

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

THE STATE OF NEBRASKA,

Plaintiff,

vs.

RODNEY V. BROMWICH,

Defendant.

Case No. CR02-34

JOURNAL ENTRY ON TRIAL

DATE OF TRIAL: June 24-25, 2003.

APPEARANCES:

For plaintiff: Thomas P. Herzog, Holt County Attorney.
For defendant: Richard L. Alexander with defendant.

SUBJECT: Jury Trial.

PROCEEDINGS:

Tuesday, June 24, 2003:

The clerk displayed the juror orientation video to the panel. The court made brief introductory comments and 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 admonished the panel and recessed jury selection for the mid-morning recess. After the recess, the court resumed its voir dire examination. During the court's examination, the court excused seven prospective jurors or alternate jurors for cause, undue hardship, or extreme inconvenience. The clerk drew replacement jurors or alternate jurors and the court examined the replacement jurors or alternate jurors. At the close of the court's examination, the court admonished the panel and excused the panel for lunch. In the absence of the panel, the defendant through counsel moved for mistrial. Both counsel presented arguments. The court denied the motion and recessed the trial for lunch.

Following the lunch recess, 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:

[deleted]

was thereby selected. 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, [deleted], was thereby selected. The court administered the trial oath to the trial jury and the alternate juror. The court admonished the trial jury and the alternate juror, dismissed the remainder of the jury panel, and declared a brief recess.

Following the recess, the court read preliminary instructions to the jury. Counsel for plaintiff presented opening statement. The court admonished the jury and declared a brief recess. Following the recess, counsel for defendant presented opening statement.

The plaintiff adduced evidence. Brenda Test, a witness under sequestration, appeared briefly to produce physical evidence in open court, but was not called as a witness at that time, and departed the courtroom after such production. Jason Sears testified upon oath. During direct examination, the court admonished the jury, Brenda Test appeared to retake possession of items of physical evidence previously produced but not yet received in evidence, and the court declared a brief recess.

Following the recess, Brenda Test produced the items of physical evidence and departed the courtroom, and counsel resumed the examination of Jason Sears. At the close of the day, the court admonished the jury, Brenda Test appeared to retake possession of items of physical evidence previously produced but not yet received in evidence, and the court recessed the trial to Wednesday, June 25, 2003, at 9:00 a.m. The court remanded the defendant to the sheriff's custody.

Wednesday, June 25, 2003:

The trial resumed with both counsel and the defendant present. Brenda Test produced the items of physical evidence and departed the courtroom, and counsel resumed

and concluded the examination of Jason Sears. Patrick Kennedy testified upon oath. At the conclusion of the examination of Patrick Kennedy, the court admonished the jury and declared a brief recess. Following the recess, plaintiff recalled Patrick Kennedy, who testified further upon oath. Larry Wanamaker, Kipton Krysel, and Gina Jones testified upon oath. At the conclusion of the examination of Gina Jones, the court admonished the jury and declared a brief recess. Following the recess, Vicky Cowan testified upon oath. Counsel entered into certain verbal stipulations on the record in open court. The court admonished the jury and declared a brief recess. During the recess, the court met with counsel in chambers regarding the anticipated rests of both parties and the procedure for reserving motions. Following the recess, counsel entered into additional verbal stipulations on the record in open court. The plaintiff rested. Subject to the discussion in chambers, the defendant rested. The court admonished the jury and excused the jury for an extended lunch recess. In the absence of the jury, with both counsel and the defendant present, the defendant verbally moved to dismiss Count No. 1. Both counsel presented arguments. The court denied the motion. The court then met with counsel in chambers for an informal instruction conference.

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 10, inclusive, and the proposed verdict form. Neither party objected to any instruction or the verdict form, except the defendant objected to paragraph K of Instruction No. 10. Arguments of counsel were heard or waived. The court overruled the objection. 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 recessed the trial for lunch. The jury returned and both counsel presented closing arguments. The plaintiff waived rebuttal argument. The court read the written instructions to the jury and submitted the cause at 2:45 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 4:30 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 with Intent to Deliver. Upon inquiry by the court, all 12 jurors responded by show of hands that it was their unanimous verdict. Counsel for plaintiff waived further polling of the jury. Counsel for defendant requested that the jury be polled, and upon direction of the court, the clerk called the name of each juror individually and inquired if the verdict was such juror's verdict, and each juror responded individually in the affirmative. The court accepted the verdict, and adjudged the defendant as stated below in accordance therewith. The court further found the defendant guilty on Counts Nos. 2 and 3, and not guilty on Count No. 4, and adjudged the defendant as stated below. The court remanded the defendant to custody pending posting of bond, set a sentencing date, and ordered a presentence investigation. The jury was discharged with the thanks of the court.

ORDER: IT IS THEREFORE ORDERED that:

1. Pursuant to verdict, the defendant, Rodney V. Bromwich, is adjudged guilty on Count No. 1 of Possession of a Controlled Substance With Intent to Deliver, a Class III felony.
2. Pursuant to the court's own verdict, the defendant is adjudged guilty on Count No. 2 of Possession of Marijuana, One Ounce or Less, an infraction.
3. Pursuant to the court's own verdict, the defendant is adjudged guilty on Count No. 3 of Possession of Drug Paraphernalia, an infraction.
4. Pursuant to the court's own verdict, the defendant is adjudged not guilty of Count No. 4, Open Container Violation.
5. Sentencing is deferred and set for **Monday, August 25, 2003, at 9:05 a.m.**, or as soon thereafter as the same may be heard.

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

7. The defendant is remanded to custody pending posting of bond as previously established.

8. The jury is discharged.

Signed at **O'Neill**, Nebraska, on **June 25, 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:

William B. Cassel
District Judge

Mailed to: