

ALTERNATE JURORS IN JURY ROOM

(Updated September 2010)

I. UNITED STATES COURTS OF APPEALS

Manning v. Huffman,
269 F.3d 720 (6th Cir. 2001).

Involvement of alternate jurors in deliberations (in addition to, not replacing, jurors on panel) constitutes prejudice per se to defendant.

United States v. Ottersburg,
76 F.3d 137 (7th Cir. 1996).

Conviction reversed on appeal where two alternates participated in jury deliberations; court holds plain error holding of *Olano* permissive, not mandatory and finds harm under facts of case.

United States v. Beasley,
464 F.2d 468 (10th Cir. 1972).

Mistrial required where alternate is present in jury room and included in any proceeding commenced by the jury, albeit only selection of the foreperson, after deliberations begin.

United States v. Virginia Erection Corp.,
335 F.2d 868 (4th Cir. 1964).

Presence of alternate in jury room was plain error even though counsel (but not the defendants) consented to the alternate's presence as a precaution because one of the regular juror's was feeling ill and even though the alternate was instructed not to participate in the deliberations.

II. STATE CASES

Stokes v. State,
843 A.2d 64 (Md. 2004).

In case where defendant was convicted of offenses related to possession of and use of a handgun, reversal was required as a result of the alternate jurors's participation in deliberations, even though the judge after some deliberations had occurred instructed the jurors that the alternates were merely to observe. A presumption of prejudice applied in this situation and the presumption was not rebutted even though the defendant had admitted during his testimony that he had transported a handgun and his attorney made important related concessions in opening statement. (Defendant had been charged with more serious crimes, leading to the concessions about the handgun.)

Hoos v. State,
75 P.3d 609 (Wyo. 2003).

Government failed to overcome presumption of prejudice which arose from alternate juror's participation in deliberations. (The participation, either by words or gestures, was presumed as a result of the alternate juror's presence during deliberations for 40 minutes.)

Archie v. State,
844 So.2d 1173 (Miss. App. 2003).

Alternate juror's improper participation in deliberations required reversal of conviction where post-verdict inquiry revealed that the alternate juror may have influenced the verdict.

State v. Gross,
776 N.E.2d 1061 (Ohio 2002).

Death sentence reversed due to trial court's error in permitting alternate jurors to sit in on sentencing deliberations. Prejudice was presumed given evidence that at least one alternate inserted himself into actual deliberations through intrusive verbal participation, and more than one alternate participated through nonverbal acts.

State v. Washington,
632 N.W.2d 758 (Minn. App. 2001).

Misdemeanor convictions reversed where court allowed alternates to participate in deliberations.

Koch v. Rist,
730 N.E.2d 963 (Ohio 2000).

Affirming grant of new trial in medical malpractice case where dismissed alternate entered jury room and remained there throughout jury's deliberation as within the discretion of the trial judge, without trial judge specifically finding prejudice.

Hayes v. State,
735 A.2d 1109 (Md. App. 1999).

Substitution of alternate juror, who had been excused but had not left courthouse, after jury left courtroom to begin deliberations was impermissible; basis for trial court's conclusion that no deliberations had occurred prior to substitution was not clear, record did not reveal how much time had passed, or what jury was doing, during critical period, alternate was allowed to leave courtroom for some period of time, and alternate was not interviewed to determine whether she had been exposed to any outside influences.

State v. Edgarnelson,
587 N.W.2d 439 (S. Dak. 1998).

Conviction for inhumane treatment of animals reversed despite lack of objection where alternate juror deliberated with the twelve impaneled.

State v. Cleveland,
959 S.W.2d 548 (Tenn. 1997).

A missing juror during a trial for aggravated assault was replaced by an alternate. When the missing juror returned during closing arguments, the court removed the alternate and returned the missing juror. The Supreme Court of Tennessee held that the juror's absence during closing argument was a fundamental error under its constitution and therefore not subject to harmless error analysis.

State v. Babbington,
676 N.E.2d 1326 (Ill. App. 1997).

Murder conviction reversed where 13 jurors answered questions upon being polled; court held that whether or not alternate actually deliberated, defendant was entitled to know composition of his jury.

State v. Grovenstein,
493 S.E.2d 865 (S.C. 1997).

Trial court erred in failing to grant mistrial when it was discovered that alternate was not dismissed before jury began deliberations; prejudice presumed under South Carolina law.

Turk v. Silberstein,
1996 WL 580960 (Conn. Super. Sept. 30, 1996), *aff'd*, 709 A.2d 578 (Conn.App. 1998).

Granting motion in civil case to set aside verdict because alternate juror participated in jury deliberations.

People v. Litwa,
646 N.Y.S. 2d 329 (N.Y. Sup. Ct. 1996).

Harm presumed where alternate jurors communicated with deliberating jurors in arson trial.

Commonwealth v. Sheehy,
588 N.E.2d 10 (Mass. 1992).

In first-degree murder case, trial court committed reversible error by allowing alternates to sit in

jury room with deliberating jurors; alternates, whose views may be influenced by lack of responsibility for verdict, may improperly influence deliberating jurors.

Commonwealth v. Smith,
531 N.E.2d 556 (Mass. 1988).

Presence of alternate jurors during jury deliberations required automatic reversal of conviction even though they had been instructed not to participate and defense counsel had not objected. Remand for a hearing on whether defendant was prejudiced was not the proper remedy.

Bullock v. State,
258 S.E.2d 610 (Ga. 1979).

Voluntary manslaughter conviction reversed when an alternate juror was allowed to retire to the jury room with the serving jurors after defense counsel had objected to the alternate's presence.

People v. Adame,
111 Cal. Rptr. 462 (Cal. 1973).

Grant of new trial affirmed in case involving a second degree murder conviction because an alternate juror was allowed to sit with the deliberating serving jurors.

State v. Bindyke,
220 S.E.2d 521 (N.C. 1972).

The presence of an alternate in the jury room during deliberations, even if for only a minute or two, is reversible error per se.