

1 STATE OF LOUISIANA
2 versus
3 CHRISTOPHER NABORS

CASE NO. 375-409 "F"
CRIMINAL DISTRICT COURT
PARISH OF ORLEANS

4 JURY INSTRUCTIONS

5 NOVEMBER 30, 1995

6 HON. DENNIS J. WALDRON, JUDGE PRESIDING

7 APPEARANCES:

8 Greg Kennedy	Assistant District Attorney
9 Sharon Andrews	Assistant District Attorney
10 Michael Carbo	Attorney for Defendant
11 John W. Reed	Attorney for Defendant

12 -----
13 BY THE COURT:

14 Ladies of the Jury, gentlemen of the Jury, I will instruct
15 you. Before I do that I want to thank each of the attorneys for
16 their professional conduct, their presentations, their conduct
17 towards each other, their conduct toward everyone who's been in
18 this courtroom, their conduct toward the Court, most importantly
19 their conduct toward the Jury. I would like to thank also all of
20 the persons who were spectators for all or any portion of these
21 proceedings over these four days for their attitude and their
22 conduct toward the Court, toward the attorneys, toward each other,
23 and most importantly toward the Jury. My comments will last only
24 a few minutes, in case you're concerned about the time frame.
25 As soon as I'm finished, you may go directly to the Jury Room and
26 take whatever time you feel is necessary to deliberate in this
27 case.

28 Ladies of the Jury, gentlemen of the Jury, a person accused
29 of a crime is presumed by our law to be innocent until each and
30 every element of the alleged offense is proven beyond a reasonable
31 doubt. It is the duty of the Jury in considering the evidence and
32 applying to the evidence the law given to you by this Court, to

1 give the defendant the benefit of every reasonable doubt arising
2 out of the evidence and/or out of the lack of evidence in the case.
3 It is the duty of the Jury, if not convinced of the guilt of the
4 defendant beyond a reasonable doubt, to return a verdict of not
5 guilty.

6 The defendant is not required to prove his innocence but may
7 rest upon the presumption of innocence until it is overcome by
8 positive affirmative proof presented by the State. The burden,
9 therefore, is upon the assistant district attorneys prosecuting the
10 case to prove to your satisfaction and beyond a reasonable doubt
11 the guilt of the defendant as to the crime charged. If you
12 entertain a reasonable doubt as to any fact or element necessary to
13 constitute the guilt of the defendant, it is your sworn duty to
14 give him the benefit of that doubt and return a verdict of not
15 guilty. On the other hand, if the State of Louisiana has proven to
16 your satisfaction and beyond a reasonable doubt the guilt of the
17 defendant as to the crime charged, you will be justified in
18 returning a verdict of guilty. If the State of Louisiana has
19 proven to your satisfaction beyond a reasonable doubt the guilt as
20 to the responsive verdict of guilty, you would be justified in
21 returning a verdict of guilty as to that charge. If you find that
22 the defendant has been proven guilty beyond a reasonable doubt of
23 vehicular homicide, the law allows you the full power and
24 discretion, if it is your pleasure, to return a lesser verdict of
25 guilty of negligent homicide. Please, the State need not prove its
26 case beyond all doubt but beyond a reasonable doubt. A reasonable
27 doubt is doubt based on reason and common sense.

28 Please be aware as well the following rules of law that apply
29 in this or any other criminal case. Please be advised that you are
30 the judges of the law, but you are also the judges of the facts.
31 You are the judges of the facts. You are the exclusive judges of
32 the facts. You find from the evidence and the lack of evidence

1 what facts have been proven and what facts have not been proven.
2 For this purpose you determine the credibility of the witnesses
3 accordingly as you are impressed with their veracity. You may take
4 into account their manner on the stand, the probability or
5 improbability of their statements, the interest or lack of interest
6 they may have in a particular case, the facts and circumstances
7 surrounding their testimony, any other consideration that you wish
8 to take into account as it relates to their testimony.
9 Additionally, you may consider any prior inconsistent statements
10 that any witness has given. Please be advised that if you feel
11 that any witness in this case has wilfully or deliberately
12 testified falsely as to any material fact for the purpose of
13 deceiving you, that will allow you if you so desire to disregard
14 entirely the testimony of that witness as proving nothing and be
15 unworthy of belief. You have the right to accept as true or to
16 reject as false the testimony of any witness accordingly as you are
17 impressed with his or her veracity.

18 The law as it relates to a witness who has been qualified as
19 an expert witness, I have explained previously. As I said with
20 the first witness who was qualified as an expert, the rule of law
21 in that regard, and told you that it would apply to all witnesses
22 who have been called and recognized as experts. The mere fact that
23 a person is recognized by the Court and offered to either or both
24 sides as an expert, in no way imposes upon you an obligation or a
25 duty to accept what they say as being completely true or partially
26 true. That is entirely up for you to do and for you to decide.
27 Persons, however, who because of special training and/or special
28 knowledge in a particular field are indeed recognized by law as
29 experts in that particular field, and they are allowed to give
30 expert opinions in that field. This rule of law applies to the
31 testimony that you have heard over the course of this trial, in
32 regards to all areas of expertise where witnesses recognized as

1 experts have been allowed to testify. You should consider and
2 weigh the testimony of an expert witness just as you would the
3 testimony and shall review and examine, evaluate and consider the
4 testimony of any witness. The weight and the effect which you, the
5 Jury, may give to the testimony of an expert will also depend on
6 your evaluation of the degree of knowledge and skill possessed by
7 that expert. In that connection you are entitled to take into
8 account the evidence and/or lack of evidence as to any particular
9 training, special study and/or experience of the expert in the
10 field in which he or she has been recognized as an expert.

11 You are the judges of the law but in a different sense. You
12 receive the evidence from the witnesses. You receive the law from
13 the Court. It is your sworn duty to accept the law and to apply it
14 as given to you by the Court.

15 The bill of information read to you at the outset of this
16 trial on Monday is a mere allegation against the accused. It
17 carries with it no weight, nor any presumption of guilt. You must
18 not be influenced by it in any way in considering this case.

19 As to the particular law that governs this case, as I have
20 previously stated, the law would allow you at this time to consider
21 as you go to the Jury Room in a few moments, three possible
22 verdicts. These verdicts are listed on this verdict sheet. Please
23 attach no significance to the order in which they are listed. They
24 are in this order merely because the law says they must be, and
25 thus they are. They are, number one, guilty. That is, guilty as
26 charged, guilty of vehicular homicide. Number two, guilty of
27 negligent homicide. Number three, not guilty. The law, as I have
28 already explained to you, will allow you to consider and return a
29 verdict of guilty as charged only if you are convinced beyond a
30 reasonable doubt that the defendant has been proven guilty as
31 charged. If you find that he has been so proven beyond a
32 reasonable doubt, the law gives you the option of returning either

1 verdict number one or two; guilty of vehicular homicide or guilty
2 of negligent homicide. If you find that the defendant has been
3 proven guilty only of negligent homicide and that has been proven
4 beyond a reasonable doubt, then that is the only guilty verdict you
5 could consider. It goes without saying that if you are not
6 convinced beyond a reasonable doubt that the defendant has been
7 proven guilty of either vehicular or negligent homicide, that your
8 verdict must be not guilty.

9 Please be advised that the definitions for these two
10 particular alleged offenses; more particularly, the offenses that
11 are part of the responsive verdict scheme as I have explained it to
12 you, the law in this regard is as follows. A vehicular homicide is
13 the killing of a human being caused proximately or directly by an
14 offender engaged in the operation or in the actual physical control
15 of a vehicle, while the operator of the vehicle is under the
16 influence of alcoholic beverages. If the amount of alcohol in the
17 defendant's blood at the time alleged as shown by chemical analysis
18 was .05 or less, you shall presume that the defendant was not under
19 the influence of alcoholic beverages. This presumption, however,
20 may be overcome by other competent evidence proving beyond a
21 reasonable doubt that the defendant was under the influence of
22 alcoholic beverages. The State need not prove that the accused
23 intended to cause the death or great bodily harm to the alleged
24 victim. Intent is not an issue when the allegation is vehicular
25 homicide. Vehicular homicide is a non-intentional crime. However,
26 the State must prove that the death of the alleged victim was
27 caused by the accused operating a motor vehicle while under the
28 influence of alcohol. That is to say, the State must prove that
29 the alleged victim would not have died but for the accused having
30 operated a motor vehicle under the influence of alcohol at the time
31 of the alleged offense. The State must prove that the accused was
32 under the influence of alcohol and that his operation of a motor

1 vehicle in that state of mind caused the death of the alleged
2 victim. Because there is a responsive verdict of negligent
3 homicide the Court will instruct you as to what that is under our
4 law.

