

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

MICHAEL JOSEPH DIAZ,
Defendant-Appellant.

Jackson County Circuit Court
14CR30279; A160171

Timothy Barnack, Judge.

Submitted March 9, 2017.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Sara F. Werboff, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Jacob Brown, Assistant Attorney General, filed the brief for respondent.

Before Duncan, Presiding Judge, and DeVore, Judge, and Garrett, Judge.

PER CURIAM

Reversed and remanded.

PER CURIAM

Defendant appeals the trial court's judgment convicting and sentencing him for driving under the influence of intoxicants. Defendant's case was tried to the court. In the first of defendant's three assignments of error, defendant asserts that the trial court erred by conducting a bench trial without having secured a written jury trial waiver from defendant. The state concedes that the trial court erred and that we must reverse and remand. *See* Or Const, Art I, § 11 (requiring that jury trial waivers be "in writing"); *State v. Barber*, 343 Or 525, 530, 173 P3d 827 (2007) (holding that the trial court erred by conducting a bench trial in the absence of a written jury trial waiver and that, given the specific, constitutional requirement of a written waiver, this court had no discretion not to correct the error). Accordingly, we reverse and remand for a new trial. Because the record may develop differently on remand, we do not address defendant's second and third assignments of error.

Reversed and remanded.