

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

DENNIS L. NEKOLITE,
Defendant.

Case No. CR99-39

**JOURNAL ENTRY
ON TRIAL**

DATE OF TRIAL: February 23-24, 2000.

APPEARANCES:

For plaintiff:

Thomas P. Herzog, Holt County Attorney.

For defendant:

Rodney W. Smith, Holt County Public Defender, with defendant.

SUBJECT:

Jury Trial.

PROCEEDINGS:

The juror orientation video was not displayed because the tape was broken. After hearing introductory comments by the court, the jury panel was duly sworn for examination. The names of 24 prospective jurors were duly drawn by the clerk and voir dire examination conducted by the court.

During the court's examination, 1 prospective juror were excused for cause and replacement duly drawn by the clerk and examined by the court.

Voir dire examination was then conducted by counsel for plaintiff. The plaintiff passed the panel for cause. At the conclusion of the plaintiff's examination, the panel was duly admonished and a mid-morning recess was taken. Following the recess, voir dire examination was then conducted by counsel for defendant. During the defendant's examination, on defendant's motion, a prospective juror was excused for cause. A replacement was duly drawn by the clerk, examined by the court and counsel for plaintiff, who passed the replacement juror for cause. Defense counsel then completed voir dire examination, and passed the panel for cause.

Peremptory challenges to the panel of 24 prospective jurors were exercised by counsel for plaintiff and counsel for defendant, and the trial jury of 12 persons was duly sworn. The trial jury was duly admonished by the court and excused for lunch. In the absence of the jury, the defendant voluntarily

waived his statutory right of sequestration of the jury during jury deliberations. Recess for lunch followed.

Following the recess, preliminary instructions were given by the court to the jury, and opening statements were presented by counsel for plaintiff and counsel for defendant. The jury was admonished and a brief recess taken.

Following the recess, defendant purported to move to sequester witnesses in the presence of the jury. The court declined to consider the motion in the presence of the jury. No other witnesses were present during the testimony of the first witness. Brian Phelps was sworn and testified for plaintiff. The jury was admonished and excused from the courtroom. In the jury's absence, defendant moved to sequester witnesses. The plaintiff does not object and reciprocally moves to sequester witnesses. The defendant does not object. Reciprocal motions to sequester witnesses granted. Stipulation made regarding videotape exhibit. A brief recess was taken.

Following the recess, Michael Parks was sworn and testified for plaintiff. The plaintiff rested. The jury was admonished and excused from the courtroom. The defendant moved for a directed verdict. Arguments heard or waived. Motion denied. The jury returned, and at the defendant's request, Exhibit 3 (the videotape) was published to the jury until the stipulated stopping point. The jury was admonished and the trial recessed to February 24, 2000, at 8:30 a.m.

On Thursday, February 24, 2000, with all counsel and the defendant present, the trial resumed. The defendant, Dennis L. Nekolite, was sworn and testified on his own behalf. The jury was admonished and a brief recess was taken. Following the recess, the defendant rested. Brian Phelps, having been previously sworn, was recalled and testified for plaintiff on rebuttal. Karen Boshart was sworn and testified for plaintiff on rebuttal. Michael Parks, having been previously sworn, was recalled and testified for plaintiff on rebuttal. Morris John Kersenbrock was sworn and testified for plaintiff on rebuttal. The plaintiff rested on rebuttal. No surrebuttal evidence. The jury was admonished and excused from the courtroom.

In the absence of the jury, the defendant renewed his motion for directed verdict. Arguments waived. Motion denied. Informal instruction conference held in chambers with counsel only. Formal instruction conference held in open court with all counsel and the defendant present. The court's proposed instructions Nos. 1 through 9, inclusive, and proposed verdict form were considered. No objections for plaintiff. No objections for defendant except to the extent inconsistent with defendant's request for lesser-

included offense instruction. Defendant requests instructions on lesser-included offense. Plaintiff objects. Arguments waived. Objection sustained and requested instruction refused for reasons stated on the record. Refused instructions duly endorsed as refused by court and filed by the clerk. Whereupon, the jury returns. Closing arguments were presented. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 12:01 p.m., and the jury retired to the jury room.

At 2:57 p.m., with all counsel and the defendant present, the jury returned and announced that it had reached verdict. The verdict form was duly filed by the clerk, and read aloud by the clerk in open court, wherein the jury found the defendant guilty as charged. Upon inquiry by the court if it was their unanimous verdict, all 12 jurors joined in an affirmative response. Further polling of the jury was waived by counsel for plaintiff and counsel for defendant. The verdict was accepted by the court and the defendant adjudged guilty as charged. A presentence investigation by the probation officer was ordered, and the clerk was directed to notify the probation officer. Bond was continued, and the defendant ordered to appear and advised of the consequences for failure to appear. The jury was discharged with the thanks of the court.

ORDER:

IT IS THEREFORE ORDERED that:

1. The defendant, Dennis L. Nekolite, is adjudged guilty as charged of Terroristic Threats, a Class IV felony.
2. Presentence investigation is ordered, and the clerk is directed to notify the probation officer.
3. Sentencing is set for April 27, 2000, at 9:00 a.m. The defendant is ordered to appear for sentencing.
4. The jury is discharged.

Dated: February 24, 2000.

If checked, the Court Clerk shall:

: Mail a copy of this order to all counsel of record and to any pro se parties.

9 Done on _____, 19____ by _____.

9 Enter judgment on the judgment record.

9 Done on _____, 19____ by _____.

9 Mail postcard/notice required by § 25-1301.01 within 3 days.

9 Done on _____, 19____ by _____.

9 (Trial docket entry dictated.)

Mailed to:

BY THE COURT:

William B. Cassel
District Judge