

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

**THE STATE OF NEBRASKA,**

Plaintiff,

vs.

**MARY ANN IRWIN,**

Defendant.

Case No. CR03-27

**JOURNAL ENTRY ON TRIAL**

**DATE OF TRIAL:** September 2-3, 2003.

**APPEARANCES:**

For plaintiff: Thomas P. Herzog, Holt County Attorney.  
For defendant: John P. Heitz with defendant.

**SUBJECT:** Jury Trial.

**PROCEEDINGS:**

Tuesday, September 2, 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 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. At the close of the court's examination, 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. The court administered the trial oath to the trial jury. The court admonished the trial jury, dismissed the remainder of the jury panel subject to recall at second case for trial at this session, and paused briefly to allow persons to depart. The court

read preliminary instructions to the jury. Counsel for plaintiff presented opening statement. Counsel for defendant presented opening statement. The court admonished the jury and recessed the trial for lunch.

Following the lunch recess, the plaintiff adduced evidence. The parties verbally stipulated on the record in open court regarding serious bodily injury to Tommy Fox. MistiSu Ellis and Tommy Fox testified upon oath. The court admonished the jury and declared a brief recess. Kenneth Hubert, Robert Greiner, Steven Fernau, Shane Schwager, Crystal Ellis, and Eugene Ellis Jr., testified upon oath. The court admonished the jury and declared a brief recess. Tina Elliott testified upon oath. The plaintiff rested. Subject to motions to be made outside the presence of the jury, the defendant rested. The court admonished the jury and excused the jury for the day. In the absence of the jury, the defendant moved for a directed verdict. Counsel presented arguments. The court denied the motion. The court held an informal instruction conference in chambers with counsel. With the defendant and both counsel present in open court, the court held the formal instruction conference. There were no objections to the proposed instructions or verdict form by either party and no additional requested instructions. Without objection, the court established time limits of 60 minutes per side for closing argument. The court recessed the trial to Wednesday, September 3, 2003, at 9:00 a.m. The court remanded the defendant to the sheriff's custody.

Wednesday, September 9, 2003:

The trial resumed with both counsel and the defendant present. In the absence of the jury, the court reopened the formal instruction conference to confirm that the defendant specifically requested the "failure to testify" instruction. The jury returned. Counsel for plaintiff presented closing argument. Counsel for defendant presented closing argument. Counsel for plaintiff presented rebuttal argument. The court read the written instructions to the jury and submitted the cause at 10:11 a.m. 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.

The court received a jury question in writing from the bailiff, which was duly filed by the clerk. The court consulted counsel informally in chambers. Thereafter, the court held a formal instruction conference on the record with both counsel and the defendant present. There was no objection to the court's proposed Instruction No. 12. The jury returned at 11:18 a.m., and the court read Instruction No. 12 to the jury and resubmitted the cause at 11:19 a.m. The court directed the bailiff to conduct the jury to the jury room to resume deliberations. The court again recessed for the trial for the jury deliberations.

At 11:36 a.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 the sole charge of Accessory to Assault in the First Degree. 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 adjudged the defendant as stated below in accordance therewith. The plaintiff waived restitution. The defendant's motion for reduction of bond was denied. 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, Mary Ann Irwin, is adjudged guilty on the sole count of Accessory to Assault in the First Degree, a Class IV felony.
2. Restitution is waived by the plaintiff.
3. The defendant's motion for reduction of bond is denied.
4. Sentencing is deferred and set for **Monday, November 3, 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 is remanded to custody pending posting of bond as previously established.

7. The jury is discharged.

Signed at **O'Neill**, Nebraska, on **September 3, 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: