

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

ROCKY B. WEAVER,
Defendant.

Case No. CR99-44

**JOURNAL ENTRY
ON TRIAL**

DATE OF TRIAL: March 6-8, 2000.

APPEARANCES:

For plaintiff: Thomas P. Herzog, Holt County Attorney.

For defendant: Ronald E. Temple with defendant.

SUBJECT: Jury Trial.

PROCEEDINGS:

The juror orientation video was displayed. 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, 5 prospective jurors were excused for cause and replacements duly drawn by the clerk and examined by the court. The panel was admonished and a mid-morning recess was taken.

Voir dire examination was then conducted by counsel for plaintiff. The plaintiff passed the panel for cause. Voir dire examination was then conducted by counsel for defendant. The defendant 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 recessed for lunch.

Following the recess, in the absence of the jury, the defendant voluntarily waived his statutory right of sequestration of the jury during jury deliberations. The defendant's motion in limine was called to the court's attention. The plaintiff objected to consideration thereof as untimely. The objection was sustained,

and the motion in limine was denied as untimely. The defendant moved for sequestration of witnesses. The plaintiff consented thereto and reciprocally moved for sequestration of witnesses. The reciprocal motions to sequester witnesses were granted to the extent provided in Rule 615 and counsel admonished to instruct witnesses accordingly and admonished not to communicate the testimony of any witness to any other witness, directly or indirectly. The jury returned, and preliminary instructions were given by the court to the jury, and opening statements were presented by counsel for plaintiff and counsel for defendant. Lori Aylor was sworn and testified for plaintiff. The jury was admonished and a brief recess was taken.

Following the recess, Diane Tasler and Terry Tomjack were sworn and testified for plaintiff. The jury was admonished and a brief recess was taken. Following the recess, Lori Aylor, having been previously sworn, was recalled and testified further for plaintiff. Lynn Sellers was sworn and testified for plaintiff. The jury was admonished, and the trial was recessed until Tuesday, March 7, 2000, at 9:00 a.m.

On Tuesday, March 7, 2000, the trial resumed with all counsel and the defendant present. A brief discussion with counsel was held in the absence of the jury. Whereupon, the jury returned and Lynn Sellers, having been previously sworn, was recalled and testified for plaintiff. The jury was admonished and excused from the courtroom. In the absence of the jury, counsel for defendant and counsel for plaintiff examined Lynn Sellers upon the matter of witness sequestration. Defendant alleges a violation of the sequestration order, and moves for specific relief. Arguments heard. The motion was denied. The defendant moved for enlargement of the sequestration order. Arguments were heard. Findings were stated on the record and the motion was denied. Whereupon, the jury returned, and Frances Lake and Ben Matchett were sworn and testified for plaintiff. The jury was admonished and a mid-morning recess was taken.

Following the recess, the jury returned and Lynn Sellers, having been previously sworn, was recalled and testified further for plaintiff. Frances Lake, having been previously sworn, was recalled and testified further for plaintiff. During such examination, the jury was admonished and excused from the courtroom. Arguments were heard upon evidentiary objections, and a proposed limiting instruction was considered at the defendant's request for a limiting instruction. The defendant's objection to the content of the limiting instruction concerning "the defendant's intent at the time of the alleged incident" was overruled. The defendant moved to preclude further testimony by Lynn Sellers. Arguments of counsel

were heard. The motion was denied. The jury returned, and the examination of Frances Lake was concluded. The limiting instruction requested by the defendant was given at the time that Exhibit 4 was received for specified limited purposes. Lynn Sellers, having been previously sworn, was again recalled and testified further for plaintiff. John Mitchell was sworn and testified for plaintiff. During the direct examination, a video tape received as Exhibit 5 was displayed to the jury pursuant to a stipulation that the official reporter need not take the content of the tape. At the close of direct examination, the jury was admonished and recess was taken for lunch.

Following the lunch recess, the jury returned and the examination of John Mitchell was concluded. Richard Mlnarik was sworn and testified for plaintiff. On plaintiff's motion, the jury was admonished and a brief recess was taken. Following the recess, stipulated evidence was received and the plaintiff rested. The jury was admonished and excused from the courtroom. The defendant moved for a directed verdict of acquittal. Arguments of counsel were heard. The motion was denied. A brief recess followed. Whereupon, the jury returned, and the defendant rested without evidence. The jury was admonished and excused from the courtroom. An informal instruction conference was held in chambers.

In the absence of the jury, the defendant renewed his motion for directed verdict. Arguments of counsel were renewed or waived. The motion was denied. A formal instruction conference held in open court with all counsel and the defendant present. The court's proposed instructions Nos. 1 through 10, inclusive, and the proposed verdict form were considered. No objections for plaintiff. No objections for defendant except to the last clause of paragraph A of Instruction No. 4. Arguments of counsel were heard or waived. The objection was overruled. There were no additional requested instructions. Time limits of 30 minutes per side for closing arguments were established.

Whereupon, the jury returns. Counsel for plaintiff presented closing argument. During the course thereof, upon an objection by the defendant, the jury was admonished and excused from the courtroom. Thereafter, the jury returned and the plaintiff's closing argument was concluded. Counsel for defendant presented closing argument. Counsel for plaintiff presented rebuttal argument. After inquiry regarding the jury's desire concerning working late, the jury was admonished and excused from the courtroom for the day. In the absence of the jury, the defendant moved for dismissal of the information asserting prosecutorial misconduct during closing argument. Arguments of counsel were heard. The motion was denied. Counsel

reaffirmed that counsel had requested the court not to include a specific instruction in the final written instructions. The court advised the defendant of his obligation to remain present in the immediate area of the courtroom during deliberations. The trial was recessed until 8:30 a.m. on Wednesday, March 8, 2000.

On Wednesday, March 8, 2000, at 8:30 a.m., trial resumes with all counsel and the defendant present. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 8:52 a.m., and the jury retired to the jury room.

Upon receipt of a written jury question, the court consulted informally with counsel in chambers and prepared proposed Instruction No. 11. Formal instruction conference held with all counsel and defendant present. There were no objections to proposed Instruction No. 11. Whereupon, at 10:07 a.m., the jury returned and Instruction No. 11 was read to the jury and the cause resubmitted at 10:09 a.m., at which time the jury again retired to continue deliberations.

At 10:48 a.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 not guilty. 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 not guilty. The jury was discharged with the thanks of the court.

ORDER: IT IS THEREFORE ORDERED that:

1. The defendant, Rocky B. Weaver, is adjudged not guilty of Theft By Unlawful Taking, and the defendant is immediately released from custody.
2. The defendant's bond is released, discharged, and any surety thereon exonerated.
3. The jury is discharged.

Dated: March 8, 2000.

If checked, the Court Clerk shall:

- : Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 19____ by _____.
- 9 Enter judgment on the judgment record.
Done on _____, 19____ by _____.
- 9 Mail postcard/notice required by § 25-1301.01 within 3 days.
Done on _____, 19____ by _____.
- 9 (Trial docket entry dictated.)

Mailed to:

BY THE COURT:

William B. Cassel
District Judge