

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

ALLEN D. DANIEL,
Defendant.

Case No. CR99-14

**JOURNAL ENTRY
ON TRIAL**

DATE OF TRIAL: March 20-21, 2000.

APPEARANCES:

For plaintiff: Eric A. Scott, Cherry County Attorney, and John Freudenberg,
Deputy Cherry County Attorney.

For defendant: Robert D. Coupland with defendant.

SUBJECT: Jury Trial.

PROCEEDINGS:

Prior to the jury panel entering the courtroom, with all counsel and the defendant present, the defendant's motion in limine came on for hearing. The defendant stated cause for late filing, and the plaintiff requested to proceed to the merits. Evidence was adduced and arguments were heard. The motion was sustained to the extent that the plaintiff is precluded from discussing or introducing evidence of the nature and extent of injury to Vicki Johnston until after a Rule 404(3) hearing in the absence of the jury.

The jury panel entered the courtroom and 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, three 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. During defendant's examination, on defendant's motion, a prospective juror was excused for cause. A replacement was duly drawn by the clerk and examined by the court and counsel for plaintiff. The plaintiff passed the

replacement for cause, and defendant's counsel resumed examination. Thereafter, on defendant's motion, a second prospective juror was excused for cause. A replacement was duly drawn by the clerk and examined by the court and counsel for plaintiff. The plaintiff passed the replacement for cause, and defendant's counsel resumed examination. The defendant thereafter 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 and admonished. During a brief pause, the balance of the jury panel was excused. Preliminary instructions were given by the court to the jury. The trial jury was duly admonished by the court and recessed for lunch.

Following the recess, in the absence of the jury, the defendant moved for continuance based upon a failure to serve a subpoena upon the witness, Brian Schied. Brian Schied appears in open court and is placed under subpoena by the court on the record. The defendant withdrew the motion. The defendant moved to sequester witnesses. The plaintiff requests to identify Rusty Osburn as a person whose presence is shown by a party to be essential to the presentation of the party's cause. The defendant objects to the proposed designation. Arguments of counsel were heard. The motion to sequester witnesses during the testimony of other witnesses pursuant to Rule 615 is granted 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 plaintiff's request to designate Rusty Osburn as an exception under Rule 615(3) is granted.

The jury returned, and opening statements were presented by counsel for plaintiff and counsel for defendant. Vicki Gann and Kimberly Shahan were sworn and testified for plaintiff. The jury was admonished and a brief recess was taken.

Following the recess, Brian Schied was sworn and testified for plaintiff. The jury was admonished and a brief recess was taken. Following the recess, Rusty Osburn 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 of acquittal. Arguments of counsel were heard. The motion was denied. A brief recess followed. Whereupon, the jury returned, and Jordan Pitkin was sworn and testified for defendant. At the close of direct examination, the jury was admonished, and the trial was recessed until Tuesday, March 21, 2000, at 9:00 a.m.

On Tuesday, March 21, 2000, with all counsel and the defendant present, and in the absence of the jury, the defendant voluntarily waived his statutory right of sequestration of the jury during deliberations. The jury returned, and the examination of Jordan Pitkin, having been previously sworn, was concluded. Peggy Snell and Joe Kreycik were sworn and testified for defendant. The defendant was sworn and testified in his own behalf. The jury was admonished and a brief recess was taken.

Following the recess, the defendant rested. The plaintiff rested without rebuttal 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 of counsel were renewed or waived. The motion was denied. An informal instruction conference was held in chambers. Thereafter, a formal instruction conference was 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. There were no additional requested instructions. The parties confirmed that they did not desire to have the NJI2d instruction on "voluntary statement" given and the court does not give the instruction because of the request of both sides. Time limits of 30 minutes per side for closing arguments were established. The court instructed the defendant of his obligation to remain present during the jury deliberations, and counsel confirmed that they would be available at their respective offices.

Whereupon, the jury returns. Counsel for plaintiff presented closing argument. Counsel for defendant presented closing argument. Counsel for plaintiff presented rebuttal argument. The written instructions were read to the jury. The cause was submitted for commencement of deliberations at 11:53 a.m., and the jury retired to the jury room.

Upon receipt of written jury questions, 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 12:31 p.m., the jury returned and Instruction No. 11 was read to the jury and the cause resubmitted at 12:32 p.m., at which time the jury again retired to continue deliberations.

At 1:48 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 not guilty on each count. 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, Allen D. Daniel, is adjudged not guilty on Count No. 2 of Attempted Assault in the First Degree and not guilty on Count No. 3 of Use of a Firearm to Commit a Felony, 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 21, 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 ____.

(Trial docket entry dictated.)

Mailed to:

BY THE COURT:

William B. Cassel

District Judge