

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 22 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTONIO CIRANDA-SANCHEZ,

Defendant - Appellant.

No. 10-50392

D.C. No. 3:09-cr-01558-JM-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Jeffrey T. Miller, Senior District Judge, Presiding

Argued and Submitted June 7, 2011
Pasadena, California

Before: B. FLETCHER and N.R. SMITH, Circuit Judges, and GWIN, District
Judge.**

The district court did not abuse its discretion by substituting an alternate juror because of the original juror's loud, distracting cough. A district court abuses its discretion when it "base[s] its ruling on an erroneous view of the law or a

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable James S. Gwin, District Judge for the U.S. District Court for Northern Ohio, Cleveland, sitting by designation.

clearly erroneous assessment of the evidence.” *United States v. Hinkson*, 585 F.3d 1247, 1259 (9th Cir. 2009) (en banc) (quoting *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 405 (1990) (internal quotation marks omitted)). Neither error occurred in this case.

Whether a juror is unable to continue to serve “is the kind of question peculiarly suited to the exercise of discretion by the trial judge.” *United States v. Echavarria-Olarte*, 904 F.2d 1391, 1395 (9th Cir. 1990). Although the original juror was willing to complete her jury service, the district court observed not only her cough, but the other jurors’ reactions to her cough. The district court’s determination that the cough’s distraction to both the juror herself and the other jurors required the substitution of an alternate juror “is one that a rational jurist could have made based on the record presented to him.” *See United States v. Bonas*, 344 F.3d 945, 948 (9th Cir. 2003).

AFFIRMED.