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Testimony Wraps Up in Brandon Lawsuit

BY DAVID HENDEE, WORLD-HERALD STAFF WRITER

Falls City, Neb. -- The mother of a young woman murdered nearly six years ago asked Richardson County District Court on Friday for \$200,000 in compensation for the alleged negligence of the county and its former sheriff in her daughter's death.

JoAnn Brandon of Lincoln also asked Judge Orville Coady to award her daughter's estate \$100,000 for her wrongful death, \$50,000 for her daughter's pain and suffering, and \$6,202.20 for funeral and burial expenses.

Brandon's request came at the end of a three-day trial in the wrongful-death lawsuit against former Sheriff Charles Laux and Richardson County. Brandon alleges, among other things, that Laux negligently caused the death of her daughter, Teena Brandon, by not arresting two Falls City men whom the 21-year-old had accused of raping and beating her on Christmas Day 1993.

The alleged rapists -- John Lotter and Marvin "Tom" Nissen -- were angry that Teena Brandon had posed as a man and dated Falls City women, including one of their friends.

Brandon and two others were slain Dec. 31, 1993, in a farmhouse near Humboldt, Neb. Lotter and Nissen were convicted of the murders.

Coady's judgment in the case is not expected for at least a month. The Hebron-based judge, who is hearing the civil case without a jury, asked attorneys to file statements on their clients' behalf by Oct. 24.

JoAnn Brandon, whose hands often trembled as she sat through the trial, said afterward that she still doesn't feel that a burden has been lifted from her.

"I'm exhausted," she said. "Now, it's the waiting game."

Herbert Friedman of Lincoln, one of Brandon's lawyers, said the ordeal of

pursuing the case through the courts has been charged with emotion for his client.

"She had to relive a lot of stuff," he said. "This is probably the last chapter for her. It was a bitter pill to swallow."

Laux and his attorney, Richard Boucher of Lincoln, declined to comment as they left the courthouse. Laux was the county sheriff when Brandon was killed.

In his closing arguments, Friedman said Laux and the county were guilty of "extraordinary neglect" in Teena Brandon's death. He also said that Laux's hostility toward the sexually confused woman and the decisions he made in the investigation of her rape allegations were "intentional and reckless."

Friedman said the evidence showed that not only did Laux fail to perform his duty to protect Brandon but that he also prevented his chief deputy from arresting Lotter and Nissen despite evidence supporting her claims.

Such conduct falls below the standard of care that Nebraskans deserve from their law enforcement officers, Friedman said. Laux had enough evidence the day Brandon accused the men of rape to arrest, if not at least question, Lotter and Nissen, two widely known troublemakers in Falls City, Friedman said.

"All he needed was reasonable belief that Lotter and Nissen had committed a crime on this girl, and it seems to me that it was pretty clear from the beginning . . . that they had more than adequate evidence to indicate that Miss Brandon had been assaulted, raped and probably falsely detained," he said.

Laux testified that he delayed arresting Lotter and Nissen until he had more evidence.

The judge ruled Thursday that there had been reasonable probable cause to arrest Lotter and Nissen before the slayings.

In his final arguments, Boucher said that despite the great tragedy of the case, Laux was not negligent.

The investigation was not perfect, Boucher said, but the sheriff worked Christmas and the following days on the investigation, called in colleagues and alerted the State Patrol.

Laux made no assurances to Brandon that Lotter and Nissen would be quickly arrested and he did not offer her special protection, said Boucher, who noted

that protection was not requested.

Boucher also said that JoAnn Brandon had not proven the allegations that the Nebraska Supreme Court considered when it reinstated the case two years ago. The high court said that JoAnn Brandon had a good argument that Laux violated his duty to protect Teena Brandon after she reported to Laux that she had been raped by Lotter and Nissen and that they had threatened her life.

The case landed in the Supreme Court after former Richardson County District Judge William Rist ruled that JoAnn Brandon and her daughter's estate had no legal claim. The high court reinstated the lawsuit and returned it to Richardson County for trial.

The Supreme Court acknowledged that case law generally recognizes that police officers may not be held liable for failure to protect people from harm caused by criminal conduct. In certain instances, however, law enforcement officers and a victim may have a special relationship that may create a police duty to protect. Examples are people who serve as informers or witnesses and people whom the police have expressly promised to protect from precise harm.

A majority of the Nebraska justices said a special relationship was created between Teena Brandon and police when she went to law enforcement officials and offered to testify and aid in the prosecution of Lotter and Nissen.

Laux, a truck driver and Richardson County commissioner, testified for nearly two hours Friday, often pondering questions for several seconds before answering quietly. He stood in the witness box for about the last half-hour in an attempt to project his voice for attorneys.

He acknowledged he had no new evidence after Dec. 28, 1993 -- more than 48 hours before Brandon was slain -- that would have made a stronger rape case against Lotter and Nissen. He also acknowledged that he knew Brandon feared her assailants and that they posed a danger to the community.

Other testimony included a videotaped deposition of Jodi Nelson, a deputy Lancaster County attorney. She said Laux's handling of the case was not negligent and did not fall below a reasonable standard of care.

Friedman said the civil case was able to explore issues that didn't surface during the criminal trials of Lotter and Nissen, such as the adequacy of the rape investigation.

"There was probably nothing wrong with the adequacy of the investigation," he said, "he just didn't follow up with it."