



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA v. DONALD WAYNE DALTON  
CR-16-0012-PR**

**PARTIES:**

*Petitioner:* State of Arizona

*Respondent:* Donald Wayne Dalton

**FACTS:**

The police received a 911 call that stated there was a man removing a swamp cooler from the roof of a vacant house. The caller indicated that the man who had been on the roof left towards an alley with a second man, who turned out to be Dalton. Dalton and Brian Day, the man who had been on the roof, matched the descriptions the caller gave police. At the vacant house, police found that a swamp cooler had been removed from the roof. Police detained Dalton and Day.

At first, Dalton denied being in the house at all. Later after further questioning, Dalton said he had been inside the house resting. Dalton denied any involvement in the removal of the swamp cooler and he said that he was actually trying to “get Brian [Day] to leave the premises and [to] stop doing what he was doing because [he] didn’t want to see him being an idiot and getting in trouble.” On January 21, 2014, a grand jury indicted Dalton for burglary in the second degree and criminal damage.

At trial, Dalton testified that he had been homeless and would occasionally sleep in the vacant house and in an alley nearby. Dalton also stated that on the day of the alleged crime, he was sleeping in the house when he heard banging. When Dalton went outside to investigate there was a swamp cooler hanging “over [his head].” Dalton further testified that he saw Day outside and that Day was mumbling and talking to himself and was “not very coherent.” Initially, Dalton tried to get Day to leave. He stated that he had lied to police at first about being in the house because he did not want “to get wrapped up with Brian Day’s stupidity.” Dalton also said that he “was scared because [he] just realized how stupid it is to help somebody and [he] could have gotten [him]self into so much trouble over it.”

The trial court gave final instructions to the jury and then excused the alternate, advising the jury that the alternate could be called back if “something happens overnight.” At 2:15 p.m., the jurors retired to deliberate. There was only one question during deliberations that took one minute to answer. At 4:21 p.m., the jury decided to “quit for the day.” One juror informed the bailiff that she would not be available for the next day. The court and counsel agreed to “bring[ing] the alternate back and hav[ing] them start over at 11:00 tomorrow.”

The following day at 11:00 a.m. the jury reconvened. The trial court did not instruct the

reconstituted jury to “begin deliberations anew” as required by Criminal Rule 18.5(h); neither party objected. About 43 minutes later the jury returned to the courtroom to announce its verdict. The record indicates that the trial court apologized for making the jury wait before it could return its verdict, indicating jury deliberation took less than 43 minutes. The jury found Dalton guilty of burglary in the second degree and not guilty of criminal damage. All jurors confirmed their verdicts during the jury poll.

On appeal, the majority opinion held that the trial court’s failure to instruct the jury to begin deliberations anew under Rule 18.5(h) constituted fundamental, prejudicial error that required reversal of Dalton’s conviction and remand for a new trial. The Arizona Constitution guarantees a defendant the right to a unanimous jury verdict in a criminal case. Ariz. Const. Art. 2, § 23. If a deliberating juror is replaced by an alternate, then the deliberations must start anew to ensure the jury verdict is unanimous. Therefore, the majority found that the error in failing to provide any instruction on starting deliberations anew was fundamental. The majority also found that Dalton was prejudiced by the trial court’s failure to comply with Rule 18.5(h). None of the other instructions were sufficient to instruct the jury to begin anew once the alternate joined it. The jury deliberated for less than 43 minutes after the alternate joined. Finally, the case against Dalton was not overwhelming and the majority could not say beyond a reasonable doubt that the jury would have reached the same result had the trial court properly instructed it to begin deliberations anew after the alternate joined.

The dissent found that Dalton did not meet his burden of showing a fundamental, prejudicial error. The error was not fundamental because it did not “go to the foundation of the case or take away a right essential to the defense” such that Dalton could not possibly have received a fair trial. Further, the dissent found that the original instructions were sufficient to ensure that the jurors knew they were to deliberate fully, which would carry over when the alternate joined. There is no suggestion in the record that the substitute juror did not fully deliberate and each juror confirmed their verdicts during the jury poll. The issue before the jurors in this case was a simple one and the less-than-43-minute verdict in such a case does not demonstrate fundamental error or resulting prejudice.

**ISSUE:**

Did the two-judge majority of the court of appeals err by reversing Appellant’s burglary conviction upon concluding the trial court committed fundamental, prejudicial error by failing to instruct the jury to “begin deliberations anew” under Arizona Rule of Criminal Procedure 18.5(h) when it substituted a deliberating juror with an alternate juror?

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