

ORIGINAL
(e-filed)

20080066

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

SUPREME COURT NO. 20080066
DISTRICT COURT NO. 07-C-00949

CHRISTOPHER BARROS,

APPELLANT,

vs.

NORTH DAKOTA
DEPARTMENT OF TRANSPORTATION,

APPELLEE.

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

APR 28 2008

STATE OF NORTH DAKOTA

APPEAL FROM DISTRICT COURT, MORTON COUNTY,
NORTH DAKOTA, SOUTH CENTRAL JUDICIAL DISTRICT

REPLY BRIEF FOR APPELLANT

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I. TABLE OF CONTENTS

II. LAW AND ARGUMENT ¶1

III. CONCLUSION ¶5

V. LAW AND ARGUMENT

[¶1] The Form 104 that was submitted in this case contains four (4) separate sections. (Appellant's Appendix at 32 hereinafter Appx.). Additionally, the officer fills out and removes a portion of the Form 104. (Appx. at 33). The portion filled out and removed by the officer contained Barros' name, date specimen was obtained and sealed which was 10/19/2008. (Id.). The top portion of the Form 104 was also filled out by the officer. (See Appx. at 32). That portion contained Barros', the officer's name, and county of arrest. (Id.). The middle-left section of the Form 104 was filled out by the blood-specimen collector. (See Id.). This section contains the date of 10/19/08 as to when the specimen was collected. (Id.). This section was filled out at the Mandan Police Department by a Registered Nurse. (See Id.). Upon completion of these sections of the Form 104 the blood specimen is mailed to the State Crime Laboratory.

[¶2] Upon receipt by the State Crime Laboratory, the middle-right section of the Form 104 was filled out by Cindy Leingang. (See Id.). The only identifying information relating to the blood sample is the Laboratory Case Number TL-07-3121 and the date of sample collection of 10/18/2008. (Id.). Barros' name, the officer's name, the specimen collector's name, nor the county of arrest do not appear anywhere on this portion of the Form 104. There was no evidence presented at the DOT Hearing as to how a case number is assigned. There was no evidence presented that the specimen received on 10/22/07 was indeed Barros' blood. The bottom portion of the Form 104 was filled out by Janelle Portscheller on 10/23/07. (See Id.). That portion contains the Case Number TL-07-312, Barros' name and the alcohol concentration. (Id.).

[¶3] The State's reliance on the officer's testimony is misplaced. The facts and circumstances relating to the blood draw are not in dispute. However, the information produced at the State Crime Laboratory upon receipt of a blood specimen does not match the information relating to the collection of Barros' blood specimen. (See Id.). There was no evidence as to the State Crime Lab's procedure upon receipt of a blood specimen. All that is available from the record is that a blood specimen that was drawn on 10/18/2007 was received on 10/22/08 by Cindy Leingang and assigned a Laboratory Number TL-07-3121. (See Id.). On 10/23/08 TL-07-3121 was assigned to Barros and tested by Janelle Portscheller. (See Id.).

[¶4] The basic and mandatory requirements allowing for the evidentiary shortcuts for establishing chain-of-custody in this case were not met. The Form 104 contains inconsistent information. No testimony from any person at the State Crime Laboratory was offered to attempt to clear up the inconsistency. The argument seems to be that because blood was drawn from Barros and because the blood tested in this case has been designated as Barros' blood, chain of custody is assumed. This argument is not sufficient to allow for the evidentiary shortcuts establishing chain of custody to be relied upon in this case. It is important to note that the Department of Transportation had the opportunity to cure the inconsistencies by calling officials from the State Crime Laboratory to testify and chose not to utilize that opportunity.

VIII. CONCLUSION

[¶5] The reliance upon the evidentiary shortcut for establishing chain-of-custody of the blood test in this case was improper and the Department of Transportation was

required to establish chain-of-custody by other evidence. Having failed to do so, the blood results in this case must be admitted into evidence.

Dated this 28th day of April, 2008.

/s/

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THE SUPREME COURT OF THE STATE OF NORTH DAKOTA

Christopher Barros,

Appellant,

v.

North Dakota Department of Transportation,

Appellee

Supreme Court No. 20080066
Morton Co. No. 07-C-00949

AFFIDAVIT OF FILING AND SERVICE BY E-MAIL

Nicki Fath being first duly sworn, deposes and says that on the 28th day of April, 2008, she filed by email the attached Appellant's Reply Brief according to the N.D. Sup. Ct. Admin. Order 14 upon:

supclerkofcourt@ndcourts.com

Nicki Fath, being first duly sworn, deposes and says that on the 28th day of April, 2008, she served by email the attached Appellant's Reply Brief as required by N.D. Sup. Ct. Admin. Order 14(D)(1), in Adobe PDF Format (document formatting and page numbering may be slightly different than Word), upon:

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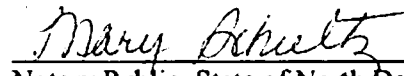
Dated this 28th day of April, 2008.



NICKI FATH

SUBSCRIBED AND SWORN to before me this 28th day of April, 2008.

(SEAL) **MARY SCHULTZ**
NOTARY PUBLIC, STATE OF NORTH DAKOTA
MY COMMISSION EXPIRES APRIL 26, 2011



Notary Public, State of North Dakota
Dickinson, ND