

STATE OF MICHIGAN
IN THE DISTRICT COURT FOR THE COUNTY OF BARRY

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THE PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff,

[redacted],

Defendant.

Case No. 08-[redacted] SD

Hon. Gary R. Holman

PLAINTIFF'S MOTION IN LIMINE TO
EXCLUDE EVIDENCE

_____/

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MOTION IN LIMINE TO EXCLUDE ARGUMENTS, STATEMENTS AND EVIDENCE
REGARDING DEFENDANT'S OPERATOR'S LICENSE, EMPLOYMENT STATUS, OR
RAMIFICATIONS OF AN O.W.I. CONVICTION AT TRIAL

NOW COMES the People of the State of Michigan, by intern Phillip Toutant, and states
as follows in support of their motion in limine.

1. That it is alleged that on or about March 15, 2008, [redacted] operated a motor vehicle while intoxicated (O.W.I.), in violation of MCL 257.625(1).
2. That MCR 6.414(B) gives this court the responsibilities of excluding evidence/arguments that are not relevant *and* protecting juror impartiality.

3. That the status of the Defendant's operator's license, employment status, or the ramifications of an O.W.I. conviction to the Defendant are not relevant to any element O.W.I. statute, MCL 257.625(1).¹
4. That no relevant issue favorable to the Defendant can be supported by the status of the Defendant's operator's license, employment status, or the ramifications of an O.W.I. conviction to the Defendant.
5. That pursuant to MRE 403, even if arguments or evidence regarding the Defendant's driver's license or employment status are relevant, their probative value is outweighed by their unfair prejudice to the People's case.
6. That neither counsel nor the court may discuss the disposition of the defendant after a verdict. *People v Goad*, 421 Mich 20, 25; 364 NW2d 683 (1984).
7. That as the status of the Defendant's operator's license, employment status, and the ramifications of an OWI conviction to the Defendant are not relevant to the elements of the OWI statute or issues in this case favorable to the Defendant, they are irrelevant and inadmissible. Therefore, the status of the Defendant's operator's license, employment status, or the ramifications of an O.W.I. conviction should not be brought before the jury during any stage of [redacted]'s trial.

WHEREFORE, The People of the State of Michigan ask that this court issue an order barring the Defendant from making any statements or arguments regarding the status of the Defendant's operator's license, employment, or the effect of an O.W.I. conviction during any stage of trial.

¹ The O.W.I. elements are that 1) the Defendant *whether licensed or not*; 2) operated a motor vehicle on a public highway, or other place open to the general public; 3) with either: a) under the influence of alcoholic liquor; or b) an unlawful bodily alcohol content. MCL 257.625(1), (1)(a)-(b). Employment and licensing information are in **no way** relevant to these elements.

Respectfully submitted,

Date: 7/7/2008

Phillip B. Toutant
Intern

STATE OF MICHIGAN

IN THE DISTRICT COURT FOR THE COUNTY OF BARRY

_____/

THE PEOPLE OF THE
STATE OF MICHIGAN,

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_____/

Case No. [redacted] SD

Hon. Gary R. Holman

BRIEF IN SUPPORT OF PLAINTIFF'S
MOTION IN LIMINE TO
EXCLUDE EVIDENCE

[redacted]
Attorney for Defendant
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BRIEF IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE ARGUMENTS,
STATEMENTS AND EVIDENCE REGARDING DEFENDANT'S OPERATOR'S LICENSE,
EMPLOYMENT STATUS, OR RAMIFICATIONS OF AN O.W.I. CONVICTION AT TRIAL

**I. THE COURT SHOULD EXCLUDE ARGUMENTS OR STATEMENTS
REGARDING THE DEFENDANT'S OPERATOR'S LICENSE AND EMPLOYMENT
STATUS IN DEFENDANT'S O.W.I. TRIAL BECAUSE THEY ARE NOT RELEVANT**

A. Evidence that is not material is not relevant and therefore is not admissible

The Michigan Rules of Evidence state that irrelevant evidence is not admissible. MRE 401. MRE 401 defines relevant evidence as "evidence having any tendency to make the

existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Then, MRE 402 unequivocally demands that “[e]vidence which is not relevant is not admissible.” Therefore, any evidence that does not meet MRE 401’s relevancy threshold is inadmissible. Further refining the term “relevant” in the context of MRE 401, the Michigan Supreme Court in *People v Brooks*, 453 Mich 511, 517-518; 557 NW2d 106 (1996), held that relevant evidence must be material.² The *Brooks* court held that materiality looks to the relationship between the premises the evidence supports and the issues in the case, noting that “[i]f evidence is offered to help prove a proposition which is *not a matter in issue*, the evidence is *immaterial*.” *Id.* at 518 (emphasis added).

B. Arguments and statements regarding the Defendant’s operator’s license and employment status are not material and therefore not relevant in the Defendant’s O.W.I. trial.

For example, in *People v May*, unpublished opinion per curiam of the Court of Appeals, issued March 18, 2004 (Docket No. 243615), the court held that evidence regarding the sale of marijuana by the defendant, Henry May was not relevant to the alleged offense of felony murder arising out of an instance of child abuse. In *May*, the prosecution introduced evidence that Mr. May and his cousin were weighing and attempting to distribute marijuana at Mr. May’s felony murder trial. *Id.* at 4. The trial court allowed the introduction of this evidence, and a jury convicted Mr. May of felony murder. *Id.* at 1. Mr. May appealed, raising three issues, the last of which contested the admission of the evidence regarding the marijuana distribution. *Id.* at 1-4.

The court determined that as Mr. May was charged with felony murder arising out of an instance

² The *Brooks* court also held that evidence must have sufficient probative force in addition to materiality. *Brooks, supra*. However, probative force of arguments, statements, and evidence of [redacted]’s drivers license and employment status are not at issue here, as they are **not material**. Therefore, the *Brooks* court’s discussion of the probative force prong of relevancy is not discussed herein.

of child abuse, the evidence introduced regarding the possession and distribution of marijuana was irrelevant. *Id.* The *May* court based its holding on the fact that possession or distribution of marijuana were not elements of the offenses with which Mr. May was charged, and that the marijuana evidence did not make it any more or less likely that Mr. May committed felony murder arising out of an instance of child abuse.³ *Id.* Though the court held that the evidence regarding marijuana possession and distribution were irrelevant, and thus inadmissible, it affirmed Mr. May's conviction, as the admission of the marijuana evidence did not prejudice Mr. May. *Id.*

Similar to *May*, evidence of [redacted]'s operators' license or employment status are not relevant to this matter. Like in *May*, [redacted]'s operators' license and employment status have do not concern any issue to be proved in this matter. A driver subject to the same facts as Mr. [redacted]'s alleged offense could hold **any** job, have **any** type of license, and still violate the MCL 257.625(1). For that matter, a defendant could have no job and no operators' license at all and even still violate MCL 257.625(1). Further, like Mr. May's uncharged marijuana offenses, under [redacted]'s facts, operators' license and employment status have no bearing on any issue favorable to the Defendant's case within or outside the elements of MCL 257.625(1).

Therefore, arguments, facts and evidence regarding [redacted]'s license or employment status fail the materiality prong of the relevance test under *Brooks*, are not relevant under MRE 401, and should not be allowed before the jury pursuant to MRE 402.

³ I.e., that the evidence was not material, and therefore not relevant.

II. EVEN IF THIS COURT HELD THAT EVIDENCE AND ARGUMENTS REGARDING THE DEFENDANT’S DRIVER’S LICENSE OR EMPLOYMENT STATUS WERE RELEVANT, SUCH EVIDENCE IS STILL MORE PREJUDICIAL THAN PROBATIVE, AND SHOULD THUS BE EXCLUDED UNDER MRE 403.

A. Evidence should be excluded when its probative value is outweighed by its unfair prejudice to the opposing party.

MRE 403 provides that relevant “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice...” In *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), the Michigan Supreme Court further explained the concept of prejudice as where there is a risk that the jury could disproportionately value particular evidence beyond the extent of its logical value.

B. This court should exclude evidence regarding the Defendant’s driver’s license or employment status because the risk of unfair prejudice to the People far outweighs its probative value.

For example, in *People v Sabin*, 223 MichApp 530; 566 NW2d 677 (1997), the Michigan Court of Appeals held that arguments and evidence of James Arthur Sabin’s parole status at the time he allegedly committed first-degree criminal sexual conduct was more prejudicial than probative, causing the jury to be misled and make improper inferences. In *Sabin*, James Arthur Sabin was convicted of first-degree criminal sexual conduct involving his minor daughter. *Id.* at 530. At trial, the prosecution made multiple references to Mr. Sabin’s parole “agency order,” which required, amongst other terms, that the Defendant have no contact with members of his family. *Id.* at 537-538. The prosecutor justified the allusion to Mr. Sabin’s parole to support a rationale for the victim’s delay in reporting the alleged conduct. *Id.* at 538. After his conviction, Mr. Sabin appealed on four issues, including the prejudicial nature of the prosecutor’s comments

