No. _____

In The

Supreme Court of the United States

BILLY GENE REYNOLDS,

Petitioner,

versus

THE STATE OF TEXAS,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Texas For The Tenth District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a criminal defendant is denied his Sixth Amendment right to a fair and impartial jury trial under *Old Chief v. U.S.*, 519 U.S. 172, 117 S.Ct. 644 (1997) where the Petitioner signed a written stipulation with the State the day before trial as to his prior DWI convictions and said stipulation was approved in writing by the trial court judge, but the trial court judge after presentment of the Indictment, in front of the jury, asked the Petitioner if the prior convictions were "true" to which Petitioner responded in the affirmative, thus breaching the written stipulation that Petitioner had relied upon before trial and bringing to the attention of the jury his prior convictions as a direct result of the breach of the stipulation by the trial court judge.

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PETITION FOR A WRIT OF CERTIORARI

To The Honorable Justices Of The Supreme Court:

Petitioner Billy Gene Reynolds respectfully prays that a writ of certiorari issue to review the final decision of the Court of Appeals of Texas for the Tenth District in this case.

OPINIONS BELOW

The Memorandum Opinion of the Court of Appeals (App. 1) is unreported; *Reynolds v. State*, 2013 WL 3168371, No. 10-12-00270-CR (Tex. App.-Waco 2013, pet. ref'd).

JURISDICTION

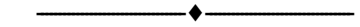
The judgment of the Court of Appeals was entered on June 20, 2013. Petitioner's timely filed Petition for Discretionary Review was denied on December 18, 2013, by the Texas Court of Criminal Appeals. (App. 6). The Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST. amend. VI.



STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below.

On May 2, 2012, Petitioner was convicted by jury in the 413th District Court of Johnson County, Texas, in Cause Number F45940 for the offense of Driving While Intoxicated – Felony Repetition. Punishment was assessed by jury at Life in the Institutional Division of the Texas Department of Criminal Justice as a result of Petitioner's punishment being enhanced to that of a habitual offender. Petitioner timely gave his Notice of Appeal.

B. Statement of Facts.

On October 8, 2011, shortly before midnight, Petitioner was arrested in Joshua, Johnson County, Texas, for the offense of Driving While Intoxicated by Trooper Bradley Fein of the Texas Department of Public Safety. On November 18, 2011, Petitioner was indicted by the Grand Jury of Johnson County, Texas, for the offense of Driving While Intoxicated – 3rd Offense or More. On April 30, 2012, before voir dire, Petitioner entered into a written stipulation as to his prior DWI convictions and said stipulation was approved by the trial court judge.

On May 1, 2012, the Indictment was presented by the State in front of the jury. In breach of the stipulation agreed to by the Petitioner and the State and ratified by the trial court judge the day before, the State read the prior DWI convictions to the jury ***and the trial court judge asked the Petitioner to enter a plea of "true" or "not true" to each prior after the Petitioner had already pled not guilty to the primary offense***. The Petitioner entered pleas of "true" in front of the jury.

At trial, the State again breached the stipulation when Trooper Fein referred to the two (2) prior DWI convictions in front of the jury. The State then offered the stipulation into evidence. However, the stipulation inaccurately informed the jury that one of Petitioner's prior DWI convictions was from "Johnson County," Texas, instead of "Hood County," Texas, as alleged in the Indictment and never mentioned the

court of conviction as well. On May 2, 2012, the State then breached the stipulation again and made reference to Petitioner's prior DWI convictions when Petitioner's son, Jeffrey Reynolds, was testifying.

On May 2, 2012, the trial court judge read the jury charge which made no reference to a stipulation and specifically asked the jury to consider the prior convictions in finding the Petitioner guilty or not guilty as alleged in the Indictment. The Petitioner was found guilty. This appeal resulted.

