

IN THE
FOURTH CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

NO. 96-KA-1427

STATE OF LOUISIANA

Versus

CHRISTOPHER C. NABORS

APPEAL FROM THE CRIMINAL DISTRICT COURT FOR THE
PARISH OF ORLEANS, NO. 375-409, SECTION "F",
THE HONORABLE DENNIS WALDRON, JUDGE PRESIDING

BRIEF OF THE STATE OF LOUISIANA, APPELLEE

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Nabors for possible hypothermia, not to "get information from him" (id. p. 498).

The Reconstruction of the Vehicle Velocity:

Michael George Sunseri: a former state trooper, was an accident reconstruction expert who had supervised the investigation and reconstruction of about 500 serious injury or fatal motor vehicle accidents (V. 5, p. 352-353). In his expert opinion, based upon his examination of the scene and records in the case, he estimated the velocity of the Nabors vehicle at between 50 and 65 m.p.h. at the time of impact (id. p. 375, 404).

George Hurban: another accident reconstruction expert who testified for the state, concluded that Nabors drove his vehicle down Friedrichs Drive in City Park at a speed of 40 to 61 m.p.h., failed to stop at the stop sign, and proceeded straight across the intersection without stopping (V. 4, p. 150-151). The speed limit in the Park was 20 m.p.h. (id. p. 170).

The defense presented only two witnesses at the trial, Dr. Robert Watts and John Rigol, Jr., who both testified regarding the speed of the Nabors' vehicle at the time it impacted the curb on Wisner Boulevard.⁵

At Charity Hospital and Afterward:

Dr. Lee Lenahan: a resident in training in the emergency room at Charity Hospital, recognized that Nabors was a doctor at Charity although he was not personally acquainted with him (V. 4, p. 274). Dr. Lenahan testified that Nabors smelled of alcohol

⁵Dr. Watts, an expert in mechanical engineering and fluid mechanics, offered his opinion that the vehicle was more likely traveling at 30 m.p.h. than at 50 m.p.h. (V. 5, p. 525), and Mr. Rigol, an expert in accident reconstruction, concluded that there was not enough data available to arrive at an accurate estimate of vehicle velocity (V. 5, p. 569). The state rebutted by recalling Michael Sunseri, its accident reconstruction expert, and rested. The state does not here examine these opinions in detail because the appellant has not questioned the sufficiency of the state's evidence on this issue. Jackson v. Virginia, supra.

(V. 4, p. 277). The intake records showed Nabors to be "very intoxicated" (V. 4, p. 277-278) at this time. When Nabors arrived at Charity, I.V.'s were started and blood was drawn (V. 4, p. 280). However, this first blood sample was never analyzed, because a "lab accident" occurred sometime after the sample was drawn and apparently no one thought to get a second sample (V. 4, p. 282; V. 2, p. 304; S.Ex. 28).

Later an N.O.P.D. Officer, Bryan Frere, ordered by his supervisors to go to Charity Hospital "and extract blood from" Nabors (V. 4, p. 260), enlisted Dr. Lenahan's help (id. 261). Dr. Lenahan testified at trial that he drew blood from Nabors in a standard fashion and there should be nothing wrong with the sample he obtained (id. p. 294).⁶ Nurses notes state that an I.V. was placed in Nabors' left arm, but Dr. Lenahan testified that he took blood from Nabors' right arm (id. p. 295).

P/O Bryan Frere: a police officer assigned to the D.W.I. unit, went to Charity Hospital and obtained Dr. Lenahan's assistance in taking a sample of Nabors' blood (V. 4, p. 260-261). Officer Frere witnessed the entire procedure as Dr. Lenahan drew the blood (id. p. 261-263). He did not observe an I.V. (id. p. 261, 265-266). Officer Frere was satisfied that the drawing of the blood had been done properly and all appropriate procedures followed (id. p. 261-267). However, he noted that the vials of blood drawn from Nabors were unusual in that they were not full and were "liquidy" with a foam content (id. p. 263). Officer Frere submitted Nabors' blood test kit to the Central Evidence and Property Room of the New Orleans Police Department (id. p. 269). While at the hospital, Officer Frere observed

⁶According to Dr. Lenahan, the blood was drawn from Nabors' antecubital region, using a standard police kit (V. 4, p. 284). Dr. Lenahan did not recall whether he turned off the I.V. in Nabors' arm before taking the blood sample, although "[i]t's customary to slow the I.V. down or turn it off" (V. 4, p. 287). The sample was placed in the box, sealed, and given to the officer (V. 4, p. 288).

Nabors and, noting that his speech was slurred, thought Nabors may have been intoxicated (id. p. 262).

Teresia Lamb: a civilian employed by the New Orleans Police Department's Crime Laboratory, testified as a certified expert in the analysis of blood (V. 5, p. 411-414) that she retrieved the blood kit [containing Nabors' blood specimen] from the Central Evidence and Property room, tested it, and ran a blood alcohol test and gas chromatograph on the sample (V. 5, p. 417). She concluded there was a .04 grams percent ethyl alcohol content in the sample (id.). She noticed when she opened the blood kit that "the tube of blood did not appear to be a normal tube of blood," and the texture and color of the blood were incorrect (V. 5, p. 419). Thus, she ran additional tests on the blood (a "pack cell volume" and "hematocrit") (V. 5, p. 418).

Ms. Lamb testified that in her tests of the blood alcohol level, "our standard procedure as approved by the Louisiana State Police was followed in this instance" (V. 5, p. 430). She got a reading of an .04 blood alcohol level on each test she ran (V. 5, p. 434). The police laboratory used for the testing was appropriately certified by the Louisiana State Police (id.). She added nothing to the blood in the tube (id. p. 435).

Dr. Monroe Samuels: Associate Director of Laboratories at Charity Hospital, was a consultant to the Orleans Parish Coroner's Office. He oversaw the activities for all of the laboratories at Charity Hospital (V. 4, p. 308), and was recognized at trial as an expert in pathology, toxicology, and the testing of bodily fluids (id. p. 309, 313).

Dr. Samuels testified that police asked him to examine a tube of blood (the sample taken from Nabors) which, upon examination, appeared diluted and did not appear to be whole blood (V. 4, p. 309-310). Dr. Samuels tested the blood in an instrument at Charity Hospital which analyzes approximately twenty characteristics, and found that the readings were "grossly abnormal and many of them are incompatible with life". Dr.

Samuels concluded that the sample was contaminated and "consistent with a sample being watered down by some intravenous fluids of some sort." In his opinion the blood alcohol results from the sample would not be accurate (id. 309-312).

The blood alcohol reading on the sample tested by Dr. Samuels (.04 %) reflected the contents of the tube but not the amount of alcohol in the blood of the person from whom the sample was taken (id. p. 311-312). He expected that reading to be higher (id.). Dr. Samuels testified that the amount of blood in the body from which the sample was taken was not .04 percent (V. 4, p. 346). All of his findings were consistent with a blood sample being diluted by an I.V. solution (V. 4, p. 319). Dr. Samuels further testified that anyone taking a blood specimen for analysis should not draw blood above an I.V. because the blood from the vein will have been diluted by the intravenous fluids from the I.V. (V. 4, p. 318), and a medical student learns this in his sophomore year. A four-year resident (such as Dr. Lenahan) "most assuredly" would know better than to draw blood above an I.V. (id.).

P/O Joe Waquespack: an N.O.P.D. officer, arrived at Charity Hospital shortly before Nabors. When he asked Nabors who was in the car, Nabors responded: "I don't know who the bitch is. I just picked her up in a bar" (V. 4, p. 250).

under the influence of alcoholic beverages is not limited by La.Rev. Stat. 32:662. State v. Nabors, 95-K-2582 (La. 4th Cir. 11/28/95); 80 So.2d (V. 1, p. 139).

After this court considers and rules on a claim in the course of a writ application, it will not entertain a defendant's identical claim based upon the same evidence a second time on appeal. State v. Molancon, 536 So.2d 430, 431 (La. App. 4th Cir. 1988), writ denied, 582 So.2d 860 (La. 1991); State v. Batiste, 482 So.2d 122, 123 (La. App. 4th Cir. 1986). An appellate court will only reverse its previous determination if the defendant can present new evidence tending to show that the earlier decision