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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
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No. 37936-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

vs.

**Scott Silvas,**

Appellant.

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Clallam County Superior Court

Cause No. 05-1-00592-0

The Honorable Judges S. Brooke Taylor and Ken Williams.

### **Appellant's Opening Brief**

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### **ASSIGNMENTS OF ERROR**

1. Mr. Silvas' convictions were based on insufficient evidence.
2. The trial court erred by considering documents that were not part of the record to convict Mr. Silvas.
3. Mr. Silvas' Diversion Agreement was equivalent to a guilty plea.
4. The trial court erred by accepting Mr. Silvas' Diversion Agreement without affirmative proof that he entered the contract intelligently, voluntarily, and with a full understanding of its consequences.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Due process requires the state to prove every element of an offense beyond a reasonable doubt. In this case, Mr. Silvas stipulated to the admissibility of any evidence the state wished to present, but the prosecution did not introduce any evidence at trial. Were Mr. Silvas' convictions based on insufficient evidence?
2. A bench trial based on stipulated facts is equivalent to a guilty plea when the accused person reserves no defenses and preserves no issues for appeal. Mr. Silvas explicitly waived all defenses and challenges to his conviction, and agreed that the evidence was sufficient for conviction. Was Mr. Silvas' bench trial equivalent to a guilty plea?
3. An abbreviated proceeding that is equivalent to a guilty plea must be accompanied by proof that the accused person agreed to the abbreviated proceeding knowingly, voluntarily, and intelligently. The record does not establish that Mr. Silvas knew he was subject to five years of probation and twelve months of community custody. Was his conviction entered in violation of his constitutional right to due process?

## STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Scott Silvas was charged with Possession of Methamphetamine and Driving Under the Influence. RP (12/5/05) 2. On May 16, 2007, he signed two documents: (1) a Pre-trial Diversion Agreement, and (2) a Declaration of Defendant, Waiver of Jury Trial, and Stipulation to Facts Sufficient for Guilt. CP 20-28; RP (5/16/07) 5-8; *see* Appendix A and B. These documents set forth a waiver of speedy trial, a waiver of jury trial, a waiver of all trial rights (including the right to contest evidence, to present evidence, to confront witnesses, to testify, to remain silent, and the right to challenge the admissibility of evidence on constitutional or evidentiary grounds), an agreement that any future bench trial would be limited to review of the police reports (and any other material submitted by the state), a stipulation “that the facts contained within the investigative reports are sufficient for a trier of fact” to find guilt, and a stipulation that the controlled substance “is what the information alleges it to be.” CP 20-21; 27. By signing, Mr. Silvas “waive[d] any and all defenses to the commission of the charge(s)...” CP 28.

The judge reviewed the documents with him, and told him that if he failed to complete the program, he had stipulated to the facts, which meant that he would be found guilty without a trial. Mr. Silvas said that

he knew what he was doing, understood the requirements, and agreed to sign the agreement. RP (5/16/07) 5-7.

Although they listed some of the penalties that would follow conviction, the documents did not inform Mr. Silvas that if his diversion were to be revoked, he would be subject to 60 months probation on the DUI and up to 12 months community custody on the possession charge. CP 20-28. Nor did the court review this with him before he entered the agreement. RP (5/15/07).

Mr. Silvas was set for a diversion review hearing on April 4, 2008, but did not come to court. The prosecutor asserted that Mr. Silvas' location was not known, that it would be impossible to serve him, and that therefore his diversion agreement should be revoked. The court revoked the diversion agreement and issued a warrant. RP (4/4/08) 2.

Mr. Silvas appeared in court on May 12, 2008 and told the judge that he had heard about the warrant and showed up voluntarily. The court informed Mr. Silvas that the prosecutor and the Friendship agency (which administered the diversion program) believed that his diversion should be revoked. A hearing was set. RP (5/12/08) 2-3. On May 16, 2008, defense counsel informed the court that Mr. Silvas did not object to the revocation, and Mr. Silvas confirmed that. The court revoked the diversion. RP (5/16/08) 2-3.

On June 5, 2008, the trial judge reviewed “materials that have been submitted and presented to the Court.” RP (6/5/08) 2. Those materials were not identified for the record, and were not made a part of the record. The court found Mr. Silvas guilty as charged. RP (6/5/08) 2.

Mr. Silvas had completed 60 days inpatient drug treatment, and 150 hours of community service, but had failed diversion because he did not have enough money for the monthly fees (although he had made some payments). The parties noted that he could have participated in Drug Court, where additional resources would have been available to him. RP (6/5/08) 2-10.

Mr. Silvas was sentenced to 30 days in jail on the felony charge, and 365 days in jail with 361 suspended on the DUI charge. CP 12. He was also sentenced to five years probation on the DUI, and 12 months community custody on the possession charge. CP 12.

