

1 IN THE KITSAP COUNTY DISTRICT COURT

2)
3 STATE OF WASHINGTON,)

) No. **23658501**

4)
5 Plaintiff,)

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

6 v.)

7 **JOSHUA BENJAMIN SWANSON,**)

8 Defendant.)
9)
10)

11 **PRE-TRIAL DIVERSION AGREEMENT**

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

15 **DEFENDANT’S WAIVER OF RIGHTS AND AGREEMENT**

16 **1. Waiver of Speedy Trial.** The Defendant understands that he or she has the right to be tried within
17 ninety (90) days following the “commencement date” as defined in (CrRLJ 3.3(c)(2)(i)), and that if the
18 Defendant does not receive a trial within this time period the case may be dismissed with prejudice. The
19 Defendant understands that he or she has a right to trial by _____ (date).

The Defendant gives up that right and agrees to a new commencement date of **December 31, 2030.**

As a result of this waiver, the last allowable date for trial will be **March 31, 2031.**

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

23 **3. Waiver of Rights, Waiver of Objection to Any Evidence Presented.** The Defendant understands that
24 he or she has the right to contest and object to evidence presented against the Defendant. Should the
25 Defendant be found to be in violation of this agreement, the Defendant gives up the right to contest or object
26 to any evidence presented against the Defendant at any future hearings, whether or not such evidence is a
27 part of the Court’s record at the time of entry of this agreement. The Defendant also understands that he or
28 she has the right to present evidence on the Defendant’s own behalf. The Defendant gives up the right to
29 present evidence on the Defendant’s own behalf as to the Defendant’s guilt or innocence regarding the
30 underlying charge(s). The Defendant understands that evidence will be presented against the Defendant at a
31 future hearing and the Defendant understands that the judge will review that evidence in determining the
32 Defendant’s guilt or innocence.

33 The Defendant understands that, by this process, he or she is giving up the constitutional right to a jury
34 trial, the right to hear and question witnesses, the right to call witnesses in his or her own behalf, the right to
testify or not to testify, the right to remain silent, the right to challenge the admissibility of statements the
Defendant has made (CrRLJ 3.5), the right to challenge physical, oral or identification evidence (CrRLJ 3.6),
and the right to assert any of the following privileges: both spousal and marital (RCW 5.60.060), physician-
patient (RCW 5.60.060), clergy-penitent (RCW 5.60.060), psychologist-client (RCW 18.83.110), registered
nurse (RCW 5.62.020), counselor (RCW 18.19.180).

1 The Defendant also understands that this agreement by itself is not an admission of guilty of the
2 sufficiency of the evidence, but that if the Defendant fails to comply and a future trial is held, the judge will
3 determine whether the Defendant is guilty beyond a reasonable doubt based only on the State's evidence.

4 The Defendant understands that the maximum sentence for the crime(s) charged herein of—
5 **THEFT IN THE THIRD DEGREE** is 364 days in jail and/or a \$5,000 fine plus costs and assessments,
6 _____ is 90 days in jail and/or a \$1,000 fine, plus costs and assessments,
7 and that the judge can impose any sentence up to the maximum, no matter what the prosecutor or the defense
8 recommends.

9 4. **Defendant's Promise to be Present in Court.** The Defendant understands and agrees that his or her
10 presence is required at all future court hearings unless that presence is waived in writing by the judge.

11 5. **Additional Conditions.** The Defendant agrees to fully and completely satisfy all of the following
12 selected conditions—

13 **Criminal Law Violations.** The Defendant shall have no criminal law violations. The Defendant agrees
14 that this Court may take action on the Prosecution's motion alleging the Defendant's violation of this
15 condition prior to any resolution of the alleged new criminal law violation. The Defendant specifically
16 agrees that a "conviction" for a criminal law violation occurring after the signing of this Agreement is
17 not a prerequisite to this Court taking action on the Prosecution's motion to revoke this Agreement due
18 to the Defendant's alleged violation of this condition. The Defendant further agrees that the Defendant's
19 petition or otherwise request of any Washington court to grant the Defendant a deferred prosecution
20 pursuant to RCW 10.05 et seq. for any criminal law violation occurring after the signing of this
21 Agreement shall be a violation of this condition. Civil infractions (for example, but not limited to,
22 speeding tickets) are not considered criminal law violations. Accordingly, the Defendant's commission
23 of a civil infraction does not constitute a violation unless otherwise stated in this Agreement.

24 **Address and Telephone Information.** The Defendant agrees to notify the Court in person or in writing
25 of any change of residence or mailing address and of any change of telephone number, and the Defendant
26 agrees that such notification must be made within 10 days of the change.

27 **Failure to File Proof of Compliance with the Court.** The Defendant agrees that failure to file with the
28 Court Clerk written proof of compliance with any condition in this Agreement, when such proof of
29 compliance is required herein, shall be a material violation of this Agreement.

30 **Court Order(s) Prohibiting Contact.** The Defendant agrees to strictly comply with all provisions of
31 any court order entered in this case or any other case if such order restrains the Defendant and was issued
32 pursuant to any of the following chapters of the Revised Code of Washington: 7.92, 7.9, 9A.46, 10.99,
33 26.09, 26.10, 26.26, or 74.34, or any temporary order for protection granted under chapter 7.40 pursuant
34 to chapter 74.34., or any valid foreign protection order as defined in RCW 26.52.020.

Pre-Trial Conditions of Release. The Defendant shall abide by all pre-trial conditions of release unless
and until those conditions are removed by the Court. This includes, but is not limited to, any requirement
imposed relating to the use of an ignition interlock device.

Seized Property. The Defendant today agrees to forfeit all property seized by law enforcement pursuant
to an investigation into the crime(s) charged under the above listed cause number.

Probation Monitoring Assessment. The Defendant shall pay a misdemeanor probation department
assessment of [\$400] [\$ **200**] at \$20 per month by the 5th of each month beginning **MARCH 5,**
2021. Payments shall be made to—

Kitsap County District Court, 614 Division Street, MS-25, Port Orchard, WA 98366

Any amounts paid by check should include the Defendant's full name and case number. If payment is
made by check, then 30 days will be required for the payment to process and post.

1 **Monitoring of Conditions by District Court.** The Defendant agrees that compliance with this
2 Agreement shall be monitored by the Kitsap County District Court. The Defendant agrees to contact
3 District Court Probation within one judicial day of the signing of this Agreement and keep all
4 appointments with District Court Probation or the District Court staff.

5 **Emergency Responder Restitution.** The Defendant shall pay restitution in the amount indicated below
6 directly to the primary investigative agency in this case.

\$ ____	Bainbridge Island Police Dept.	Attn: Bainbridge Island PD, 625 Winslow Way E, Bainbridge Island, WA 98110
\$ ____	Bremerton Police Dept.	Attn: DUI Cost Recovery, BPD, 1025 Burwell, Bremerton, WA 98337
\$ ____	Kitsap County Sheriff's Office	Attn: DUI Cost Recovery, 614 Division Street, MS-37, Port Orchard, WA 98366
\$ ____	Port Orchard Police Dept.	Attn: Port Orchard Municipal Court, 216 Prospect Street, Port Orchard, WA 98366
\$ ____	Poulsbo Police Department	Attn: Poulsbo Municipal Court, 200 NE Moe Street, Poulsbo, WA 98370
\$ ____	Washington State Patrol	Attn: DUI Cost Recovery, 4811 Werner Road, Bremerton, WA 98312

9 \$ ____ **Total**

10 Defendant shall, within 90 days ____ of entering into this Agreement, file proof of such
11 full payment with the Court Clerk

12 **Valid License and Insurance.** The Defendant shall not drive a motor vehicle without possessing both
13 a valid driver license and current proof of automobile personal liability insurance.

14 **DUI Victim Impact Panel.** The Defendant shall attend a DUI victim impact panel and within 90 days
15 of entering into this Agreement file written proof thereof with the Court Clerk. In order to satisfy this
16 condition, the panel must comport with the requirements set out in RCW 10.01.230.

17 **Chemical Dependency Treatment.** The Defendant shall obtain a chemical dependency evaluation from
18 a state-certified agency, within 90 days of entering into this Agreement file written proof thereof with
19 the Court Clerk, successfully comply with all treatment recommendations, and provide proof of such
20 compliance within a reasonable period of time.

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

27 **Defensive Driving Course.** The Defendant shall attend and successfully complete either a six (6) hour
28 live defensive driving course or the eight (8) hour online defensive driving course, and within 90 days
29 of entering into this Agreement file written proof thereof with the Court Clerk monthly.

30 **Alcohol and Marijuana Prohibited.** The Defendant shall not possess or consume alcohol or marijuana
31 [for the duration of this agreement] [until the Defendant files written proof with the Court Clerk
32 of an evaluation indicating no significant alcohol or drug problem (screening of substance abuse reveals
33 insufficient symptoms to indicate abuse or addiction to any substance, including but not limited to
34 alcohol or marijuana) and files written proof with the Court Clerk of successful completion of
alcohol/drug information school] [until the Defendant becomes twenty-one years of age].

Non-Prescribed Drugs Prohibited. The Defendant shall not possess or consume any controlled
substances or any narcotic pain medications unless prescribed by a physician.

Ignition Interlock Device. The Defendant shall not operate any vehicle that is not equipped with a
functioning ignition interlock alcohol device. Unless otherwise noted in this agreement, there is no
exception for vehicles used by the Defendant in the course of his/her occupation or employment. This
condition may be rescinded by the Court one year from the date of entry of this agreement if the

1 Defendant is in strict compliance with this Agreement, and if the Defendant possesses a valid driver
2 license and automobile liability insurance at the time that the Defendant makes such a request.

3 **Intimate Partner DV Assessment.** The Defendant shall successfully complete a domestic violence
4 behavioral assessment from a state-certified agency (or an equivalent military program), and shall file
5 proof thereof with the Court Clerk within a reasonable period of time. The Defendant shall file proof of
6 enrollment in any recommended treatment with the Court Clerk within 90 days of entering this
7 Agreement.

8 **Firearms.** The Defendant shall not possess or own any firearm for the duration of this Agreement.

9 **DV Parenting Class.** The Defendant shall attend and successfully complete a parenting class for a
10 minimum twenty-four (24) hours that includes a discussion of the effects of domestic violence on
11 children, and within 90 days of entering this Agreement file written proof thereof with the Court Clerk.

12 **Anger Management Course.** The Defendant shall successfully complete an anger management course,
13 and within 90 days of entering this Agreement file written proof thereof with the Court Clerk.
14 Completion of online courses shall not satisfy this condition.

15 **Psycho-Sexual Evaluation.** The Defendant shall obtain a psycho-sexual evaluation from a state-
16 certified agency, within 90 days of entering this Agreement file proof thereof with the Court Clerk,
17 successfully comply with all treatment recommendations, and provide proof of such compliance to the
18 Court Clerk within a reasonable period of time.

19 **Mental Health Evaluation.** The Defendant shall obtain a mental health evaluation from a state-certified
20 agency, within 90 days of entering this Agreement file proof thereof with the Court Clerk, successfully
21 comply with all treatment recommendations, and provide proof of such compliance to the Court Clerk
22 **Choose an item.**

23 **Entry Prohibited.** The Defendant shall not enter upon the premises of the following location(s): _____.

24 **No Contact [Non-DV Cases Only].** The Defendant shall not make any attempt to contact the following
25 person(s): _____. This no contact provision specifically includes, as a non-exhaustive list, contact in
26 person, in writing, by telephone, by electronic communication, or through third parties.

27 **10.99 Protection Order/Sexual Assault Protection Order/Harassment No Contact Order.**
28 Defendant agrees to join the Prosecutor's recommendation to the court that the protection order issued
29 under the above listed cause number shall remain in full force and effect, until such later time as the
30 order expires or is rescinded by the court.

31 **Restitution.** The Defendant agrees to pay the following restitution to the named party or parties in the
32 amount(s) shown below. Restitution shall be paid directly to the recipient, unless contact with that
33 recipient is prohibited by this Agreement or by other order of the court, in which case restitution shall
34 be paid through the Court Clerk. The Defendant agrees that the below listed amount of restitution must
be paid in full before the expiration of this Agreement.

- Restitution to be paid directly to court
- Restitution to be paid directly to victim

Amount	Name	Address
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	Total	

Other. _____.

6. 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 material violation of this

1 Agreement. The Defendant specifically agrees that substantial compliance with this contract constitutes
2 insufficient performance on the part of the Defendant, and that part, partial or substantial performance does
3 not entitle the Defendant to the benefit of his or her bargain under this Agreement.

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

9 PROSECUTION’S AGREEMENT

10 **DISMISSAL OF CHARGE(S)**

11 If the Defendant successfully complies with the promises he or she has made herein, the Prosecution
12 agrees to move to dismiss with prejudice the charge(s) of **THEFT IN THE THIRD DEGREE** at a
13 hearing to be scheduled **not before ONE (1) years** following entry of this Agreement.

14 **AMENDMENT OF CHARGE(S)**

15 If the Defendant successfully complies with the promises he or she has made herein, the Prosecution
16 agrees to move to amend the charge of Driving Under the Influence to the lesser charge of Negligent
17 Driving in the First Degree, and the Defendant agrees to the Court’s entry of a guilty finding to the
18 amended charge at a hearing to be scheduled **not before _____ years** following entry of this Agreement.
19 The defendant agrees to entry of a guilty finding on the amended lesser charge pursuant to *In re Personal*
20 *Restraint of Barr*, 102 Wn.2d 265-71 (1984).

21 RCW 46.61.5249, Negligent Driving in the First Degree, has a maximum penalty of 90 days in jail
22 and a \$1,000 fine, plus costs and assessments. RCW 46.61.500, Reckless Driving, has a maximum
23 penalty of 364 days in jail and a \$5,000 fine, plus costs and assessments. The court may impose up to
24 the maximum penalty on any crime regardless of anything in this Agreement and regardless of the
25 parties’ recommendations to the court.

26 Upon entry of a conviction for the amended charge the Prosecution will make the following
27 sentencing recommendation to the Judge—

- 28 1) That the Court impose zero (0) days of confinement,
- 29 2) That the Court impose only non-discretionary legal financial obligations,
- 30 3) That the Court impose no probation.
- 31 4) That any pre-trial conditions of release requiring the use of an ignition interlock be rescinded.

32 PROCEDURE ON ALLEGED VIOLATION OF AGREEMENT

33 The Defendant and Prosecution agree that the prompt resolution of a party’s allegation of violation of
34 this Agreement by the other party is desirable. Accordingly, the parties request this Court to set a hearing
date within approximately 30 days of any party’s motion on this matter, so that this Court may promptly
determine whether a violation of this Agreement has occurred.

The parties further agree that a Prosecution motion alleging a violation of this Agreement by the
Defendant will be handled in accordance with the procedures set forth in *State v. Marino*, 100 Wn.2d 719,
674 P.2d 171 (1984), and *State v. Kessler*, 75 Wn.App. 634, 879 P.2d 333 (1994). The parties also agree
that, when determining guilt or innocence, the Court may look beyond the confines of the Defendant’s court
file and may consider evidence found in the Defendant’s Washington State Department of Licensing driving
abstract, in the Washington State Judicial Information System (including access through the Judicial Access
Browser System), and in the Statewide Electronic Collision and Ticket Online Records.

