

COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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NO. 38909-6-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II**

STATE OF WASHINGTON,

Respondent,

vs.

PINO JACOBO IBARRA,

Appellant.

BRIEF OF APPELLANT

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2009

P.M. 7-31-09

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ASSIGNMENT OF ERROR

Assignment of Error

1. The trial court violated Washington Constitution, Article 1, § 21, United States Constitution, Sixth Amendment, and CrR 6.5 when it allowed the alternate juror to participate in jury deliberations. RP 258-260; CP 120.

2. The trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, when it included a sentencing enhancement unsupported by substantial evidence. RP 1-260.

Issues Pertaining to Assignment of Error

1. Does a trial court violate Washington Constitution, Article 1, § 21, United States Constitution, Sixth Amendment, and CrR 6.5 if it allows an alternate juror who did to replace a regular juror to participate in deliberations?

2. Does a trial court violate a defendant's right to due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment, if it imposes a sentencing enhancement unsupported by substantial evidence?

STATEMENT OF THE CASE

Factual History

Sometime before August of 2007, officers from the Cowlitz-Wahkiakum County Drug Task Force (Task Force) arrested Jesus Santos-Reyes for two deliveries of a controlled substance, possession of a forged Social Security Card, and possession of a forged identification card. RP 32-34, 110-113. Mr. Santos-Reyes is a Mexican National Vera Cruz who illegally entered the United States and has lived in the Cowlitz County area for about three years with his wife and child. RP 108-110. Although he initially worked as a forklift operator, he later became addicted to illegal drugs and began selling controlled substances to support his drug use. RP 114-115. Having no desire to go to prison for his crimes and then be deported to Mexico, Mr. Santos-Reyes entered into a contract with the Task Force and the Cowlitz County Prosecutor's Officer whereby his charges would be reduced to simple possession if he purchased drugs on multiple occasions from four different people. RP 32-34, 110-113. The Task Force officers working with Mr. Santos-Reyes apparently did not inform any federal authorities that Mr. Santos-Reyes was living illegally in the United States. RP 1-4, 25-107.

On June 5th, June 13th, and June 20th, 2008, Mr. Santos-Reyes met with task force officers and claimed that he could purchase cocaine or

marijuana from Juan Ibarra. RP 36-47, 47-57, 57-68. On each occasion, Mr. Santos-Reyes placed a telephone call in which he claimed to have set up a drug purchase with Juan Ibarra. *Id.* However, since Mr. Santos-Reyes' side of the conversations were in Spanish, and since none of the Task Force Officers present spoke that language, they had no way to determine just what Mr. Santos-Reyes said over the telephone. RP 76-80. After each telephone conversation, the officers searched Mr. Santos-Reyes and his vehicle, gave him pre-recorded currency with which to make the drug purchases, and placed a small video recorder on his person. RP 36-47, 47-57, 57-68. They then followed him over to 1262 12th Avenue in Longview, which has apartments on the second floor over a business on the first floor. *Id.*

On each occasion, when Mr. Santos-Reyes drove to the building at 1262 12th Avenue he parked out front, and then entered through the secured door that led up to the upstairs apartments. RP 36-47, 47-57, 57-68. On the first occasion, a Hispanic male Mr. Santos-Reyes claimed was the defendant was waiting outside and went in with him. RP 119-121. Although there were Task Force Officers doing surveillance, they could not identify this person as the defendant. RP 79-80. On the second occasion, Mr. Santos-Reyes claimed that the defendant met him at the door and opened it for him. RP 124-126. On the third occasion, an unknown person was coming out the front door and Mr. Santos-Reyes was able to enter without a key or help from

anyone else. RP 128-132. None of the task force officers doing surveillance was able to verify that the defendant or his brother were present on any of these occasions. RP 76-91, 194-196, 203, 212.

While none of the Task Force Officers saw either the defendant or his brother at 1262 12th Avenue on June 5th, June 13th, and June 20th, 2008, they were able to verify the times that Mr. Santos-Reyes entered and exited the door that led up to the second floor apartments. RP 171-180, 186-194, 197-202, 204-212. They were also able to follow Mr. Santos-Reyes after he left the building and then meet with him. *Id.* On each occasion, a second search of Mr. Santos-Reyes uncovered illegal drugs (marijuana on the first occasion and cocaine on the second and third), and revealed the absence of the “buy money.” RP 36-68. In addition, the officers also recovered the surveillance tapes on each occasion. *Id.*

According to Mr. Santos-Reyes, during the June 5th operation, he gave the defendant the “buy money” after going up to the defendant’s apartment, and the defendant, who was alone, then gave him a baggie of marijuana. RP 117-123. By contrast, according to Mr. Santos-Reyes, both the defendant and his brother were present in the apartment on both June 13th and June 20th, and on both occasions he gave the money to the defendant, who gave him cocaine in exchange. RP 124-128, 128-137.

On September 9, 2008, the Task Force Officers obtained the warrant

to search the defendant's apartment at 1262 12th Avenue in Longview. RP 72-75, 87-88. On that day, they waited for the defendant to exit the building, at which time they placed him under arrest. RP 68-71. They, in conjunction with an officer and a drug dog, then searched the defendant's upstairs apartment, which was number 14. RP 72-75, 87-88. During this search, they found evidence that the defendant was the lessor of the apartment. RP 68-71. However, they found no marijuana, cocaine, scales, drug paraphrenalia, or "buy" money. RP 72-75, 87-88

Procedural History

By information filed September 16, 2009, the Cowlitz County prosecutor charged the defendant Pino Jacobo Ibarra with one count of delivery of marijuana, and five counts of delivery of cocaine. CP 1-3. Within two weeks, the state amended the information to add school bus stop enhancements to each count. CP 5-7. The defendant later went to a jury trial on the first three counts of the information. RP 6; CP 112. At some point during the trial, a juror revealed the fact of a family relationship through marriage with the informant. *Id.* The court then declared a mistrial upon the defendant's motion. *id.*

Two days after the mistrial was declared, the parties began a new trial, during which the state called seven witnesses, including five Task Force Officers and Mr. Santos Reyes. RP 25, 108, 161, 171, 186, 197, 204. The

state also called an employee of the Longview School District as a witness. RP 161. These witnesses testified to the facts contained in the preceding *Factual History*. See Factual History. In addition, the Longview School District Employee testified that there was a Longview School Bus Stop at the corner of 11th and Broadway in Longview. RP 161-164. The state also presented the testimony of Task Force Officer Hammer, who testified that he measured the distance from the northwest corner of the building at 1262 12th Avenue in Longview, to the front door of the Community House, which is a homeless shelter that he identified as sitting on Hemlock between 11th and 12th Streets in Longview. RP 165-167. This distance was 723 feet. RP 170. He stated that he only measured the distance to the Community House front door because he didn't know that the bus stop was actually farther down the street. RP 165-167. According to Officer Hammer, the Community House was more than one-half way down Hemlock from 12th to 11th Streets. RP 170. Detective Hammer's specific description of what he did to make the measurement was as follows:

DETECTIVE HAMMER: I walked straight up 12th Avenue to Hemlock. I took a right on Hemlock and went to the door just east of the main entrance of the Community House.

RP 168.

Following the close of the state's case, the defendant took the stand on his own behalf. RP 213-226. He denied knowing Mr. Santos-Reyes, and

denied ever selling him marijuana or cocaine. *Id.* After his testimony, the court instructed the jury without objection or exception from either party. RP 226, 227-238; CP 60-78. The parties then presented closing argument. RP 238-255. At exactly 11:53:26 hours the court dismissed the jury and instructed it to commence its deliberations. RP 258; CP 120. The court then held a colloquy with the parties concerning the instructions. RP 255-258. Following this colloquy, the court recessed at exactly 11:57:13. RP 258.

