

FILED
Court of Appeals
Division III
State of Washington
2/19/2019 8:00 AM

NO. 36000-8

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JEREMY S. TRACY,

Defendant/Appellant.

REPLY BRIEF

Dennis W. Morgan WSBA #5286
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ARGUMENT

The State misconstrues Mr. Tracy's position. He is not trying invade the province of the jury or violate the deliberative process.

Mr. Tracy asserts that the lack of protective procedures during deliberations had the potential to adversely impact the jury's decision making.

Recently, in *State v. Whitaker*, 6 Wn. App. 2d 1 (2018), the Court addressed whether or not there was improper contact between two jurors and the bailiff. The *Whitaker* Court noted at 25:

“Communications necessary for the proper care of the jury, such as lunch orders and other administrative matters, do not raise an inference of an impropriety because these communications are neutral and innocuous.” *See: State v. Yonker*, 153 Wn.2d 627, 636, 137 P.3d 888 (2006) (citing *State v. Johnson*, 12 Wn. App. 443, 460, 105 P.3d 85 (2005); *State v. Forsyth*, 13 Wn. App. 133, 137, 533 P.2d 847 (1975)).

Moreover, the bailiff's oath currently used in the Superior Courts of the State of Washington states:

“Do you solemnly swear or affirm that you will take the jury in charge; that you will suffer no one to communicate with them; that you will give them no food or drink except by order of the court and, when they have agreed upon the verdict you will bring them again into court so help you God?”

Also, it does not appear from the record that the bailiff was given an oath by the trial court prior to excusing the jury for deliberations.

Mr. Tracy otherwise relies upon his original brief and the argument contained in it.

DATED this ____ day of February, 2019.

Respectfully submitted,

s/Dennis W. Morgan
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NO. 36000-8-III
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	KLICKITAT COUNTY
Plaintiff,)	NO. 17 1 00032 1
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
JEREMY S. TRACY,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this ____ day of February, 2019, I caused a true and correct copy of the *REPLY BRIEF* and to be served on:

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