REASONS FOR GRANTING THE WRIT

There are special and important reasons for granting this writ. This Court should grant certiorari because this case involves a much needed revisit to its landmark decision in *Old Chief v. U.S.*, 519 U.S. 172, 117 S.Ct. 644 (1997). It is well-founded that a district court abuses its discretion when it spurns Petitioner's offer to admit to evidence of prior conviction element of offense charged and directly comments on the prior convictions in the presence of the jury. There was absolutely no justification for the trial court judge to implicitly suggest to the jurors that they could consider the prior convictions for impeachment evidence where Petitioner did not testify at trial. There appears to be confusion in Texas where a defendant stipulates to the prior convictions in DWI cases and the trial court judge still allows the State to read the prior convictions to the jury

during presentment of the Indictment and then asks the defendant how he pleads to the priors in spite of the stipulation. This practice by trial court judges in Texas is simply inapposite to this Court's decision in *Old Chief* and, thus, a petition for a writ of certiorari should issue to end the confusion in the courts below where this unconstitutional procedure continues to be utilized by Texas judges in criminal jury trials.

I. Pursuant To This Court's Decision In *Old Chief*, The Court Of Appeals Erred In Denying Petitioner The Right To Stipulate To The Prior Convictions By Allowing The Trial Court Judge To Ask Petitioner, In The Presence Of The Jury, If The Prior Convictions Were "True" After Petitioner Already Had Signed A Written Stipulation With The State That They Were "True" Which Raised Risk Of Verdict Tainted By Improper Consideration From Nature Of Prior Offenses.

The Court of Appeals' memorandum opinion wholly failed to address the repeated breaches of the defective stipulation during the trial by not only the State, but the trial court judge. *Old Chief*, 519 U.S. at 172, 117 S.Ct. at 644; *Tamez v. State*, 11 S.W.3d 198 (Tex. Crim. App. 2000); *accord Blue v. State*, 41 S.W.3d 129, 132 (Tex. Crim. App. 2000); TEX. R. EVID. 103(d). As a general proposition, a stipulation is regarded as a contractual agreement between the parties. *Howeth v. State*, 645 S.W.2d 787, 789 (Tex.

Crim. App. 1983). In *Bryant v. State*, 135 S.W.3d 130 (Tex. App.-Waco 2004), *rev'd on other grounds*, 187 S.W.3d 397 (Tex. Crim. App. 2005), Chief Justice Gray of the Tenth Court of Appeals agreed and stated that Bryant got exactly what he wanted in that "the stipulation regarding prior convictions was not discussed in front of the jury, just as he wanted." *Id.* at 137 (Gray, C.J., dissenting). In the instant case, Reynolds never received what he wanted when he entered into the stipulation and, as a result, requested an acquittal or any other relief he may be justly entitled to like a new trial.

Chief Justice Gray further stated: "Sometimes we do not see what is obvious. At other times, we see only what people tell us is there. There is an old adage: when something is obvious but overlooked, 'It is hard to see the forest through the trees.' Likewise, if you stand blindfolded in the middle of a pasture and everyone around you, who is not blindfolded, tells you that all they see are trees, you will not see that there are no trees. That is, you will not see there are no trees until you take off the blindfold. We are in the middle of a case, and everyone is saying '*Tamez*.' [citation omitted]. It is time to take off the blindfold. There is no *Tamez*. This case is not about the forest of *Tamez* at all. But to see this, we must step away from *Tamez*, step away from *Hollen*, step away from *Robles*, and even step away from *Old Chief*. 'What we've got here is . . . [a] failure to communicate. [citation omitted].'" *Id.* at 136 (Gray, C.J., dissenting).

Petitioner respectfully asks this Court to take the blindfold off of the Waco Court's memorandum opinion and apply the sound logic in the dissenting opinion of Chief Justice Gray that was adopted by the Texas Court of Criminal Appeals in *Bryant II*. *Bryant v. State*, 187 S.W.3d 397, 400 (Tex. Crim. App. 2005); *Old Chief,* 519 U.S. at 172, 117 S.Ct. at 644. In the case at bar, there was never any written stipulation as to two prior convictions, but only one. Furthermore, the purported stipulation was breached by the State and the trial court judge during trial so as to render it invalid under this Court's decision in *Old Chief* as "Reynolds never got even close to what he wanted" when he entered into the stipulation with the State as they repeatedly referred to the two prior convictions throughout the trial. Moreover, the jury charge did not include some reference to the purported stipulation (as there was no valid one) and its legal effect of establishing the jurisdictional element for felony DWI and left the matter squarely on the shoulders of the jury. *Martin v. State*, 200 S.W.3d 635, 641 (Tex. Crim. App. 2006). No rational trier of fact could find from the ***evidence*** presented by the State that Reynolds had two prior DWI convictions as specifically alleged in the Indictment (i.e., one in "Johnson County," Texas, and one in "Hood County," Texas) based on examination of State's Exhibit No. 3 as neither the proper county nor the court of conviction were named. Accordingly, the evidence was legally insufficient.

In reviewing the legal sufficiency of the evidence, this Court views the evidence in the light most favorable to the verdict and determines whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Russeau v. State*, 171 S.W.3d 871, 877 (Tex. Crim. App. 2005), *citing*, *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979). To support a conviction for Driving While Intoxicated, Felony Repetition, the State must prove that Petitioner has two prior felony convictions. TEX. PEN. CODE ANN. § 49.09(b) (Vernon 2011). The prior convictions of DWI ***as alleged in the indictment*** are elements of the offense of felony DWI which the State must prove beyond a reasonable doubt. *Weaver v. State*, 87 S.W.3d 557, 560 (Tex. Crim. App. 2002); *Gibson v. State*, 995 S.W.2d 693, 696 (Tex. Crim. App. 1999). The State can satisfy this obligation by either offering in evidence certified copies of the judgments or entering into a valid stipulation with the Petitioner as to the prior convictions. *Bryant v. State*, 187 S.W.3d at 401; *Robles v. State*, 85 S.W.3d 211, 212 (Tex. Crim. App. 2002); *Martin v. State*, 200 S.W.3d at 640. The State ***may*** introduce the stipulation into evidence to prove the jurisdictional element of two prior DWI related cases, but is not required to do so. *Hollen v. State*, 117 S.W.3d 798, 802 (Tex. Crim. App. 2003). That is where the danger lies. If the State takes that chance and places the wrong conviction into evidence, should they be rewarded with a conviction for DWI – Felony Repetition?

When a party stipulates to a fact, he usually loses his ability to complain about the sufficiency of the proof on that issue. *Bryant*, 187 S.W.3d at 400. As a general proposition, a stipulation is regarded as a contractual agreement between the parties. *Howeth v. State*, 645 S.W.2d 787, 789 (Tex. Crim. App. 1983). If there is an ambiguity in the stipulation, it is to be resolved in favor of the party in whose interest the stipulation was made. *O'Conner v. State*, 401 S.W.2d 237, 238 (Tex. Crim. App. 1966); *Bender v. State*, 739 S.W.2d 409, 412 (Tex. App.-Houston [14th Dist.] 1987, no pet.). The stipulation in the case at bar was not ambiguous and recited two prior DWI convictions of Petitioner with one occurring in "Johnson County," Texas and the other occurring in "Johnson County," Texas. Because the stipulation incorrectly recited the second conviction as having occurred in "Johnson County," Texas, instead of "Hood County," Texas, as alleged in the Indictment, the State was not relieved of its burden of proving correctly the second DWI conviction. *See, e.g., Stell v. State*, 496 S.W.2d 623, 626 (Tex. Crim. App. 1973) (evidence will fail when stipulation is insufficient to prove element of offense). Petitioner's purported stipulation contained two parts and Petitioner's specific concession of one of them is not a concession of the other as alleged in the Indictment. *Bryant*, 187 S.W.3d at 403 ("What is equally apparent and certainly more conclusive is that there had not been a judicial admission by the defendant.") (Meyers, J., dissenting). Accordingly, Petitioner may complain about the sufficiency of the evidence as to

his alleged second DWI conviction as he never stipulated to it occurring in "Hood County," Texas.

Secondly, the purported stipulation is not valid because Petitioner "never got what he wanted" which was for the State and the trial court judge not to make reference to the prior convictions during the guilt/innocence phase of the trial. *Id.* at 400. On May 1, 2012, the Indictment was presented by the State in front of the jury. In breach of the stipulation agreed to by the Petitioner and the State and ratified by the trial court judge the day before, the State read the prior DWI convictions to the jury and the trial court judge ***asked the Petitioner to enter a plea of "true" or "not true" to each prior offense after the Petitioner had already pled not guilty to the primary offense***. As a result of the trial court judge's actions, the Petitioner entered pleas of "true" in front of the jury. "***This separate plea was, of course, unnecessary.*** The two previous convictions of DWI are jurisdictional elements of the offense of felony DWI, which must be alleged to invoke the jurisdiction of the felony court and which must be proved to obtain a conviction of felony DWI. ***The appellant's plea of not guilty was a denial of those allegations.***" *Barfield v. State*, 63 S.W.3d 446, 448 (Tex. Crim. App. 2001) (opinion of Womack, J.) (emphasis added). The trial court judge had a mandatory duty to accept the plea of not guilty and proceed with the trial and not breach the stipulation by bringing to the attention of the jury the prior DWI convictions. TEX. CODE CRIM. PROC. ANN. art. 36.01(a)(2) (Vernon

2012); *Old Chief*, 519 U.S. at 172, 117 S.Ct. at 644; *Tamez*, 11 S.W.3d at 198. While the State may read the prior convictions to the jury while arraigning the Petitioner in the presence of the jury, *Old Chief* does not allow the trial court judge to ask the Petitioner how he pleads to the prior convictions in the presence of the jury. *Accord Martin*, 200 S.W.3d at 640.

Accordingly, it was fundamental error for the trial court judge to ask the Petitioner in the presence of the jury how he pled to the jurisdictional paragraphs when he had just approved the purported stipulation the day before. TEX. R. EVID. 103(d); *accord Blue*, 41 S.W.3d at 132. By doing so, the trial court judge took the jurisdictional issue out of the hands of the jury and denied the Petitioner his right to have a jury decide the issue concerning his prior convictions. U.S. CONST. amend. VI; TEX. CONST. art. I, § 10. Thus, the pleas of "true" should not be allowed to be used for any purpose. Even the State did not believe the pleas of "true" by Petitioner satisfied their obligation of proving the elements of two prior convictions for a felony DWI conviction as evidenced by the subsequent offer and admission into evidence of State's Exhibit No. 3. Furthermore, Petitioner's pleas of "true" to the prior convictions had no evidentiary value because the entry of a plea to an indictment is not testimony under oath and, thus, not a judicial admission. *See Lopez v. State*, 500 S.W.2d 844, 846 (Tex. Crim. App. 1973); *see also Martinez v. State*, 2001 WL 871687, at *3 (Tex. App.-El Paso 2001, no pet.) ("not designated for publication");

contra Bass v. State, 160 S.W.3d 604, 606 (Tex. App.-Waco 2005, no pet.).[1] Thus, the State was still required to present evidence to prove its allegation that Petitioner had two prior DWI convictions and the State attempted to do so as evidenced by the record.

At trial, the State again breached the stipulation when Trooper Fein referred to the two (2) prior DWI convictions in front of the jury. The State then offered the stipulation into evidence. However, the stipulation, as stated above, inaccurately informed the jury that one of Petitioner's prior DWI convictions was from "Johnson County," Texas, instead of "Hood County," Texas, as alleged in the Indictment and never mentioned the court of conviction as well. The State then breached the stipulation again when it entered the blood-alcohol stipulation exhibit as it referenced the prior convictions again in the first paragraph of said exhibit. On May 2, 2012, the State then breached the stipulation again and made reference to Petitioner's prior DWI convictions when Petitioner's son, Jeffrey Reynolds, was testifying.

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[1] It should be noted that *Bryant* and *Martin* were decided after *Bass*. It should also be noted that Bass' counsel stated before voir dire that his client would "stipulate to the two misdemeanors." Bass later entered a plea of not guilty and pled "true" to the allegations of prior misdemeanor convictions. No further mention was made of the prior convictions during trial until Bass took the stand in his own defense and admitted to the prior convictions. The parties "never entered a written stipulation into evidence" as was done in the instant case. Bass "got what he wanted." Accordingly, *Bass* is simply inapposite in the case at bar.

Judge Cochran states in her concurring opinion in *Bryant II* that, "A valid stipulation may be either written and signed by the defendant in open court and agreed to by the defendant himself or made orally in open court and agreed to by the defendant himself on the record in front of the judge." *Bryant*, 187 S.W.3d at 405 n.3 (Cochran, J., concurring). Judge Johnson states in her concurring opinion in *Bryant II* that "the substance of the stipulation must be somewhere in the record. In a criminal case, this requirement may be met by: the admission into evidence of the written stipulation, signed by the defendant himself; a record of an oral recitation of the substance of the written stipulation; ***or*** some other means of ***setting out the terms of the stipulation in sufficient detail*** that a trial court has enough information to rule on motions and objections and ***a reviewing court is able to resolve any complaints about sufficiency of the state's evidence as to a particular element of the offense***." *Id.* at 404 (Johnson, J., concurring) (emphasis added).

In the case at bar, there was never any written stipulation as to two prior convictions, but only one. Furthermore, the purported stipulation was breached by the State several times during trial as to render it invalid under the Texas Court of Criminal Appeals' logic in *Bryant II* as "Reynolds never got even close to what he wanted" when he entered into the stipulation with the State as they repeatedly referred to the two prior convictions throughout the trial. Moreover, the jury charge did not include some reference to the

purported stipulation (as there was no valid one) and its legal effect of establishing the jurisdictional element for felony DWI and left the matter squarely on the shoulders of the jury. *Martin*, 200 S.W.3d at 641. No rational trier of fact could find from the ***evidence*** presented by the State that Reynolds had two prior DWI convictions as specifically alleged in the Indictment (i.e., one in "Johnson County," Texas, and one in "Hood County," Texas) based on examination of State's Exhibit No. 3 as neither the proper county nor the court of conviction were named. Accordingly, the evidence is legally insufficient.

Upon a finding that the evidence is legally insufficient to support a conviction, this Court may modify the judgment to reflect a conviction for a lesser included offense only if the jury was charged on the lesser offense or if a party requested the lesser offense but was denied. *Collier v. State*, 999 S.W.2d 779, 782 (Tex. Crim. App. 1999). Misdemeanor DWI is a lesser included offense of felony DWI. *Mosqueda v. State*, 936 S.W.2d 714, 717 (Tex. App.-Fort Worth 1996, no pet.). However, the trial court did not charge the jury on misdemeanor DWI nor did either side request such a charge. Thus, the judgment cannot be modified, but only reversed and a judgment of acquittal entered.

"Our criminal justice system makes two promises to its citizens: a fundamentally fair trial and an accurate result. If either of those two promises are not met, the criminal justice system itself falls into disrepute and will eventually be disregarded." *Jacobson v. State*, 398 S.W.3d 195, 200 (Tex. Crim. App. 2013),

quoting, *Ex parte Thompson*, 153 S.W.3d 416, 421 (Tex. Crim. App. 2005) (Cochran, J., concurring). Chief Justice Gray was right in *Bryant I*. No one can dispute that. If this Court still believes the evidence was legally sufficient in spite of what occurred at Reynolds' trial, then at least provide Reynolds a new trial based on the denial of a fundamentally fair trial for the reasons stated herein and embrace *Old Chief*. U.S. CONST. amend. VI.

CONCLUSION AND PRAYER

The Texas Court of Appeals' disregard of *Old Chief* rests at least in part on the uncertainty of what a stipulation means. This Court should end the uncertainty with respect to the scope and status of *Old Chief* and decide whether *Old Chief* did indeed articulate a principle of constitutional law that must be followed when a defendant agrees to stipulate. For the foregoing reasons, the petition for a writ of certiorari to the Court of Appeals of Texas for the Tenth District should be granted.

Respectfully submitted,

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March 18, 2014

[SEAL]

IN THE
TENTH COURT OF APPEALS

No. 10-12-00270-CR

BILLY GENE REYNOLDS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 413th District Court
Johnson County, Texas
Trial Court No. F45940

MEMORANDUM OPINION

Billy Gene Reynolds was indicted for the felony offense of driving while intoxicated. To elevate the offense to a felony, the indictment alleged two previous DWI convictions. The indictment also contained two punishment enhancement paragraphs. Reynolds pleaded not guilty to the offense of driving while intoxicated, but he pleaded true to the two DWI enhancement paragraphs. Reynolds also pleaded true to the two punishment felony enhancement paragraphs. The jury convicted Reynolds of felony driving

while intoxicated and assessed his punishment at life in prison. We affirm.

In his sole issue on appeal, Reynolds argues that the evidence is legally insufficient to support his conviction. The Court of Criminal Appeals has expressed our standard of review of a sufficiency issue as follows:

> In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). This "familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. "Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Hooper*, 214 S.W.3d at 13.

Lucio v. State, 351 S.W.3d 878, 894 (Tex. Crim. App. 2011), *cert den'd*, 132 S.Ct. 2712, 183 L.Ed.2d 71 (2012).

The Court of Criminal Appeals has also explained that our review of "all of the evidence" includes evidence that was properly and improperly admitted. *Conner v. State*, 67 S.W.3d 192, 197 (Tex. Crim. App. 2001). And if the record supports conflicting inferences, we must presume that the factfinder resolved the conflicts in favor of the prosecution and therefore defer to that determination. *Jackson v. Virginia*, 443 U.S. 307, 326, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). Further, direct and circumstantial evidence are treated equally: "Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). Finally, it is well established that the factfinder is entitled to judge the credibility of witnesses and can choose to believe all, some, or none of the testimony presented by the parties. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991).

Driving while intoxicated is a Class B misdemeanor. TEX. PENAL CODE ANN. § 49.04(b) (West Supp. 2012). However, driving while intoxicated is enhanced to a third degree felony if the person has previously been convicted two times of any other offense relating to the operation of a motor vehicle while intoxicated. *See* TEX. PENAL CODE ANN. § 49.09(b)(2) (West Supp. 2012). The two prior DWI convictions are elements of the offense of felony driving while intoxicated. *Martin v. State*, 200 S.W.3d 635, 640-41 (Tex. Crim. App.2006).

Reynolds argues that the evidence does not sufficiently establish two prior DWI convictions as alleged in the indictment to support a conviction for felony driving while intoxicated. The indictment alleged two prior DWI convictions: 1) Cause No. 31725, June 24, 1997 in Johnson County, and 2) Cause No. 17513, June 8, 1989 in Hood County. Reynolds entered into a written stipulation as to his prior DWI convictions. The stipulation incorrectly stated that the second DWI conviction, Cause No. 17513, occurred in Johnson County rather than Hood County.

The stipulation provides that Reynolds:

> [H]ereby stipulates to having been previously, finally, and lawfully convicted two times of an offense relating to operating a motor vehicle while intoxicated, as alleged in the indictment and read to the jury.

The State presented the indictment at trial, and correctly stated the DWI Enhancement, Cause No. 17153, that occurred on June 8, 1989 in Hood County. Reynolds pleaded "true" to that enhancement.

A defendant in a criminal case may stipulate to evidence against him. *Bryant v. State*, 187 S.W.3d 397, 400 (Tex. Crim. App. 2005). If the defendant elects to do this, his stipulation is a kind of judicial admission. *Id.* Judicial admissions are formal concessions in the pleadings in the case or stipulations by a party or counsel that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact. *Id.*

In the stipulation, Reynolds concedes that he has two prior DWI convictions, elements of felony driving while intoxicated. Although there is a clerical error in the stipulation, the evidence is sufficient to show that Reynolds has two prior DWI convictions and to support his conviction for felony driving while intoxicated. We overrule the sole issue on appeal.

We affirm the trial court's judgment.

AL SCOGGINS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Affirmed
Opinion delivered and filed June 20, 2013
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On this day, the Appellant's petition for discretionary review has been refused.

Abel Acosta, Clerk

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