

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

SHANE DEMPSEY,
Defendant.

Case No. CR01-8

**JOURNAL ENTRY
ON TRIAL**

DATE OF TRIAL: October 23-24, 2001.

APPEARANCES:

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

For defendant: Rodney J. Palmer with defendant.

SUBJECT: Jury Trial.

PROCEEDINGS:

October 23, 2001:

Prior to the arrival of the jury panel, and in the absence of the panel, the defendant's counsel renewed the prior motion to withdraw as counsel for defendant. There was no new evidence, and arguments of counsel were heard or waived. The motion was denied.

The juror orientation video was displayed to the panel. 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, one prospective juror was excused for cause and replacement duly drawn by the clerk and examined by the court. At the conclusion of the court'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 plaintiff. The plaintiff passed the panel for cause. Voir dire examination was then conducted by counsel for defendant. During the examination, a prospective juror was excused for cause on the defendant's motion, and a replacement drawn by the clerk and examined by the court. The plaintiff waived examination of the replacement and the defendant's examination resumed. During the resumed examination, another prospective juror was excused for cause on the defendant's motion, and a

replacement drawn by the clerk and examined by the court. During the court's examination, the replacement was excused for cause by the court and a second replacement was drawn by the clerk and examined by the court. The plaintiff waived examination of the second replacement and the defendant's examination resumed. During the resumed examination, one of the prospective alternate jurors was excused for cause on the defendant's motion, and a replacement drawn by the clerk and examined by the court. The plaintiff waived examination of the replacement and the defendant's examination resumed. 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:

Terri R. Lewis	Kristi M. Tielke	Wayne Pollock
Dale M. Riha	Nancy J. Albrecht	Heather R. Hoppe
Marjorie M. Reynoldson	Gregg S. Bartak	Elaine M. Pofahl
Brian D. Rowse	Cecilia F. Carr	Kelly D. Morrow

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, Roger D. Yusten, was thereby selected. The alternate juror was duly sworn. The trial jury and alternate were admonished, and excused for lunch. The remainder of the panel was discharged. In the absence of the jury, the plaintiff verbally moved for leave to amend the information by interlineation as to Count No. 5, and without objection, the motion was granted and the amendment accomplished instanter. 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. William Price was sworn and testified. During direct examination, the jury was admonished and a brief recess was taken. After the recess, the examination of William Price was concluded. Lance Willits and Colin Stevens were sworn and testified. The jury was admonished and excused for the day. The trial was recessed until Wednesday, October 24, 2001, at 9:00 a.m.

October 24, 2001:

With all counsel and the defendant present, and in the absence of the jury, the court inquired of counsel regarding certain matters. No action was taken. Thereafter, the jury returned and the trial resumed. Julie Taylor and Richard W. Galyen were sworn and testified. The jury was admonished and a brief recess was taken.

William Price, having previously been sworn, was recalled and testified further. Ernie Van Horn was sworn and testified. During direct examination, the jury was admonished and a brief recess was taken. After the recess, the examination was concluded. The plaintiff recalled Julie Taylor, who had been present in the courtroom after her previous testimony. The defendant through counsel objected based upon the sequestration order imposed in the pretrial order. The court sustained the objection, and the recalling of the witness Julie Taylor was denied. The plaintiff rested. The jury was admonished and excused from the courtroom. In the absence of the jury, the defendant verbally moved for directed verdict on Counts Nos. 1, 2, 3, 4, 5, and 7. Arguments of counsel were heard. During counsel's argument, both parties waived further admonishment of the jury before lunch, and the clerk was directed to instruct the bailiff to take the jury to lunch without reentering the courtroom. The remaining arguments were heard. The motion was sustained as to Count No. 7, but overruled and denied in all other respects. The trial was recessed for lunch.

Following the lunch recess, the defendant adduced evidence. Merle Lorensen was sworn and testified. Colin Stevens, having been previously sworn, was recalled and testified further. The defendant called for Richard W. Galyen to be recalled. In the absence of the witness, the court admonished the jury and excused the jury from the courtroom. A brief discussion with counsel in the absence of the jury followed and the trial was recessed. Following the recess, the defendant withdrew his attempt to recall the witness Galyen. The defendant, Shane Dempsey, was sworn and testified in his own behalf. During cross examination, the jury was admonished and a recess was taken. After the recess, the examination of the defendant was concluded. The defendant rested. The plaintiff rested on rebuttal without any rebuttal evidence. The jury was admonished and excused from the courtroom.

In the absence of the jury, the defendant renewed the previous motion for directed verdict made at the close of the plaintiff's case. Arguments of counsel were heard. The motion was denied, except as to Count No. 7 as to which the defendant's motion was granted at the close of the plaintiff's evidence.

