

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent and are not available in a publicly accessible electronic database. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

OLINGA GRIEGO,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-12587
Trial Court No. 3AN-13-03465 CR

SUMMARY DISPOSITION

No. 0083 — October 23, 2019

Appeal from the Superior Court, Third Judicial District,
Anchorage, Michael L. Wolverton, Judge.

Appearances: Michael L. Barber, under contract with the Public
Defender Agency, and Quinlan Steiner, Public Defender,
Anchorage, 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.*

Olinga Griego appeals her conviction for felony driving under the
influence. At Griego's trial, to prove that Griego had ingested a controlled substance that

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

impaired her ability to drive, the State relied upon the testimony of Dr. Naziha Nuwayhid, a forensic analyst from the Washington State Patrol Toxicology Laboratory.

Dr. Nuwayhid testified that she was the analyst assigned to Griego's case, and that she performed the initial test of Griego's blood — a test that revealed the presence of the controlled substance zolpidem. However, Christopher Johnston, another analyst employed by the laboratory, was the one who conducted the follow-up test that revealed the specific amount of zolpidem in Griego's blood.

Dr. Nuwayhid described the test result obtained by Johnston, but she also testified that she had reviewed Johnston's work and that she agreed with Johnston's test result regarding the amount of zolpidem in Griego's blood.

In this appeal, Griego contends that she was denied her right of confrontation when Dr. Nuwayhid was allowed to testify about the amount of zolpidem in Griego's blood. Griego argues that, because Dr. Nuwayhid did not perform the second test herself, she should not have been allowed to testify about the result of that test — that, instead, the State should have been required to present the testimony of Christopher Johnston, the analyst who personally ran the second test.

As we have already noted, Dr. Nuwayhid was the analyst assigned to Griego's case. As the assigned analyst, she was responsible for reporting the laboratory's assessment of Griego's blood. As part of this responsibility, Dr. Nuwayhid was expected to review Johnston's work, and to either accept or reject Johnston's test result. Dr. Nuwayhid testified that, after reviewing Johnston's work, she independently concurred in the test result, and she therefore included this result in her report of Griego's case.

Given this record, our resolution of Griego'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 Griego's case, we conclude that Dr. Nuwayhid's testimony did not violate Griego's right of confrontation.

The judgment of the superior court is AFFIRMED.