5 Negligent homicide is the killing of a human being by criminal
6 negligence. Criminal negligence exist when although there is
7 neither specific nor general criminal intent present, there is such
8 disregard of the interest of others that the offender's conduct
9 amounts to a gross deviation below the standard of care expected to
10 be maintained by a reasonably careful person under like
11 circumstances. In order to have criminal negligence it is not
12 sufficient that a person merely failed to act reasonably. The
13 conduct must be so far below the expected conduct of a reasonably
14 careful person in a similar situation, that it can be considered to
15 be a gross deviation. Evidence which tends to support a finding of
16 ordinary negligence or civil negligence will not support a finding
17 of criminal negligence. Criminal negligence amounts to gross
18 negligence. Gross negligence has been described as very great
19 negligence. That which amounts to an extreme departure from the
20 ordinary standard of care expected of a reasonably careful person
21 under like circumstances. Thus, in order to consider a verdict of
22 guilty and to convict the defendant of negligent homicide, you must
23 be convinced beyond a reasonable doubt that the defendant killed
24 the alleged victim on the date stated in the bill of information
25 and the killing was the result of the defendant's criminal
26 negligence.

27 You may consider both direct and circumstantial evidence in
28 this case or any other case. Direct evidence is evidence which if
29 believed proves a fact. It is given as a result of being observed
30 by one of the senses, such as the eyes, the ears or the nose.
31 Circumstantial or indirect evidence is evidence which if believed
32 proves a fact, and from that fact you may logically and reasonably

1 conclude that another fact exist. To put it another way,
2 circumstantial evidence exist where the facts may be established by
3 circumstance. The law says that a jury may convict even on
4 circumstantial evidence, if the jury is convinced beyond a
5 reasonable doubt that any evidence, including any circumstantial
6 evidence is valid, good and believable. However, if a case is
7 based only on circumstantial evidence, the evidence must exclude
8 every reasonable hypothesis of innocence before a guilty verdict
9 can be returned. Likewise, if a case as to any particular element
10 that the State must prove is based only on circumstantial evidence,
11 the evidence as to that particular essential element must exclude
12 every reasonable hypothesis of innocence before a guilty verdict
13 can be returned. I am just about finished.

14 All six of you must agree in order to reach a legal verdict.
15 Your verdict, be it not guilty, guilty of negligent homicide,
16 guilty of vehicular homicide, must be unanimous. If for any reason
17 all six of you can't agree and you feel it would be useless to go
18 on with your deliberation, the Court would have the option of
19 declaring a mistrial, as you would be a hung jury. The case could
20 be re-tried on another date, before another jury if that happened.
21 Both sides are entitled to your individual opinion, but any of you
22 may change your opinion as a result of reasonable persuasion by
23 your fellow jurors.

24 Please, in connection with this case, opening statements, the
25 closing arguments, comments, questions and objections of the
26 attorneys are not, are not to be considered evidence in the case.
27 Upon retiring now to the Jury room, please select from among you a
28 foreperson. Upon your doing so, please begin your deliberation
29 whenever you're comfortably seated and ready to proceed in the jury
30 room. If at any point all six of you agree on any of the three
31 verdicts as being the appropriate verdict in this case, have your
32 foreperson on the back of the sheet fill in the date of November

1 30, 1995 -- the court reporter was kind enough to do that for you
2 already. You would need only fill in below the language "We, the
3 Jury, find the defendant Christopher Nabors," whatever the verdict
4 might be. Should it be not guilty, write in those two words.
5 Should it be guilty of negligent homicide, write in those four
6 words. Should it be guilty as charged, guilty of vehicular
7 homicide, you need only write the word guilty. Have your
8 foreperson affix his or her signature on the line above the word
9 foreperson. The only other task I would ask you to perform would
10 be to answer yes if you agree with the verdict and sign your name
11 next to it, to assure us that all six of you have agreed to any
12 verdict, be it not guilty or guilty. If there are any other
13 exhibits that you wish to see again, with the exception of the
14 written documents, I believe I explained in detail yesterday the
15 law that does not allow you to see those again for purposes of
16 reading them and I can see no other reason why you may want to see
17 them, but as to anything else -- just by way of example, the
18 photographs, if you wish to view any of those please send a message
19 down by way of the Sheriff who will be stationed outside the doors,
20 which of course will be closed, of the Jury Room and I will confer
21 with the attorneys and then I will personally make a decision as to
22 whether or not those should be sent to you. If you have any
23 questions while you're deliberating, please let me know. I'll
24 bring you right down and I'll attempt to answer your questions.

25 Ms. Jones, we will be excusing you in just a moment. Thank
26 you for your patience with us. Are there any questions of the
27 ladies or gentlemen of the Jury now? (NEGATIVE RESPONSE). There
28 are none. Is there comment or objection by the State as to the
29 Charge?

30 MR. REED:

31 We need to approach, Your Honor.

32 BY THE COURT:

1 (BENCH CONFERENCE) .

2 BY THE COURT:

3 Ladies of the Jury, gentlemen of the Jury, there was one other
4 point of law that I always refer to and I simply overlooked
5 it in this case. I have instructed you as to your review as the
6 exclusive triers of the fact, as to your evaluation of any and all
7 witnesses. It goes without saying that under the law of this state
8 and these United States, the defendant need not testify and his
9 failure to testify in no way can be held against him. A defendant
10 who chooses not to testify is merely exercising the same
11 constitutional right that would be guaranteed to both you and to me
12 should we ever find ourselves on trial in these united states for
13 an alleged criminal offense. A jury may never consider in any
14 case, including this one, if you find that the defendant has not
15 testified, as to why he didn't testify, nor concern yourself with
16 that in any way, nor in any way consider it as possible evidence of
17 possible guilt on his part. I have given each of the attorneys a
18 copy of exactly what I was going to say, and that is the reason why
19 all of them agreed that they should come up because clearly I
20 overlooked reading that one bit of law, as I've just done. Is
21 there anything else the State wishes me to read?

22 MR. KENNEDY:

23 No, Your Honor.

24 BY THE COURT:

25 Is there anything further by the defense?

26 MR. REED:

27 No, Your Honor.

28 BY THE COURT:

29 The State and the defense at this time are satisfied with
30 the charge as I have given it?

31 MR. KENNEDY:

32 Yes, Your Honor.

1 MR. REED:

2 Yes, Your Honor.

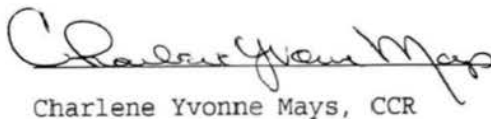
3 BY THE COURT:

4 Thank you. Both sides being satisfied with the charge
5 and the manner in which it has been given, it is my pleasure to
6 excuse Ms. Jones. I thank you, Ms. Jones. The other ladies and
7 gentlemen may retire now to the jury room. Thank you for your
8 attention, your courtesy and your kindness to all of us. We truly
9 appreciate it.

10 Ms. Jones, there will be a Sheriff who will escort you
11 out. All persons remain in position, Captain, until the Juror is
12 escorted out of the courtroom. Sometimes the attorneys approach
13 you and want to know how they performed or what is your evaluation
14 of the case. You're free to talk with them. You're likewise free
15 to say "I prefer not to be heard from," and no one will in any way
16 attempt to further chat with you. Thank you again. We have your
17 certificate of service. Good luck to you, ma'am. If everyone will
18 remain in place while Ms. Jones is escorted out. The Jury is now
19 deliberating in the Jury Room. We are in recess. Thank each lady
20 and gentleman.

21 -----
22 CERTIFICATE

23 I, Charlene Yvonne Mays, do hereby certify that the above
24 proceedings were recorded in shorthand by me and transcribed under
25 my direct supervision, and are true and correct to the best of my
26 ability and understanding.

27
28 
29 Charlene Yvonne Mays, CCR

30
31 New Orleans, Louisiana

32 May 28, 1996