

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

GARY STOEGER,
Defendant.

Case No. CR01-15

**JOURNAL ENTRY
ON TRIAL**

DATE OF TRIAL: October 2, 2001.

APPEARANCES:

For plaintiff: Eric A. Scott, Cherry County Attorney.

For defendant: Thurman Gay 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 and three prospective alternate jurors were duly drawn by the clerk and voir dire examination conducted by the court.

During the court's examination, eight prospective jurors were excused for cause, of which three were tentatively excused only because of pressing personal or business concerns, and replacements duly drawn by the clerk and examined by the court. During the court's examination, one of the jurors excused for cause was replaced by one of the jurors tentatively excused for pressing personal or business concerns. During the court's examination, the panel was duly admonished and a mid-morning recess was taken. During the recess, one prospective juror was interviewed in chambers with all counsel and the defendant present. Following the recess, voir dire examination was concluded by the court. 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. On the defendant's motion and without objection, one of the jurors was excused for caused and replaced by one of the jurors tentatively excused only for pressing personal or business concerns. 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, consisting of:

Dale L. Kalenda
Charles K. Oliver
Phyllis M. Ohlmann
Geraldine C. Ballard

Candace L. Rager
Debra D. Osburn
George W. Shadbolt Jr.
Darlene T. Bonifield

John D. Nadolski
Lois A. Marcum
Georgia J. Wheeler
Jean M. Morrison

was thereby selected. The trial jury was duly sworn. Additional voir dire examination of the prospective alternate jurors was waived by counsel for plaintiff and counsel for defendant. Peremptory challenges were exercised by counsel for plaintiff and counsel for defendant, and the alternate juror, Jess T. Ravenscroft, was thereby selected. The alternate juror was duly sworn. The trial jury and the alternate juror were duly admonished, and excused for lunch. Recess for lunch followed.

Following the recess, preliminary instructions were given by the court to the jury. Opening statements were presented by counsel for plaintiff and counsel for defendant. Evidence was adduced for plaintiff. Mark Reimers, Calvin Reimers, and Joe Kreycik were sworn and testified. The jury was admonished and a brief recess was taken. Clayton Swanson and John Pettigrew were sworn and testified. The State rested. The jury was admonished and excused from the courtroom. The defendant moved for a directed verdict. Arguments of counsel were heard. The motion for a directed verdict was denied. A brief recess was taken. After the recess, but in the absence of the jury, the defendant advised the court of the defendant's intent to rest without introducing evidence. After discussion regarding the possibility of a motion to reopen the state's case-in-chief, the state elected not to make any such motion. The jury returned, and the defendant rested without adducing any additional evidence. The jury was admonished and excused from the courtroom.

An informal instruction conference was held in the courtroom off the record. Thereafter a formal instruction conference was held in the courtroom with both counsel and the defendant present. The defendant renewed the defendant's motion for directed verdict and renewed the arguments in support thereof. The plaintiff waived additional argument. The motion was denied.

Proposed Instructions Nos. 1 through 10, inclusive, and the proposed verdict form were considered. There were no objections for plaintiff. There were no objections for defendant, except that the defendant objected to paragraph E of Instruction No. 3. Arguments of counsel were heard or waived. The objection was overruled. Both parties specifically requested that the "Voluntary Statement"

instruction not be given. The defendant specifically requested that Instruction No. 9, "Failure to Testify," be given.

There were no additional requested instructions for the plaintiff and no additional requested instructions for the defendant.

Pursuant to agreement of counsel, closing arguments were limited to 15 minutes per side. The court advised the defendant of the requirement that he remain present on the courtroom floor of the courthouse during all jury deliberations.

With all counsel and the defendant present, the jury returned and closing arguments were presented by counsel for plaintiff and counsel for defendant. The written instructions were read to the jury and the cause submitted at 4:50 p.m. The court discharged the alternate juror, who was excused with the thanks of the court. The court directed the bailiff to conduct the jury to the jury room to commence deliberations. The trial was recessed.

A written question was received from the jury. Proposed Instruction No. 11 was prepared and copies furnished to counsel for plaintiff and counsel for defendant. Thereafter, a formal instruction conference was held in the courtroom with both counsel and the defendant personally present. There were no objections to proposed Instruction No. 11. Whereupon, the jury returned at 5:24 p.m. with both counsel and the defendant present. The court read Instruction No. 11 to the jury, and the cause was resubmitted at 5:26 p.m. The court directed the bailiff to conduct the jury to the jury room to resume deliberations.

At 6:02 p.m., with both counsel and the defendant present, the jury returned and reported that it had reached a verdict. The signed verdict form was reviewed by the court. The signed verdict was duly filed by the clerk, who read the verdict aloud in open court, wherein the jury found the defendant guilty and adjudged the value of the property taken in the amount of \$250.00. Upon inquiry by the court, all 12 jurors responded by show of hands that it was their unanimous verdict. Counsel for plaintiff and counsel for defendant waived further polling of the jury. The court accepted the verdict, and adjudges the defendant as stated below in accordance therewith. Upon inquiry by the court, no party requested any change in the defendant's bond. The jury was discharged with the thanks of the court.

ORDER:

IT IS THEREFORE ORDERED that:

1. Pursuant to verdict, the defendant, Gary Stoeger, is adjudged guilty of Theft By Unlawful Taking, a Class I misdemeanor.

2. Presentence investigation is ordered. The clerk is directed to notify the probation officer.

3. Sentencing is set for **Friday, November 30, 2001**, at **9:15 a.m.**, or as soon thereafter as the same may be heard. The defendant is ordered to appear for sentencing. Bond is continued upon the same terms and conditions.

4. The jury is discharged.

Dated: October 2, 2001.

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 _____.

Enter judgment on the judgment record.

Done on _____, 19____ by _____.

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

Done on _____, 19____ by _____.

(Trial docket entry dictated.)

Mailed to:

BY THE COURT:

William B. Cassel
District Judge