

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,
Plaintiff,

vs.

RANDY S. PETERSON,
Defendant.

Case No. CR02-9

JOURNAL ENTRY ON TRIAL

DATE OF TRIAL: October 1-3, 2002.

APPEARANCES:

For plaintiff: Thomas P. Herzog, Holt County Attorney.
For defendant: Randy S. Peterson, the defendant, pro se. Rodney W. Smith, Holt County Public Defender, is also present in back of courtroom as standby counsel.

SUBJECT: Jury Trial.

PROCEEDINGS:

Tuesday, October 1, 2002:

In the absence of the jury panel, with the county attorney and the defendant present, and in the absence of standby counsel, the court inquired of the defendant whether he still wished to continue to represent himself. The defendant stated that he did, but alluded to legal advise from the standby counsel. The court reminded the defendant that, pursuant to the pretrial order, the purpose of standby counsel is not to provide legal advise to the defendant in the conduct of the trial, but to be available to assume the duties of counsel should the defendant desire to exercise his right to court-appointed counsel if indigent. The court advised the defendant that he has two choices, one to represent himself and the other to request appointed counsel, but that no hybrid representation would be allowed. The defendant reaffirmed his election to represent himself. The defendant again raised objection to the designation of Jason Sears as a person whose presence is shown to be essential to the plaintiff's case and thereby exempt from the witness sequestration requirement. Jason Sears was not then present in the courtroom. Arguments were heard. The court again overruled

the objection. The court inquired if the county attorney and the defendant understood and accepted the procedure that the official court reporter would not attempt to take the content of any videotape exhibit admitted in evidence and displayed to the jury, and that the exhibit itself would constitute the sole record of the content displayed to the jury, and both replied that they did. The county attorney and the defendant were excused from the courtroom during the display of the juror orientation video.

The juror orientation video was displayed. The county attorney and the defendant returned to the courtroom, and the standby counsel was also present. 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 tentatively excused for cause, only because of personal concerns, and a replacement was duly drawn by the clerk and examined by the court. The panel was duly 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 the defendant. The defendant passed the panel for cause. Peremptory challenges to the panel of 24 prospective jurors were exercised by counsel for plaintiff and by the defendant, and the trial jury of 12 persons, consisting of:

[deleted] [deleted] [deleted]

was thereby selected. The trial jury was duly sworn. Additional voir dire examination of the prospective alternate jurors was waived by the county attorney and by the defendant. Peremptory challenges were exercised by counsel for plaintiff and by the defendant, and the alternate juror, [deleted], was thereby selected. The alternate juror was duly sworn. The trial jury and the alternate juror were duly admonished, and the proceedings were paused to allow the excused members of the panel who so wished to depart.

Following the pause, preliminary instructions were given by the court to the jury. Prior to completion of the preliminary instructions, the jury was admonished and the trial was recessed for lunch.

Following the lunch recess, with the county attorney, the defendant, and the standby counsel all present, the preliminary instructions were completed. Opening statements were presented by counsel for plaintiff and by the defendant.

The evidence was adduced for plaintiff. Jason Sears was sworn and testified. During direct examination, the jury was admonished and a brief recess was taken. Following the recess, the examination resumed and was concluded. The jury was admonished and a mid-afternoon recess was taken. Following the recess, Ben Matchett, Paul Hagen, Reagan Wiebelhaus, and Mike Parks were sworn and testified. During the direct examination of Mike Parks, the examination was suspended to display a videotape exhibit in full when time permitted. Gena Jones was sworn and testified. During cross examination, the jury was admonished and excused for the day.

In the absence of the jury, the plaintiff's motion to release subpoena of Jason Sears and Don Clyde was considered. After consultation between the county attorney and the defendant and without objection, the motion was granted as to Jason Sears and granted to the extent that the defendant's examination of Don Clyde would be taken out of turn at the beginning of the Wednesday session in order that the witness could thereafter be released. The motion was otherwise denied. The court recessed the trial to Wednesday, October 2, 2002, at 9:00 a.m.

Wednesday, October 2, 2002:

The trial resumed with the county attorney and the defendant present. The standby counsel was also present. Pursuant to the agreement of the parties, the defendant was allowed to call a witness out of turn for the convenience of the witness, and Don Clyde was sworn and testified. The examination of Gina Jones was resumed and concluded. The examination of Mike Parks was resumed. At the beginning of cross examination, a

videotape exhibit was displayed to the jury. At the conclusion of such display, the jury was admonished and the mid-morning recess was taken.

After the recess, the examination of Mike Parks was resumed and concluded. The court admonished the jury and recessed the trial for lunch.

After the lunch recess, in the presence of the jury, the State rested. The court admonished the jury and excused the jury from the courtroom. There were no motions. The jury returned, and the defendant adduced evidence. Douglas Scott Shelhamer was sworn and testified. During direct examination, the defendant requested and the court granted a short recess. The jury was admonished and excused for the recess. After the recess in the absence of the jury, the plaintiff verbally moved in limine. Arguments were made by the county attorney and the defendant. The court denied the motion. The jury returned and the examination of Douglas Scott Shelhamer was concluded. Thomas L. Jackson, Brian Wishecoby, Shantile Harrington, and LaDell Harrington were sworn and testified. The court admonished the jury and recessed the trial. After a short recess, in the absence of the jury, the defendant and his standby counsel requested an additional recess for the purpose of determining whether the defendant desires to request court-appointed counsel to take over and represent the defendant through the completion of trial. The court granted the request without objection and the recess continued. After the further recess, in the absence of the jury, the defendant and standby counsel reported that the defendant elected to continue representing himself. The jury returned and in the presence of the jury the defendant rested. The court admonished the jury and excused the jury from the courtroom. In the absence of the jury, the defendant moved to dismiss Counts Nos. 4 and 5 as vague. The defendant and the county attorney presented brief arguments. The court denied the motion. The plaintiff requested a further short recess, which the court granted. After the recess, the jury returned and the plaintiff presented rebuttal evidence. Mike Parks and Gena Jones, having been previously sworn, were recalled and testified on rebuttal. The plaintiff rested on rebuttal. After consultation with the county attorney and

the defendant at the bench, the jury was admonished and excused for the day. In the absence of the jury at the close of all of the evidence, neither side made any motions.

An informal instruction conference was held in chambers with the county attorney and the defendant present and participating, and the standby counsel present but not allowed to participate. Thereafter a formal instruction conference was held in the courtroom with the county attorney and the defendant present and participating, and the standby counsel present in the back of the courtroom.

Proposed Instructions Nos. 1 through 14, inclusive, and the proposed verdict form were considered. The plaintiff objected to the submission of the affirmative defenses of self-defense and protection of minor child as not justified by the evidence, but did not objection to the language thereof or otherwise object to the instructions or verdict form. Arguments were heard or waived. The court overruled the objection. There were no objections by defendant. There were no additional requested instructions. After consultation and without objection, the court established time limits for closing argument of 30 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. The defendant requested that his standby counsel be discharged from further responsibility and acknowledged that he was voluntarily waiving any further right to request appointed counsel at the trial. Without objection, the motion was granted and the standby counsel was discharged. The trial was recessed until Thursday, October 3, 2002, at 9:00 a.m.

Thursday, October 3, 2002:

With the county attorney and the defendant present, and in the absence of the jury, the court on its own motion reopened the jury instruction conference, and notified both parties that the court had reconsidered the applicability of any defense under § 28-1413, and explained the court's analysis with regard thereto. The court provided both parties with the revised set of instructions consisting of Instructions Nos. 1 through 13, inclusive, and the proposed verdict form, and specifically noted the changes from the instructions

considered on the previous day. Other than the plaintiff's objection that the giving of the self-defense instruction was not warranted by the evidence and the defendant's objection to the deletion of the § 28-1413 instruction, there were no objections by other party to the revised set of instructions and the verdict form. Arguments were heard or waived on the respective objections, and the objections were overruled. There were no additional requested instructions for plaintiff. The defendant submitted proposed instructions Nos. 1 and 2, which were the instructions deleted by the court in the revision of instructions, and requested the additional instructions. The plaintiff objected. Arguments were heard or waived. The objection was sustained, and the court endorsed such requested instructions as "refused" and directed the clerk to file the same.

The plaintiff requested permission to display parts of Exhibits 1 and 6, both of which are videotape exhibits, and specifically identified the portions that he desires to play during closing argument. The defendant did not object and affirmatively stated that he desired such portions to be displayed to the jury, and further disclaimed any desire for additional portions to be displayed. Permission was granted accordingly.

With plaintiff's counsel and the defendant present, the jury returned, and closing arguments were presented by counsel for plaintiff and by the defendant personally. The written instructions were read to the jury and the cause submitted at 10:22 a.m. The court discharged the alternate juror. The court directed the bailiff to conduct the jury to the jury room to commence deliberations. The trial was recessed.

At 12:01 p.m., with plaintiff's counsel and the defendant personally 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 on all counts. Upon inquiry by the court, all 12 jurors responded by show of hands that it was their unanimous verdict. The plaintiff's counsel and the defendant personally waived further polling of the jury.

The court accepted the verdict, and adjudges the defendant as stated below in accordance therewith. The jury was discharged with the thanks of the court.

ORDER: IT IS THEREFORE ORDERED that:

1. Pursuant to verdict, the defendant, Randy S. Peterson, is adjudged guilty as charged:

- a. On Count No. 1, of Third Degree Assault on an Officer, a Class IIIA felony;
- b. On Count No. 2, of Third Degree Assault on an Officer, a Class IIIA felony;
- c. On Count No. 3, of Third Degree Assault on an Officer, a Class IIIA felony;
- d. On Count No. 4, of Obstructing a Peace Officer, a Class I misdemeanor; and,
- e. On Count No. 5, of Resisting Arrest, a Class I misdemeanor.

2. Sentencing is deferred and set for Monday, December 2, 2002, at 9:05 a.m., or as soon thereafter as the same may be heard.

3. A presentence investigation is ordered, and the clerk is directed to notify the probation officer.

4. The defendant's bond is continued.

5. The jury is discharged.

Signed at **O'Neill**, Nebraska, on **October 3, 2002**;
DEEMED ENTERED upon file stamp date by court clerk.

If checked, the court clerk shall:

Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.

(Trial docket entry dictated.)

BY THE COURT:

William B. Cassel
District Judge

Mailed to: