

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

ADALBERTO RODRIGUEZ,
Defendant.

Case No. CR00-11

**JOURNAL ENTRY
ON TRIAL**

DATE OF TRIAL: April 24, 2000.

APPEARANCES:

For plaintiff:

Thomas P. Herzog, Holt County Attorney.

For defendant:

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

SUBJECT:

PROCEEDINGS:

The juror orientation video was not displayed because the tape had been displayed to the same panel on a prior occasion. 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, 6 prospective jurors were excused for cause and replacements 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, in the absence of the jury panel, the defendant moved in the alternative for mistrial or for leave to waive a jury, based upon improper factual statements of the plaintiff's counsel during plaintiff's voir dire examination. During the arguments of counsel, the defendant was granted a brief recess to consult with counsel. After the recess, the defendant reaffirmed the request to waive jury as an alternative to the motion for mistrial. Arguments of counsel were concluded. Findings were stated on the record. Due to the improper factual statements of the prosecutor regarding conviction of other persons

for crimes arising from the same incident, the court granted the motion to waive a jury.

The jury panel returned and the panel was discharged. A recess followed.

The matter resumed upon trial to the court without a jury. Opening statements were presented by counsel for plaintiff and counsel for defendant. Counsel agreed to reciprocally sequester witnesses. Michael Parks was sworn and testified for plaintiff. At the close of direct examination, the trial was recessed for lunch.

Following the lunch recess, the examination of Michael Parks was concluded. Norman DeSive, Tim Johnson, Darrin Pelc, Wally Wimmer, and John Mitchell were sworn and testified. The plaintiff rested.

The defendant moved for a directed verdict. Arguments of counsel were heard. The motion was denied.

Darwin G. Dye and Beatriz Rodriguez were sworn and testified for the defendant. The defendant, Adalberto Rodriguez, was sworn and testified on his own behalf. The defendant rested.

Michael Parks, having been previously sworn, was recalled and testified for plaintiff on rebuttal. The plaintiff rested on rebuttal. No surrebuttal evidence.

Closing arguments were presented by counsel for plaintiff and counsel for defendant. The matter was taken under advisement. Pronouncement of verdict was set for Thursday, May 4, 2000, at 9:15 a.m. The defendant was ordered to appear for pronouncement of verdict and the bond was continued.

ORDER: IT IS THEREFORE ORDERED that:

1. The defendant's motion to waive jury is granted, and the jury is discharged.
2. The matter is taken under advisement for pronouncement of verdict at a later time.
3. Pronouncement of verdict is set for May 4, 2000, at 9:15 a.m. The defendant is ordered to appear for such pronouncement.
4. The defendant's bond is continued.

Dated: April 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.

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