Informal instruction conference held in the courtroom on the record. Draft instructions reviewed and discussed.

After a recess for printing of corrected instructions, copies of the corrected instructions, consisting of Instructions Nos. 1 through 12, inclusive, and the revised verdict form, were provided to both parties. The defendant, upon being informed of his right to the presence of his counsel during jury deliberations, for any jury questions, and for the receipt of the jury verdict, waived such right, and the court, after examination of the defendant, found such waiver to be made freely, voluntarily, knowingly and intelligently. The court will therefore excuse the defendant's counsel from attendance during deliberations, further instructions in response to questions, and receipt of the verdict. The parties agreed to time limits on closing arguments of 30 minutes per side.

There were no objections to the revised instructions and verdict form for plaintiff. There were no objections to the revised instructions and verdict form for defendant, except Instruction No. 8. The defendant objected to Instruction No. 8, and arguments of counsel were heard. The objection was overruled. There were no additional requested instructions by either the plaintiff or the defendant.

Whereupon 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 5:10 p.m. The court discharged the alternate juror, who was excused with the court's thanks. The court directed the bailiff to conduct the jury to the jury room to commence deliberations. After the jury exited, and in their absence, the court again inquired of the defendant regarding the waiver of presence of counsel, and the defendant renewed his waiver. The court directed counsel to determine that the proper exhibits and only the proper exhibits were delivered to the jury. Counsel were thereafter excused. The trial was recessed for the jury deliberations.

At 6:02 p.m., in the presence of the plaintiff's attorney and the defendant without counsel, the jury returned and reported that it had reached a verdict. The signed verdict form was reviewed by the court and questions propounded by the court of the foreperson to verify the jury's intention regarding its findings of amounts in light of an unfilled blank on the verdict form regarding Count No. 6. The jurors reported in open court that they had intended to fill in the sum of \$200 in the blank and had inadvertently failed to do so. Upon inquiry by the court, all 12 jurors responded by show of hands that such was their intention.

Without objection on the court's own motion, the jury foreperson was allowed to fill in the blank with the sum of \$200 to conform the verdict form to the jury's verdict. The signed and conformed verdict was duly filed by the clerk, who read the verdict aloud in open court. Upon inquiry by the court, all 12 jurors responded by show of hands that it was their unanimous verdict. The plaintiff's attorney waived further polling of the jury. The 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, there were no motions on the matter of bond. The jury was discharged with the thanks of the court.

ORDER:

IT IS THEREFORE ORDERED that:

1. Pursuant to verdict, the defendant, Shane Dempsey, is adjudged guilty:
 - a. On Count No. 1, of Theft By Unlawful Taking, classified as a Class II misdemeanor based upon the jury determination of value of \$80.00;
 - b. On Count No. 2, of Unauthorized Use of a Propelled Vehicle, a Class III misdemeanor;
 - c. On Count No. 3, of Failure to Report Accident, classified as a Class IV misdemeanor based upon the jury's determination that the defendant failed to report the accident within 12 hours;
 - d. On Count No. 4, of Reckless Driving, a Class III misdemeanor; and,
 - e. On Count No. 6, of Criminal Mischief, classified as a Class II misdemeanor based upon the jury's determination that the defendant intentionally caused pecuniary loss of \$200.00.
2. Pursuant to verdict, the defendant, Shane Dempsey, is adjudged not guilty on Count No. 5, the charge of Criminal Mischief.
3. As granted on the defendant's motion for directed verdict at the close of the plaintiff's case, the defendant is adjudged not guilty on Count No. 7, the charge of Criminal Mischief.
4. Presentence investigation is ordered. The clerk is directed to notify the probation officer.
5. Restitution hearing is set for **Monday, November 5, 2001, at 9:00 a.m.**, or as soon thereafter as the same may be heard, contemporaneously with the similar hearing scheduled in Case No. CR01-7.

6. Sentencing is set for **Monday, December 17, 2001**, at **9:00 a.m.**, or as soon thereafter as the same may be heard, contemporaneously with the similar scheduled hearing in Case No. CR01-7. The defendant is ordered to appear for sentencing. Bond is continued upon the same terms and conditions.

7. The jury is discharged.

8. The prior motion of attorney Rodney J. Palmer for leave to withdraw as counsel for defendant is granted effective as of the receipt of verdict in this case. The court takes judicial notice of the defendant's request for court-appointed counsel and the plaintiff's confession of defendant's indigent status in the related case No. CR01-7, and appoints **Rodney W. Smith, Holt County Public Defender**, to represent the defendant in the remaining proceedings in this case.

Dated: October 24, 2001.

If checked, the Court Clerk shall:

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

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