

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2011-110536-001 DT

09/20/2012

HONORABLE BRUCE R. COHEN

CLERK OF THE COURT
T. Gatz
Deputy

STATE OF ARIZONA

S LEE WHITE
STEPHEN PAUL WALKER

v.

PATRICK MCLEOD NISSLEY (001)

LAWRENCE I KAZAN

APO-PLEAS-CCC

**TRIAL MINUTE ENTRY
DAY EIGHTEEN**

Courtroom 6B SCT

State's Attorney: S. Lee White
Defendant's Attorney: Lawrence Kazan
Defendant: Present

Court Reporter, Gail Ferguson, is present.

A record of the proceeding is also made by audio and/or videotape.

10:41 a.m. Trial to Jury continues from September 19, 2012. **LET THE RECORD REFLECT** that the jury is all present in the jury room and resumes their deliberations from September 19, 2012.

11:08 a.m. Court reconvenes with respective counsel who are appearing telephonically, Defendant is not present. The jury is not present.

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Let the record reflect the Court has received a jury question from the jury. Same is discussed between Court and counsel and the jury is provided a written answer.

FILED: Jury Question

11:13 a.m. The Court stands at recess.

12:00 p.m. **LET THE RECORD REFLECT** that the jury takes a lunch break from deliberations.

1:27 p.m. Court reconvenes with respective counsel, Defendant is not present. The jury is not present.

Court Reporter, Gail Ferguson, is present.

A record of the proceeding is also made by audio and/or videotape.

Discussion is held regarding the aggravating instructions.

1:30 p.m. **LET THE RECORD REFLECT** that the Defendant is now present.

1:35 p.m. The jury is present.

The jury is all present in the jury box and by their Foreperson return into Court their verdict, which is read and recorded by the Clerk and is as follows:

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Patrick M. Nissley, as to Count 1: **SECOND DEGREE MURDER,**

NOT GUILTY.

If the jury finds Defendant not guilty of **SECOND DEGREE MURDER**, or if the jury is unable to agree upon a verdict as to **SECOND DEGREE MURDER**, proceed to either or both sections A and B

A. Having found the Defendant not guilty of Count 1: **SECOND DEGREE MURDER** or, after full and careful consideration of the facts, being unable to agree on whether to find the Defendant guilty or not guilty of Count 1: **SECOND DEGREE MURDER**, we, the Jury, do find the Defendant as to the lesser included offense of Count 1: **RECKLESS MANSLAUGHTER:**

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GUILTY OF RECKLESS MANSLAUGHTER.

Foreperson”

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Patrick M. Nissley, as to Count 2: ENDANGERMENT – IMMINENT DEATH,

GUILTY OF ENDANGERMENT –IMMINENT DEATH.

Foreperson”

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Patrick M. Nissley, as to Count 3: ENDANGERMENT – IMMINENT DEATH,

GUILTY OF ENDANGERMENT –IMMINENT DEATH.

Foreperson”

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Patrick M. Nissley, as to Count 4: ENDANGERMENT – IMMINENT DEATH,

GUILTY OF ENDANGERMENT –IMMINENT DEATH.

Foreperson”

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Patrick M. Nissley, as to Count 5: ENDANGERMENT – IMMINENT DEATH,

GUILTY OF ENDANGERMENT –IMMINENT DEATH.

Foreperson”

“We, the Jury, duly empanelled and sworn in the above-entitled action, upon our oaths, do find the Defendant, Patrick M. Nissley, as to Count 6: POSSESSION OR USE OF NARCOTIC DRUGS,

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GUILTY OF POSSESSION OR USE OF NARCOTIC DRUGS.

Foreperson”

The jurors reply that these are their true verdict.

The jury is polled at the request of counsel for the Defendant. Each juror replies that these are his/her true verdicts.

FILED: Verdicts

1:40 p.m. The jury leaves the courtroom; Court and counsel remain in session.

Discussion is held regarding the aggravating instructions.

State's exhibit 220 is marked for identification.

1:51 p.m. The jury is present.

AGGRAVATION PHASE:

The State makes an opening statement, Defendant reserves argument.

2:00 p.m. The jury leaves the courtroom; Court and counsel remain in session.

State's exhibit 220 is received in evidence.

2:27 p.m. The jury is present.

State's case:

Lisa Pavese is sworn and testifies.

The witness is excused.

Edward Pavese is sworn and testifies.

The witness is excused.

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State's exhibit 220 is played for the jury.

State's exhibit 105 is played for the jury.

State rests

Defendant rests

3:01 p.m. The Court stands at recess.

3:06 p.m. Court reconvenes with respective counsel, Defendant is present. The jury is not present.

Court Reporter, Gail Ferguson, is present.

A record of the proceeding is also made by audio and/or videotape.

Counsel for the Defendant moves for a judgment of acquittal.

Counsel present argument to the Court.

IT IS ORDERED denying Defendant's motion for directed verdict.

3:11 p.m. The Court stands at recess.

3:20 p.m. Court reconvenes with respective counsel, Defendant is present. The jury is present.

Court Reporter, Gail Ferguson, is present.

A record of the proceeding is also made by audio and/or videotape.

The Aggravating Circumstances Instructions are read to the jury by the Court.

FILED: Aggravating Circumstances Instructions

Closing arguments

3:55 p.m. The jury retires in charge of sworn bailiffs to consider their verdicts. Court and counsel remain in session.

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IT IS ORDERED setting time for Sentencing on October 25, 2012 at 8:30 a.m. in this Division.

IT IS FURTHER ORDERED that the Adult Probation Office shall conduct a presentence investigation and submit a report to this division prior to sentencing.

ISSUED: Request for Presentence Report.

IT IS ORDERED pursuant to Rule 7.2 Defendant shall not be released on bail or own recognizance.

ISSUED: Order of Confinement

By that date it is expected that the attorneys shall have had the opportunity to review the presentence report and its recommendations. It is assumed that after review thereof the attorneys may decide to present further information or evidence regarding sentencing. It is therefore anticipated that the sentencing shall be continued for a mitigation hearing and as such individuals who have an interest on either side shall have the opportunity to appear and if appropriate be heard at the time of the mitigation/sentencing.

4:07 p.m. The jury is present.

The jury is all present in the jury box and by their Foreperson return into Court their verdict, which is read and recorded by the Clerk and is as follows:

“We the jury, duly empanelled and sworn in the above-entitled action, upon our oaths, unanimously find beyond a reasonable doubt as to Count 1: RECKLESS MANSLAUGHTER the aggravating circumstances alleged as follows.

1. The victim’s immediate family suffered physical, emotional or financial harm:

PROVEN

2. That the offense charged in this count is a dangerous offense because the offense involved the discharge, use, or threatening exhibition of a motor vehicle, a deadly weapon or dangerous instrument:

PROVEN

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Foreperson”

“We the jury, duly empanelled and sworn in the above-entitled action, upon our oaths, unanimously find beyond a reasonable doubt as to Count 2: ENDANGERMENT – IMMINENT DEATH the aggravating circumstances alleged as follows.

1. The victim’s immediate family suffered physical, emotional or financial harm:

PROVEN

2. That the offense charged in this count is a dangerous offense because the offense involved the discharge, use, or threatening exhibition of a motor vehicle, a deadly weapon or dangerous instrument:

PROVEN

Foreperson”

“We the jury, duly empanelled and sworn in the above-entitled action, upon our oaths, unanimously find beyond a reasonable doubt as to Count 3: ENDANGERMENT – IMMINENT DEATH the aggravating circumstances alleged as follows.

1. The victim’s immediate family suffered physical, emotional or financial harm:

PROVEN

2. That the offense charged in this count is a dangerous offense because the offense involved the discharge, use, or threatening exhibition of a motor vehicle, a deadly weapon or dangerous instrument:

PROVEN

Foreperson”

“We the jury, duly empanelled and sworn in the above-entitled action, upon our oaths, unanimously find beyond a reasonable doubt as to Count 4: ENDANGERMENT – IMMINENT DEATH the aggravating circumstances alleged as follows.

1. The victim’s immediate family suffered physical, emotional or financial harm:

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PROVEN

2. That the offense charged in this count is a dangerous offense because the offense involved the discharge, use, or threatening exhibition of a motor vehicle, a deadly weapon or dangerous instrument:

PROVEN

Foreperson”

“We the jury, duly empanelled and sworn in the above-entitled action, upon our oaths, unanimously find beyond a reasonable doubt as to Count 5: ENDANGERMENT – IMMEDIATE DEATH the aggravating circumstances alleged as follows.

1. The victim’s immediate family suffered physical, emotional or financial harm:

PROVEN

2. That the offense charged in this count is a dangerous offense because the offense involved the discharge, use, or threatening exhibition of a motor vehicle, a deadly weapon or dangerous instrument:

PROVEN

Foreperson”

The jurors reply that these are their true verdict.

The jury is polled at the request of counsel for the Defendant. Each juror replies that these are his/her true verdicts.

FILED: Verdicts

The jury is thanked by the Court and excused from further consideration of this cause.

Pursuant to the verdict entered, and there being no further need to retain the exhibits not offered in evidence in the custody of the Clerk of the Court,

IT IS ORDERED that the Clerk permanently release all exhibits not offered in evidence to the counsel/party causing them to be marked, or to their written designee.

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IT IS FURTHER ORDERED that counsel/party or written designee take immediate possession of all exhibits referenced above.

ISSUED: Exhibit/Record Release Form

FILED: Trial Worksheet and Exhibit Worksheet

4:15 p.m. Trial concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.