

STIPULATED TRIALS

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TRIAL ON STIPULATED FACTS AND/OR STIPULATED EVIDENCE. (Minn. R. Crim. Pro. 26.01, Subd. 3)

Leading case on the distinction between Stipulated Evidence Trial and Stipulated Facts Trial:

- *Dereje v. State*, 837 N.W.2d 714 (Minn. 2013)

Stipulated Evidence Trial: An agreement between opposing parties to stipulate to “a body of evidence containing contrary versions of events,” and the court must make material factual determinations regarding the events prior to rendering a decision. *See Dereje v. State*, 837 N.W.2d 714, 720-21 (Minn. 2013).

Stipulated Fact Trial: An agreement between opposing parties “regarding the actual event or circumstances,” and therefore the court need not resolve conflicts in evidence. The court will simply apply the law to the parties’ stipulated facts. *See Dereje v. State*, 837 N.W.2d 714, 720-21 (Minn. 2013).

Required Waiver of Rights:

1. Right to a trial by jury,
2. Right to testify at trial,
3. Right to have the prosecution witnesses testify in open court in my presence,
4. Right to question those prosecution witnesses, and
5. Right to require any favorable witnesses to testify for me in court.

When to use: Rule 26.01, subd. 3 should be used if there is no pretrial ruling dispositive of the case, and if the defendant wishes to have the full scope of appellate review, including a challenge to the sufficiency of the evidence. Comments to Rule 26. *See also State v. Busse*, 644 N.W.2d 79, 89 (Minn. 2002).

STIPULATION TO PROSECUTION’S CASE TO OBTAIN REVIEW OF A PRETRIAL RULING (Minn. R. Crim. Pro. 26.01, subd. 4)

Stipulation to Prosecution’s Case: A trial to the court based on stipulated evidence (prosecution’s evidence), where the parties agree that a pretrial ruling is dispositive of the case.

Record must include:

1. Clear record as to precisely what pretrial ruling(s) are being preserved,
2. Acknowledgment by both parties that the preserved ruling(s) is/are dispositive of the case,
3. Acknowledgment by both parties that if the defendant were to prevail on the issue on appeal, a contested trial would be unnecessary; and
4. Waiver of Rights (see Minn. R. Crim. Pro. 26.01, subd. 3(b)(1)-(4)).

Limited Right to Appeal: Appellate review is limited to dispositive pretrial issue and appellate court will not review sufficiency of the evidence for finding of guilt or other issues that could arise at a contested trial.

Amendment effective October 1, 2017

- Applies to all cases pending on, or commenced on or after, the effective date.

5. Amend Rule 26.01, subd. 3, as follows:

* * *

Subd. 3. Trial on Stipulated Facts; Trial on Stipulated Evidence.

- (a) The defendant and the prosecutor may agree that a determination of the defendant's guilt, or the existence of facts to support an aggravated sentence, or both, may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both. Before proceeding, the defendant must acknowledge and personally waive the rights to:
 - (b) The defendant, after an opportunity to consult with counsel, must waive the right to a jury trial under Rule 26.01, subdivision 1(2)(a), or subdivision 1 (2)(b), or both, and must personally waive the following specific rights:
 - (1) to testify at trial;
 - (2) to have the prosecution witnesses testify in open court in the defendant's presence;
 - (3) to question those prosecution witnesses; and
 - (4) to require any favorable witnesses to testify for the defense in court.

(b)(c) The agreement and the waiver must be in writing or be placed on the record.

(e)(d) If the parties use this procedure to determine the issues of the defendant's guilt, and the existence of facts to support an aggravated sentence, the defendant must make a separate waiver of the above-listed rights as to each issue.

(d)(e) On submission of the case entirely on stipulated facts, stipulated evidence, or both, the court must proceed under subdivision 2 of this rule as in any other trial to the court.

(e)(f) If the court finds the defendant guilty based entirely on the stipulated facts, stipulated evidence, or both, the defendant may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court.

6. Amend Rule 26.01, subd. 4, as follows:

Subd. 4. Stipulation to Prosecution's Case to Obtain Review of a Pretrial Ruling.

(a) When the parties agree that the court's ruling on a specified pretrial issue is dispositive of the case, or that the ruling makes a contested trial unnecessary, the following procedure must be used to preserve the issue for appellate review.

(b) The defendant must maintain the plea of not guilty.

(c) The defendant and the prosecutor must acknowledge that the pretrial issue is dispositive, or that a trial will be unnecessary if the defendant prevails on appeal.

(d) The defendant, after an opportunity to consult with counsel, must waive the right to a jury trial under Rule 26.01, subdivision 1(2)(a), and must also personally waive the rights specified in Rule 26.01, subdivision 3(e)(b)(1)-(4).

(e) The defendant must stipulate to the prosecution's evidence in a trial to the court, and acknowledge that the court will consider the prosecution's evidence, and that the court may enter a finding of guilt based on that evidence.

(f) The defendant must also acknowledge that appellate review will be of the pretrial issue, but not of the defendant's guilt, or of other issues that could arise at a contested trial.

(g) The defendant and the prosecutor must make the preceding acknowledgments personally, in writing or on the record.

(h) After consideration of the stipulated evidence, the court must make an appropriate finding, and if that finding is guilty, the court must also make findings of fact on the record or in writing as to each element of the offense(s).

7. Amend the comments to Rule 26, paragraphs 1 through 7, as follows:

Comments

Rule 26.01, subd. 1(1) (Right to Jury Trial). *In cases of felonies and gross misdemeanors, the defendant has the right to a jury trial under Minn. Const. Art. 1, § 6, which guarantees the right to jury trial in “all criminal prosecutions.” The term “criminal prosecution” includes prosecutions for all crimes defined by Minn. Stat. § 609.02. See Peterson v. Peterson, 278 Minn. 275, 281, 153 N.W.2d 825, 830 (1967); State v. Ketterer, 248 Minn. 173, 176, 79 N.W.2d 136, 139 (1956). The defendant’s right to jury trial for offenses punishable by more than six months imprisonment is also guaranteed by the Fourteenth and Sixth Amendments to the United States Constitution. Duncan v. Louisiana, 391 U.S. 145, 159 (1968); Baldwin v. New York, 399 U.S. 66, 69 (1970).*

Since misdemeanors in Minnesota are punishable by no more than 90 days of incarceration or a fine or both, Minn. Stat. § 609.03, subd. 3, no federal constitutional right exists to a jury trial on a misdemeanor. However, a state constitutional right to a jury trial exists in any prosecution for the violation of a misdemeanor statute punishable by incarceration. See Minn. Const. Art. 1, § 6 as interpreted in State v. Hoben, 256 Minn. 436, 444, 98 N.W.2d 813, 819 (1959).

Rule 26.01, subd. 1(2)(a) establishes the procedure for waiver of the right to trial by jury on the issue of guilt. A jury waiver must be knowing, intelligent, and voluntary. State v. Ross, 472 N.W.2d 651, 653-54 (Minn. 1991). “The focus of [an] inquiry [regarding a jury waiver] is on whether the defendant understands the basic elements of a jury trial.” Id. at 654. The Minnesota Supreme Court has recommended the following guidelines: “the defendant should be told that a [felony] jury . . . is composed of 12 members of the community, that the defendant may participate in the selection of the jurors, that the verdict of the jury must be unanimous, and that, if the defendant waives a jury, the judge alone will decide guilt or innocence.” Id.

Rule 26.01, subd. 1(2)(b) establishes the procedure for waiver of the right to trial by a jury on the issue of an aggravated sentence. See generally Blakely v. Washington, 542 U.S. 296 (2004) and State v. Shattuck, 704 N.W.2d 131 (Minn. 2005) as to the constitutional limitations on imposing aggravated sentences based on findings of fact beyond the elements of the offense and the conviction history. Also, see Rules 1.04 (d), 7.03, and 11.04, subd. 2 and the comments to those rules. Whether a defendant has waived or demanded a jury trial on the issue of guilt, that defendant may still have a jury trial on the issue of an aggravated sentence, and a valid waiver under Rule 26.01, subd. 1(2)(b) must be made before an aggravated sentence may be imposed based on findings not made by jury trial. The requirements for a valid jury waiver are discussed in the comment regarding Rule 26.01, subd. 1(2)(a).

Rule 26.01, subd. 1(3) (Withdrawal of Jury-Trial Waiver) provides that waiver of jury trial may be withdrawn before commencement of trial. Trial begins when jeopardy attaches.

Rule 26.01, subd. 3 (Trial on Stipulated Facts; Trial on Stipulated Evidence) previously applied only to court trials on stipulated facts. In Dereje v. State, 837 N.W.2d 714 (Minn. 2013), the Minnesota Supreme Court clarified that Rule 26.01, subd. 3, does not apply to a court trial on a stipulated body of evidence. Rule 26.01, subd. 3, was amended in 2017 to apply to court trials on stipulated evidence, as well as court trials on stipulated facts. A defendant who agrees to a court trial on stipulated facts, stipulated evidence, or both, must acknowledge and personally waive the rights listed in Rule 26.01, subd. 3(b)(1)-(4).

The rules do not permit conditional pleas of guilty by which the defendant reserves the right to appeal the denial of a motion to suppress evidence or other pretrial order. Rule 26.01, subd. 4 implements the procedure authorized by State v. Lothenbach, 296 N.W.2d 854 (Minn. 1980), which allows a defendant to stipulate. This rule supersedes Lothenbach as to the procedure for stipulating to the prosecution's case to obtain review of a pretrial ruling. Rule 26.01, subd. 4, "replaced Lothenbach as the method for preserving a dispositive pretrial issue for appellate review in a criminal case." State v. Myhre, 875 N.W.2d 799, 802 (Minn. 2016). Rule 26.01, subd. 4, limits appellate review to the dispositive pretrial issue. This rule also distinguishes the Lothenbach-type procedure it implements from Rule 26.01, subd. 3 (Trial on Stipulated Facts). Rule 26.01, subd. 3 should be used if there is no pretrial ruling dispositive of the case, and if the defendant wishes to have the full scope of appellate review, including a challenge to the sufficiency of the evidence. See State v. Busse, 644 N.W.2d 79, 89 (Minn. 2002).

The phrase in the first sentence of Rule 26.01, subd. 4(a) – "or that the ruling makes a contested trial unnecessary" – recognizes that a pretrial ruling will not always be dispositive of the entire case, but that a successful appeal of the pretrial issue could nonetheless make a trial unnecessary, such as in a DWI case where the only issue is the validity of one or more qualified prior impaired driving incidents as a charge enhancement. See, e.g., State v. Sandmoen, 390 N.W.2d 419, 423 (Minn. App. 1986). The parties could agree that if the defendant prevailed on appeal, the defendant would still have a conviction for an unenhanced DWI offense. Where a conviction for some offense is supportable regardless of the outcome of the appeal, but a contested trial would serve no purpose, Rule 26.01, subd. 4 could be used.

* * *

8. **Amend Appendix A to Rule 15, as shown on pages 6–11, herein.**
9. **Amend Appendix B to Rule 15, as shown on pages 12–15, herein.**
10. **Adopt Appendix G to Rule 15, Alford Addendum, as shown on pages 16–17, herein.**
11. **Adopt Appendix H to Rule 15, Norgaard Addendum as shown on pages 18–19, herein.**
12. **Delete Form 32; adopt Form 32a, as shown on page 20, herein.**
13. **Adopt Form 32b, as shown on pages 21–23, herein.**
14. **Adopt Form 32c, as shown on pages 24–26, herein.**

**FORM 32b - WAIVER OF RIGHTS AND AGREEMENT REGARDING RULE
26.01, SUBD. 3**

State of Minnesota

County _____

District Court

Judicial District: _____

Court File Number: _____

Case Type: _____

Criminal

State of Minnesota, Plaintiff

vs.

_____, Defendant

**Waiver of Rights and Agreement
Regarding Rule 26.01, subd. 3,
Trial on Stipulated Facts,
Stipulated Evidence, or Both**

TO THE ABOVE-NAMED COURT:

PROSECUTOR'S AGREEMENT

- 1) The prosecutor agrees to a trial based entirely on stipulated facts, stipulated evidence, or both as set forth in paragraphs 2 and 6 of this document.

Dated: _____

Signature of Prosecutor

**DEFENDANT'S AGREEMENT, NOT GUILTY PLEA, WAIVER OF TRIAL BY
JURY AND ASSOCIATED RIGHTS, STIPULATION, AND ACKNOWLEDGMENT
OF APPELLATE REVIEW**

- 2) I, _____, Defendant in the above- entitled action, agree that (mark one or both lines)

a determination of my guilt
 the existence of facts to support an aggravated sentence

may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both.

- 3) I maintain my plea of not guilty.

- 4) I have been advised by the court of my right to a trial by jury on the issue of guilt and the issue of an aggravated sentence. I understand that:

a. a jury is composed of the number of jurors required by law, selected from the community,

- b. I may participate in the selection of the jurors,
- c. the jury's general verdict and answer(s) to any special interrogatory(ies) must be unanimous, and
- d. if I waive a jury, the judge alone will determine my guilt or innocence, whether facts exist to support an aggravated sentence, or both.

Mark one or both lines:

I have had an opportunity to consult with counsel, and I waive my right to a trial by jury on the issue of guilt.

I have had an opportunity to consult with counsel, and I waive my right to a trial by jury on the existence of facts to support an aggravated sentence.

5) I have had an opportunity to consult with counsel regarding the following trial rights:

- a. to testify at trial,
- b. to have the prosecution witnesses testify in open court in my presence,
- c. to question those prosecution witnesses, and
- d. to require any favorable witnesses to testify for me in court.

Mark one or both lines:

I acknowledge these trial rights and I hereby waive them for the purpose of the determination of guilt.

I acknowledge these trial rights and I hereby waive them for the purpose of the determination of the existence of facts to support an aggravated sentence.

6) I stipulate to the existence of the following facts, the court's consideration of the following evidence, or both, for the purpose(s) described in paragraph 2 of this document (*describe stipulations here or refer to on-the-record recitation of stipulations*).

7) I understand that if the court finds me guilty based on the stipulated facts, stipulated evidence, or both, I may appeal from the judgment of conviction and raise issues on appeal as from any trial to the court.

Dated: _____

Signature of Defendant

Name: _____

Street Address: _____

City/State/Zip: _____

E-mail address: _____

FORM 32c - WAIVER OF RIGHTS AND AGREEMENT REGARDING RULE 26.01, SUBD. 4

State of Minnesota

County _____

District Court

Judicial District: _____

Court File Number: _____

Case Type: _____

Criminal

State of Minnesota, Plaintiff

vs.

_____, Defendant

**Waiver of Rights and Agreement
Regarding Rule 26.01, subd. 4,
Trial on Stipulation to
Prosecution's Case to Obtain
Review of a Pretrial Ruling**

TO THE ABOVE-NAMED COURT:

PROSECUTOR'S AGREEMENT THAT PRETRIAL RULING IS DISPOSITIVE

1) The prosecutor acknowledges and agrees that the court's ruling on the following pretrial issue is dispositive of the case or that a trial will be unnecessary if the defendant prevails on appeal (*describe pretrial ruling*):

Dated: _____

Signature of Prosecutor

**DEFENDANT'S AGREEMENT, NOT GUILTY PLEA, WAIVER OF TRIAL BY JURY AND
ASSOCIATED RIGHTS, STIPULATION, AND ACKNOWLEDGMENT OF LIMITED
APPELLATE REVIEW**

2) I, _____, Defendant in the above-entitled action, acknowledge and agree that the court's pretrial ruling described in paragraph 1 of this document is dispositive of this case or that a trial will be unnecessary if I prevail on appeal.

3) I maintain my plea of not guilty.

- a. I have been advised by the court of my right to a trial by jury. I understand that: a jury is composed of the number of jurors required by law, selected from the community,
- b. I may participate in the selection of the jurors,
- c. the jury's verdict must be unanimous, and
- d. if I waive a jury, the judge alone will determine my guilt or innocence.

Having had an opportunity to consult with counsel, I waive my right to a trial by jury.

4) I have had an opportunity to consult with counsel regarding the following trial rights. I acknowledge and waive my rights:

- a. to testify at trial,
- b. to have the prosecution witnesses testify in open court in my presence,
- c. to question those prosecution witnesses, and
- d. to require any favorable witnesses to testify for me in court.

5) I stipulate to the prosecution's evidence in a trial to the court. I acknowledge that the court will receive and consider the prosecution's evidence and that the court may find me guilty based on that evidence. Specifically, I stipulate to the following evidence (*describe stipulations or refer to on-the-record recitation of stipulations*):

6) I acknowledge that appellate review in this case will only be of the pretrial ruling described in paragraph 1 of this document and not of my guilt or of other issues that could arise at a contested trial.

Dated: _____

Signature of Defendant
Name: _____
Street Address: _____
City/State/Zip: _____
E-mail address: _____