

NOTICE

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IN THE COURT OF APPEALS OF THE STATE OF ALASKA

TERESA ANN JOHNSON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12744
Trial Court No. 3PA-16-01291 CR

SUMMARY DISPOSITION

No. 0084 — October 23, 2019

Appeal from the Superior Court, Third Judicial District, Palmer,
Gregory Heath, Judge.

Appearances: Marilyn J. Kamm, Anchorage, under contract
with the Office of Public Advocacy, for the Appellant. Michal
Stryszak, Assistant Attorney General, Office of Criminal
Appeals, Anchorage, and Jahna Lindemuth, Attorney General,
Juneau, for the Appellee.

Before: Allard, Chief Judge, Harbison, Judge, and Mannheimer,
Senior Judge.*

Teresa Ann Johnson appeals her conviction for felony driving under the
influence. At Johnson's trial, to prove that Johnson had ingested controlled substances
that impaired her ability to drive, the State relied upon the testimony of Lisa Noble, a

* Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska
Constitution and Administrative Rule 23(a).

toxicology supervisor and forensic analyst from the Washington State Patrol Toxicology Laboratory.

Noble testified that, even though the testing of Johnson's blood was performed by other analysts in the laboratory, Noble was the supervising analyst who reviewed and evaluated all of the forensic testing in Johnson's case. With respect to each analyst's test results, it was Noble's job to either reject those test results or certify them as the official results of the laboratory.

In Noble's testimony, she described the test results obtained by the other analysts, but Noble also testified that she had reviewed those analysts' work and that she agreed with their test results.

In this appeal, Johnson contends that she was denied her right of confrontation when Noble was allowed to testify about the amount of the controlled substances in Johnson's blood. Johnson argues that, because Noble did not perform the tests herself, she should not have been allowed to testify about the results of those tests — that, instead, the State should have been required to present the testimony of the analysts who personally ran those tests.

But as we have already noted, Noble was the supervising analyst, and she was responsible for certifying the laboratory's assessment of Johnson's blood. As part of this responsibility, Noble was expected to review the other analysts' work, and to either certify or reject their test results. Noble testified that, after reviewing the testing data, she reached her own independent conclusion that the test results were accurate, and she therefore certified those results.

Given this record, our resolution of Johnson's case is governed by our recent decision in *Robbins v. State*, ___ P.3d ___, 2019 WL 3980157 (Alaska App. 2019).

In *Robbins*, we confronted another situation where the forensic analyst responsible for a defendant's case testified about the test results obtained by a second

analyst (working at the same laboratory) who performed portions of the testing under the first analyst's supervision. We held that this testimony did not violate the confrontation clause:

Gingras testified that he was the forensic analyst who was personally assigned to Robbins's case. Gingras explained that, even though Lowe conducted certain aspects of the testing (*i.e.*, the testing to determine the precise level of [the drug] in Robbins's blood), Lowe's test results were forwarded to Gingras, and Gingras was responsible for reviewing those test results and certifying them ... as the official test results obtained by the Toxicology Laboratory.

Given these circumstances, we conclude that Gingras could properly testify regarding the results of the [drug] testing performed by Lowe.

Robbins, 2019 WL 3980157 at *5.

Applying our holding in *Robbins* to the facts of Johnson's case, we conclude that Noble's testimony did not violate Johnson's right of confrontation.

The judgment of the superior court is AFFIRMED.