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STATE OF WASHINGTON
BY

No. 34389-4-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

DANIEL SILVA,

Appellant/Defendant.

PIERCE COUNTY SUPERIOR COURT

CAUSE NO. 05-1-02201-1

THE HONORABLE RONALD E. CULPEPPER,

Presiding at the Trial Court.

APPELLANT'S OPENING BRIEF

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I. ASSIGNMENTS OF ERROR

1. The trial court committed reversible error when it denied Mr. Silva's motion to withdraw his guilty plea where Mr. Silva was misadvised of his standard range and maximum sentence.

2. The trial court committed reversible error when it denied Mr. Silva's motion to withdraw his guilty plea where trial counsel failed to actually and substantially assist Mr. Silva in deciding whether to plead guilty.

3. The trial court committed reversible error by denying Mr. Silva his right to counsel in his motion to withdraw his guilty plea.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Should Mr. Silva's case be remanded for withdrawal of his guilty plea where he was misadvised as to the correct standard range and maximum penalties for three of the counts to which he pleaded guilty? (Assignment of Error Number One.)

2. Should Mr. Silva's case be remanded for withdrawal of his guilty plea where his trial counsel failed to properly advise him of his

standard range and maximum sentences, and additionally failed to inform him of exculpatory evidence, until after the guilty plea was entered? (Assignment of Error Number Two.)

3. Should Mr. Silva's case be remanded for a rehearing on the withdrawal of his guilty plea where his original attorney refused to represent him in the motion to withdraw his guilty plea, and the attorney appointed to assist him failed to file a written motion and then abandoned him? (Assignment of Error Number Three.)

III. STATEMENT OF THE CASE

1. Procedural History

On May 6, 2005, the appellant/defendant, Daniel Silva, was charged by Information with one count of first degree rape, one count of first degree kidnaping, one count of first degree burglary, and one count of second degree assault.[1] All acts alleged to have constituted the offenses occurred on May 5, 2005. The alleged victim of all four

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1 RCW 9A.44.040(1)(b), RCW 9A.40.020(1)(b), RCW 9A.52.020(1)(b), RCW 9A.36.021(1)(a), RCW 10.99.020.

counts was Ronne Brown, who was allegedly Mr. Silva's ex-girlfriend. CP 1-4.

On August 12, 2005, the Honorable Stephanie A. Arend presided over Mr. Silva's Motion for Order to Show Cause, which concerned a defense Subpoena Duces Tecum that had not been timely honored. CP 7, RP 1 2-41.[2] The trial court ordered that some of the discovery items in question be delivered by the City of Tacoma Police Department to the Pierce County Prosecutor's Office by August 15, 2005, and that the remaining discovery materials be provided to the prosecutor's office by August 19, 2005. All discovery items were to be made available to the defense upon receipt by the State. CP 8-10; RP 1 38-41. (Copy of Subpoena Duces Tecum is attached as Appendix A and incorporated by reference herein; CP 89-90.

On October 5, 2005, Mr. Silva entered a guilty plea before the Honorable Ronald Culpepper, to the nine count Amended Information

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2 The RPs are unnumbered. For purposes of appellant's brief the RPs are designated as follows: RP 1 = August 12, 2005; RP 2 = October 5, 2005, RP 3 = December 30, 2005; RP 4 = January 27, 2006.

which included one count of residential burglary, one count of attempted assault in the second degree, one count of unlawful imprisonment, one count of tampering with a witness, two counts of felony harassment, and three counts of violation of a protection order. CP 25-29; RP 2 2-17.

On November 4, 2005, Judge Culpepper ordered the Department of Assigned Counsel to Represent Mr. Silva with respect to his motion to withdraw his guilty plea. CP 94. (Copy of Order is attached as Appendix B and incorporated by reference herein.)

Pro Se, Mr. Silva filed a written request to withdraw his guilty plea on December 30, 2005. CP 96-98. (Copy of letter/motion is attached as Appendix C and incorporated by reference herein.) Mr. Silva's motion to withdraw his guilty plea was considered by Judge Culpepper in hearings on December 30, 2005, and January 27, 2006. RP 3, RP 4 3-11. An oral ruling denying the motion was made on January 27, 2006. RP 4 11.

On January 23, 2006, Mr. Silva's original attorney, Steven J.

Krupa, filed a Motion and Declaration for Order Allowing Withdrawal of Counsel. CP 99-100. Mr. Krupa continued to represent Mr. Silva until February 1, 2006 when the trial court entered an Order Allowing Withdrawal of Counsel. CP 101.

On January 27, 2006, the trial court imposed the following sentence to be served in the Department of Corrections: Eighty-four (84) months for Count I (residential burglary - d.v.), sixty-three(63) months for Count II (attempted second degree assault d.v.), sixty(60) months each for Counts III through IX (unlawful imprisonment - d.v., tampering with a witness - d.v., felony harassment - d.v.(x2), and violation of a court order - d.v. (X3)). The sentences for all counts were ordered to be served concurrently. Additionally, the Court imposed twelve(12) months for the deadly weapon, other than firearm, enhancement. CP 48-62. A timely Notice of Appeal was filed on February 3, 2006. CP 66-81.

2. **Plea Hearing - October 5, 2005**

At the October 5, 2005 hearing Mr. Silva entered guilty pleas to

the nine counts charged in the Amended Information. In the Statement of Defendant on Plea of Guilty the form states that for counts 6 through 8 each "crime carries a maximum sentence of zero to twelve (0-12) months imprisonment and a $5,000. fine. The standard range is from zero to twelve (0-12) months..."[3] CP 31-44. (See Statement of Defendant on Plea of Guilty, attachment "B" (2) and (3) which is attached as Appendix D and incorporated by reference herein.)

The improper standard range and maximum sentence is actually written twice for each count of violation of a court order. The zero to twelve(0-12) month standard range and maximum sentence is incorrectly stated a second time in the boxes below the list of counts. For each of counts six through eight the standard range of "0-12 months" and a maximum penalty of penalty of "12 months/$5 K" is written, but crossed out.

Notably, not only are the improper standard range and

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3 Mr. Silva's actual standard range sentence for the crime of violation of a court order is sixty(60) months; the maximum sentence is five (5) years and a $10,000. fine.

maximum penalties, which are listed beneath the elements, not crossed out, but in the boxes where interlineations were made Mr. Silva did not initial the changes as he had initialed other changes made in the previous page. Clearly, the written form misadvises Mr. Silva of both the standard range sentences and the maximum penalties for three of the nine counts to which he pleaded guilty.

At the plea hearing, the trial Court specifically misadvised Mr. Silva that "a violation of the protection order is at twelve(12) months..." RP 2 10. Neither the State nor the defense alerted the trial court to its mistake.

3. Motion Hearing - December 30, 2005

On December 30, 2006, Mr. Silva appeared before the trial Court represented by Mr. Krupa and newly appointed Sverre Staurset. Although the Order directing DAC to appoint new counsel did not in any way limit the representation to advisory only, attorney Staurset advised the Court that his role was "to be a second opinion on the issues of whether or not Mr. Silva has grounds to take away his guilty

plea." RP 3 4. (See Appendix B).

The following colloquy between Mr. Staurset and the Court took place.

> **MR. STAURSET:** I have met with him in the jail. I have discussed with him the items that he initially said to me, and I do not believe merits a - - well, doesn't have a basis in law. However, he did raise an issued today and, quite frankly, I think it probably would warrant, and so I would like to ask the Court to look at the Defendant's Statement on Plea of Guilty.
>
> **JUDGE CULPEPPER:** Paragraph 11, or what are you - -
>
> **MR. STAURSET:** Page 2 of that one, you can see there was some interlineation done.
>
> **JUDGE CULPEPPER:** Page 2 of 7?
>
> **MR. STAURSET:** Of the Plea. And you can see there at the bottom there is some interlineation and then there are his initials out there on the side. Now, so there's nothing wrong with that one, it appears that it's something he's approved of. But, if the

Court goes to page 3, and the Court can look under Count Six-

JUDGE CULPEPPER: Now, I have page 3.

MR. STAURSET: The attachment, I apologize, Attachment B.

JUDGE CULPEPPER: Attachment B, the first page of the attachment.

MR. STAURSET: Under Count Six, you notice , it'a "zero to 12," and then "zero to 12" is struck and "60 months" is written down and "one year" has been changed to "five years." Notice there are no initials there. And I asked him outright, "Are you telling me that you didn't know that change was made and the interlineation?" And he said, "No, I thought it was a misdemeanor." And now, of course, this would be a felony. And the same thing, your Honor, on page 2 of that document, attachment B, you'll notice for Count Eight, Counts Seven and Eight, the same thing happened there as well. So, basically there are three - -

JUDGE CULPEPPER: What I see on that page is at the bottom there's a little grid and it says "60 months," Seven and Eight above, for Count Seven "12 months," Count Eight it says "12 months."

MR. STAURSET: Correct - - well, no, in the big block below the standard range - -

JUDGE CULPEPPER: This one (indicating)? Yeah, I see that up above it says - -

MR. STAURSET: "Zero to 12" is struck and "60" is written in on Count Eight.

JUDGE CULPEPPER: But up above it looks like it says it carries a maximum of 12 months.

MR. STAURSET: Right. But it says "60" in the box.

JUDGE CULPEPPER: Right, it says "60" in the box.

MR. STAURSET: So, what he's saying, it was his understanding that all these things were misdemeanors, not felonies, and so I can't solve that issue. I don't know whether

or not the Court's colloquy would give rise to illuminating this issue.

So, what the Court has to do, I mean, it's my opinion what the Court has to do is either order up the transcripts of the plea to see if he understand that he was pleading to felonies, not misdemeanors, or not, and if that's not the case then of course the case law, which I think the Court now is well familiar with, that is that you can't increase sentence if it wasn't part of the plea, it wouldn't be knowing and voluntary. But I can't solve that issue, I can just illuminate it, and then the Court - - RP 3 4-7.

MR. KRUPA interjected the following:

MR. KRUPA: I guess, if I can be heard, after speaking with Mr. Silva, one of the things that I thought, just so we have a record here, too, is should Mr. Silva, despite the fact that Mr. Staurset has said that he doesn't have ground on those other issues and again, I don't think he does because I did this plea,

if we want to make a full record should we listen to his motion, I guess, as well? If we're gong to come back let him do his motion on the other grounds, that way it's done.

JUDGE CULPEPPER: What motion?

MR. KRUPA: His motion to withdraw was based on not just what - -

JUDGE CULPEPPER: Is there a motion ot withdraw? I've never heard one or seen one.

MR. KRUPA: I can't do it for him, but if he's going to make it orally, I think he may be prepared to say something. Your Honor, look, I want a closure too at this point. If he has some things he has to say, let's have him say them on the record. RP 3 14-15.

Mr. Silva then went on to advise the Court that Mr. Krupa had failed to disclose the exculpatory information he received pursuant to the Subpoena Dues Tecum and during an interview with the alleged victim. Mr. Silva additionally advised the Court that he was not

properly advised concerning sexual offender registration. Finally, he told the Court that he was not properly advised of his standard range and maximum sentences, and that he believed the three counts of violation of a court order were misdemeanors rather than felonies. RP 3 15-17. On the same date Mr. Silva filed, pro se, his letter/motion to withdraw his guilty pleas. CP 96-98; Appendix C. Notably neither defense attorney filed any motion on Mr. Silva's behalf.

At the close of the hearing Judge Culpepper requested to see a transcript of the plea hearing, and continued the matter. RP 3 18,20.[4]

4. <u>Motion and Sentencing Hearing - January 27, 2006</u>

Mr. Krupa appeared at the January 27, 2006 hearing. Mr. Staurset was not in attendance. At the hearing, Judge Culpepper stated that he had received the VRPs of the plea hearing but didn't know "exactly what he [Mr. Staurset] wanted me to look for in the transcripts." RP 4 3. To this inquiry Mr. Krupa replied:

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4 The VRPs for the plea hearing - - dated 10-05-05 - - were filed on January 12, 2006.

MR. KRUPA: I don't know. I just told you I can't argue that for him. He put some issues in front of the Court last time, a written paper in front of the Court regarding some grounds, and he made it clear that he wanted to withdraw his plea, and I can't help him with that....RP 4 4.

Mr. Silva then did his best to explain the situation and argue his motion to the Court. RP 4 4, 10-11. The Court denied Mr. Silva's motion and imposed sentence. RP 4 9, 15-16.

IV. ARGUMENT

A. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DENYING MR. SILVA'S MOTION TO WITHDRAW HIS GUILTY PLEA BECAUSE THE GUILTY PLEA WAS INVOLUNTARY AND HAD NOT BEEN PREDICATED ON EFFECTIVE ASSISTANCE OF COUNSEL.

Under CrR 4.2(f), the trial court shall allow a defendant to withdraw his plea of guilty whenever it appears that withdrawal is necessary to correct a manifest injustice, i.e., an injustice that is obvious, directly observable, overt, not obscure. *State v. Taylor*, 83

Wn.2d 594,598,521 P.2d 699 (1974). In *Taylor*, the Court set forth four indicia of manifest injustice which would allow withdrawal of a guilty plea: (1) the denial of effective assistance of counsel, 2) the plea was not ratified by the defendant, (3) the plea was involuntary, and (4) the plea agreement was not honored by the prosecution. Any of the four indicia listed above would independently establish "manifest injustice" and would require a trial court to allow a defendant to withdraw his plea. *State v. Taylor*, 83 Wn.2d at 597; see also *State v. Wakefield*, 130 Wn.2d 464,472,925 P.2d 183 (1996).

1. Mr. Silva did not enter his plea of guilty knowingly, voluntarily, and intelligently because he was not advised of his correct standard range and maximum sentences.

Due Process requires an affirmative showing that a defendant entered a guilty plea intelligently and voluntarily. *State v. Ross*, 129 Wn.2d 279,284,916 P.2d 405 (1996); see also *State v. Zumwalt*, 97 Wn.App. 124,901 P.2d 319 (1995). A plea of guilty is not voluntary if it is the product of or induced by coercive threat, fear, persuasion, promise or deception. *State v. Swindell*, 22 Wn. App. 626,630,590,

P.2d 1292(1979), *affirmed* Wn.93 Wn.2d 192,607 P.2d 852 (1980).

Where a defendant is misinformed regarding the standard sentencing range, the plea is involuntary and constitutes a manifest injustice. State v. Walsh, 143 Wn.2d 1,6-9,17 P.3d 591 (2001); State v. Miller, 110 Wn.2d 528,531-535,756 P2d. 122 (1988). This is so regardless of the fact that the correct sentencing range is lower than the miscalculated range. State v. Moon, 108 Wn.App. 59,63-64,29 P.3d 734(2001); State v. Murphy, 119 Wn.App. 805,806,81 P.3d 122 (2002); In re Isadore, 151 Wn.2d 294,88 P.3d 390 (2004). But see In re Matthews, 128 Wash.App. 267,115 P.3d 1043 (2005).[5] The remedy where a plea agreement is based on misinformation as to the standard sentencing range is the defendant's choice of specific performance of the agreement or withdrawal of the guilty plea unless there are compelling reasons not to allow that remedy. Id; State v. Walsh, 143 Wn 2d at 8-9.

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Clarification of this point is presently pending before the Washington State Supreme Court in State v. Mendoza, Petition for Review No. 775877. Oral argument was heard on 06-29-06.

In Mr. Silva's case the record clearly shows that he was misadvised that the standard range sentence for each of the three counts of violation of a court order was zero to twelve (0-12) months and that the maximum penalty was twelve (12) months and five thousand dollars. Mr. Silva was misadvised both on the plea form and by the trial court. CP 31-44; RP 2 10. This mistake rendered Mr. Silva's plea involuntary, with the result that his case must be remanded to the trial court to allow Mr. Silva the choice of withdrawal of his plea or specific performance of the plea agreement, absent compelling reasons not to allow Mr. Silva his choice of remedy. See *State v. Walsh, Supra; State v. Murphy, Supra.*

2. Mr. Silva was denied effective assistance of counsel by counsel's failure to properly advise him of his correct standard range and maximum sentences, and counsel's failure to advise him of the exculpatory evidence he had obtained before entry of the guilty plea.

The Washington State and United States Constitutions guarantee a criminal defendant the right to effective assistance of counsel. Washington Constitution Art.1 section 22; United States

Constitution Amend. 14. To prevail on a claim of ineffective assistance of counsel, the defendant must show: (1) counsel's performance fell below an objective standard of reasonableness, and (2) but for counsel's deficient performance the result of the proceeding would have been different. Strickland v. Washington, 466 W.S. 668,80 L.Ed.2d 674,104 S.Ct. 2025, *rehearing* denied, 467 U.S. 1267 (1984). In 1985, the United States Supreme Court held in Hill v. Lockhart, 474 U.S. 52,106 S.Ct. 366 (1985), that the same two part test should be applied in challenges based on ineffective assistance of counsel in the context of guilty plea. *See also* State v. Garcia, 57 Wn.App .927,791 P.2d 244 (1990).

Counsel has an affirmative obligation to assist a defendant "actually an substantially" in determining whether to plead guilty. State v. Stowe, 71 Wn.App. 182,186,858 P.2d 267 (1993). When counsel fails to inform the defendant of the applicable law or affirmatively misrepresents a collateral consequence of a plea that results in prejudice to the defendant, the defendant is denied effective

assistance of counsel, which renders the plea involuntary. *Stowe*, 71 Wn.App. at 188-89. In the context of a guily plea, the defendant must show that his counsel failed to "actually and substantially [assist] his client in deciding whether to plead guilty," and that but for counsel's failure to adequately advise him, he would not have pleaded guilty. *State v. McCollum*, 88 Wn.App. 977,947 P.2d 1235(1997).

In Mr. Silva's case, his written and oral motion to withdraw his guilty plea was based on a mistake as to his standard range and maximum penalties. This mistake created further confusion for Mr. Silva because it reasonably caused him to believe that some of the amended charges were misdemeanors. Additionally, both orally and in writing, Mr. Silva expressed his dissatisfaction with trial counsel because he believed Mr. Krupa had not properly informed him of the exculpatory information primarily concerning the alleged victim's taped and written statements.

Mr. Silva's beliefs are supported by the record. Firstly, the mistakes as to his standard range and maximum sentences are plainly

visible on his plea form, and were orally reinforced by the Court. CP 31-44; Appendix D; RP 2 10. Secondly, his trial counsel in fact requested and received additional discovery pertaining to the alleged victim as a result of the Subpoena Duces Tecum he filed on August 4, 2005. CP 89-90; Appendix A. The Supplemental Discovery Distribution Receipts filed on August 15, 2005, August 19, 2005, and August 22, 2005 show that copies of audio taped interviews, written reports, and a 911 tape were provided to Mr. Krupa. CP 91-93. (See Appendix E, which is attached and incorporated by reference herein.) Moreover, Mr. Silva's assertions that this belated discovery was not disclosed to him until after he entered guilty pleas were <u>not contested</u>.

Based on his oral assertions and his written letter/motion, Mr. Silva received ineffective assistance of counsel because his trial counsel failed to "actually an substantially assist" him in deciding to plead guilty. Not only did trial counsel encourage Mr. Silva to plead guilty based on erroneous standard range and maximum sentences, but he also failed to disclose exculpatory information, which prevented Mr.

Silva from entering an informed and voluntary guilty plea. The trial court erred in denying Mr. Silva's motion for withdrawal of his guilty plea because Mr. Silva's standard range and maximum sentence were incorrectly stated, and because of his counsel's failure to adequately inform and assist Mr. Silva in his decision of whether to plead guilty.

B. MR. SILVA WAS DENIED THE ASSISTANCE OF COUNSEL IN HIS MOTION TO WITHDRAW HIS GUILTY PLEA.

The United States Constitution, Sixth Amendment, and Washington Constitution, Article I, § 22 guarantee the right to assistance of counsel at any critical stage in an original criminal prosecution. *State v. Valentine*, 132 Wn.2d 1,16 935 P.2d 1294 (1997); *Coleman v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387 (1970). A pre-sentencing motion to withdraw a guilty plea is a "critical stage" of a prosecution. *State v. Harrell*, 80 Wn.App. 802,911 P.2d 1034 (1996).

State v. Harrell, *Supra*, is directly on point. In that case the defendant sought to withdraw his guilty pleas prior to sentencing

alleging that his counsel was ineffective during the plea stage. At the hearing on the motion to withdraw defense counsel declined to assist Harrell. The trial court denied Harrell's motion to withdraw his guilty pleas. Division One reversed, holding that where a defendant is outright denied counsel in a motion to withdraw a guilty plea the "denial of the right to counsel is presumed prejudicial and warrants reversal without a harmless error analysis." *Supra* a 803. The *Harrell* Court rejected the State's argument that the defendant had waived his right to counsel by electing to proceed pro se stating: "The waiver of the right to counsel must be knowingly, voluntarily, and intelligently made, and the demand to defend must be unequivocal." (See also *State v. Sims*, 84 Wash.App. 1082 (1997), right to counsel violated where defendant was denied effective assistance of counsel at motion to withdraw guilty plea.)

In the case at bar, Mr. Silva's first trial counsel flatly refused to assist him in his motion to withdraw his guilty pleas. RP 3 14-15; RP 4 4. Attorney Staurset was consequently appointed for the specific

purpose of assisting Mr. Silva with his motion to withdraw his guilty plea. (See Order - Appendix B). Mr. Staurset, however, failed to file a written motion to withdraw Mr. Silva's guilty pleas even though he acknowledged that Mr. Silva had been misadvised as to his standard range and maximum sentence. Had Mr. Staurset taken the time to read the plea hearing VRPs he would have discovered that the trial court had also orally misadvised Mr. Silva on the same matter. RP 2 10. Despite the trial court's prodding that a written motion to withdraw the guilty plea be prepared, none was forthcoming by counsel. RP 3 14, 18,20. Mr. Staurset also failed to request an evidentiary hearing.

Furthermore, Mr. Staurset completely abandoned Mr. Silva when the motion hearing was continued from December 30, 2005 until January 27, 2006, leaving Mr. Silva entirely without counsel at this critical point. At no time did Mr. Silva waive his right to counsel.

Like the defendant in *Harrell*, Mr. Silva's motion to withdraw his guilty plea was based in part on a claim of ineffective assistance of

counsel. Mr. Krupa had a direct conflict of interest, and the trial court properly appointed Mr. Staurset to represent Mr. Silva in his motion to withdraw his guilty plea. The trial court erred, however, by failing to hold Mr. Staurset to his legal and ethical obligations to effectively represent Mr. Silva, and by allowing Mr. Staurset to abandon Mr. Silva before the motion hearing was completed and prior to issuing a ruling. Mr. Silva was denied the assistance of both trial attorneys.

His remedy in this instance is for this Court to remand for a rehearing on Mr. Silva's motion to withdraw his guilty pleas after new trial counsel is appointed. *State v. Harrell, Supra* at 804.

V. CONCLUSION

For all of the foregoing reasons and conclusions, Mr. Silva respectfully requests that this Court reverse the decision of the trial court denying his motion to withdraw his guilty plea on the grounds that the plea was invalid. In the alternative, Mr. Silva request that this Court remand for a rehearing on his motion to withdraw his guilty plea after new trial counsel is appointed.

counsel. Mr. Krupa had a direct conflict of interest, and the trial court properly appointed Mr. Staurset to represent Mr. Silva in his motion to withdraw his guilty plea. The trial court erred, however, by failing to hold Mr. Staurset to his legal and ethical obligations to effectively represent Mr. Silva, and by allowing Mr. Staurset to abandon Mr. Silva before the motion hearing was completed and prior to issuing a ruling. Mr. Silva was denied the assistance of both trial attorneys.

His remedy in this instance is for this Court to remand for a rehearing on Mr. Silva's motion to withdraw his guilty pleas after new trial counsel is appointed. *State v. Harrell, Supra* at 804.

V. CONCLUSION

For all of the foregoing reasons and conclusions, Mr. Silva respectfully requests that this Court reverse the decision of the trial court denying his motion to withdraw his guilty plea on the grounds that the plea was invalid. In the alternative, Mr. Silva request that this Court remand for a rehearing on his motion to withdraw his guilty plea after new trial counsel is appointed.

RESPECTFULLY SUBMITTED this 3rd day of August, 2006.

Sheri L. Arnold
WSBA # 18760
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies that on August 4, 2006, she delivered in person to the Pierce County Prosecutor's Office, County-City Building, 930 Tacoma Ave.South, Tacoma, WA. 98402, and by the U.S. Post Office to appellant, Daniel Silva, DOC # 829959, Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay. WA. 98326, true and correct copies of this Opening Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on August 4, 2006.

Norma Kinter

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY

APPENDIX A

Subpoena Duces Tecum (08-03-05)

IN THE SUPERIOR COURT FOR THE COUNTY OF PIERCE
IN AND FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff,	)	NO. 05-1-02201-1
v.	)	**SUBPOENA DUCES TECUM**
DANIEL SILVA Defendant.	)	

RECEIVED
AUG 04 2005
OFFICE OF
CHIEF OF POLICE

SUBPOENA DUCES TECUM

TO: CITY OF TACOMA (TPD)
POLICE DEPARTMENT
TPD INCIDENT NO: 051250556

GREETINGS:

YOU ARE HEREBY COMMANDED to provide to the Law Offices of Krupa & Clark, P.S., the following :

1) copies of any and all materials used in the training of Officers Farrison and Holden with regard to interviewing criminal suspects or witnesses;
2) any guidelines, policies or procedures utilized by TPD in interviewing criminal suspects or witnesses;
3) copies of any materials used in the training of the aforementioned officers with regard to identifying and/or interviewing a subject under the influence of methamphetamine;
4) any guidelines, policies or procedures utilized by TPD with regard to identifying and/or interviewing a subject under the influence of methamphetamine;
5) copies of the taped interview of Daniel Silva conducted by Officers Farrison and Holden;
6) copies of the taped interview of Ronee Brown conducted by Officer Coulter;
7) all photos of Brown including those taken by Officers Taylor and Wilhrich;
8) Officer Lim's sketches;
9) all photographs of the scene and the evidence at 4411 North 30th including those taken by Officer Werner;
10) all photographs, sketches or other forensic reports created in connection with the incidents at Point Defiance Park .

LAW OFFICES OF
KRUPA & CLARK, P.S.
1008 South Yakima Avenue, Suite 100
Tacoma, Washington 98405
(253) 573-1000

You are to make this information available to Steven J. Krupa, of the Law Offices of Krupa & Clark, P.S., no later than August 14th 2005.

DATED this 3 day of August 2005.

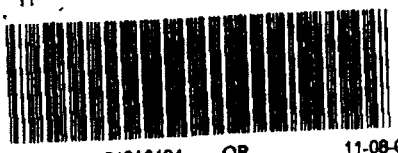
Stephanie A Arend
Judge
Pierce County Superior Court

LAW OFFICES OF
KRUPA & CLARK, P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 100
TACOMA, WASHINGTON 98405
(253) 573-1000

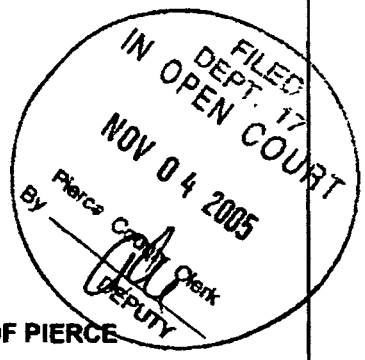
APPENDIX B

Order (11-04-05)

23415 11/8/2005 80056



05-1-02201-1 24016424 OR 11-08-05



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff , vs. SILVA, DANIEL , Defendant .	Cause No: 05-1-02201-1 **ORDER**

___ The Department of Assigned Counsel is hereby appointed to represent the defendant, Daniel Silva, with respect to his Motion to Withdraw hi s Plea of Guilty. Return with Attorney Date is set for 11/10/05 at 1:30 p.m. Former counsel is Steven Krupa.

DATED this 4th day of November, 2005.

Judge **RONALD CULPEPPER**

R. BRIAN LEECH

Attorney for Plaintiff
WSBA# 24449

APPENDIX C

Letter from Defendant to Court (12-30-05)

25594 1/4/2006 00042

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff , vs. SILVA, DANIEL , Defendant .	Cause No. 05-1-02201-1 **LETTER FROM DEFENDANT**

POOR QUALITY
ORIGINAL

YOUR HONOR, I'm HERE TODAY TO BE LET OUT OF CONTRACT THAT ~~HAS~~ HAS BEEN changed without my consent, a contract that I've never fully UNDERSTOOD. I will SHOW THE INEFFECTIVE REPRESENTATION OF THIS ACCOUNT BY MR KRUPA. I will show descrepancies and provide Documents that I believe to make the contract void and not agreed UPON by myself.

① Before I CAN ENTER INTO A Bargin OR A AGREEMENT I have the RIGHT TO Full DISCLOSER OF all ELEMENTS OF ITEMS there in. MR KRUPA never Provided me with the discovery on the claims brought against me. HAD He Given me the Discovery to READ before I SIGNED the AGREEMENT. I WOULD OF only ASKED FOR THE CLAIMS AGAINST me to be SATISFIED by JURY RESOLUTION. Since He DIDNT GIVE me THAT OPTION I COULDNT OF ENTER THAT AGREEMENT because OF the LACK OF DISCLOSER. I would Have never Agreed to this contract. ~~It~~ DISCOVERY WAS WAS NOT PROPERLY Provided and is REQUIRED FOR a law contract.

② Before Signing the agreement MR KRUPA told me that I would Have to SIGN AS A Sexual Predator FOR 10 years. After Signing the Agreement I met with DOC and He informed me that I would have to Sign AS A Sexual Predator FOR 20 YRS. DOC again MR KRUPA had told me Something that was not true in the contract.

③ ON THIS CONTRACT there are 5 COUNTS 2 which are Felonies, ~~and~~ ~~three which~~ Count 5 And Count 9 ~~are~~, ~~which~~ They are Felony Harassment. Count 6, 7, 8 - which are violation OF A Protection order, Count 5, 6, 7, 8, 9 I was never arraigned on these charges and was told by MR KRUPA that ALL were Felonies. After Signing my AGREEMENT I Find out that count 6, 7, 8 ARE misdimenors, Standard Range 0-12 months & 5000 Dollar Fine. Without my Consent ~~they were changed~~ the Range and the charges were changed on the agreement to a Range OF 60 months & 10000 Fine. The only change that I agreed to with MR KRUPA in this AGREEMENT were on COUNTS 4 and 5. I agreed to the change by Signing my INITIALS next to his. I DIDNT AGREE to count 6, 7, 8 Being Changed to Felonies when they were misdimenors, IF SO I would Have signed it with my INITIALS ~~AND~~ NEXT TO MR KRUPAS. THESE COUNTS HAVE BEEN changed and I DIDNT AGREE TO THIS. I ALSO DINT AGREE WITH being sentenced with 9 Felony convictions.

when I have no previous Felony convictions. I Have the agreement here to show the charges and that both parties ~~and~~ could not have agreed ~~on the~~ to ~~any changes~~ without my initials next to any changes.

POOR QUALITY
ORIGINAL

Your Honor, it takes 6 Requirements for law Contract.
Offer by a person authorized to make an offer ② Acceptance by a person
authorized to make acceptance. ③ Begin or Agreement and Full Disclore of
all Elements of terms therein ④ Consideration must be given ⑤ Element
of time ⑥ Both Parties must be mentally competent. In closing, I have shown
the flagrand disregard and ineffective representation of this account by Mr
Krupa, the descrepancies in the contract that are not agreed on by myself. Had
I been shown all necessary information, discovery and evidence prior to signing
the agreement I would of only asked to resolve the claims brought against
me by Jury Resolution. If found guilty of breaching the peace, I will respect
the decision and pay the debt I owe. I didnot knowingly and willingly
agree to this contract Thank you

APPENDIX D

Statement of Defendant on Plea of Guilty (10-05-05)

21892 10/6/2005 00131

OCT 05 2005

FILED
CRIMINAL DIV 2
IN OPEN COURT
OCT 05 2005
PIERCE COUNTY, Clerk
By DEPUTY

05-1-02201-1 23829927 STTDFG 10-05-05

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON, Plaintiff, vs. Daniel Silva Defendant.	CAUSE NO. 05-1-02201-1 STATEMENT OF DEFENDANT ON PLEA OF GUILTY

1. My true name is: Daniel Silva
2. My age is: 26
3. I went through the 12th grade.
4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:
   (a) I have the right to representation by a lawyer and that if I cannot afford to pay for a lawyer, one will be provided at no expense to me. My lawyer's name is Steven J. Kruger
   (b) I am charged with the crime(s) of:

Count I: residential burglary (w sexual not & deadly weapon enhancement)

The elements are: did unlawfully and feloniously with intent to commit a crime against a person therein enter or remain unlawfully into the dwelling of another, with sexual motivation (9A.9.94A.030) a domestic violence incident (10.99.020) and in the commission thereof was armed with a deadly weapon (glass bottle) (9.94A.125 9.94A.602)

This crime carries a maximum sentence of 10 years imprisonment and a $20K fine. The standard range if from 63 months to 84 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense [✓] Serious Violent [ ] Violent [ ] Non-Violent [✗] Sex [✗] Drug [ ] Traffic [ ] Check all that apply.

Count II: attempted assault second degree

Elements: did unlawfully and feloniously with intent to commit the crime of assault in the second degree (defined as intentionally assault another under circumstances not amounting to assault in the first degree and thereby inflict recklessly substantial bodily harm) take a substantial step toward commission of that crime (a dv incident as defined in 10.99.020)

Case Name: State v. Silva Cause No: 05-1-02201-1

ATTACHMENT "B" 1

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count 3 : unlawful imprisonment

Elements: did unlawfully, feloniously and knowingly restrain another person contrary to 9A.40.040 a d.v. incident as defined by 10.99.020

This crime carries a maximum sentence of 5 years imprisonment and a $ 10,000 fine. The standard range is from 51 months to 60 months based upon the attached stipulation as to my criminal history.
Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[✓] Non-Violent[✓] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)

Count 4 : tampering with a witness

Elements: did unlawfully and feloniously attempt to induce a witness or a person he knows is about to be called to be a witness, to withhold testimony (9A.72.120 (1)(a) a d.v. incident (10.99.020

This crime carries a maximum sentence of 5 years imprisonment and a $ 10,000 fine. The standard range is from 51 months to 60 months based upon the attached stipulation as to my criminal history.
Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[✓] ~~Non-~~ Non Violent[✓] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)

6. (b) (continued) Defendant is pleading guilty to these additional counts:

OK
SJK
DS

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
3	51 - 60M		51 - 60M	9 - 18	5 years/10K
4	51 - 60M		51 - 60M	9 - 18	5 years/10K

ATTACHMENT "B"

Case Name: State v Silva Cause No: 05-1-09201-1

ATTACHMENT "B" 2 ~~(CONTINUED)~~

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count 5 : felony harassment

Elements: did unlawfully, knowingly threaten to cause bodily injury immediately or in the future to another, and by words or conduct placed that person in reasonable fear that the threat would be carried out and further that the threat was a threat to kill, (RCW 46.20.270 (2)(b) and (1)(a)(i)(b))

This crime carries a maximum sentence of 5 years imprisonment and a $ 10,000 fine. The standard range is from 51 months to 60 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[✓] Non-Violent[✓] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)

Count 6 : violation of court order (protection/other)

Elements: did unlawfully and feloniously violate the terms of a court order issued pur (10.99, 26.09, 26.10, 26.26, 26.50 or 74.34) by willfully having contact when such contact was prohibited by court order and after having actual notice of the existence of that order and that further the conduct which constituted said violation was an assault (not of the 1st or 2nd degree) involving 26.50.110(4) and increasing the class of the crime contrary to 26.50.110

This crime carries a maximum sentence of 0-12 MOA ~~years~~ imprisonment and a $ 5000 fine. The standard range is from 0 months to 12 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[✓] Non-Violent[✓] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)

6. (b) (continued) Defendant is pleading guilty to these additional counts:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
5	51-60 m		51-60 m	9-18	5 years/10k
6	~~0-12 months~~		~~0-12 months~~	9-18	~~12 months~~
	60 m		60 m		5 years 10k

ATTACHMENT "B"

Case Name: State v. Silva Cause No: 05-1-02201-1

ATTACHMENT "B" (3)

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count 7: violation of a courtorder (protection/other)

Elements: See elements to count 6

This crime carries a maximum sentence of 12 months ~~years~~ imprisonment and a $ 5000 fine. The standard range is from 0 months to 12 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[✓] Non-Violent[ ] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)

Count 8: violation of a ~~protec~~ court order (protection/other)

Elements: See element to count 6

This crime carries a maximum sentence of 12 months ~~years~~ imprisonment and a $ 5000 fine. The standard range is from 0 months to 12 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[✓] Non-Violent[✓] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)

6. (b) (continued) Defendant is pleading guilty to these additional counts:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
	60m		60m		5years 10K
7	~~0-12m~~		~~0-12 m~~	9-18	~~12m 5K~~
8	~~0-12m~~		~~0-12~~	9-18	~~12m 5K~~
	60m		60m		5years 10K

ATTACHMENT "B"

Case Name: State v. Silva Cause No: 05-1-02201-1

ATTACHMENT "B" (4)

4. (b) (continued) Defendant is pleading guilty to these additional counts:

Count 9: felony harassment

Elements: See Count 5

This crime carries a maximum sentence of 5 years imprisonment and a $ 10000 fine. The standard range is from 51 months to 60 months based upon the attached stipulation as to my criminal history.

Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[ ] Non-Violent[✓] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)

~~**Count** ___~~

~~Elements:~~

~~This crime carries a maximum sentence of _____ years imprisonment and a $__ _____ fine. The standard range is from _____ months to _____ months based upon the attached stipulation as to my criminal history.~~

~~Offense Designations: Most Serious Offense[ ] Serious Violent[ ] Violent[ ] Non-Violent[ ] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)~~

6. (b) (continued) Defendant is pleading guilty to these additional counts:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
9	51-60		51-60	9-12	5 year/$10K

ATTACHMENT "B"

This crime carries a maximum sentence of 10 years imprisonment and a $ 20K fine. The standard range is from 63 months to 84 months based upon the attached stipulation as to my criminal history.
Offense Designations: Most Serious Offense[✓] Serious Violent[ ] Violent[✓] Non-Violent[✓] Sex[ ] Drug[ ] Traffic[ ] (check all that apply)

(c) ✓ Additional counts are addressed in Attachment "B".

5. I UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM ALL UP BY PLEADING GUILTY:

(a) The right to a speedy and public trial by an impartial jury in the county where the crime is alleged to have been committed;

(b) The right to remain silent before and during trial, and the right to refuse to testify against myself;

(c) The right at trial to hear and question the witnesses who testify against me;

(d) The right at trial to testify and to have witnesses testify for me. These witnesses can be made to appear at no expense to me;

(e) I am presumed innocent unless the charge is proven beyond a reasonable doubt or I enter a plea of guilty;

(f) The right to appeal a finding of guilt after a trial as well as other pretrial motions such as speedy trial challenges and suppression issues.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:

(a) Each crime with which I am charged carries a maximum sentence, a fine, and a STANDARD SENTENCE RANGE as follows:

COUNT NO.	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancement for (F) Firearm, (D) Other Deadly Weapon, (V) VUCSA in protected zone, (VH) Vehicular Homicide, See RCW 46.61.520, or (JP) Juvenile Present	TOTAL ACTUAL CONFINEMENT (standard range including enhancements)	STANDARD RANGE COMMUNITY CUSTODY (Only applicable for crimes committed on or after July 1, 2000. For crimes committed prior to July 1, 2000, see paragraph 6(f))	MAXIMUM PENALTY
1	63 - 84 m	12 months	75 ~~months to~~ 96 months	36 to 48 m	10y / $20k
2	63 - 84 m		63 - 84 m	18 - 36	10y / $20k

✓ Additional counts are addressed in Attachment "B".

(b) The standard sentence range is based on the crime charged and my criminal history. Criminal history includes prior convictions and juvenile adjudications or convictions, whether in this state, in federal court, or elsewhere.

(c) The prosecuting attorney's statement of my criminal history is attached to this agreement. Unless I have attached a different statement, I agree that the prosecuting attorney's statement is correct and complete. If I am convicted of any additional crimes between now and the time I am sentenced, I am obligated to tell the sentencing judge about those convictions.

(d) If I am convicted of any new crimes before sentencing, or if any additional criminal history is discovered, both the standard sentence range and the prosecuting attorney's recommendation may increase. Even so, my plea of guilty to this charge is binding upon me. I cannot change my mind if additional criminal history is discovered even though the standard sentencing range and the prosecuting attorney's recommendation increase or a mandatory sentence of life imprisonment without the possibility of parole is required by law.

(e) In addition to sentencing me to confinement, the judge will order me to pay $500.00 as a victim's compensation fund assessment. If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss. The judge may also order that I pay a fine, court costs, attorney fees and the costs of incarceration.

(f) **For Crimes Committed Prior to July 1, 2000:**
In addition to sentencing me to confinement, the judge may order me to serve up to one year of community supervision if the total period of confinement ordered is less than 12 months. If this crime is a drug offense, assault in the second degree, assault of a child in the second degree, or any crime against a person in which a specific finding was made that I or an accomplice was armed with a deadly weapon, the judge will order me to serve at least one year of community placement. If this crime is a vehicular homicide, vehicular assault, or a serious violent offense, the judge will order me to serve at least two years of community placement. If this crime is a sex offense, the court will order me to serve at least three years of community custody. The actual period of community placement, community custody, or community supervision may be as long as my earned early release period. During the period of community placement, community custody, or community supervision, I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance. RCW 74.04.005(6)(h).

For Crimes Committed On or After July 1, 2000:
For crimes committed on or after July 1, 2000: In addition to sentencing me to confinement, the judge may order me to serve up to one year of community custody if the total period of confinement ordered is less than 12 months. If the crime I have been convicted of falls into one of the offense types listed in the following chart, the court will sentence me to community custody for the community custody range established for that offense type unless the judge finds substantial and compelling reasons not to do so. If the period of earned release awarded per RCW 9.94A.150 is longer, that will be the term of my community custody. If the crime I have been convicted of falls into more than one category of offense types listed in the following chart, then the community custody range will be based on the offense type that dictates the

longest term of community custody. If I have been convicted of a crime that is not listed in the chart and my sentence is more than 12 months, I will be placed on community custody for the period of earned release.

OFFENSE TYPE	COMMUNITY CUSTODY RANGE
Sex Offenses (Not sentenced under RCW 9.94A.120(8))	36 to 48 months or up to the period of earned release, whichever is longer
Serious Violent Offenses	24 to 48 months or up to the period of earned release, whichever is longer
Violent Offenses	18 to 36 months or up to the period of earned release, whichever is longer
Crimes Against Persons as defined by RCW 9.94A.440(2)	9 to 18 months or up to the period of earned release, whichever is longer
Offenses under Chapter 69.50 or 69.52 RCW (Not sentenced under RCW 9.94A.120(6))	9 to 12 months or up to the period of earned release, whichever is longer

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions placed on my activities. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

Ct. II = 63 mos
Cts III - IX = 60 mos concurrent

(g) The prosecuting attorney will make the following recommendation to the judge: 31 months Dept of Corrections; + 12 months weapons enhancement consecutive; 36 to 48 m comm custody; total confinement 96 mos; NCO w/V; restitution; registered sex offender; $500 CVPA; $110 filing; $100 DNA; HIV test

(h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range of actual confinement and community custody unless the judge finds substantial and compelling reasons not to do so. If the judge goes outside the standard range of actual confinement and community custody, either the State or I can appeal that sentence. If the sentence is within the standard range, no one can appeal the sentence.

(i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

(j) I understand that I may not possess, own, or have under my control any firearm unless my right to do so is restored by a court of record and that I must immediately surrender any concealed pistol license. RCW 9.41.040.

NOTIFICATION RELATING TO SPECIFIC CRIMES: IF ANY OF THE FOLLOWING PARAGRAPHS DO NOT APPLY, THEY SHOULD BE STRICKEN AND INITIALED BY THE DEFENDANT AND THE JUDGE.

(k) This offense is a most serious offense, or strike, as defined by RCW 9.94A.030, and if I have at least two prior convictions for most serious offenses, whether in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.
In addition, if this offense is (1) rape in the first degree, rape of a child in the first degree, rape in the second degree, rape of a child in the second degree, indecent liberties by forcible compulsion, or child molestation in the first degree, or (2) murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, or burglary in the first degree, with a finding of sexual motivation, or (3) any attempt to commit any of the crimes listed in this sentence, and I have at least one prior conviction for one of these listed crimes in this state, in federal court, or elsewhere, the crime for which I am charged carries a mandatory sentence of life imprisonment without the possibility of parole.

~~(l) The judge may sentence me as a first-time offender instead of giving me a sentence within the standard range if I qualify under RCW 9.94A.030. This sentence could include as much as 90 days confinement, and up to two years community supervision if the crime was committed prior to July 1, 2000, or two years of community custody of the crime was committed on or after July 1, 2000, plus all of the conditions described in paragraph (e). Additionally, the judge could require me to undergo treatment, to devote time to a specific occupation, and to pursue a prescribed course of study or occupational training.~~

(m) The judge may suspend execution of the standard range term of confinement under the special sex offender sentencing alternative (SSOSA) if I qualify under RCW 9.94A.120(8). If the judge suspends execution of the standard range term of confinement, I will be placed on community custody for the length of the suspended sentence or three years, which ever is greater; I will be ordered to serve up to 180 days of total confinement; I will be ordered to participate in sex offender treatment; and I will be subject to all of the conditions described in paragraph (e). Additionally, the judge could require me to devote time to a specific occupation and to pursue a prescribed course of study or occupational training. If a violation of the sentence occurs during community custody, the judge may revoke the suspended sentence.

(n) Because this crime involves a sex offense or a kidnaping offense involving a minor, I will be required to register where I reside, study, or work. The specific current registration requirements are set forth in Attachment "A". These requirements may change at a later date. I will be responsible for learning about any changes in the registration requirements and for complying with the registration requirements.

(o) If this crime involves a sex offense or a violent offense, I will be required to provide a sample of my blood for purpose of DNA identification analysis.

(p) If this is a crime of domestic violence and if I, or the victim of the offense has a minor child, the court may order me to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(q) If this crime involves a sexual offense, prostitution, or a drug offense associated with hypodermic needles, I will be required to undergo testing for the human immunodeficiency (AIDS) virus.

(r) The judge may sentence me under the special drug offender sentencing alternative (DOSA) if I qualify under RCW 9.94A.120(6). This sentence could include a period of total confinement in a state facility for one-half of the midpoint of the standard range plus all of the conditions described in paragraph (e). During confinement, I will be required to undergo a comprehensive substance abuse assessment and to participate in treatment. The judge will also impose community custody of at least one-half of the midpoint of the standard range that must include appropriate substance abuse treatment, a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. Additionally, the judge could prohibit me from using alcohol or controlled substances, require me to devote time to a specific employment or training, stay out of certain areas, pay thirty dollars per month to offset the cost of monitoring and require other conditions, including affirmative conditions.

(s) If the judge finds that I have a chemical dependency that has contributed to the offense, the judge may order me to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which I am pleading guilty.

(t) If this crime involves the manufacture, delivery, or possession with the intent to deliver methamphetamine or amphetamine, a mandatory methamphetamine clean-up fine of $3,000.00 will be assessed. RCW 69.50.401(a)(1)(ii).

(u) If this crime involves a motor vehicle, my driver's license or privilege to drive will be suspended or revoked. If I have a driver's license, I must now surrender it to the judge.

(v) If this crime involves the offense of vehicular homicide while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.502, committed on or after January 1, 1999, an additional two years shall be added to the presumptive sentence for vehicular homicide for each prior offense as defined in RCW 46.61.5055(8).

(w) The crime of _____ has a mandatory minimum sentence of at least _____ years of total confinement. The law does not allow any reduction of this sentence. This mandatory minimum sentence is not the same as the mandatory sentence of life imprisonment without the possibility of parole described in paragraph 6(k).

(x) I am being sentenced for two or more serious violent offenses arising from separate and distinct criminal conduct and the sentences imposed on counts _____ and _____ will run consecutively unless the judge finds substantial and compelling reasons to do otherwise.

(y) I understand that the offense(s) I am pleading guilty to include a deadly weapon or firearm enhancement. Deadly weapon or firearm enhancements are mandatory, they must be served in total confinement, and they must run consecutively to any other sentence and to any other deadly weapon or firearm enhancements.

(z) I understand that the offenses I am pleading guilty to include both a conviction under RCW 9.41.040 for unlawful possession of a firearm in the first or second degree and one or more convictions for the felony crimes of theft of a firearm or possession of a stolen firearm. The

~~sentences imposed for these crimes shall be served consecutively to each other. A~~ consecutive sentence ~~will also be imposed for each firearm unlawfully~~ possessed.

(aa) This plea of guilty will result in the suspension of public assistance. RCW 74.08.290.

7. I plead guilty to count 1 through 9 in the amended ~~info~~ Information. I have received a copy of that information.

8. I make this plea freely and voluntarily.

9. No one has threatened harm of any kind to me or to any other person to cause me to make this plea.

10. No person has made promises of any kind to cause me to enter this plea except as set forth in this statement.

11. The judge has asked me to state what I did in my own words that makes me guilty of this crime. This is my statement: On May 5, 2005 in Pierce County WA, with intent to commit a crime therein I entered the dwelling of Renee Brown, with sexual motivation, while armed with a deadly weapon (bottle); I also attempted to recklessly inflict substantial bodily harm against Ms. Brown; Ms Brown was my girlfriend; I knowingly restrained Ms. Brown against her will; a week or two later ~~on or about the same date in the same place~~ knowing Ms. Brown to be a witness in an official proceeding I attempted to get her to withhold testimony; I also harassed Ms. Brown with threats to commit bodily injury immediately and put her in reasonable fear that the threat would be carried out the threat was a threat to kill I would agree that ~~I did this harassment twice~~; ~~Once about the same time in the same place~~ I thrice had contact with Ms. Brown, knowing that an officer asked in this case prevailing such conduct the that the conduct of the violation was an assault. I agree that each of these offenses is separate and distinct criminal actions. D.S.

[ ] Instead of making a statement, I agree that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.

12. My lawyer has explained to me, and we have fully discussed, all of the above paragraphs. I understand them all. I have been given a copy of this "Statement of Defendant on Plea of Guilty." I have no further questions to ask the judge.

Daniel Silva
Defendant

I have read and discussed this statement with the defendant and believe that the defendant is competent and fully understands the statement.

Steven J. Krupa
Defendant's Lawyer
WSBA # 23997

Approved for entry:

Prosecuting Attorney
WSBA# 21999

Case Name: State v. Daniel Silva Cause No: 05-1-07201-1

ATTACHMENT "A"

(If required, attach to Statement of Defendant on Plea of Guilty.)

Because this crime involves a sex offense or a kidnaping offense involving a minor, I will be required to register with the sheriff of the county of the state of Washington where I reside. If I am not a resident of Washington but I am a student in Washington or I am employed in Washington or I carry on a vocation in Washington, I must register with the sheriff of the county of my school, place of employment, or vocation. I must register immediately upon being sentenced unless I am in custody, in which case I must register at the time of my release with the person designated by the agency that has me in custody and I must also register within 24 hours with the sheriff of the county of the state of Washington where I will be residing, or if not residing in the state of Washington, where I am a student, where I am employed or where I carry on a vocation.

If I leave this state following my sentencing or release from custody but later move back to Washington, I must register within 30 days after moving to this state or within 24 hours after doing so if I am under the jurisdiction of this state's Department of Corrections. If I leave this state following my sentencing or release from custody but later while not a resident of Washington I become employed in Washington, carry out a vocation in Washington, or attend school in Washington, I must register within 30 days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if I am under the jurisdiction of the Department of Corrections.

If I change my residence within a county, I must send written notice of my change of residence to the sheriff within 72 hours of moving. If I change my residence to a new county within this state, I must send written notice of my change of residence to the sheriff of my new county of residence at least 14 days before moving, register with that sheriff within 24 hours of moving and I must also give written notice of my change of address to the sheriff of the county where last registered within 10 days of moving. If I move out of Washington State, I must send written notice within 10 days of moving to the new state or foreign country to the county sheriff with whom I last registered in Washington State.

If I move to another state, or if I work, carry on a vocation, or attend school in another state I must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. I must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom I last registered in Washington State.

If I am a resident of Washington and I am admitted to a public or private institution of higher education, I shall, within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier, notify the sheriff of the county of my residence of my intent to attend the institution.

If I lack a fixed residence, I am required to register. Registration must occur within 24 hours of release in the county where I am being supervised if I do not have a residence at the time of my release from custody or within 14 days after ceasing to have a fixed residence. If I enter a different county and stay

there for more than 24 hours, I will be required to register in the new county. I must also report in person to the sheriff of the county where I am registered on a weekly basis if I have been classified as a risk level II or III, or an a monthly basis if I have been classified as a risk level I. The lack of a fixed residence is a factor that may be considered in determining a sex offender's risk level.

The foregoing statement was signed by the defendant in open court in the presence of the defendant's lawyer and the undersigned judge. The defendant asserted that [check the appropriate box]:

(a) [ ] The defendant had previously read the entire statement above and the defendant understood it in full; or

(b) [ ] the defendant's lawyer had previously read to him or her the entire statement above and that the defendant understood it in full; or

* (c) [ ] An interpreter had previously read to the defendant the entire statement above and that the defendant understood it in full.

I find the defendant's plea of guilty to be knowingly, intelligently, and voluntarily made. Defendant understands the charges and the consequences of the plea. There is a factual basis for the plea. The defendant is guilty as charged.

FILED
CRIMINAL DIV 2
IN OPEN COURT
OCT 05 2005
PIERCE COUNTY, Clerk
By _____ DEPUTY

Dated this 4th day of October, 2005

_____
Judge

*INTERPRETER'S DECLARATION

I am a certified interpreter or have been found otherwise qualified by the court to interpret in the _____ language, which the defendant understands, and I have translated _____ for the defendant from English into that language. The defendant has acknowledged his or her understanding of both the translation and the subject matter of this document. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____, _____.

_____
Interpreter

APPENDIX E

Supplemental Discovery Distribution Receipts
(08-15-05, 08-19-05, 08-22-05)

05-1-02201-1 23548432 RCPD 08-16-05

FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG 1 5 2005 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. DANIEL SILVA, Defendant.	CAUSE NO. 05-1-02201-1 SUPPLEMENTAL DISCOVERY DISTRIBUTION RECEIPT

A request was made for discovery in this case and the following is attached hereto:

And/or/including: COPIES OF AUDIO TAPED INTERVIEWS WITH VICTIM & ARRESTEE

Date request processed: AUGUST 11, 2005

Defense Attorney: STEVEN JOHN KRUPA

Prosecuting Attorney: R. BRIAN LEECH

This discovery was distributed as follows:

[ ] RECEIPT BY DEFENSE COUNSEL DATED: _____

I hereby acknowledge, on behalf of the defendant above-named, that I have received discovery from the State. I have filed a Notice of Appearance in this case. Pursuant to CrR 4.7(h)(3), these materials must remain in the exclusive custody of the defense attorney.

_____

or

_____

[X] DECLARATION FOR DISTRIBUTION OF DISCOVERY

Under the laws of the State of Washington, under penalty of perjury, I certify that the following is true and correct: That on this date, I deposited in [ ] a United States of America Post Office receptacle [X] Legal Messenger [ ] Pierce County Routing, a properly addressed routing and/or postage stamped envelope containing the above referenced discovery directed to:

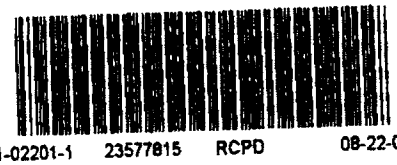
STEVEN JOHN KRUPA, 1008 S YAKIMA AVE, STE 201, TACOMA, WA 98405

SIGNED AND DATED in Tacoma Washington: Jeanette Stanley 8/12/05.

bs

ORIGINAL

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400



05-1-02201-1 23577815 RCPD 08-22-05

FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG 19 2005 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. DANIEL SILVA, Defendant.	CAUSE NO. 05-1-02201-1 SUPPLEMENTAL DISCOVERY DISTRIBUTION RECEIPT

A request was made for discovery in this case and the following is attached hereto:

Pages copied:	433 through 446
And/or/including:	Supp discovery, 911 tape, audio taped interviews and CD
Date request processed:	AUGUST 18, 2005
Defense Attorney:	STEVEN JOHN KRUPA
Prosecuting Attorney:	R. BRIAN LEECH

This discovery was distributed as follows:

[ ] RECEIPT BY DEFENSE COUNSEL DATED: _____

I hereby acknowledge, on behalf of the defendant above-named, that I have received discovery from the State. I have filed a Notice of Appearance in this case. Pursuant to CrR 4.7(h)(3), these materials must remain in the exclusive custody of the defense attorney.

_____

or

_____

[X] DECLARATION FOR DISTRIBUTION OF DISCOVERY

Under the laws of the State of Washington, under penalty of perjury, I certify that the following is true and correct: That on this date, I deposited in [ ] a United States of America Post Office receptacle [X] Legal Messenger [ ] Pierce County Routing, a properly addressed routing and/or postage stamped envelope containing the above referenced discovery directed to:

STEVEN JOHN KRUPA, ATTY, 1008 YAKIMA AVE, STE 201, TACOMA

SIGNED AND DATED in Tacoma Washington: Shannon Dick, 8/18/05.

sds

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400

05-1-02201-1 23587679 RCPD 08-23-05

FILED
IN COUNTY CLERK'S OFFICE
A.M. AUG 22 2005 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, COUNTY CLERK
BY _____ DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON, Plaintiff, vs. DANIEL SILVA, Defendant.	CAUSE NO. 05-1-02201-1 SUPPLEMENTAL DISCOVERY DISTRIBUTION RECEIPT

A request was made for discovery in this case and the following is attached hereto:

Pages copied: 447 through 453
Date request processed: AUGUST 19, 2005
Defense Attorney: STEVEN JOHN KRUPA
Prosecuting Attorney: R. BRIAN LEECH

This discovery was distributed as follows:

[ ] RECEIPT BY DEFENSE COUNSEL DATED: _____

I hereby acknowledge, on behalf of the defendant above-named, that I have received discovery from the State. I have filed a Notice of Appearance in this case. Pursuant to CrR 4.7(h)(3), these materials must remain in the exclusive custody of the defense attorney.

_____

or

_____

[x] DECLARATION FOR DISTRIBUTION OF DISCOVERY

Under the laws of the State of Washington, under penalty of perjury, I certify that the following is true and correct: That on this date, I deposited in [ ] a United States of America Post Office receptacle [x] Legal Messenger [ ] Pierce County Routing, a properly addressed routing and/or postage stamped envelope containing the above referenced discovery directed to:

STEVEN JOHN KRUPA, 1008 S YAKIMA AVE, STE 201, TACOMA, WA 98405-4850

SIGNED AND DATED in Tacoma Washington: _____, 8/19/05.

bs

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: (253) 798-7400