APPENDIX

TABLE OF CONTENTS

Page

APPENDIX A

In the Supreme Court of the State of Alaska

Teresa Johnson, Petitioner, v. **State of Alaska**, Respondent.	Supreme Court No. **S-17653** **Order** Petition for Hearing Date of Order: **1/29/20**

Court of Appeals No. **A12744**
Trial Court Case No. **3PA-16-01291CR**

Before: Bolger, Chief Justice, Winfree, Stowers, Maassen, and Carney, Justices

On consideration of the Petition for Hearing filed on 11/22/19, and the response filed on 1/9/20,

IT IS ORDERED: The Petition for Hearing is **DENIED**.

Entered at the direction of the court.

Clerk of the Appellate Courts

[/s/ signed]
Meredith Montgomery

cc: Supreme Court Justices
Court of Appeals Judges
Judge Gregory Heath
Central Staff

Distribution:
Mail:
Brandon Stone
Kirkland & Ellis Llp
Hari Santhanam
Kirkland & Ellis LLP
Michal Stryszak
Office of Criminal Appeals

APPENDIX B

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

TERESA ANN JOHNSON, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A12744 Trial Court No. 3PA-16-01291CR 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 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.

---

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

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.

APPENDIX C

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

STATE OF ALASKA, Plaintiff, v. TERESA ANN JOHNSON, Defendant.	FILED in the TRIAL COURTS State of Alaska, Third District at Palmer Alaska SEP 19 2016 Clerk of the Trial Courts By [/s/] Deputy Case No. 3PA-16-0129CR

ORDER REGARDING EXPERT TESTIMONY

The State is seeking to introduce the testimony of Washington Laboratory Forensic Toxicologist Lisa Noble. Johnson objected on the record on September 14, 2016, and September 16, 2016. On September 16, 2016, the Court ordered the parties to brief the issue by noon on September 19, 2016. The State of Alaska filed a Motion Regarding Expert Testimony the morning of September 19, 2016. Johnson filed Defendant's Brief Regarding Admissibility of Lisa Noble's Testimony about the Lab Results on September 19, 2016. After reviewing the briefings,

the Court finds that Lisa Noble's testimony is admissible if the State lays the necessary foundation.

I. Facts

On May 28, 2016, Teresa Johnson was arrested for DUI and MIW4. Wasilla Police Officer Lopez applied for and was granted a search warrant to seize four vials of Teresa Johnson's blood for testing. On July 27, 2016, testing completed by the Washington Crime Lab showed that a variety of controlled substances in Johnson's blood. The testing was done by three different analysts at the Washington State Toxicology Lab and involved a Liquid Chromatography/Mass Spectrometry, a Liquid Chromatography/Tandem Mass Spectrometry, and a Gas Chromatography/Mass Spectrometry.

Amanda Chandler signed off on the laboratory report and certified as follows:

> Unless indicated otherwise, I performed all testing reported above for the submitted evidence. The document on which this certification appears is a true and complete copy of my official report and I have technically reviewed all relevant pages of testing documentation in the case record. The tests were administered according to testing methods approved by the state toxicologist pursuant to WAC 448-14-010, -020,-030 and/or RCW 46.61.506(3) by an analyst possessing a valid permit issued by the state toxicologist.

Lisa Noble also signed the laboratory report indicating that she reviewed the findings in her supervisory capacity and agreed with them.

II. Applicable Law

The Sixth Amendment's Confrontation Clause, U.S. Const. amend. VI, requires that a criminal defendant be confronted with the witnesses against him. "Testimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." *Crawford v. Washington*, 124 S. Ct. 1354, 1369 (2004). In *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 2532 (2009), the Supreme Court decided that forensic lab reports are "testimonial" and therefore trigger the defendant's confrontation rights. After the *Melendez-Diaz* decision, the Alaska Court of Appeals held in *Vann v. State*, 229 P.3d 197, 210 (Alaska Ct. App. 2010), that expert testimony based in part on test data obtained from other people, but that offers independent analysis by the testifying witness, is consistent with the Confrontation Clause.

Shortly thereafter, the Supreme Court decided *Bullcoming v. New Mexico*, 131 S.Ct. 2075 (2011), and held that scientific reports could not be used as substantive evidence against a defendant, unless the analyst who prepared and certified the report was subject to confrontation. *Id.* Justice Sotomayor, in her concurrence, limited the reach of the majority opinion by proposing four scenarios in which courts may allow expert testimony from a witness in a supervisory role. *Id.* Justice Sotomayor specifically noted that *Bullcoming* was "not a case in which the person testifying is a supervisor, reviewer, or someone else with a personal, albeit limited, connection to the scientific test at issue." *Bullcoming v. New Mexico*, 131 S. Ct. 2705, 2722 (2011) (emphasis added).

Johnson argues that *Bullcoming* overruled *Vann*. However, the most recent Supreme Court decision in this area, *Williams v. Illinois*, 132 S. Ct. 2221 (2012), is consistent with the approach taken in *Vann*.[1] In *Williams*, the Court dealt with the problem of an expert witness's reliance on data generated by someone else's testing. The expert witness relied on the results of DNA testing performed by another laboratory when the expert evaluated whether the defendant's DNA matched a DNA sample obtained from inside the victim's body. The Court found no violation of the confrontation clause.

III. Assuming the Appropriate Foundation is Laid, Lisa Noble's Testimony is Admissible

Lisa Noble's testimony will be admitted assuming the State lays the appropriate foundation. The State must show that Lisa Noble independently reviewed the test results and drew conclusions from the underlying data. Her analysis must involve a process of searching for any errors in the test results or calibration and control processes of the machines used during testing. Unlike the proposed expert in *Bullcoming*, Lisa Noble will need to be able to "expose any lapses or lies." Lisa Noble will only be able to testify to facts in which she has independent knowledge, but the defense should not be limited in the scope of their cross-examination of Lisa Noble and the data relied on in forming the report and reaching

[1] In a recent memorandum decision, which is not binding authority, the Alaska Court of Appeals "interpret[ed] *Williams* as being at least consistent with the approach that this Court took in *Vann*." *McCarty v. State*, 2016 WL 2610657 (Alaska App. 2016).

her particular conclusions even though she did not physically perform the test itself.

Blood tests are admittedly different from the DNA comparisons discussed in *Vann* and *Williams*, but Johnson's Sixth Amendment rights will not be violated if Lisa Noble is able to provide independent review and analysis of the results.

IT IS HEREBY ORDERED that the State's Motion Regarding Expert Testimony is GRANTED, subject to the appropriate foundation.

Dated at Palmer, Alaska this 19 of September 2016,

[/s/ signed]
Gregory L. Heath
Superior Court Judge

I certify that on 9/19/16
a copy of this document was sent to
☐ ☒ Deft/Atty ☒ DA ☐ DPS ☐ AGO
☐ MSASP/AASAP ☐ DMV ☐ FWP
☐ MSPT ☐ Anch Jail ☐ Other
Deputy Clerk [/s/]

APPENDIX D

IN THE SUPERIOR COURT
FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER

State of Alaska, Plaintiff, v. Teresa Ann Johnson, Defendant.	CASE NO. 3PA-16-0129CR **AMENDED JUDGMENT AND ORDER OF COMMITMENT/ PROBATION FELONY DUI OR REFUSAL**

DOB: [redacted]
ASPIN: [redacted] ATN: [redacted]
DL/ID: [redacted] ST: AK ☐ CDL

Plea Agreement: ☐ Yes ☒ No ☐ Partial
Trial: ☐ Court ☒ Jury

The defendant came before this court on October 11, 2016 with defense counsel, Hannah Thorssin-Bahri, and the assistant district attorney, Shawn Traini present.

Defendant has been convicted of the following offenses upon defendant's plea of:

☐ guilty ☒ not guilty ☐ no contest

CTN:	Offense Date:	Offense	Class	DV Offense per AS 18.66.990(3), (5) (Yes or No)
001	05/28/2016	AS28.35.030(n): Felony DUI - 2+ Priors	C Felony	No

The following charges were dismissed:

CTN:	Offense Date:	Offense:

SENTENCE

INCARCERATION

It is ordered that the defendant is committed to the care and custody of the Commissioner of the Department of Corrections for the following period(s):

CTN	Period
001	Sixteen (16) months with twelve (12) months suspended. The defendant shall remand to Mat-Su Pretrial Facility on January 10, 2017 at 7:30 am to serve the unsuspended four (4) months.

Total unsuspended term of incarceration: four (4) months

The defendant to be credited for time already served in this case.

☐ Under AS 33.16.090(a)(2) and AS 12.55.115, the defendant is not eligible to be considered for discretionary parole until the defendant has:

☐ served the following term: _____

☐ completed the following conditions: _____

FINE AND OTHER COSTS

The defendant shall pay the following fine and costs:

☒ FINE.

001 Defendant is fined $10,000.00 with $0.00 suspended. The unsuspended $10,000.00 shall be paid by October 11, 2018. ☐ safety corridor ☐ hwy work zone

☒ POLICE TRAINING SURCHARGE

The defendant shall pay a police training surcharge pursuant to AS 12.55.039 within 10 days:

☒ $100 (Felony) ☐ $75 (DUI/Refusal)

☐ $50 (Misd) ☐ $10 (Inf/Viol) ☐ $0 (None)

☒ INITIAL JAIL SURCHARGE.

The defendant was arrested and taken to a correctional facility or is being ordered to serve a term of incarceration. Therefore, defendant shall immediately pay a correctional facility surcharge of $100 per case to the Department of Law Collections Unit, 1031 West 4th Avenue, Suite 200, Anchorage, AK 99501. [AS 12.55.041(b)(l)]

☒ SUSPENDED JAIL SURCHARGE

The defendant is being placed on probation. Therefore, defendant shall pay an additional $100 correctional facility surcharge. This surcharge is suspended and must only be paid if defendant's probation is revoked and, in connection with the revocation, defendant is arrested and taken to a correctional facility or incarceration is ordered served. [AS 12.55.04l(c)]

☐ RESTITUTION

The defendant shall pay restitution as stated in the Restitution Judgment. Defendant shall apply for an Alaska Permanent Fund Dividend every year that defendant is a resident eligible for a Dividend until the restitution is paid in full.

* * *

LICENSE AND FORFEITURE ACTIONS

☒ The defendant's driver's license is permanently revoked and may only be restored pursuant to the conditions in AS 28.35.030(0).
[AS 28.35.030(n)(3)]

☒ The defendant is disqualified from driving a commercial vehicle for life, subject to reinstatement under AS 28.33.140(g)-(h).
[AS 28.33.140(e)]

☒ The defendant's interest in the vehicle, watercraft, or aircraft used in the commission of the offense is forfeited.

A forfeiture hearing is scheduled for December 9, 2016 at 8:30 am in Courtroom 4, Palmer Courthouse 435 S. Denali St, Palmer AK 99645

ID# (VIN, HIN, SN) of vehicle used in offense [redacted]

Make Kia Model _____ Year 2002

☒ The Division of Motor Vehicles (DMV) shall revoke the registration of all vehicles registered in defendant's name. For every vehicle registered in defendant's name as co-owner or as co-owner

under a business name, the DMV shall reissue vehicle registration and omit defendant's name. [AS 28.35.030(n)(6)]

☒ Within 10 days, defendant shall submit an Affidavit of Vehicle Ownership to the DMV Registrar at 1300 W. Benson Blvd., Suite 900, Anchorage, AK 99503.

☐ IGNITION INTERLOCK DEVICE

After defendant regains the privilege to drive or obtains a limited license, defendant must use an ignition interlock device as directed in the *IID Information Sheet* (CR-483) for ___ months. [AS 28.35.030(n)(1)]

☐ Commercial vehicle used in the offense

- ☐ Weighing more than 26,000 pounds
- ☐ Designed to transport > 15 passengers
- ☐ Used to transport hazardous materials

OTHER ORDERS

It is also ordered:

☐ DNA IDENTIFICATION

The defendant shall provide samples for the DNA registration system when requested to do so by a health care professional acting on behalf of the state and provide oral samples for the DNA registration system when requested by a correctional, probation, parole or peace officer. [AS 12.55.015(h); AS 44.41.035.]

PROBATION

☒ The defendant is placed on probation for two (2) years under the following conditions:

* * *

[10/29/16]	[/s/ signed]
Date Signed	Superior Court Judge
October 11, 2016	Gregory L Heath
Date Effective	Type or Print Name

EGriffeth
Clerk

* * *

APPENDIX E

TOXICOLOGY LABORATORY
WASHINGTON STATE PATROL
2203 Airport Way South Suite 360
Seattle, WA 98134
(206) 292-8100 FAX No. (206) 262-8145

TOXICOLOGY TEST REPORT

Attention: Toxicology Section
Agency: State of Alaska Crime Lab
Address: 4805 Dr MLK Jr Ave
Anchorage, AK 99507-1275

Tox Case #: ST-16-06645 **Case Type**: DUI
Report Date: 7/27/2016

Agency Case #: 16-02435 16-1032
Subject Name: Teresa A. Johnson

Evidence: The following evidence was submitted to the Laboratory by Nikki Roth of the State of Alaska Crime Lab on 6/15/2016 via Fed Ex:

(1) ST-16-06645-A: VGray, Blood - Peripheral

Drug Analysis Results:

ST-16-06645-A: Blood - Peripheral

ST-16-06645-A was tested by Enzyme Multiplied Immunoassay Technique (EMIT for the presence of amphetamines, barbiturates, benzodiazepines, cocaine metabolite. methadone, opiates, phencyclidine (PCP), and tricyclic antidepressants on 08/17/2016. The following result(s)-was obtained:

Presumptive positive for benzodiazepines and methadone

ST-16-06645-A was tested by Gas Chromatography/ Mass Spectrometry for basic drugs and metabolites on 06/20/2016. The following result(s) was obtained:

Alprazolam	**positive**
Diazepam	**positive**
Diphenhydramine	**positive**
Methadone	**positive**
Nordiazepam	**positive**
Oxycodone	**positive**
Tapentadol	**positive**

PLAINTIFF
Exhibit No. 4
Admitted ☑
3PA-16-0129
(Case Number)

ST-16-06645-A was tested by Liquid Chromatography/Mass Spectrometry on 06/21/2016. The following result(s) was obtained:

Methadone	**0.44 mg/L**

(test conducted by Christie Mitchell-Mata, Forensic Scientist 3)

ST-16-06645-A was tested by Gas Chromatography/ Mass Spectrometry for diphenhydramine on 06/2312016. The following result(s) was obtained:

Diphenhydramine	**0.059 mg/L**

(test conducted by Justin Knoy, Forensic Scientist 3)

ST-16-06645-A was tested by Liquid Chromatography/Tandem Mass Spectrometry for benzodiazepines, quetiapine, and zopiclone on 06/23/2016. The following result(s) was obtained:

7-aminoclonazepam	**positive**
Alprazolam	**0.065 mg/L**
Clonazepam	**0.025 mg/L**
Diazepam	**0.016 mg/L**
Nordiazepam	**0.080 mg/L**

ST-16-06645-A was tested by Liquid Chromatography/Tandem Mass Spectrometry for cannabinoids on 06/23/2016. The following result(s) was obtained:

None detected

ST-16-06645-A was tested by Liquid Chromatography/Tandem Mass Spectrometry for opiates on 06/23/2016. The following result(s) was obtained:

Oxycodone	**0.049 mg/L**

(test conducted by Christie Mitchell-Mata, Forensic Scientist 3)

ST-16-06645-A was tested by Gas Chromatography/ Mass Spectrometry for Tapentadol on 07/14/2016. The following result(s) was obtained:

Tapentadol	**positive**

COMMENTS

Amanda Chandler, MS certifies under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct: Unless indicated otherwise, I performed all testing reported above, for the submitted evidence. The document on which this certification appears is a true and complete copy of my official report and I have technically reviewed all relevant pages of testing documentation in the case record. The tests were administered according to testing methods approved by the state toxicologist pursuant to WAC 448-14-010, -020, -030 and/or RCW 46.61.506(3) by an analyst possessing a valid permit issued by the state toxicologist.

Examined by:	**Reviewed by:**
[/s/ Amanda Chandler]	[/s/ Lisa Noble]
Amanda Chandler, MS	Reviewer:
Forensic Scientist 3	Date: 7 / 28 / 16

Executed this 27th day of July, 2016
at Seattle, Washington

APPENDIX F

IN THE SUPERIOR COURT FOR APPEALS
OF THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA,
Plaintiff,
v.
TERESA ANN JOHNSON,
Defendant.

No. 3PA-16-01291 CR

* * *

[***3**] STATUS HEARING
BEFORE THE HONORABLE GREGORY HEATH
SUPERIOR COURT JUDGE
Palmer, Alaska
September 14, 2016
11:17 a.m.

APPEARANCES:

FOR THE PLAINTIFF: SHAWN TRAINI
District Attorney's Office
515 East Dahlia Street
Suite 150
Palmer, Alaska 99645

FOR THE DEFENDANT: HANNAH THORRSIN-BAHRI
Public Defender's Office
515 East Dahlia Street
Suite 100
Palmer, Alaska 99645

* * *

[***4**] THE COURT: So where are we at with the trial?

MS. THORRSIN-BAHRI: We are ready for trial.

THE COURT: Okay. Mr. Traini.

MR. TRAINI: Your Honor, here's kind of where we're at. We have a crime lab person in Washington --

THE COURT: Okay.

MR. TRAINI: -- that had some childcare issues. I don't know if I can get her up for next week.

THE COURT: All right.

MR. TRAINI: There is another analyst that reviewed her findings. I could probably get her up for Monday or Tuesday. I filed an amended notice specifically listing her as soon as I learned of the childcare issues, Your Honor.

THE COURT: Okay.

MR. TRAINI: Her name was still on the report and so defense has had her name for a while. I could probably get her up Monday or Tuesday. You know, what I would ask is, you know, that we just set a trial status.

THE COURT: Friday?

MR. TRAINI: Friday.

THE COURT: All right.

MR. TRAINI: And I'll see if I can get the other person up. And as long as I can get her up, we'll be good to go.

THE COURT: Okay.

MS. THORRSIN-BAHRI: And who -- I guess I'm unclear, I mean, the defense has a right to cross-examine the person that tested the blood. And so if the state is saying that they are going to call somebody other than that person, the defense objects and the state's required to bring up the person who tested the blood.

[***6**] MR. TRAINI: That's actually --

MS. THORRSIN-BAHRI: It's a confrontational clause issue.

MR. TRAINI: That's actually not a confrontation clause, Your Honor, because theoretically and realistically no one actually tests the blood. What actually tests the blood is the instrument, