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SUPREME COURT  
STATE OF WASHINGTON

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Respondent, ) Nos. 77347-5 & 77360-2  
 ) (Consolidated)  
 vs. )  
 )  
 FELIPE RAMOS & ) STATEMENT OF ADDITIONAL  
 MARIO MEDINA, ) AUTHORITIES  
 )  
 Appellants, )  
 )  
 )  
 )

Pursuant to RAP 10.8, The State respectfully cites the following as additional authority:

- 1) Schad v. Arizona, 501 U.S. 624, 111 S. Ct. 2491, 115 L. Ed. 2d 555 (1991), wherein the Supreme Court held that even in a capital case, the jury need not be unanimous as to the means by which a murder is committed, so long as the jury is unanimous as to the single crime of murder.
- 2) 11 Wash. Prac., Pattern Jury Instructions Criminal (2nd Ed.), 2005 Supplement to Volume 11, WPIC 4.20 Introduction (Replacement), which states in pertinent part the following regarding alternative means of committing a single crime and the desirability of presenting a special interrogatory to the jury to assist appellate review:

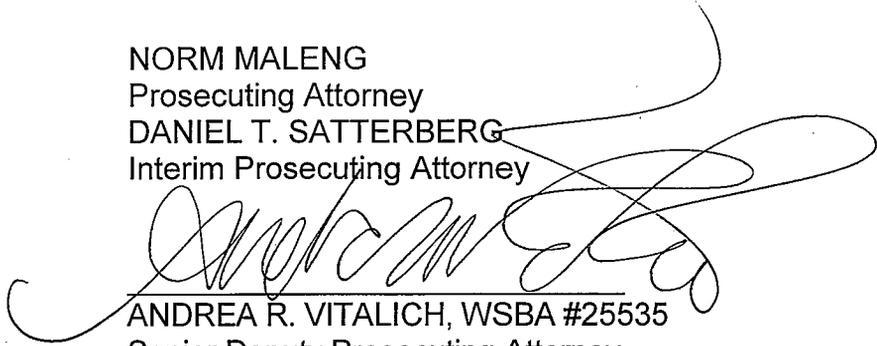
**Unanimity as to alternative elements -- Statute defining a single offense committed by alternative means.** When a statute sets forth a single offense that may be committed by alternative means, there must be jury unanimity as to guilt for the single crime charged. However, unanimity is not required as to each of the alternative means by which the crime was committed, provided there is substantial evidence presented to support each alternative means. (Citations omitted.) Evidence is constitutionally sufficient to support each alternative means if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could find each means of committing the crime proved beyond a reasonable doubt. (Citations omitted.)

....

Practitioners should consider whether to use a special verdict form to specify which alternative means they relied on in reaching their verdict. A format for these special verdict forms is included at WPIC 190.09, Special Verdict Form -- Elements with Alternatives; see also WPIC 164.00, Concluding Instruction -- Special Verdict -- Elements with Alternatives. Using a special verdict form may eliminate potential problems that may arise if one of the alternatives is later found not to have been supported by substantial evidence. (Citations omitted.) Using a jury interrogatory has the benefit of curing the sufficiency-of-the-evidence problem without altering unanimity requirements.

Dated this 25<sup>th</sup> day of September, 2007.

NORM MALENG  
Prosecuting Attorney  
DANIEL T. SATTERBERG  
Interim Prosecuting Attorney

A large, stylized handwritten signature in black ink, appearing to read 'Andrea R. Vitalich', is written over the typed name and title of the signatory.

ANDREA R. VITALICH, WSBA #25535  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent