

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**THE STATE OF NEBRASKA,**

Plaintiff,

vs.

**LARRY L. RUEGGE II,**

Defendant.

Case No. CR02-33

**JOURNAL ENTRY ON TRIAL**

**DATE OF TRIAL:** March 11-12, 2003.

**APPEARANCES:**

For plaintiff: Thomas P. Herzog, Holt County Attorney.  
For defendant: Rodney W. Smith, Holt County Public Defender, with defendant.

**SUBJECT:** Jury Trial.

**PROCEEDINGS:**

Tuesday, March 11, 2003:

The clerk displayed the juror orientation video. After introductory comments, the court administered the examination oath to the jury panel. 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, the court excused eight prospective jurors and two prospective alternate jurors for cause. The clerk drew replacement jurors or alternate jurors and the court examined the replacement jurors or alternate jurors. Following the court’s examination, the court admonished the panel and recessed the trial for the mid-morning recess.

Following the recess, the court inquired of a prospective juror who had reported to the clerk during the recess. The prospective juror asked to be excused because of an emergency arising during the recess. Without objection, the court excused the prospective juror. The clerk drew a replacement and the court examined the replacement juror.

Counsel for plaintiff conducted voir dire examination. The plaintiff passed the panel for cause. Counsel for defendant conducted voir dire examination. The defendant passed the panel for cause. Counsel for plaintiff and defendant alternately exercised peremptory challenges to the panel of 24 prospective jurors, and the trial jury of 12 persons, consisting of:

Thelma R. Lindberg	David W. Triester	Richard S. Frankforter
Elizabeth J. Boettcher	Verla M. Hyatt	Bryan S. Abner
Scott L. Moore	Bonnie J. Strampher	Barbara D. Shane
Mark R. Hoffman	Alan L. Hinrichsen	Paul Bartak

was thereby selected. The court administered the trial oath to the trial jury. Both counsel waived additional voir dire examination of the prospective alternate jurors. Counsel for plaintiff and defendant alternately exercised peremptory challenges, and the alternate juror, Dorothy M. Mosel, was thereby selected. The court administered the trial oath to the alternate juror. The court admonished the trial jury and the alternate juror, directed the remainder of the jury panel to return on Tuesday, March 18, 2003, at 8:45 a.m., and recessed the trial for lunch.

Following the lunch recess, the court read preliminary instructions to the jury. Counsel for plaintiff and counsel for defendant presented opening statements.

The plaintiff adduced evidence. Jason Sears testified upon oath. During direct examination, the court admonished the jury and declared a brief recess. Following the recess, counsel resumed and concluded the examination. Chris Butts testified upon oath. The plaintiff called Natasha Johnson Ruegge, the defendant's wife. At the beginning of her testimony, after conferring with counsel in low tones, the court admonished the jury and excused the jury from the courtroom. In the absence of the jury, the court advised the witness and the parties of the spousal privilege under Rule 505(2). At the request of defendant's counsel, the court took a brief recess. Following the recess, both the defendant and the witness waived the Rule 505(2) privilege on the record. The court further advised the witness of her privilege against self incrimination, and temporarily excused the witness

to consult her own counsel. The defendant's counsel made an oral motion in limine and presented argument. The court denied the motion. Pending the return of witness Natasha Ruegge, the jury returned and Dave Laursen testified upon oath. The court admonished the jury and declared a brief recess. Following the recess, in the absence of the jury, the witness Natasha Ruegge returned and requested leave to withdraw her waiver of the Rule 505(2) privilege after consulting with her own counsel. Without objection, leave was granted. The jury returned, and upon inquiry by the court, the witness claimed her Rule 505(2) privilege. At the request of defendant's counsel and without objection, the court gave a limiting instruction to the jury to make no inference from the assertion of the marital privilege. The plaintiff rested. The court admonished the jury and excused the jury for the day with instructions to return on the following day at 9:00 a.m.

In the absence of the jury, the defendant moved for directed verdict. Both counsel presented arguments on the motion. The court denied the motion as to Counts Nos. 1 and 3, but reserved ruling on Count No. 2. The court recessed the trial to Wednesday, March 12, 2003, at 9:00 a.m.

Wednesday, March 12, 2003:

The court consulted both counsel in chambers. With all parties and counsel present, in the absence of the jury, the court granted the defendant's motion to dismiss Count No. 2. Both counsel stipulated regarding placing certain exhibits in individual clear plastic bags. The court advised the parties formally of the court's determination regarding the applicability of § 29-437 and the court's view of the matter. The defendant orally moved for mistrial. Both counsel presented arguments. The court denied the motion. The court formally reviewed the additional limiting instruction requested by defendant's counsel regarding the assertion of privilege by Natasha Ruegge. Both counsel consented to the additional limiting instruction. The defendant's counsel notified the court of the defendant's intention to call Natasha Ruegge, and both counsel stipulated that if she was called, both she and the defendant would waive spousal privilege, but that she would assert

her Fifth Amendment privilege. The defendant requested the State to grant the witness immunity, and the county attorney declined. The defendant requested the court to grant the witness judicial immunity, and conceded the existence of contrary precedent. The court denied the motion.

The jury returned and the court gave the defendant's requested additional limiting instruction. In the presence of the jury, the defendant rested without additional evidence. The court admonished the jury and excused the jury from the courtroom. The court conducted an informal instruction conference in chambers with counsel. Thereafter the court conducted a formal instruction conference in the courtroom with both counsel and the defendant present. Neither party made any further motions. The court provided the parties with proposed Instructions Nos. 1 through 12, inclusive, and the proposed verdict form. Neither party objected to any instruction. Neither party requested any additional instructions. After consultation and without objection, the court established time limits for closing argument of 60 minutes per side. The court advised the defendant of the requirement that he remain present in the third floor of the courthouse during all jury deliberations. The court briefly recessed the trial. The jury returned and both counsel presented closing arguments. The court read the written instructions to the jury and submitted the cause at 12:35 p.m. The court discharged the alternate juror. The court directed the bailiff to conduct the jury to the jury room to commence deliberations. The court recessed for the trial for the jury deliberations.

At 1:41 p.m., with both counsel and the defendant personally present, the jury returned and reported that it had reached a verdict. The court reviewed the signed verdict form. The clerk duly filed the signed verdict, and read the verdict aloud in open court, wherein the jury found the defendant guilty on Count No. 1 of Possession of a Controlled Substance. Upon inquiry by the court, all 12 jurors responded by show of hands that it was their unanimous verdict. Both counsel waived further polling of the jury. The court accepted the verdict, and adjudged the defendant as stated below in accordance therewith.

The court further found the defendant guilty on Count No. 3 and adjudged the defendant as stated below. The court continued bond, set a sentencing date, ordered the defendant to appear and reminded the defendant of consequences of failure to appear. The jury was discharged with the thanks of the court.

**ORDER:** IT IS THEREFORE ORDERED that:

1. Pursuant to verdict, the defendant, Larry L. Ruegge II, is adjudged guilty on Count No. 1 of Possession of a Controlled Substance, a Class IV felony.
2. Pursuant to the court's own verdict, the defendant is adjudged guilty on Count No. 3 of Possession of Drug Paraphernalia, an infraction.
3. Pursuant to the ruling on defendant's motion to dismiss at the close of the plaintiff's case, the defendant is adjudged not guilty of Count No. 2, Possession of Marijuana, One Ounce or Less.
4. Sentencing is deferred and set for **Monday, May 12, 2003**, at **9:00 a.m.**, or as soon thereafter as the same may be heard.
5. A presentence investigation is ordered, and the clerk is directed to notify the probation officer.
6. The defendant's defendant bond is continued and the defendant is ordered to appear for sentencing.
7. The jury is discharged.

Signed at **O'Neill**, Nebraska, on **March 12, 2003**;  
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:

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William B. Cassel  
District Judge

Mailed to: