

Nebraska Truck Driver's Felony Manslaughter Conviction Vacated

BY MARGERY A. BECK
Associated Press

OMAHA, Neb. — Nebraska's Supreme Court vacated a felony manslaughter conviction Friday for a dump truck driver who caused a fatal crash, saying the trial judge was wrong to allow two traffic infractions to serve as the basis for it.

The infractions by Lyle Carman — driving too fast for conditions and following too closely — were minor offenses that would allow only for a misdemeanor motor vehicle homicide conviction, the court said.

Carman was convicted last December in the June 7, 2012, crash near Lincoln that killed 23-year-old Raven Addy-Cruz of Kearney and seriously injured her husband and year-old daughter. He was sentenced earlier this year to 3 years' probation and 90 days in jail, but that sentence was put on hold while he appealed.

At the time of the accident, Carman was driving a dump truck on Interstate 80 that was restricted to one lane for construction. He told investigators that he looked briefly at his mirrors, and when he looked up, Addy-Cruz's car had stopped and he was unable to keep from crashing into it.

In its ruling Friday, the state Supreme Court said neither of the infractions for which Carman was convicted is punishable by imprisonment. Each infraction carries only a fine. The lower court had found that the infractions were unlawful acts that caused a death and, therefore, constituted the crime of manslaughter.

"It is apparent to this court that such

traffic infractions are not the type of unlawful acts that were typically considered in connection with the crime of manslaughter," Justice John Wright wrote.

Prosecutors argued that any unlawful act that causes the death of another is sufficient under state law to charge a person with manslaughter. But the high court said public welfare offenses such as traffic infractions don't contain the element of criminal intent necessary to support a manslaughter conviction.

"Our analysis points us toward the conclusion that momentary inattentiveness and minor traffic violations do not involve the culpability ... required to convict one of felony manslaughter," Wright said. "This rationale was espoused more than 70 years earlier when it was observed that the term 'manslaughter' imports a degree of brutality which jurors generally do not care to cast upon a merely negligent driver, and society is often unwilling to condemn as a felon one who is guilty only of some act of negligence, even though that act has resulted in the death of another."

Carman's attorney, Robert Creager of Lincoln, said Friday that the ruling sets a precedent for prosecutors to follow in future crash fatality cases.

"This case sort of clears up ... a lot of ambiguity and a lot of questions as to what is the prosecutor's real discretion here to form the charge (of manslaughter)," Creager said.

Lancaster County Attorney Joe Kelly did not immediately return a message Friday to answer whether his office can and will file a misdemeanor charge against Carman.

Pearl

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mountain fluttering like cards," he said. "I didn't think anything of it because the Army Air Force used to practice every once and a while."

And then he heard something. "There was an explosion on Ford Island. And I still didn't think anything of it. I thought, 'Boy. That is pretty realistic today! They are hitting the target,'" he said.

He then saw a plane fly across the island. "That first plane that [dropped the bomb] came over the ship," he recalled.

The plane was flying to the northeast. He later learned that the bomb had hit a runway.

As the plane flew over the *Dobbin*, he saw "two big red circles" on the plane. It was at that time that Werner knew something was awry.

The captain rang up "fire and rescue." Werner immediately took action. He ran to his fire and rescue station.

And then right away the captain changed the alarm to "general quarters." When that alarm sounded his duty was to haul ammunition to one of the four 3-inch anti-aircraft guns. As the planes flew overhead, the crew went about their duties to serve the vessels under its watch — hooking them up to electricity, arming them, helping fire up boilers and assembling machinery. One of the five destroyers in the *Dobbin's* "nest" got under way within 10 minutes after the air attack began.

Pearl Harbor is located on the center south side of the island, and each Japanese plane came to Oahu from the north. The first wave of planes arrived at 7:55 a.m. and attacked Pearl from the north, west and south; the second wave arrived at 8:55 a.m. and attacked from the east and south.

"I thought that there were planes in the air all morning!" Werner said.

Across the harbor at the Naval Air Station Kaneohe Bay, Robert Titterton, later of Yankton, was on kitchen patrol duty. He was peeling potatoes. When the attacks came, Bob stayed inside for safety. An officer saw Bob and suggested that he leave the area. Bob "politely" rejected such an idea because it was just too darn dangerous outside, to which the officer suggested he reconsider. He was sitting on a multi-gallon fuel tank which would explode if hit by a shell! And move he did. Fireman First Class Everett Cecil Titterton, Bob's brother, died aboard the *Oklahoma* that day.

The *Dobbin* may have been a tender, but it was also well armed. The ship had the same armament as a cruiser — 5-inch 51-caliber guns. The barrels were long and they took 4-5 men to operate. The 5-inch 38-caliber guns on a destroyer were anti-aircraft guns, but the 51s, which were attached to the deck, were just too long. They were made for distance bombardment, such as firing upon another ship or the shore.

The main deck, which runs all the way from the fore to the aft of the boat, was wooden. Werner laughed as he recalled that deck. "You had to serve three months on deck as a seaman."

Every morning was "holy stoning the deck," which is a firebrick with a hole in it. A broom handle pushed the brick across the deck through sand and water. You had to go back and forth 20 times across each board. That deck was as

white as your "sheets." When the war started, they painted everything gray, including that deck.

The *Dobbin* fired her guns at the planes, and Werner hauled ammunition. The 4-inch ammunition was fixed, which meant that the powder charge came in a sack, which was in an aluminum canister or tube. They had a projectile on top of that. The loader unscrewed the top and pulled it out. Typically, in practice, after the projectile and charge were removed, the canister was saved. However, with so many shells being fired, everything went over the side of the ship and into the water. There was no place to keep them. Later on, when Werner was running back and forth, he looked up at the sunrise above the mountains and then looked across the water and saw the canisters bobbing around in the harbor. (In the northern hemisphere sunrise was in the southeast; on Dec. 7, sunrise was 6:26 a.m., Hawaiian time.) "It looked like a big mound of jewels with the sun hitting them," he said. But, "if you turned your head to the other side, the ships were blowing up and turning over."

While the *Dobbin's* own battle history doesn't mention it, other ship commanders in the destroyer nest credited the *Dobbin's* anti-aircraft fire with shooting down a Japanese dive bomber. As a result, the ship received the Pearl Harbor Battle Star. Destroyer commanders uniformly praised the crew. For example, "a *Dobbin* welder was over the side welding up air ports when a bomb hit 25 yards from his post. Not for a moment did he stop welding."

According to the action report filed by Cmdr. H.E. Paddock, the captain of the *Dobbin*: "At 0910 three enemy planes [during the second wave], identified by yellow disks painted on their wings, attacked. They came in low approaching from the starboard quarter. ... The heavy fire from this ship and from the destroyers of Division One alongside caused the plane to swerve and cross just astern. ... Three bombs were dropped, resulting in near misses on the starboard quarter, astern and port quarter. They appeared to be 300-pound bombs."

"Fragments from these bombs struck the stern of the ship, causing the personnel and material damage described below. ... All personnel casualties were members of the Number 4 three-inch anti-aircraft gun located on the aft end of the boat deck. ... The personnel of Number 4 AA gun were badly hit. But in spite of this, Coxswain H.A. Simpson, U.S. Navy, in charge, reorganized his crew, got them in hand, and continued to fight against planes which approached within gun range."

Werner's observations were not so sterile.

"I was running down the deck with my ammunition. Here comes a guy [in a plane] with his head over the side. And he was so low that I saw the expression on his face. He had his goggles up. I could have thrown potatoes at him!" Werner said. "He had dropped two bombs. I saw these bombs coming, and I didn't know what to do. I dropped the ammunition and I went down on the deck and held myself up a little so the concussion wouldn't get me. The bomb on my side blew up in the water. And all I did was get soaking wet from the water. The one on the other side blew up before it hit and that's the one that killed the gun crew."

This is not easy for Werner to talk about. He is deliberate and certain, ever sure to honor these men by properly identify-

ing them. His gun crew was wiped out. Three men were lost: Torpedoman's Mate 3rd class J.W. Baker, Coxswain Fred Howard Carter, and Fireman 1st Class Roy Gross. Gross was Werner's best friend. A fourth *Dobbin* man, Gunner's Mate 1st Class Andrew Marze, was killed aboard the battleship *Pennsylvania*, which was in dry dock, as he assisted in the effort to fight a fire. Only 1st class or married men had overnight liberty. Marze was married and when the attack began he was waiting on the dock to be transported to the ship.

A total of 2,402 personnel died during the sneak attack on Pearl Harbor.

After the gun crew got knocked out, a guy named Grant from the *Missouri* asked Werner to join him in a 36-foot, motor whaleboat in order to look for survivors in the water. He jumped into the boat and went to the south toward the *Oklahoma* and the *Arizona*.

After the planes had dropped their bombs, the pilots remained to strafe the boats with their machine guns.

"That's an awful feeling being in the boat," Werner said. "I don't have anything to shoot back. I'm just waiting and hoping that they're not hitting us."

Men from the *Oklahoma* popped up and they rescued them. They were covered in oil, and the air reeked of cordite, a smokeless propellant that replaced gunpowder. The oil burned from Sunday morning until Thursday night and Friday morning. The skin from some men peeled off their arms as they were pulled from the water. You couldn't tell if they were alive or dead.

They also brought with them a load of hoses, torches, etc. to give to the *Oklahoma* crew to be used to cut holes in the hull to save men who were tapping from the inside. The *Oklahoma* was about halfway over when he saw the *Arizona* get hit.

After she was hit, the *Arizona* blew up, causing a gigantic explosion. There was a gigantic column of fire and smoke. The explosion caused a tremendous concussion, moving even the water in the harbor. Werner knew at that moment that a lot of men died. He also saw the *Utah* sink in about 10 minutes. They left the area when no more men popped up in the water.

They motored toward Murray Point; they had heard that coffee and sandwiches were being served at Hickam Field. When he arrived, he saw a large building which had large letters on it. Painted on its sides were the names of several ships — *West Virginia*, *Oklahoma*, *California*, *Arizona*, etc. Each ship's survivors, who had been given blankets, huddled together near the name of their ship.

"They were real miserable looking there," Werner said. "There were so few people under the *Arizona*."

Within a few days, the *Dobbin* left, on its way to future south Pacific confrontations.

Jim Bauer and his father stopped at his aunt's home in Mission Hill that day. She asked, "Where is Pearl Harbor?" No one knew, which was common. Even so, to the Greatest Generation, this attack was THE event that changed their world. It is burned in their memories. When asked what they were doing on the day of the attack, the answers indicate a more simple time. Sunday was visiting day. After church, friends and neighbors gathered to talk. There were chores for the farm kids and then there was Sunday dinner.

It was a day of rest. America hasn't rested since.

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