

**ORIGINAL**

No. 37936-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

SCOTT SILVAS,

Appellant.

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COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY [Signature] DEPUTY

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APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR CLALLAM COUNTY

The Honorable Judges S. Brooke Taylor & Ken Williams  
Cause No. 05-1-00592-0

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BRIEF OF RESPONDENT

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CAROL L. CASE  
Deputy Prosecuting Attorney  
Attorney for Respondent  
WSBA # 17052

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**A. APPELLANT'S ASSIGNMENTS OF ERROR**

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

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether defendant's convictions were based on insufficient evidence when the State did not introduce any evidence at trial.
2. Whether defendant's bench trial was equivalent to a guilty plea when he waived all defenses and challenges to his conviction and agreed that the evidence was sufficient for conviction.
3. Whether defendant's conviction was entered in violation of his constitutional right to due process when the record does not establish that he knew he was subject to five years of probation and twelve months of community custody.

**C. STATEMENT OF THE CASE**

Pursuant to RAP 10.3(b), the State accepts defendant's recitation of the procedural and substantive facts set forth in his opening brief at pages 5 through 7 with the following addition:

It should be noted that in addition to the rights the defendant relinquished when he signed the Friendship Diversion contract, (see defendant's opening brief at page 5), that he gave up the right to appeal. RP (5-16-07) 6, line 22-23. Although relinquishing the right to appeal may be covered in defendant's opening brief at page 6 ("the right to challenge the admissibility of evidence on constitutional or evidentiary grounds"), in an overabundance of caution, the state cites the actual language from the RP on 5-16-07 at page 6.

**D. ARGUMENT**

**1. THE EVIDENCE WAS SUFFICIENT TO ESTABLISH BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS GUILTY OF POSSESSION OF METHAMPHETAMINE AND DRIVING WHILE UNDER THE INFLUENCE**

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *Salinas*, 119 Wn.2d at 201.

A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn there from. *Salinas*, 119 Wn.2d at 201.

In considering the sufficiency of the evidence to support a criminal conviction, circumstantial evidence is no less reliable than direct evidence, and specific criminal intent may be inferred from conduct when it is plainly indicated as a matter of logical probability. *State v. Delmarter*, 94 Wn.2d 634, 637-638, 618 P.2d 99 (1980).

In analyzing the sufficiency of the evidence, the appellate court will defer to the trier of fact to resolve conflicts in testimony, weigh evidence, and draw reasonable inferences there from. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

When the defendant signed the Friendship Diversion contract on May 16, 2007 he indicated that he had read all the documents relating to the diversion agreement, that he understood the documents relating to the diversion agreement, that he was aware of the rights he was relinquishing by signing the diversion agreement, and that if he was not successful in completing the diversion agreement he had stipulated to facts by which he would be found guilty of the charges levied against him. RP (5-16-07) 6.

Defendant contends that the prosecutor did not submit any evidence at trial or at any other time. On May 16, 2008 a hearing was held

for the defendant to admit or deny whether he had complied with the terms and conditions of the Friendship Diversion contract. RP (5-16-08) 2. At that time, the court asked the defendant if he understood that there was going to be a mini trial at which time the court would read the police reports and decide whether he was guilty or not. The court asked the defendant if he understood that and then the court said okay, indicating that the defendant acknowledged that he understood. RP (5-16-08) 2. The matter was set for a stipulated trial for June 5, 2008. RP (5-16-08) 3.

On June 5, 2008, the defendant appeared with his attorney for a stipulated trial. The defendant's attorney mentioned the "states files and the police reports". RP (6-5-08) 2. The court, based on the materials that were presented to the court, found proof sufficient to find the defendant guilty of both charges. RP (6-5-08) 2. On May 16, 2008 the court advised the defendant that the court would be reading the police reports to decide whether he was guilty or not. RP (5-16-08) 2. The materials the court referred to on June 5, 2008 were obviously the police reports.

The evidence the court reviewed from the police reports was more than sufficient to find the defendant guilty beyond a reasonable doubt of Possession of Methamphetamine and Driving Under the Influence. The conviction should be affirmed.

