

LOCAL NEWS

# Jury acquits both men in Nathaniel Tallman felony murder trial



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It took seven attorneys three weeks to present evidence in the case of Nathaniel Tallman's death, but it took a Boulder County jury less than three hours to decide that evidence was not enough to convict the two men charged with Tallman's murder.

Daniel Ortiz, 38, and Moises Mendez, 26, were both acquitted Tuesday of felony first-degree murder and robbery, bringing a sudden end to a murder case that started with Tallman's disappearance Jan. 21, 2014.

Both defendants — who have been in custody since early 2014 — exchanged long hugs with their attorneys as Boulder District Judge Ingrid Bakke read the “not guilty” verdicts and announced the cases against them would be dismissed.

“We believe it was the right verdict in the case, and we are very happy for our client, Daniel, and for Moises,” said Ortiz's attorney Matt Connell.

Added Mendez's attorney Zak Malkinson, “Justice was absolutely served.”

But while the defendants' families rejoiced, the acquittal was a disappointment for friends and family of Tallman, 25, of Lafayette.

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“One of the realities of being a trial lawyer is that you respect the decision of the jury and thank them for the hard work that goes into being on a case like this,” said District Attorney Stan Garnett. “However, we are obviously disappointed, and particularly disappointed for the loss that Nate Tallman’s family has suffered and for this verdict making it even more difficult for them to have closure.”

### **‘A pathological liar’**

Attorneys had made their final closing arguments just a few hours before the acquittal Tuesday.

Prosecutors said Mendez and Ortiz planned the robbery and murder of Tallman during a marijuana deal with Russell Britton on Britton’s Berthoud property, but defense attorneys attacked Britton’s credibility as a witness and said he was the more likely culprit. Britton accepted a plea deal and is serving a 15-year prison sentence for lesser charges in the case.

In his closing arguments, Assistant District Attorney Ryan Brackley asked the jury to look at all of the circumstantial evidence backing Britton’s story and linking the defendants to the planning and the robbery, including phone records, surveillance tapes and forensic evidence.

“You have to fill those blanks with what makes sense, what’s believable, what’s credible,” Brackley said. “You have the evidence to find these men guilty of felony murder and robbery.”

But the verdicts for both men indicated the jury felt that was not the case. While jurors on the case declined to comment on the verdict, when asked what he felt was the deciding factor in the case, Connell simply said: “Rusty Britton.”

“You just can’t believe a word Rusty Britton has to say,” Connell said. “Rusty Britton is a pathological liar.”

Mendez’s other defense attorney Nancy Salomone echoed Connell’s thoughts, saying the prosecution did not have a case without Britton’s testimony.

“There was no way to prove the case without Rusty Britton,” Salomone said. “At the end of the day, the prosecution’s case came down to his word, and the jury saw through it.”

Garnett said at this point there is no change in Britton’s status or plea deal, and he stands by the decision to put him on the stand. Britton was the prosecution’s primary witness.

“Obviously, Mr. Britton was a difficult witness,” Garnett said. “But (this case) needed to be presented to the community.”

The three-week trial was not without its hiccups, as the dismissal of both alternate jurors and longer-than-expected testimony had Bakke concerned at times about a possible mistrial. But Garnett said the speed with which the jury returned a verdict did not concern him.

“That’s understandable after sitting in the jury box for as long as they were,” Garnett said. “What you do after a win or a loss is you learn from what you did. You don’t point fingers, and you certainly never blame a jury.”

### **‘Blood on his hands’**

During closing arguments, prosecutors said both suspects were having money problems when Ortiz — who worked with Britton in tiling — found out he was going to be meeting Tallman for the drug deal. Britton testified that on Jan. 20, 2014, Ortiz met him at a pawn shop and told him they were going to rob Tallman.

Deputy District Attorney Ken Kupfner recounted Britton’s testimony that Tallman was in the middle of a sentence at his Berthoud barn when a shot rang out and Mendez approached Britton, followed by Ortiz coming into the room.

“Not only was (Mendez) in the room, he was the one holding the gun and pulling the trigger,” Kupfner said.

Both Ortiz and Mendez were charged with first-degree murder under the felony murder rule, which allows prosecutors to charge a suspect when a person is killed during the commission of another felony — even if that suspect didn't commit the murder itself.

Brackley acknowledged that by Britton's account, Ortiz did not appear to be the shooter and may not have known the shooting was going to happen, but he was still part of the plan that led to Tallman's death.

"He still showed up at a robbery with a gun," Brackley said.

In attacking the prosecution's case, Connell pointed out that no guns, cash or marijuana was ever found in connection with Ortiz or Mendez, but all of those things were found on Britton's property. He also pointed out that Tallman's blood was found in Britton's van and on his gloves.

"Rusty Britton literally has Nate Tallman's blood on his hands," Connell said, as he put up a photo of the blood in the van and a photo of Britton. "That is where the murder happened. ... This is the guy who did it."

Connell pointed out that Britton's wife — who was home the night of the shooting — never heard or saw anything, and that no evidence was ever found in the barn. Connell also told the jury the autopsy results pointed more toward an execution-style shooting than Britton's version of events.

"The simplest explanation is that Rusty is not telling the truth," Connell said. "He had fooled (law enforcement), ladies and gentlemen. He's good at what he does; he's a con man. Don't let him fool you."

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