old Chief v. United States: Abuse of Discretion to Admit the Full Record of Prior Judgment of Conviction When Defendant Offers to Stipulate," *University of Baltimore Law Forum*: Vol. 27 : No. 2 , Article 14.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol27/iss2/14>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Forum by an authorized editor of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.

Old Chief v. United States

In a five to four decision, the United States Supreme Court in *Old Chief v. United States*, 117 S. Ct. 644 (1997), held that where the sole purpose of evidence was to prove the requisite element of prior conviction, the district court abused its discretion by choosing to admit the full record of a prior judgment despite the petitioner's offer to admit to a prior conviction. Consequently, the petitioner, charged with possession of a firearm by a felon, was not allowed to stipulate to the fact that he was a felon. In so holding, the Court prevents the prosecution from presenting the fact-finder with evidence concerning a prior felony, in an attempt to eliminate the prejudicial effect that such evidence creates. Furthermore, this holding prevents the Federal Rule of Evidence 403 balancing test, used to determine whether the probative value of a piece of evidence is substantially outweighed by its prejudicial effect, from being violated.

In 1993, Johnny Lynn Old Chief ("Petitioner") was arrested after an incident involving at least one gunshot. Petitioner was charged with violating 18 U.S.C. § 922(g)(1), which makes it unlawful for persons convicted of a crime punishable by more than one year imprisonment (i.e., a felony) to possess a firearm. Petitioner had previously been convicted of assault causing serious bodily injury.

At trial in the United States

**Abuse Of Discretion
To Admit The Full
Record Of Prior
Judgment Of
Conviction When
Defendant Offers To
Stipulate**

By Karen L. Sterner

District Court for the District of Montana, fearing that such evidence would prejudice the jury against him, Petitioner offered to stipulate to his prior felony conviction. The prosecution, however, refused to accept the stipulation. Petitioner argued that evidence of the name and nature of his prior conviction was inadmissible once he had offered to stipulate to the prior conviction element of his current offense. Nonetheless, the district court rejected Petitioner's offer to concede to a prior judgment and admitted the full judgment record over his objection. Consequently, Petitioner was convicted of being a felon in possession of a firearm, using or carrying a firearm during the commission of a violent crime and assault with a dangerous weapon.

Petitioner appealed his convictions to the Court of Appeals for the Ninth Circuit, stating that the convictions resulted from the prosecution's refusal to accept his stipulation to the fact that he was a felon. Petitioner contended that the full evidentiary inclusion of his

prior conviction may have unduly prejudiced the jury against him. The court of appeals, however, affirmed the district court conviction, holding that the government was allowed to prove its case in the manner the state considered most effective. The United States Supreme Court granted certiorari to settle the divided treatment of this issue by the circuit courts of appeal.

Beginning its analysis, the Court addressed Petitioner's threshold argument that his prior conviction was not relevant to the case at hand. *Old Chief*, 117 S. Ct. 644, 649 (1997). The Court, to the contrary, found that his prior conviction was essential to the current charges because it showed that he was "within the particular sub-class of offenders for whom firearms possession is outlawed by § 922(g)(1)." *Id.* By applying the definition of relevant evidence, the Court concluded that information concerning Old Chief's prior conviction was relevant because it made it more probable than not that he was a member in the subclass of offenders affected by § 922(g)(1). *Id.* at 649-50.

In evaluating the relative weight and importance of the evidence, the Supreme Court relied on the balancing test prescribed by Rule 403 of the Federal Rules of Evidence, that states even if evidence is relevant it can be excluded if the "probative value [of the evidence] is substantially outweighed by the danger of unfair

prejudice.” *Id.* at 650 (quoting FED. R. EVID. 403). The Court concluded that the prejudice to the petitioner by refusing his stipulation and revealing his prior conviction for assault to the jury substantially outweighed the probative value of introducing the evidence as proof of his prior conviction. *Id.*

The Court further characterized “unfair prejudice” as when a fact-finder improperly bases its decision of guilt on something other than specific proof relating to the charged offense. *Id.* Under Federal Rule of Evidence 404(b), “evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” *Id.* at 651 (citing FED. R. EVID. 404(b)). Thus, propensity character evidence is prohibited to prove conduct. *Id.* While propensity evidence may be admissible for other purposes, it was inapplicable in Petitioner’s case. *Id.* In the Court’s majority opinion, unfair prejudice would occur if evidence of a prior conviction was misused as propensity evidence. *Id.* at 650. Moreover, generalization via propensity evidence adversely affects defendants by increasing the chances that a fact-finder will view them as likely to have committed the crime with which they are currently charged. *Id.* Accordingly, evidence of a prior conviction is subject to analysis for probative value and for prejudicial risk of misuse as propensity evidence. *Id.* at 651.

Available substitutes and alter-

natives to proffered prejudicial evidence also need to be evaluated in terms of whether they are of less prejudicial but equally probative value. *Id.* at 652. In its analysis, the Court referred to the Advisory Committee Notes to Rule 403, that caution a court that is considering whether to exclude evidence on grounds of unfair prejudice to evaluate the “availability of other means of proof” as a factor. *Id.* at 652 (quoting FED. R. EVID. 403 advisory committee’s notes).

Case law supports the contention that the government may prove its case by evidence of its choice. *Id.* at 653 (citing *Parr v. United States*, 255 F.2d 86 (5th Cir. 1958)). In the Court’s opinion, however, “[t]he issue is not whether concrete details of the prior crime should come to the jurors’ attention but whether the name or general character of that crime is to be disclosed.” *Id.* at 655. The Court concluded that disclosure of the fact of the qualifying conviction is what matters under the statute. *Id.* Finally, the Court noted that “there is no cognizable difference between the evidentiary significance of an admission and of the legitimately probative component of the official record the prosecution would prefer to place in evidence.” *Id.* The latter carries with it, however, an inherent risk of unfair prejudice. *Id.* Therefore, the Court determined it was an abuse of discretion to admit the record, in as much as the probative value associated with the conviction did not substantially outweigh its dan-

ger of unfair prejudice. *Id.*

Furthermore, the Court was careful to confine the scope of its ruling to stipulations concerning proof of a defendant’s legal status, and not to other situations at trial where stipulations may be attempted. *Id.* at 655-656. A criminal defendant may not, for example, attempt to lessen the impact of the prosecution’s evidentiary case with regard to his or her participation in the commission of the crime for which the defendant is being tried. *Id.* at 653.

Additionally, the Court offered alternatives to a formal stipulation for the record that, when coupled with a proper objection at trial, would require a district court to exclude evidence of the name of the offense because of its prejudicial effect. *Id.* at 655 n.10. The most commonly used is a redacted record of a conviction. *Id.* The Court recognized that by choosing such an alternative, a jury instruction would be necessary to clearly and fully explain its meaning, i.e., that it was sufficient to satisfy the required status element. *Id.*

In her dissenting opinion, joined by Chief Justice Rehnquist and Justices Scalia and Thomas, Justice O’Connor stated that the majority misapplied Federal Rule of Evidence 403. *Id.* at 656. The dissent first pointed out that “virtually all evidence is prejudicial” or it would not be relevant. *Id.* (citing *Dollar v. Long Mfg., Inc.*, 561 F.2d 613, 618 (5th Cir. 1977)). The dissenters posited

that the key to the admission of the evidence was whether or not the prejudice created by the admission was unfair. *Id.* at 657. Furthermore, the dissent argued that any prejudicial effect of refusing the stipulation and admitting evidence of a prior conviction could be rectified by a proper jury instruction. *Id.* at 658. Lastly, the dissent was troubled by "the Court's retreat from the fundamental prin-

ciple that in a criminal prosecution the Government may prove its case as it sees fit." *Id.* at 658. The dissent regarded this action as a preclusion of the government's ability to offer evidentiary testimony to adequately and effectively prove a necessary element of its case. *Id.*

With its decision in *Old Chief v. United States*, the United States Supreme Court settled the dispute

among the circuits concerning the acceptance of criminal stipulations, and adopted the Fourth Circuit's view that criminal stipulations regarding prior crimes must be accepted by the prosecution. Although this case involved the federal rules, Maryland, as well as other states, could be impacted because of the similarity between state and federal evidentiary rules.

THE LAURENCE M. KATZ COMMERCIAL LAW COLLECTION

A fund honoring Professor Katz has been created to support a permanent Commercial Law Collection in the University of Baltimore Law Library. Your contributions to assist in the establishment of this \$10,000 Endowment Fund are most welcome.

Please make checks payable to: University of Baltimore Educational Foundation

Please send to:

Laurence M. Katz Commercial Law Collection
University of Baltimore Educational Foundation
1304 St. Paul Street
Baltimore, Maryland 21202-2789

Gifts to the Laurence M. Katz Commercial Law Collection are tax deductible as allowed by law.