2. **THE DEFENDAN'TS CONSTITUTIONAL DUE PROCESS RIGHTS WERE NOT VIOLATED WHEN THE COURT FOUND HIM GUILTY OF THE CHARGES LEVIED AGAINST HIM.**

“With respect to a guilty plea conviction, this court has definitively declared what is necessary for it to be a valid conviction.” *State v.*

*Johnson*, 104 Wn.2d 338, 340, 705 P.2d 773 (1995). The Johnson court

held:

It is a violation of due process to accept a guilty plea without an affirmative showing that the plea was made intelligently and voluntarily. *Boykin V. Alabama*, 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969). Moreover, in addition to the minimum requirements imposed by the constitution, criminal pleas are governed by rules of court, CrR 4.2 . . . establishes requirements beyond the constitutional minimum. It provides:

(d) **Voluntariness.** The court shall not accept a plea of guilty, without first determining that it is made voluntarily, competently and with an understanding of the nature of the charge and the consequences of the plea. The court shall not enter a judgment upon a plea of guilty unless it is satisfied that there is a factual basis for the plea.

*Johnson*, 104 Wn.2d 340

The issue in *Johnson* of whether to require these protections in a stipulated facts trial was an issue of first impression for the Washington

State Supreme Court; the Court of Appeals had addressed the issue numerous times.

The first Court of Appeals decision on this issue was *State v. Wiley*, 26 Wn.App. 422, 613 P.2d 549, *review denied*, 94 Wn.2d 1014 (1980). The Wiley court said:

A guilty plea, however, is functionally and qualitatively different from a stipulation. A guilty plea generally waives the right to appeal. *State v. Saylor*, 70 Wn.2d 7, 422 P.2d 477 (1966). A guilty plea has been said to be “itself a conviction; nothing remains but to give judgment and determine punishment.” *Boykin V. Alabama*, 395 U.S. 238, 23 L.Ed.2d 274, 89 S.Ct. 1709 (1969).

A stipulation, on the other hand, as was employed in the instant case, is only an admission that if the State’s witnesses were called, they would testify in accordance with the summary presented by the prosecutor. The trial court must make a determination of guilt or innocence. *State v. Gossett*, 120 Ariz. 44, 583 P.2d 1364 (1978). More importantly, a stipulation preserves legal issues for appeal and can operate to keep potentially prejudicial matters from the jury’s consideration.

*Wiley*, 26 Wn.App. 425-26. “Because the stipulation was not tantamount to a guilty plea, CrR 4.2 admonitions were not required. *Wiley*, 26 Wn.App. 427.

The standard of review for a criminal conviction entered by a trial court upon stipulated record is reviewed to determine whether it is supported by substantial evidence. It is not reviewed de novo. *State v. Bartolome*, 139 Wn.App. 518, 519, 161 P.3d 471 (2007); *State v. Kessler*, 75 Wn.App. 634, 638-39, 879 P.2d. 333 (1994).

*State v. Ashue*, 145 Wn.App 492, 188 P.3d 522 (2008) involves a pretrial diversion agreement between the State and defendant. Pretrial diversion programs are nonstatutory. *Kessler*, 75 Wn.App. 636.

“Prosecutorial discretion in the charging process has historically provided a basis for informal diversion from the criminal justice system. *State v. Marino*, 100 Wn.2d 719, 721, 674 P.2d 171 (1984). Case law in the area of diversion is limited and primarily addresses the due process requirements necessary for the termination of a pretrial diversion agreement. *Kessler*, 75 Wn.App. 639. Such agreements, as distinct from plea agreements, are not under the direct supervisory control of the trial court. *Id.*

A criminal defendant may waive his right to a jury trial if the written waiver requirement of CrR 6.1(a) is satisfied. Under CrR 6.1(a), “[c]ases required to be tried by a jury shall be so tried unless the defendant files a written waiver of a jury trial, and has consent of the court.” No

Washington case has required more than a written waiver. *State v. Brand*, 55 Wn.App. 780, 785, 780 P.2d 894 (1989).

In the instant case, the defendant waived his right to a jury trial. No more is required. Hence, he is not now entitled to a jury trial as he suggests.

In *State v. Drum*, 143 Wn.App. 608, 181 P.3d 18 (2008) the defendant entered into a pretrial drug court contract, which is comparable to a pretrial diversion contract. The defendant in *Drum* missed the opt-out deadline and was found guilty at a bench trial. The defendant argued that the drug court contract was equivalent to a guilty plea and as such, must meet due process standards. Specifically Drum claims that the record must show that he entered the contract intelligently and voluntarily and with full knowledge of its consequences, i.e., the standard sentence range, the financial obligations, and the term of community custody. This court found that the drug court contract was not equivalent to a guilty plea and did not require notice of the consequences of his drug court agreement. Thus, there was no violation of his due process rights. *Drum*, 143 Wn. App. 618; *State v. Colquitt*, 133 Wn.App. 789, 795, 137 P.3d. 892 (2006). There are no court rules that govern drug court or diversion contracts in the same manner that CrR 4.2 governs guilty pleas. *Drum*, 143 Wn.App. 619.

The diversion contract in the instant case is analogous to the drug court contract in *Drum*. In the instant case the diversion contract was not equivalent to a guilty plea and did not require notice of the consequences of defendant's pretrial diversion contract. There was no violation of his due process rights.

In the instant case, the defendant, based on violation of the terms and conditions of the Friendship Diversion contract that he signed on May 16, 2007, [CP 20-28, RP (5-16-07) 5-8] submitted to a stipulated trial, which was heard on June 5, 2008; the defendant's diversion was revoked on May 16, 2008. RP (5-16-08) 2-3.

On June 2, 2008 and prior to the stipulated trial on June 5, 2008 the prosecutor's office sent a copy of the police reports to the court and to the defendant's attorney. ( See Exhibit B.)

On June 5, 2008 the defendant's attorney mentioned the police reports. RP (6-5-08) 2. The court stated that the materials had been reviewed, that there was sufficient proof under the terms of the contract, and found the defendant guilty of the charges levied against him. RP (6-5-08) 2-3. This court can infer from the record and Exhibit B that the materials the court was referring to were the police reports. The court proceeded to sentencing. RP (6-5-08) 3-15. The prosecutor recommended five years of probation on the Driving Under the Influence and 9 months

community custody on the Possession of Methamphetamine. RP (6-5-08)

6. The court imposed the five years of probation on the Driving Under the Influence and 12 months of community custody on the Possession of Methamphetamine. RP (6-5-08) 13. The court stated, “because I’m sure your attorney explained to you the consequences are going to be far worse in this case,” RP (6-5-08) 12. The State, knowing the defendant’s attorney as a reputable, competent, thorough attorney, is also sure that he explained the consequences of the diversion revocation to the defendant. However, there is nothing in the record to affirm either the court’s or the State’s belief.

On May 16, 2007, the defendant verbally acknowledged that he was giving up, among other things, his right to appeal should he be unable to complete the diversion successfully. RP (5-16-07) 6-7. The Friendship Diversion contract states that the defendant gives up his right to appeal a determination of guilt in the Declaration of Defendant, Waiver of Jury Trial, and Stipulation to Facts Sufficient for Guilt. CP 20-28, p. 2, paragraph 9, and Pre-Trial Diversion Agreement, Waivers and Stipulated Order of Continuance, page 1, paragraph 2. (*See Exhibit A.*)

If this court finds that the stipulated trial in this case is equivalent to a guilty plea because there were no defenses reserved and there were no issues preserved for appeal, that he waived only his right to appeal a

determination of guilt, and that the defendant did not know all the direct consequences prior to the stipulated trial, the State would ask this court to remand for a bench trial rather than a jury trial as the defendant requests. The defendant signed away his right to a jury trial when he signed the Friendship Diversion contract. CP 20-28, RP (5-16-07) 5-8, *see* Exhibit A at page 2, paragraph 9 of the Declaration of Defendant, Waiver of Jury Trial, and Stipulation to Facts Sufficient for Guilt and page 1, paragraph 2 of the Pre-Trial Diversion Agreement, Waivers, and Stipulated Order of Continuance.

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**E. CONCLUSION**

Based on the foregoing, the State respectfully asks this Court to analogize the diversion contract in the instant case to the drug court contract in *State v. Drum*, 143 Wn.App. 608, 181 P.3d 18 (2008), find that the stipulated bench trial was not equivalent to a guilty plea, find that the defendant's due process rights were not violated and affirm the convictions for Driving Under the Influence and Possession of Methamphetamine.

DATED this 9th day of December, 2008 at Port Angeles,  
Washington.

Respectfully submitted,



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Carol L. Case, WABA # 17052  
Deputy Prosecuting Attorney  
Attorney for Respondent

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BARBARA CHRISTENSEN

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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 Port  
of Sea 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  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(360) 417-2301 FAX 417-2469

EXHIBIT "A"

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  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015  
(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.

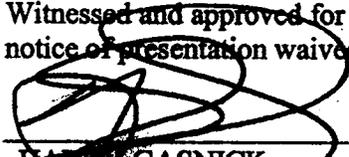
13 I DECLARE UNDER PENALTY OF PERJURY under the laws of the State of  
14 Washington that the foregoing is true and correct.

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 BLAKE GASNICK WBA #   
28 Attorney for Defendant

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

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

SCANNED -4

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

FILED  
CLALLAM CO CLERK

2007 MAY 16 A 9:52

BARBARA CHRISTENSEN

NO. 05-1-00592-0

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

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)(i)).** 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.

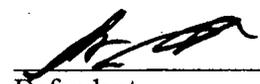
The Defendant understands that he or she has a right to trial by .  
The Defendant gives up that right and agrees to a new commencement date of .  
As a result of this waiver, the last allowable date for trial will be .

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

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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	<input type="checkbox"/> 365 <input type="checkbox"/> 90 days in jail and/or a <input type="checkbox"/> \$5,000 <input type="checkbox"/> \$1,000
23 _____	is	<input type="checkbox"/> 365 <input type="checkbox"/> 90 days in jail and/or a <input type="checkbox"/> \$5,000 <input type="checkbox"/> \$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.

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

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

20 6. **Cooperation and Truthfulness.** The Defendant agrees to fully cooperate and completely and  
21 truthfully answer any and all questions from this Court, Friendship Staff, and any health care and/or  
22

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.*

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

2  **Addendum.** The Defendant agrees to fully comply with a separately executed document entitled  
3 "Addendum to Pre-Trial Diversion Agreement" (hereafter "Addendum") and further agrees that  
4 any violation of the Addendum is also a violation of this Agreement. The parties agree that the  
5 Addendum will not be filed with the Court unless the Prosecution files a written motion alleging  
6 a violation of the Addendum.

7  The Defendant agrees that if the pending charge is related to controlled substance or legend drug,  
8 that the substance is what the charging document alleges it to be.

9  **Monitoring of Conditions by Prosecutor's Office.** The Defendant agrees that compliance with  
10 this Agreement shall be monitored by the Prosecutor's Office.

11  **Valid License and Insurance.** The Defendant shall not drive a motor vehicle without a valid  
12 driver's license and/or proof of insurance.

13  **DUI Victim's Panel.** The Defendant shall attend a DUI victim's panel and within 90 days from  
14 today's date file written proof thereof with Friendship Diversion Services.

15  **Chemical Dependency Treatment.** The Defendant shall obtain a chemical dependency evalua-  
16 tion from a state-certified agency, and thereafter successfully comply with all treatment  
17 recommendations, and within ninety (90) days from today's date file written proof thereof with  
18 Friendship Diversion Services.

19  **Drinking and Driving.** The Defendant shall not drive or be in actual physical control of a motor  
20 vehicle while having an alcohol concentration of 0.03 or more within two hours after driving or  
21 being in physical control. The Defendant shall not refuse to submit to a test of his/her breath or  
22 blood to determine alcohol and/or drug concentration upon request of a law enforcement officer  
23 who has reasonable grounds to believe that the Defendant was driving or in actual physical  
24 control of a motor vehicle while under the influence of an intoxicating liquor and/or drugs.

25  **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.