as to his parole status. *Id.* at 530. The Michigan Court of Appeals held that the allusions to Mr. Sabin's parole were analogous to misuse of prior convictions, insofar that they confused the jury, possibly leading it to think that Mr. Sabin had been previously imprisoned for acts of "incestuous pedophilia." *Id.* at 538. The *Sabin* court also noted that the relevancy of Mr. Sabin's parole as argued by the prosecution merely supported a "collateral matter [that was not] probative with regard to any material issue of fact." *Id.* at 538-539. The court then reversed and remanded Mr. Sabin's case for a new trial, holding that the admission of the prejudicial evidence was reversible error. *Id.* at 536, 539.

Like the disputed evidence and arguments in *Sabin*, evidence of [redacted]'s driver's license and employment status creates an unreasonable risk of prejudice to the People's case that substantially outweighs probative value. Just as the references to Mr. Sabin's parole allowed the jury to infer that he had been previously convicted of acts that endangered his family, references to [redacted]'s driver's license or employment status pose a significant risk of allowing the jury to infer that [redacted] would lose his job upon conviction of an O.W.I. offense. Such an inference allows the jury to consider the disposition of the defendant after trial, a proscribed practice.⁴ Further, like Mr. Sabin's parole status at the time of his offense, [redacted]'s driver's license or employment status are collateral matters, not probative to any material issues of fact to the elements of an O.W.I. violation. The similarity of the disputed evidence in *Sabin* and the evidence here mediates to the conclusion that arguments and evidence regarding [redacted]'s driver's license or employment status should be barred.

Even if this court were to rule that arguments or evidence regarding [redacted]'s driver's license or employment status to be relevant, such arguments or evidence should be excluded due to the unreasonable risk of unfair prejudice to the People.

⁴ See subpoint III, *infra*.

III. THE DEFENDANT’S DISPOSITION AFTER TRIAL MAY NOT BE ADDRESSED PRIOR TO THE FINDING OF A VERDICT.

A. Facts regarding the disposition of the Defendant, such as the ramifications of an O.W.I. conviction may not be discussed before the jury.

In *People v Goad*, 421 Mich 20, 25; 364 NW2d 683 (1984), the Michigan Supreme Court held that neither counsel nor the court may discuss the disposition of the defendant after a verdict. In further support of this premise, the *Goad* court cited to Criminal Jury Instruction 3:1:19, which states that jurors should “not concern [themselves] *during the trial* or in [their] deliberations with what the penalty might be if [they] should find the defendant guilty.” *Id.* (emphasis added).

For example, in *People v Williams*, 218 Mich 436, 439; 188 NW 403 (1922), the Michigan Supreme Court held that the trial court was not in error instructing the jury to ignore defense counsel’s argument appealing to the ramifications of Mr. William’s conviction for sale of intoxicating liquors. In *Williams*, Mr. Williams was accused of violating a prohibition statute banning the sale of intoxicating liquors and during trial, defense counsel asked the jury “not to separate this man from his wife and send him to a felon’s cell.” *Id.* The trial court instructed the jury to disregard this statement, and it did, convicting Mr. Williams. *Id.* Affirming the conviction, the Michigan Supreme Court held that the trial court was not in error by instructing the jury to ignore the Defendant’s argument encouraging nullification, noting that “[i]f counsel insists upon making appeals of that character to the jury, he must be content to have them corrected by the trial court.” *Id.*

Here, the facts surrounding the ramifications of [redacted]’s disposition after trial should be kept from the jury, just like arguments about the ramifications of Mr. Williams conviction in

Williams. Like in *Williams*, the effects of [redacted]'s conviction are not related to the alleged offense – it is merely imposed at the discretion of the court and the Secretary of State, pursuant to statute, *not* juror discretion. Further, any statements or arguments regarding [redacted]'s operators' license, employment status, or effect of an O.W.I. conviction would be appeals to the character of the jury, which, like in *Williams*, should be barred by this court as they imply the disposition of [redacted] and his employment status if the jury were to convict.

In conclusion, The People ask that this court enter an order precluding the Defendant from making any statements or arguments regarding the Defendant's operators' license, employment status, or effect of an O.W.I. conviction before the jury.

Respectfully submitted,

Date: 7/7/2008

Phillip B. Toutant
Intern