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Kyle Witty receives a congratulatory hug after a jury found him not guilty in his negligent homicide case on December 9, 2015. Witty's dump truck crashed into an SUV driven by Elizabeth McQuinn of Nashua in July 2014. (Nashua Telegraph - Don Himsel)



By Dean Shalhoup
Nashua Telegraph

Thursday, December 10, 2015
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Email

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Nashua, n.h. — A Superior Court jury took about an hour Wednesday to acquit Cornish resident Kyle Witty of negligent homicide, a felony offense with which he was charged following a July 2014 crash that claimed the life of 60-year-old Nashua resident Elizabeth McQuinn.

The jury of eight women and six men entered deliberations shortly after 1 p.m., following Judge David Garfunkel's roughly 20-minute jury instruction period. Parties were called back into the courtroom at 2:05 p.m., at which time the jury delivered its unanimous verdict on the single count against Witty.



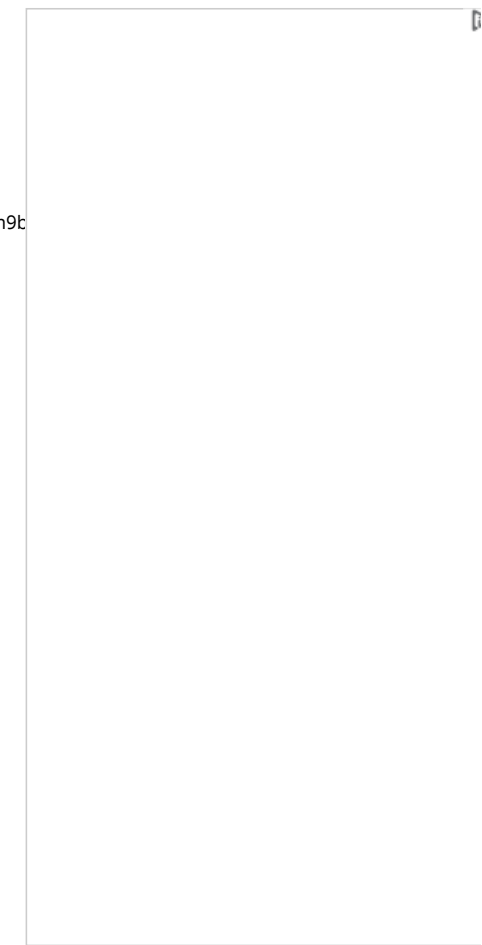
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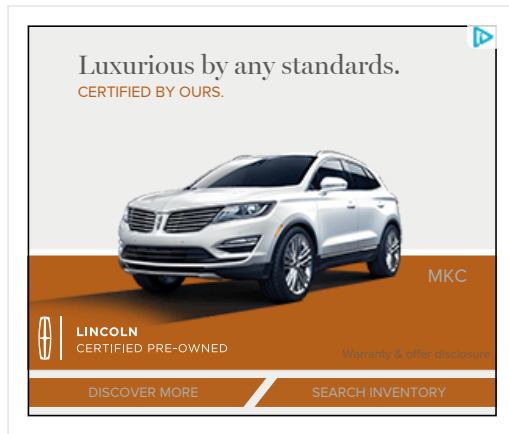
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A visibly relieved Witty embraced his attorneys and several supporters.

On the other side of the courtroom, members of McQuinn's extended family reacted tearfully to the verdict, some hugging in an attempt to console each other. They met briefly with prosecutors and victim advocate Merrill Beauchamp before slowly filing out of the courthouse.

A man who is related to Elizabeth McQuinn's widower, Brian McQuinn, said none of them wished to comment on the verdict.



After conferring with his attorneys, Witty also left the building without comment.

Lead defense attorney Richard C. Guerriero Jr. said he, Witty and co-counsel Ted Lothstein were pleased that the jury reached what Guerriero called "the decision that I believe is the right one."

"Mr. Witty is looking forward to getting on with his life," Guerriero said after Witty left the courtroom. "We are very

grateful to the jury for their service and their attention, and for reaching a fair and just verdict."

Guerriero briefly addressed the status of Witty's commercial driver's license, which he agreed to surrender as a condition of his \$50,000 personal recognizance bail.

"That's an administrative proceeding that has been on hold, pending the outcome of (the trial)," he said.

Whether the license will be reinstated in light of the jury's decision isn't yet known, Guerriero said, adding that he couldn't comment because the matter currently is in litigation.

The not-guilty verdict means the jury concluded the prosecution did not produce sufficient evidence to prove beyond a reasonable doubt that Witty failed to perceive that a substantial and unjustifiable risk existed to the extent that it represented a "gross deviation" from a reasonable standard of care in a given situation.

Proving the "gross deviation" element presented a formidable challenge to prosecutors, increasing a burden that is quite high to begin with, said Assistant County Attorney David Tencza, who prosecuted the case along with Kent Smith.

"The state's burden is already high. The negligence standard (of proof) makes it even higher," Tencza said shortly after the verdict was reached. "But when it's a matter of public safety that could have been avoided, it's important to let a jury decide."

The state alleged that on July 16, 2014, Witty's reckless failure to stop at a red light resulted in his dump truck hitting McQuinn's SUV, killing her.

As for the defense's argument that branches of a large tree obscured Witty's view of the traffic light at Route 101A and Continental Boulevard to the point that he barely had any time to react once the light came into view, Tencza pointed to a Merrimack, N.H., police officer's testimony that the department hadn't received any complaints about the tree until after the crash.

"Route 101A is a heavily traveled road; hundreds of commercial vehicles use it every day," Tencza said. The tree "is full-size; it's been growing there for some time. It doesn't seem to have been a problem for other drivers," he said.

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Witty, a former road agent in Cornish, enjoyed the support of several neighbors who felt the criminal charges against him were overreaching.

Former state Sen. Peter Burling, D-Cornish, who helped raise money to defray Witty's legal expenses, said he was pleased with the verdict.

Witty, who called him from the courthouse, sounded "so relieved," Burling said.

"I think a just result has been reached in this criminal matter, but there is hardly cause for jubilation at that, because a wonderful woman died in a tragic traffic accident and now there is all the complexity of the civil law, and how that (may) play out," Burling said.

Former Cornish Selectman Stuart Hodgeman, a retired Air Force colonel, said he attended a September court hearing to show support for Witty.

Hodgeman said Witty, who has plowed and done excavation work for him in the past, is a "very hard worker and sincere guy," and a key factor in the case was the presence of a tree canopy.

"The merits of the case itself didn't seem to hold water," said Hodgeman, who, with his wife, Mauri, also contributed to Witty's legal defense. "... That has been known to be a poor intersection for quite awhile and, obviously, if (the state Department of Transportation) cut the tree within two weeks of the accident, (the issue of the tree obscuring drivers' view) should have been brought up before."

A message left for Witty on his cellphone was not immediately returned.

Wednesday's swift verdict closed a case that began on July 29, 2014, when Witty turned himself in to Merrimack police. Witty initially was charged with reckless manslaughter, which carries a maximum of 30 years in state prison and is more serious than negligent homicide.

Prosecutors dropped the manslaughter charge on Nov. 30, the day the jury was selected for the trial, and proceeded on the single count of negligent homicide.

The trial began Monday morning with a jury site viewing of the crash scene, after which jurors were taken to the impound lot at the Merrimack Public Works garage to look at both Witty's truck and McQuinn's Kia Sorento.

The final hour of testimony on Tuesday consisted of discussion on a defense motion to dismiss the indictment against Witty, with Guerriero and Lothstein arguing that prosecutors did not produce evidence that Witty committed a criminal offense and also failed to prove the negligence element of the charge.

Garfunkel announced he had denied the motion early Wednesday morning, and later called the attorneys into his chambers for what is believed to have been an hourlong discussion involving jury instructions.

During closing arguments, Guerriero reiterated the defense's reasoning for why Witty should not be convicted.

"This was an accident, an accident that happened at an unsafe intersection ... an intersection that was blocked by a tree," he said, raising an enlarged police photo of the intersection on the day of the crash. "Kyle Witty did not create the problem at this intersection. This was not criminal negligence ... this was an accident, pure and simple."

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Smith, Tencza's fellow prosecutor, said in his closing argument that the tree wasn't the only issue in the case; the main issue was "the criminal acts that happened a year and a half ago that took the life of Elizabeth McQuinn."

"If Mr. Witty had exercised proper caution, we wouldn't be here today, and Ms. McQuinn would be," Smith said.

Although he acknowledged the tree could have played a role in the crash, Smith said Witty nevertheless failed to heed several other indications that he was coming up on a major intersection.

"If you were faced with a situation like that," Smith said, referring to the scenario Witty encountered that morning, "is that what you would do? Keep plowing ahead? Or would you slow down ... in case the light is red?"

"Mr. Witty's inattention to what he was doing that day left a husband without a wife and (siblings) without a sister," Smith said.

Valley News staff writer John P. Gregg contributed to this report.

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