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

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

Amount	Name
\$67.36	WSP - DUI recovery

\$ 67.36      **Total**

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

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

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

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

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

~~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 following 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.~~

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 12 day of May, 2007.

13 Defendant

14 Defendant address: 423 William St NW

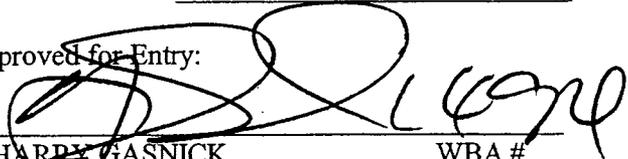
15 Defendant phone: 461-0172

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

17 Presented by:

18   
19 TIMOTHY DAVIS WBA #33427  
20 Deputy Prosecuting Attorney

21 Approved for Entry:

22   
23 HARRY GASNICK  
24 Attorney for Defendant

25 WBA # \_\_\_\_\_

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

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

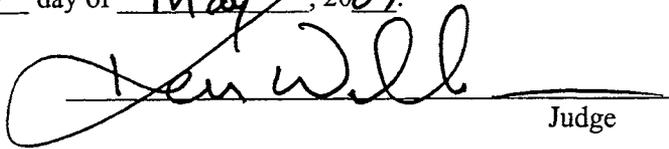
32 IT IS HEREBY ORDERED that probable cause exists to believe that the Defendant committed  
33 the offense(s) charged herein.

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

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

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

41 Distribution—Original (Court Clerk);  
42 1 copy (Prosecutor), 1 copy (Defendant)

43   
44 Judge

45 6 - 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

# CLALLAM COUNTY PROSECUTING ATTORNEY

**DEBORAH S. KELLY**

PROSECUTING ATTORNEY

(360) 417-2301  
FAX (360) 417-2469

Courthouse  
223 East Fourth Street, Suite 11  
Port Angeles, Washington 98362-3015

Toll Free:  
From Seattle (206) 464-7098  
From Forks/Clallam Bay  
(360) 374-5324

DIRECT # 360 417-2371

Ext. 2371

June 2, 2008

The Honorable George L. Wood  
Clallam County Superior Court

Re: State of Washington v. SCOTT BRYAN SILVAS  
Cause No.: 05-1-00592-0

Dear Judge Wood:

Enclosed please find a copy of the police reports in the above cause preparatory to the stipulated bench trial on June 5, 2008. A copy is also provided to Harry Gasnick.

Very truly yours,



DEBORAH S. KELLY  
Prosecuting Attorney

:am

Enclosure

cc: Harry Gasnick

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**EXHIBIT "B"**

FILED  
COURT OF APPEALS  
DIVISION II

IN THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON  
DIVISION II

09 DEC 11 AM 11:45

STATE OF WASHINGTON

NO. 37936-8-II

BY CM  
DEPUTY

STATE OF WASHINGTON,

Respondent,

vs.

AFFIDAVIT OF SERVICE BY MAIL

SCOTT SILVAS,

Appellant.

STATE OF WASHINGTON )  
: ss.  
County of Clallam )

The undersigned, being first duly sworn, on oath deposes and says:

That the affiant is a citizen of the United States and over the age of eighteen years; that on the 10<sup>th</sup> day of December, 2008, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope containing a copy of the *Brief of Respondent*, addressed as follows:

MR. DAVID C. PONZOHA, CLERK  
COURT OF APPEALS, DIVISION II  
950 BROADWAY, SUITE 300  
TACOMA, WA 98402-4454

SCOTT SILVAS  
423 WILLIAMSON ST.  
SEQUIM, WA 98382

BACKLUND & MISTRY  
203 EAST FOURTH AVENUE, SUITE 404  
OLYMPIA, WA 98501

Doreen K Hamrick  
Doreen Hamrick

SUBSCRIBED AND SWORN TO before me this 10<sup>th</sup> day of December, 2008

Lina Hendrickson  
(PRINTED NAME:) Lina Hendrickson  
NOTARY PUBLIC in and for the State of Washington  
Residing at Port Angeles, Washington  
My commission expires: 12-15-11

AFFIDAVIT OF SERVICE