Mr. Silvas appealed the Judgment and Sentence, and informed the court that he wanted to argue ineffective assistance of counsel. CP 5; RP (6/26/08) 2.

## ARGUMENT

### **I. THE EVIDENCE IN THE RECORD IS INSUFFICIENT TO PROVE THE CHARGED OFFENSES BEYOND A REASONABLE DOUBT.**

The Due Process Clause of the Fourteenth Amendment requires the state to prove every element of an offense beyond a reasonable doubt. U.S. Const. Amend. XIV; *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The sufficiency of the evidence may be raised for the first time on appeal. *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 892 (2006).

Evidence is sufficient to support a conviction when, viewed in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *Colquitt*, at 796. Cases on appeal are decided only from the record: “[I]f the evidence is not in the record it will not be considered.” *State v. Wilson*, 75 Wn.2d 329, 332, 450 P.2d 971 (1969). *See, e.g., State v. Gurske*, 155 Wn.2d 134, 118 P.3d 333 (2005) (stipulated facts showed that backpack was within reach, but not that the pistol within the backpack was readily accessible and available for use, as required for firearm enhancement).

Here, Mr. Silvas stipulated to the admissibility of any evidence the state wished to present, whether through documents or through live testimony. However, the prosecutor did not submit any evidence, and

none was admitted at trial. Accordingly, the record does not contain sufficient evidence to sustain the convictions. Mr. Silvas' convictions must be reversed and the case dismissed with prejudice. *Colquitt, supra*.

**II. MR. SILVAS' CONVICTION WAS ENTERED IN VIOLATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS.**

An abbreviated proceeding for determining guilt may be equivalent to a guilty plea. *Brookhart v. Janis*, 384 U.S. 1, 7, 86 S. Ct. 1245, 16 L. Ed. 2d 314 (1966). The difference between a stipulated trial and a guilty plea is that a stipulated trial preserves issues for appeal. *State v. Wiley*, 26 Wn. App. 422, 425-426, 613 P.2d 549 (1980). Where no defenses are reserved and no issues are preserved for appeal, a stipulated trial is equivalent to a guilty plea. *State v. Johnson*, 104 Wn.2d 338, 342-343, 705 P.2d 773 (1985).

Under such circumstances, the abbreviated proceeding is constitutional only if it comports with the protections required for guilty plea hearings. *Brookhart, supra*. There must be affirmative evidence in the record that the accused person agreed to the abbreviated proceeding intelligently and voluntarily, with an understanding of the full consequences of the agreement. *Boykin v. Alabama*, 395 U.S. 238, 23 L. Ed. 2d 274, 89 S. Ct. 1709 (1969); *see also State v. Barton*, 93 Wn.2d 301, 304, 609 P.2d 1353 (1980). This includes an understanding of the direct

consequences of conviction, including any post-release supervision. *In re Pers. Restraint of Isadore*, 151 Wn.2d 294, 298, 88 P.3d 390 (2004). A guilty plea (or its equivalent) is involuntary if the record does not show that the accused person was informed of the direct consequences of conviction. *State v. Turley*, 149 Wn.2d 395, 398-399, 69 P.3d 338 (2003).

The state bears the burden of proving the validity of a guilty plea (or plea equivalent). *State v. Ross*, 129 Wn.2d 279, 287, 916 P.2d 405 (1996). The issue of voluntariness may be raised for the first time on appeal. *State v. Walsh*, 143 Wn.2d 1, 7-8, 17 P.3d 591 (2001); *State v. Mendoza*, 157 Wn.2d 582, 589, 141 P.3d 49 (2006).

In this case, Mr. Silvas did not preserve any issues for appeal. Instead, he waived his trial rights, including his right to challenge the admissibility of evidence obtained in violation of the constitution. CP 20, 21, 27. He stipulated to the evidence submitted by the state, waived “any and all defenses,” and agreed that the facts contained in the reports were “sufficient for a trier of fact to find me guilty of the charge(s).”<sup>1</sup> CP 20, 21, 27, 28.

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<sup>1</sup> In addition, he specifically stipulated that the substance possessed “is what the information alleges it to be.” CP 27.

This agreement was equivalent to a guilty plea.<sup>2</sup> *Johnson, supra*; *Wiley, supra*. Accordingly, the due process clause requires an affirmative showing that Mr. Silvas entered the agreement intelligently and voluntarily, with an understanding of the full consequences of the agreement. *Boykin, supra*. But the record is deficient, because it fails to establish that Mr. Silvas knew he would be subject to 60 months of probation under RCW 46.61.5055 for Count II, as well as up to 12 months of community custody on Count I, pursuant to RCW 9.94A.545. In the absence of an affirmative showing that Mr. Silvas knew he'd be subject to these terms of probation and community custody, the convictions violate due process. *Isadore, supra*.

Because the record does not establish that Mr. Silvas knowingly, intelligently, and voluntarily agreed to his convictions, the Judgment and Sentence must be vacated, and the case remanded to the trial court for a jury trial. *Isadore, supra*.

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<sup>2</sup> This Court has previously held that an accused person's stipulation to the sufficiency of evidence amounts to a waiver of review on the finding of guilt. *See State v. Drum*, 143 Wn. App. 608, 617, 181 P.3d 18 (2008), *review granted at* 164 Wn.2d 1025 (2008).

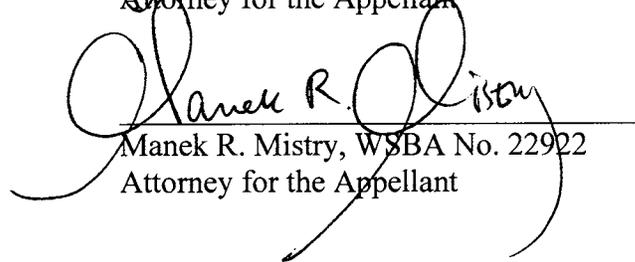
**CONCLUSION**

Mr. Silvas' Judgment and Sentence must be vacated and the case dismissed with prejudice. In the alternative, the case must be remanded to the superior court for trial.

Respectfully submitted on November 14, 2008.

**BACKLUND AND MISTRY**

  
\_\_\_\_\_  
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\_\_\_\_\_  
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Attorney for the Appellant

# **APPENDIX A**

SCANNED -4

IN THE  SUPERIOR /  DISTRICT COURT  
OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLALLAM

FILED  
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STATE OF WASHINGTON,  
  
Plaintiff,  
  
vs.  
  
SCOTT BRYAN SILVAS,  
  
Defendant.

BARBARA CHRISTENSEN  
NO. 05-1-00592-0  
**07 9 00590 9**  
PRE-TRIAL DIVERSION  
AGREEMENT, WAIVERS, AND  
STIPULATED ORDER OF  
CONTINUANCE

**ARTICLE I. PRETRIAL DIVERSION AGREEMENT**

COMES NOW, the Prosecution, by and through its attorney of record below-named, and the Defendant, by and through his or her attorney of record below-named, and hereby enter the following Pre-Trial Diversion Agreement (hereafter "Agreement"):

**ARTICLE II. DEFENDANT'S WAIVER OF RIGHTS AND AGREEMENT**

1. **Waiver of Speedy Trial (CR/CrRLJ 3.3(c)(2)(f)).** The Defendant understands that he or she has the right to be tried within 90 days following the "commencement date" as defined in CR/CrRLJ 3.3(e), and that if the Defendant does not receive a trial within this time period the case may be dismissed with prejudice unless the Defendant waives this right.

The Defendant understands that he or she has a right to trial by .  
The Defendant gives up that right and agrees to a new commencement date of .  
As a result of this waiver, the last allowable date for trial will be .

2. **Waiver of Jury Trial (CR/CrRLJ 6.1.1(a)).** The Defendant understands that he or she has the right to trial by jury unless he or she waives the right to a jury trial. The Defendant hereby waives his or her jury trial right and requests that his or her guilt or innocence be decided by a judge.

3.  **Waiver of Right to Counsel** (This waiver applies only if the box at the beginning of this paragraph is checked and the Defendant signs his or her name below). The Defendant understands the he or she has the right to be represented by a lawyer, and that he or she may talk to a lawyer before signing this document and/or any Addendum to this document. The Defendant knows that if he or she cannot afford a lawyer the Defendant could ask the Court to appoint a lawyer to represent the Defendant.

Being aware of the right to be represented by a lawyer, the Defendant hereby waives that right at this time. The waiver is made freely, knowingly and voluntarily. The Defendant has no more questions to ask about his or her right to be represented by a lawyer. The Defendant chooses to sign this document and/or any Addendum to this document without legal representation.

5-16-07  
Date

  
Defendant

1 - PRE-TRIAL DIVERSION AGREEMENT, WAIVERS,  
AND STIPULATED ORDER OF CONTINUANCE

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

APC  
08

1 4. **Waiver of Rights (CR/CrRLJ 6.1.2(b)).** The Defendant understands that he or she has the right  
2 to contest and object to evidence presented against the Defendant. The Defendant gives up the right to  
3 contest and object to any evidence presented against the Defendant as to the Defendant's guilt or  
4 innocence regarding the underlying charge(s) at any future hearings if the Defendant fails to comply  
5 with the conditions in this Agreement. The Defendant also understands that he or she has the right to  
6 present evidence on the Defendant's own behalf. The Defendant gives up the right to present evidence  
7 on the Defendant's own behalf as to the Defendant's guilt or innocence regarding the underlying  
8 charge(s). The Defendant understands that evidence will be presented against the Defendant at a future  
9 hearing and the Defendant understands that the Judge will read and review that evidence in determining  
10 the Defendant's guilt or innocence. The evidence may include, but is not limited to, police reports.

11 The Defendant understands that, by this process, he or she is giving up the constitutional right to a  
12 jury trial, the right to hear and question witnesses, the right to call witnesses in his or her own behalf,  
13 the right to testify or not to testify, the right to remain silent, the right to challenge the admissibility of  
14 statements the Defendant has made (CR/CrRLJ 3.5), the right to challenge physical, oral or identifica-  
15 tion evidence (CR/CrRLJ 3.6), the right to assert husband-wife privileges (RCW 5.60.060), the right to  
16 assert a physician-patient privilege (RCW 5.60.060), psychologist-client privilege (RCW 18.83.110),  
17 registered nurse privilege (RCW 5.62.020), and counselor privilege (RCW 18.19.180).

18 The Defendant understands that the maximum sentence for the crime(s) charged herein of

19 Possession of a CS is 5 years and/or \$10,000 fine, \$1,000 minimum fine

20 DUI is 1 year and/or \$5,000, \$1,000+ as a minimum fine

21 \_\_\_\_\_ is \_\_\_\_\_

22 \_\_\_\_\_ is  365]  90] days in jail and/or a  \$5,000]  \$1,000]

23 \_\_\_\_\_ is  365]  90] days in jail and/or a  \$5,000]  \$1,000]

24 plus costs and assessments, and that the judge can impose any sentence up to the maximum, no matter  
25 what the prosecuting authority or the defense recommends.

5. **Consent for the Release of Confidential Information.** The Defendant hereby consents to  
15 communication between the Court, Friendship Staff, and Clallam County Prosecutor's Office, and any  
16 health care and/or treatment provider for evaluation(s) and/or treatment required in this Agreement.  
17 The purpose for disclosure is to inform the criminal justice agencies listed above of the Defendant's  
18 attendance, and progress in treatment, and/or the Defendant's compliance with Court Orders and/or  
19 conditions of Friendship. The extent of information to be disclosed is the Defendant's diagnosis, infor-  
20 mation about the Defendant's attendance, or lack of attendance, at treatment sessions, the Defendant's  
21 cooperation with the treatment program, prognosis, all medical records, including all clinical, and  
22 hospital records in full. This includes but is not limited to diagnostic testing, laboratory tests,  
23 correspondence, and notes, or written documents of any nature within the meaning of the Uniform  
24 Health Care Act.

25 The Defendant consents to the release of information regarding himself or herself which may be  
protected by local, state, or federal laws which could pertain to testing, and/or treatment for HIV  
infection, AIDS, sexually transmitted diseases, mental health problems, alcohol abuse, or drug abuse.  
The Defendant understands that this consent will remain in effect, and cannot be revoked by the Defen-  
dant until this case is completed. The Defendant understands that any disclosure made is bound by  
Part 2 of Title 42 of the Code of Federal Regulations governing confidentiality of alcohol and drug  
abuse patient records, and that recipients of this information may re-disclose it only in connection with  
their official duties.

6. **Cooperation and Truthfulness.** The Defendant agrees to fully cooperate and completely and  
truthfully answer any and all questions from this Court, Friendship Staff, and any health care and/or

- 1 treatment provider for evaluation(s) and/or treatment required in this Agreement.
- 2 7. **Defendant's Promise to be Present in Court.** The Defendant understands and agrees that he or  
 3 she shall be present in court at all future court hearings herein unless previously waived in writing by  
 4 the judge.
- 5 8. **Additional Conditions.** The Defendant agrees to fully and completely satisfy all of the following  
 6 selected conditions—
- 7  **Criminal Law Violations.** The Defendant shall have no new criminal law violations. The  
 8 Defendant agrees that this Court may take action on the Prosecution's motion alleging the Defen-  
 9 dant's violation of this condition prior to any resolution of the alleged new criminal law violation.  
 10 The Defendant specifically agrees that a "conviction" for a criminal law violation occurring after  
 11 the signing of this Agreement is not a prerequisite to this Court taking action on the Prosecution's  
 12 motion to revoke this Agreement due to the Defendant's alleged violation of this condition. The  
 13 Defendant further agrees that the Defendant's petition or otherwise request of any Washington  
 14 court to grant the Defendant a deferred prosecution pursuant to RCW 10.05 et seq. for any new  
 15 criminal law violation occurring after the signing of this Agreement shall be a violation of this  
 16 condition.
  - 17  **Address and Telephone Information.** The Defendant agrees to immediately notify the Court  
 18 and Friendship in person or in writing of any change of residence or mailing address and  
 19 telephone number.
  - 20  **Bench Warrant Costs.** The Defendant shall pay any bench warrant costs imposed herein.
  - 21  **Failure to File Proof of Compliance.** The Defendant agrees that failure to file written proof  
 22 when required herein shall be a violation of this Agreement.
  - 23  **Order(s) Prohibiting Contact.** The Defendant agrees to strictly comply with all provisions of  
 24 any court order entered in this case or any other case prohibiting contact with the named person(s)  
 25 therein.
  - Seized Property.** The Defendant agrees as of today's date to forfeit all property seized herein by  
 law enforcement.
  - Drugs Prohibited.** The Defendant shall not possess or consume any non-prescribed drugs.  
 Defendant shall provide a copy of any prescriptions to Friendship Staff within one business day  
 of obtaining such.
  - Friendship Diversion Services Monitoring.** The Defendant agrees that compliance with this  
 Agreement shall be monitored by Friendship Diversion Services and the Prosecuting Attorney's  
 Office. The Defendant agrees to contact Friendship to make an appointment within one judicial  
 day of the signing of this Agreement. Defendant will bring a copy of this Agreement to Friend-  
 ship, make all appointments with Friendship, and abide by all Friendship rules and regulations.  
 The Defendant also agrees to pay a fee to Friendship for their services at a payment plan  
 satisfactory to Friendship. The exact amount of Defendant's fee will be determined by Friend-  
 ship on a sliding scale and will be between Three Hundred Fifty Dollars (\$350) and Five Hundred  
 Dollars (\$500) for misdemeanors, or Six Hundred Fifty Dollars (\$650) and One Thousand  
 Dollars (\$1,000) for felonies.
  - Court Costs.** The Defendant shall pay court costs of [ \$150 District Court /  \$200 Superior  
 Court] at \$\_\_\_\_\_ per month by the 5th of each month beginning \_\_\_\_\_, 20\_\_\_\_.  
*Payments shall be made to the Friendship Diversion Program.*
  - Clallam County Prosecutor's Crime Victim Fund.** The defendant shall pay a \$100 Clallam  
 County Prosecutor's Crime Victim Fund at \$\_\_\_\_\_ per month by the 5th of each month begin-  
 ning \_\_\_\_\_. *Payments shall be made to the Friendship Diversion Program.*

3 -

PRE-TRIAL DIVERSION AGREEMENT, WAIVERS,  
 AND STIPULATED ORDER OF CONTINUANCE

CLALLAM COUNTY  
 PROSECUTING ATTORNEY  
 Clallam County Courthouse  
 223 East Fourth Street, Suite 11  
 Port Angeles, Washington 98362-3015  
 (360) 417-2301 FAX 417-2469

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Any amounts paid by check should include the Defendant's full name and case number.

- Addendum.** The Defendant agrees to fully comply with a separately executed document entitled "Addendum to Pre-Trial Diversion Agreement" (hereafter "Addendum") and further agrees that any violation of the Addendum is also a violation of this Agreement. The parties agree that the Addendum will not be filed with the Court unless the Prosecution files a written motion alleging a violation of the Addendum.
- The Defendant agrees that if the pending charge is related to controlled substance or legend drug, that the substance is what the charging document alleges it to be.
- Monitoring of Conditions by Prosecutor's Office.** The Defendant agrees that compliance with this Agreement shall be monitored by the Prosecutor's Office.
- Valid License and Insurance.** The Defendant shall not drive a motor vehicle without a valid driver's license and/or proof of insurance.
- DUI Victim's Panel.** The Defendant shall attend a DUI victim's panel and within 90 days from today's date file written proof thereof with Friendship Diversion Services.
- Chemical Dependency Treatment.** The Defendant shall obtain a chemical dependency evaluation from a state-certified agency, and thereafter successfully comply with all treatment recommendations, and within ninety (90) days from today's date file written proof thereof with Friendship Diversion Services.
- Drinking and Driving.** The Defendant shall not drive or be in actual physical control of a motor vehicle while having an alcohol concentration of 0.03 or more within two hours after driving or being in physical control. The Defendant shall not refuse to submit to a test of his/her breath or blood to determine alcohol and/or drug concentration upon request of a law enforcement officer who has reasonable grounds to believe that the Defendant was driving or in actual physical control of a motor vehicle while under the influence of an intoxicating liquor and/or drugs.
- Alcohol Prohibited.** The Defendant shall not possess or consume alcohol.
- Ignition Interlock Device.** The Defendant shall not operate any vehicle that is not equipped with a functioning ignition interlock alcohol device. This condition may be rescinded by this Court after one (1) year from today's date if the Defendant is in full compliance with this Agreement at that time.
- DV Perpetrator's Program.** The Defendant shall successfully complete a state-certified one year Domestic Violence Perpetrator's Treatment program, and within one year from today's date file written proof thereof with Friendship Diversion Services.
- Firearm.** The Defendant shall not possess or own any firearm.
- DV Parenting Class.** The Defendant shall attend and successfully complete a parenting class for a minimum 24 hours that includes discussion concerning the effects of domestic violence on children, and within 90 days from today's date file written proof thereof with Friendship Diversion Services.
- Anger Management Course.** The Defendant shall attend and successfully complete an anger management course, and within 90 days from today's date file written proof thereof with Friendship Diversion Services.
- No Contact.** The Defendant shall not make any attempts (including but not limited to directly or indirectly, in person, in writing, by telephone, or through other persons) to contact the following:
- Consumer Awareness Course.** The Defendant shall attend and successfully complete a consumer awareness course, and within 90 days from today's date file written proof thereof with Friendship Diversion Services.

4 -

**PRE-TRIAL DIVERSION AGREEMENT, WAIVERS,  
AND STIPULATED ORDER OF CONTINUANCE**

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

1  **Driver's Education Program.** The Defendant shall attend and successfully complete a  
2 Washington State Department of Licensing approved five (5) week Driver Training Course which  
3 shall include a minimum thirty (30) hours of classroom instruction (including four hours behind  
4 the wheel), and within 90 days from today's date file written proof thereof with Friendship  
5 Diversion Services.

6  **Restitution.** The Defendant agrees to pay the following restitution through Friendship.  
7 The Defendant further agrees that he or she shall file written proof with the Court Clerk within  
8 one year from today's date showing that all restitution has been paid in full. *(If the restitution  
9 amount exceeds \$2500, the restitution must be paid down to \$2,500 prior to the signing of the  
10 diversion contract).*

Amount	Name
\$67.36	WSP - DUI recovery

11 \$ 67.36 Total

12  Defendant agrees to complete 150 community service hours and file proof with Friendship  
13 Diversion Services within 30 days of completion (up to and including 150 hours).

14  Other: \_\_\_\_\_

15 9. **Defendant's Promise to Fully Satisfy Conditions.** The Defendant understands and agrees that  
16 he or she shall fully and completely satisfy all of the conditions of this Agreement, and that failure or  
17 neglect to carry out and fulfill any term or condition of this Agreement shall constitute a violation of this  
18 Agreement.

19 The Defendant also understands and agrees that any allegation by the Prosecution that the Defen-  
20 dant has violated this Agreement will result in a hearing by this Court to determine whether a violation  
21 has been proven, and that the Prosecution will not be required to comply with its obligations in the  
22 section entitled "Prosecution's Agreement" until this Court has determined that the Defendant did not  
23 violate this Agreement and that the Defendant is in full compliance with this Agreement.

24 ~~ARTICLE III: PROSECUTION'S AGREEMENT TO DISMISS THE CHARGE(S)~~

25 ~~If the Defendant successfully complies with the promises he or she has made herein, the  
Prosecution agrees to move to dismiss with prejudice the charge(s) of at a hearing to be scheduled not  
before one year following entry of this Agreement.~~

**ARTICLE IV: PROSECUTION'S AGREEMENT TO AMEND THE CHARGE(S)**

~~If the Defendant successfully complies with the promises he or she has made herein, the  
Prosecution agrees to move to amend the charge(s) and the Defendant agrees to the Court's entry of a  
guilty finding to Use of Paraphernalia at a hearing to be scheduled not before one year following entry  
of this Agreement.~~

~~Upon the Defendant's successful compliance with this Agreement and the Court's entry of a  
guilty finding to the amended charge(s) as previously discussed, the Prosecution will make the follow-  
ing sentencing recommendation to the Judge:~~

~~90 days in jail with 90 days suspended for two years  
\$1,000 fine with \$1,000 suspended~~

~~The Defendant shall have no violation of any criminal laws, and Probation shall be unsupervised.~~

5 - PRE-TRIAL DIVERSION AGREEMENT, WAIVERS,  
AND STIPULATED ORDER OF CONTINUANCE

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

1 The Judge does not have to follow anyone's recommendation as to sentence. The Judge can give  
2 the Defendant any sentence up to the maximum authorized by law-no matter what the prosecuting  
3 authority or anyone else recommends.

3 **ARTICLE V: PROCEDURE ON ALLEGED VIOLATION OF AGREEMENT**

4 The Defendant and Prosecution agree that the prompt resolution of a party's allegation of  
5 violation of this Agreement by the other party is desirable. Accordingly, the parties request this Court  
6 to set a hearing date within approximately 30 days of any party's violation allegation so that this Court  
7 can promptly determine whether a violation of this Agreement has occurred.

8 The parties further agree that any Prosecution motion to revoke this Agreement based upon an  
9 alleged violation of this Agreement by the Defendant will be handled in accordance with the procedures  
10 set forth in *State v. Marino*, 100 Wn.2d 719, 674 P.2d 171 (1984) and *State v. Kessler*, 75 Wn.App.  
11 634, 879 P.2d 333 (1994).

12 DATED this 16 day of May, 2007.

13 Defendant

14 Defendant address: 423 Williams St N DO

15 Defendant phone: 461-0172

16 Defendant e-mail: \_\_\_\_\_

17 Presented by:

18   
19 TIMOTHY DAVIS WBA #33427  
20 Deputy Prosecuting Attorney

21 Approved for Entry:

22   
23 HARP GASNICK WBA #  
24 Attorney for Defendant

25 **ARTICLE VI: ACCEPTANCE OF WAIVERS, PDA AND  
STIPULATED ORDER OF CONTINUANCE**

26 THIS MATTER having come on regularly before the undersigned Judge of the above-entitled  
27 Court by agreement of the parties for entry of a Pre-Trial Diversion Agreement, Defendant's waiver of  
28 rights and a Stipulated Order of Continuance; the Court having considered this Agreement, motion and  
29 the files and records herein, and being fully advised in the premises; now, therefore,

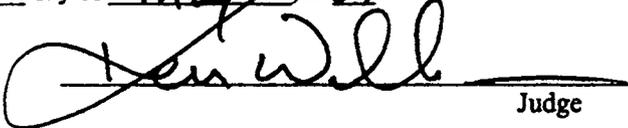
30 IT IS HEREBY ORDERED that probable cause exists to believe that the Defendant committed  
31 the offense(s) charged herein.

32 IT IS FURTHER ORDERED that the Court finds that the above Pre-Trial Diversion Agree-  
33 ment, Defendant's waiver of rights and Stipulated Order of Continuance have been entered into freely,  
34 voluntarily and knowingly by all parties hereto with full awareness and explanation of the possible legal  
35 consequences.

IT IS FURTHER ORDERED that the above-entitled matter shall be continued to a date set by  
separate order. The Defendant shall appear as required by separate order.

DONE IN OPEN COURT this 16 day of May, 2007.

36 Distribution—Original (Court Clerk);  
37 1 copy (Prosecutor), 1 copy (Defendant)

38   
39 Judge

6 - PRE-TRIAL DIVERSION AGREEMENT, WAIVERS,  
AND STIPULATED ORDER OF CONTINUANCE

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PROSECUTING ATTORNEY  
Clallam County Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

# APPENDIX B

SCANNED - 4

FILED  
CLALLAM CO CLERK

2007 MAY 16 A 9:52

BARBARA CHRISTENSEN

*07 9 00590 9*

IN THE  SUPERIOR /  DISTRICT  
COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF CLALLAM

STATE OF WASHINGTON,  
Plaintiff,

vs.

SCOTT BRYAN SILVAS,  
Defendant.

NO. 05-1-00592-0

DECLARATION OF DEFENDANT,  
WAIVER OF JURY TRIAL,  
AND STIPULATION TO FACTS  
SUFFICIENT FOR GUILT

COMES NOW the Defendant, having first been fully advised by counsel, and in consideration for entry into the "Friendship" Diversion Program, make the following Declaration:

1. My entire criminal history (both Juvenile and Adult) consists of the following offenses: *As Reflected in Post office and/or DCH*

\_\_\_\_\_ I understand that failure to disclose is reasonable grounds for termination.

2. I have never before participated in any diversion or similar program or arrangement for any other offense except \_\_\_\_\_.

3. I am requesting that the Clallam County Prosecuting Attorney's Office and this Court permit me to enter into the Clallam County "Friendship" Diversion Program which, if I successfully complete the program, will result in dismissal or reduction of the pending charge(s) against me in this case;

4. I understand that "successful completion" of this program means that I strictly comply with all program requirements as directed by the administering agency, "Friendship," which includes: reporting to the agency as directed; paying administrative costs/assessments; having no criminal violations during the period of diversion; paying full restitution for damage

1 - DECLARATION OF DEFENDANT,  
WAIVER OF JURY TRIAL, AND STIPULATION  
TO FACTS SUFFICIENT FOR GUILT

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
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26

1 arising from this case as determined by "Friendship;" or the Prosecuting Attorney; and  
2 completing community service hours as directed by "Friendship";

3 5. I understand that if I fail to successfully comply with this agreement I will be  
4 removed from the diversion program and the Clallam County Prosecuting Attorney's Office  
5 will recommence prosecution of this case against me;

6 6. If I fail to successfully complete diversion and prosecution is recommenced,  
7 I stipulate that the prosecuting attorney's office may submit to this Court copies of all materials  
8 which make up the law enforcement/investigating agency's reports on which this prosecution  
9 is based;

10 7. I stipulate that this Court may determine my guilt or innocence for the charge(s)  
11 presently filed against me in this matter based upon the law enforcement/investigating agency's  
12 reports on which this prosecution was based and any testimony of officers or witnesses to the  
13 events on which the charges are based, and I stipulate that the facts contained within the inves-  
14 tigation reports are sufficient for a trier of fact to find me guilty of the charge(s) presently filed  
15 against me in this matter. If any charge alleges use/possession of a controlled substance,  
16 I stipulate that the substance is what the information alleges it to be.

17 8. I stipulate that any statements which I have provided to law enforcement, the  
18 investigating agency, and/or the Clallam County Prosecuting Attorney's Office relating to this  
19 matter are admissible for this Court to consider at the time it determines my guilt or innocence  
20 as described above, and I waive any and all objections I have to the admission of such state-  
21 ment(s) for the Court's consideration;

22 9. I understand that, by this process, I am giving up the following constitutional  
23 rights: the right to a jury trial; the right to a speedy and public trial by an impartial jury in the  
24 county where the crime(s) is/are alleged to have been committed; the right to hear and question  
25 witnesses who testify against me; the right to call witnesses in my own behalf and at no  
expense to me; the right to testify or not to testify; the right to appeal a determination of guilt  
after trial; and the presumption of my innocence until the charge(s) have been proven beyond a  
reasonable doubt or I enter a plea of guilty;

2 - DECLARATION OF DEFENDANT,  
WAIVER OF JURY TRIAL, AND STIPULATION  
TO FACTS SUFFICIENT FOR GUILT

CLALLAM COUNTY  
PROSECUTING ATTORNEY  
Clallam County Courthouse  
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(360) 417-2301 FAX 417-2469

1 10. I understand that the crime(s) with which I am charged have a maximum sentence  
2 of five years' imprisonment and a \$10,000 fine and 1 year's imprisonment and a \$5,000 fine,  
3 respectively. The standard range for this offense is 0 months to six months, based on the prose-  
4 cuting attorney's understanding of my criminal history. This standard range may increase  
5 should I be convicted of other crimes prior to my sentencing in this case if I fail to successfully  
6 complete diversion. Also, if I fail diversion and am convicted of the present charge(s) against  
7 me, I may be prohibited from possessing, owning, or having under my control any firearm  
8 unless my right to do so is restored by a court of record.

9 11. I agree that I will pay \$100.00 to the Clallam County Prosecutor's Crime Victim  
10 Fund in addition to other legal financial obligations (LFO's).

11 BY MY SIGNATURE below I waive any and all defenses to the commission of the  
12 charge(s) filed against me.

13 **I DECLARE UNDER PENALTY OF PERJURY under the laws of the State of  
14 Washington that the foregoing is true and correct.**

15 SIGNED in Port Angeles, Washington, this 16 day of MAY, 2007.

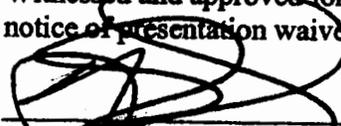
16   
17 Defendant

18 Respectfully submitted:

19 DEBORAH S. KELLY  
20 Prosecuting Attorney

21   
22 TIMOTHY DAVIS WBA #33427  
23 Deputy Prosecuting Attorney

24 Witnessed and approved for presentation:  
25 notice of presentation waived:

26   
27 HATTIE GASNICK  
28 Attorney for Defendant

29 WBA # 14919

30 3 - DECLARATION OF DEFENDANT,  
31 WAIVER OF JURY TRIAL, AND STIPULATION  
32 TO FACTS SUFFICIENT FOR GUILT

33 CLALLAM COUNTY  
34 PROSECUTING ATTORNEY  
35 Clallam County Courthouse  
36 223 East Fourth Street, Suite 11  
37 Port Angeles, Washington 98362-3015  
38 (360) 417-2301 FAX 417-2469

FILED  
COURT OF APPEALS  
DIVISION II

08 NOV 17 AM 9:09

STATE OF WASHINGTON  
BY cm  
DEPUTY

CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Opening Brief to:

Scott Silvas  
423 Williamson St.  
Sequim, WA 98382

and to:

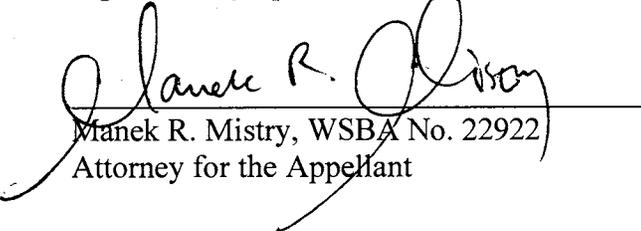
Clallam County Prosecuting Attorney  
223 E. 4th Street, Suite 11  
Port Angeles, WA 98362-0149

And that I sent the original and one copy to the Court of Appeals, Division II, for filing;

All postage prepaid, on November 14, 2008.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF  
THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE  
AND CORRECT.

Signed at Olympia, Washington on November 14, 2008.

  
\_\_\_\_\_  
Manek R. Mistry, WSBA No. 22922  
Attorney for the Appellant