Sometime after the court recessed at 11:57:13, the court became aware that it had sent the alternate juror back to deliberate with the jury. RP 260. The record at the trial court does not reveal at what point this occurred. RP 1-260. Neither does the record reveal that the court ever examined the alternative to determine what he or she had said during the court's initial deliberations. *Id.* Rather, just prior to taking the verdict on the second day, the court revealed that it had sent the alternate juror back with the jury and that upon discovering this fact, the court had excused the alternate. RP 259-260. The court also revealed that during deliberation, the jury had sent out two questions, which it had discussed with counsel and answered. RP 259-260. However, the court noted that it did not bring the defendant back from the jail to take part in these proceedings, even though the defense attorney had previously asked that the defendant be allowed to be present. RP 256-

257, 259-260.

The jury eventually returned verdicts of guilty on the first three counts of the information, along with special verdicts that each offense had been committed within 1,000 feet of a school bus stop. CP 79-84. The court later sentenced the defendant within the standard range for these offenses, and added a 24 month school bus stop enhancement. CP 92-104. The defendant thereafter filed timely notice of appeal. CP 1-7.

ARGUMENT

I. THE TRIAL COURT VIOLATED WASHINGTON CONSTITUTION, ARTICLE 1, § 21, UNITED STATES CONSTITUTION, SIXTH AMENDMENT, AND CrR 6.5 WHEN IT ALLOWED THE ALTERNATE JUROR TO PARTICIPATE IN JURY DELIBERATIONS.

Criminal Rule 6.5 sets out the procedures the trial courts should follow when choosing and employing alternate jurors. This rule states:

When the jury is selected the court may direct the selection of one or more additional jurors, in its discretion, to be known as alternate jurors. Each party shall be entitled to one peremptory challenge for each alternate juror to be selected. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the challenge provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant. If at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged, and the clerk shall draw the name of an alternate who shall take the juror's place on the jury.

Alternate jurors who do not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When jurors are temporarily excused but not discharged, the trial judge shall take appropriate steps to protect alternate jurors from influence, interference or publicity, which might affect that juror's ability to remain impartial and the trial judge may conduct brief voir dire before seating such alternate juror for any trial or deliberations. Such alternate juror may be recalled at any time that a regular juror is unable to serve, including a second phase of any trial that is bifurcated. If the jury has commenced deliberations prior to replacement of an initial juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and begin deliberations anew.

CrR 6.5.

In the case at bar, the trial court violated this rule when it sent the alternate juror in to deliberate with the other twelve jurors. Just how long these deliberations occurred is difficult to tell from the record because the trial court failed to state on the record exactly when it discovered this error and exactly when it removed the alternative juror. However, the record is clear that the alternate went into the jury room for deliberation, and that the court remained in the courtroom with prosecutor and the defense attorney for a number of minutes before adjourning. Thus, there was at least this amount of time during which the alternate juror participated in deliberations. Consequently, the court's self-serving statement just prior to taking the verdict on the second day of deliberation is not supported by the record. In fact, there is no way to tell exactly how long the alternate participated in deliberations. As the decision in *State v. Cuzick*, 85 Wn.2d 146, 530 P.2d 288 (1975), explains, this decision by the trial court was reversible error, and also constituted a violation of the defendant's right to a jury trial under Washington Constitution, Article 1, § 21, and United States Constitution, Sixth Amendment.

In *State v. Cuzick, supra*, the defendant appealed his conviction for sodomy, arguing that the trial court violated his right to jury trial under Washington Constitution, Article 1, § 21, and United States Constitution, Sixth Amendment, when it allowed an alternative juror to be present but not

participate in the jury's deliberations. The state responded that his action was not error, and that it was harmless beyond a reasonable doubt if it was error. However, the Washington Supreme Court rejected the state's argument holding that (1) allowing the alternate to enter the jury room during deliberations violates both Washington Constitution, Article 1, § 21, and United States Constitution, Sixth Amendment by allowing more jurors than are guaranteed under both constitutional provisions, (2) it also violates the specific language of RCW 10.49.070 (subsequently adopted as CrR 6.5), and (3) it violates the guarantee of privacy and deliberation free from outside influence also found as part of Washington Constitution, Article 1, § 21, and United States Constitution, Sixth Amendment.

After finding error, the court then addressed and rejected the state's arguments that (1) the defendant's failure to object waived the error, and (2) the error was harmless or should be subject to a factual finding concerning the influence of the alternate juror on the deliberations. The court held:

The State seeks to avoid these authorities with two arguments. First, it claims that Cuzick waived his right to challenge the makeup of the jury when his counsel failed to object to the alternate juror's admission to the jury room at the time it was ordered. Objection to deviation from the authorized number of jurors has been held nonwaivable, however. Even if waiver is allowed, the importance of the jury secrecy principles affected is such that it can only be made informedly and affirmatively by the defendant himself, not implied from the silence of his counsel.

Second, the State contends that, even if the admission of the

alternate juror to the jury room was error to which objection is not waived, the error should not be held presumptively prejudicial. At oral argument the Prosecuting Attorney for Clallam County, arguing for the State, conceded that, even if this argument prevails, the trial court's determination should be reversed and the case remanded for a factual inquiry into the extent of the alternate juror's participation in the deliberations. We decline to accept his invitation, however. A factual hearing would not be likely to shed much light on the actual effect of the alternate juror's presence in the jury room. It would certainly be impossible to recreate at this point every move, every expression he might have made during the several hours of deliberations. Even if it were determined exactly what he did or said, it would be difficult to tell how or whether his actions affected the other jurors. The outcome of such an investigation would only be further doubt; its primary effect would be to further invade the jury room and impose on those who served in it.

Instead, we adhere to those cases which hold that prejudice will be presumed to flow from a substantial intrusion of an unauthorized person into the jury room unless "it affirmatively appears that there was not and could not have been any prejudice." Where, as here, the intrusion involves the visible presence of a nonjuror for the full length of deliberations, the presumption of prejudice clearly has not been so conclusively defeated.

State v. Cuzick, 85 Wn.2d at 150 (citations omitted).

In the case at bar, as in *Cuzick*, the court sent the alternate juror in to deliberate with the jury, but with no prohibition about actively participating with the other jurors. Just how long the alternate was part of the deliberations is insoluble from the record, although there is no question that the alternate went in with the jury and was with them for at least the first four minutes of deliberation as it is clear from the record that the court was in session during this time after sending the jury out to deliberate. Exactly how much time

passed after the court adjourned and before the court excused the alternate is not contained in the record. However, what is clear from the decision in *Cuzick*, is that the court's actions in allowing the alternate to deliberate with the jury violated Washington Constitution, Article 1, § 21, United States Constitution, Sixth Amendment, and CrR 6.5, and that the defendant's failure to object was no waiver of this violation.

In addition, as the court sets out in *Cuzick*, "prejudice will be presumed to flow from a substantial intrusion of an unauthorized person into the jury room unless 'it affirmatively appears that there was not and could not have been any prejudice.'" *Cuzick, supra*. In the case at bar, the state cannot meet the burden because there is no affirmative evidence in the record to rebut the presumption of prejudice. As a result, the defendant in this case is entitled to a new trial.

II. THE TRIAL COURT VIOLATED THE DEFENDANT'S RIGHT TO DUE PROCESS UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3, AND UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT, WHEN IT INCLUDED A SENTENCING ENHANCEMENT UNSUPPORTED BY SUBSTANTIAL EVIDENCE.

As a part of the due process rights guaranteed under both the Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, the state must prove every element of a crime charged beyond a reasonable doubt. *State v. Baeza*, 100 Wn.2d 487, 488, 670

P.2d 646 (1983); *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073, 25 L.Ed.2d 368 (1970). As the United States Supreme Court explained in *Winship*: “[The] use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law.” *In re Winship*, 397 U.S. at 364.

Mere possibility, suspicion, speculation, conjecture, or even a scintilla of evidence, is not substantial evidence, and does not meet the minimum requirements of due process. *State v. Moore*, 7 Wn.App. 1, 499 P.2d 16 (1972). As a result, any conviction not supported by substantial evidence may be attacked for the first time on appeal as a due process violation. *Id.* In addition, evidence that is equally consistent with innocence as it is with guilt is not sufficient to support a conviction; it is not substantial evidence. *State v. Aten*, 130 Wn.2d 640, 927 P.2d 210 (1996).

“Substantial evidence” in the context of a criminal case means evidence sufficient to persuade “an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.” *State v. Taplin*, 9 Wn.App. 545, 513 P.2d 549 (1973) (quoting *State v. Collins*, 2 Wn.App. 757, 759, 470 P.2d 227, 228 (1970)). This includes the requirement that the state present substantial evidence “that the defendant was the one who perpetrated the crime.” *State v. Johnson*, 12 Wn.App. 40, 527 P.2d 1324 (1974). The test for determining the sufficiency of the evidence is whether “after viewing the

evidence in the light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 2797, 61 L.Ed.2d 560 (1979).

In the case at bar, the state charged three deliveries of a controlled substance and added an allegation to each count that the defendant committed each offense within 1,000 feet of a school bus stop. The enhancement allegations from the amended information were identical and read as follows:

The defendant, in the county of Cowlitz, State of Washington, on or about June 05, 2008, within one thousand feet of a school bus route stop designated by the Longview School District, did feloniously deliver marijuana [cocaine in counts II, and III], a controlled substance, knowing such substance to be a controlled substance; contrary to RCW 69.50.401(a) and RCW 69.50.435(1)(c) and against the peace and dignity of the State of Washington.

CP 5-6.

The school bus stop enhancement definition is found in RCW 69.50.435(1)(c) states as follows:

(1) Any person who violates RCW 69.50.401 by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under RCW 69.50.401 or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana to a person:

. . . .
(c) Within one thousand feet of a school bus route stop designated by the school district;

. . . may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

RCW 69.50.435(1)(c).

The enhancement for violating this provisions is found in RCW

9.94A.535(6), which states:

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.605. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

RCW 9.94A.535(6).

Under these two provisions, the trial court must add a 24 months enhancement to a defendant's sentence if the jury returns a special verdict finding that the state has proven beyond a reasonable doubt that the defendant committed the violation of RCW 69.50.401(a) within 1,000 feet of a school bus stop. Although the state alleged this enhancement and the jury did find it proven, as the following explains, substantial evidence does not support this finding.

In the case at bar, the state presented two witnesses on the issue of the

school bus stop enhancement. The first was an employee of the Longview School District. RP 161. He testified that there was a Longview School Bus Stop at the corner of 11th and Broadway in Longview. RP 161-164. The second witness was Task Force Officer Hammer. He testified that he measured the distance from the northwest corner of the building at 1262 12th Avenue in Longview, to the front door of the Community House, which is a homeless shelter that he identified as sitting on Hemlock between 11th and 12th Streets in Longview. RP 165-167. This distance was 723 feet. RP 170. He stated that he only measured the distance to the Community House front door because he didn't know that the bus stop was actually farther down the street. RP 165-167. According to Officer Hammer, the Community House was more than one-half way down Hemlock from 12th to 11th Streets. RP 170. Detective Hammer's specific description of what he did to make the measurement was as follows:

DETECTIVE HAMMER: I walked straight up 12th Avenue to Hemlock. I took a right on Hemlock and went to the door just east of the main entrance of the Community House.

RP 168.

The problem with this evidence is twofold, with either deficiency fatal to the school bus stop enhancement. The first is that the officer did not take a measurement from the front of the defendant's apartment building to the school bus stop. Rather, he stopped in front of the Community House, which

he explained was somewhere along the way from the defendant's apartment building to the school bus stop. He did so because he thought the school bus stop was at that location. In addition, there is no evidence at all in the record concerning the distance from the location the officer stopped to the corner of 11th and Broadway. Thus, substantial evidence does not support the enhancement.

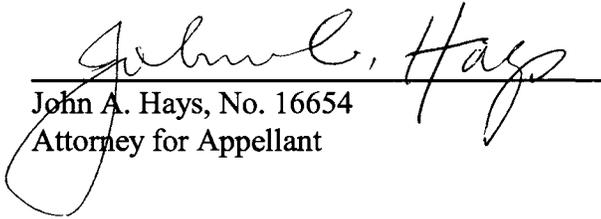
The second deficiency in the evidence on the enhancement is that, according to the officer's testimony, he was on the wrong street. As the preceding quote from the officer's testimony states, he walked up 12th, took a right on Hemlock, and then walked a certain distance down Hemlock. Nothing with his evidence even puts this location within the vicinity of 11th and Broadway where the school bus stop was located. As a result, the trial court violated the defendant's right to due process under Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment when it added the sentencing enhancement.

CONCLUSION

This court should grant the defendant a new trial because the trial court's failure to follow the procedure for the use of alternate jurors under CrR 6.5 violated the court rule as well as the defendant's right to a jury trial under Washington Constitution, Article 1, § 21, and United States Constitution, Sixth Amendment. In the alternative, this court should strike the enhancements imposed in this case because they are unsupported by substantial evidence.

DATED this 31st day of July, 2009.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 21**

The right to trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases where the consent of the parties interested is given thereto.

**UNITED STATES CONSTITUTION,
SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

**CRIMINAL RULE 6.5
ALTERNATE JURORS**

When the jury is selected the court may direct the selection of one or more additional jurors, in its discretion, to be known as alternate jurors. Each party shall be entitled to one peremptory challenge for each alternate juror to be selected. When several defendants are on trial together, each defendant shall be entitled to one challenge in addition to the challenge provided above, with discretion in the trial judge to afford the prosecution such additional challenges as circumstances warrant. If at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged, and the clerk shall draw the name of an alternate who shall take the juror's place on the jury.

Alternate jurors who do not replace a regular juror may be discharged or temporarily excused after the jury retires to consider its verdict. When jurors are temporarily excused but not discharged, the trial judge shall take appropriate steps to protect alternate jurors from influence, interference or publicity, which might affect that juror's ability to remain impartial and the trial judge may conduct brief voir dire before seating such alternate juror for any trial or deliberations. Such alternate juror may be recalled at any time that a regular juror is unable to serve, including a second phase of any trial that is bifurcated. If the jury has commenced deliberations prior to replacement of an initial juror with an alternate juror, the jury shall be instructed to disregard all previous deliberations and begin deliberations anew.

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

STATE OF WASHINGTON,
Respondent

vs.

PINO JACOBO IBARRA,
Appellant

NO. 08-1-01035-7
COURT OF APPEALS NO:
38909-6-II

AFFIRMATION OF SERVICE

STATE OF WASHINGTON)
) : ss.
County of Cowlitz)

DONNA BAKER, states the following under penalty of perjury under the laws of Washington State. That at all times herein mentioned I was and now am a citizen of the United States and resident of the State of Washington, over the age of eighteen and competent to be a witness and make service herein.

On July 31st, 2009 , I personally placed in the mail the following documents

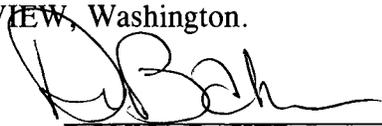
- 1. BRIEF OF APPELLANT
- 2. AFFIDAVIT OF MAILING

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Dated this 31ST day of JULY, 2009 at LONGVIEW, Washington.



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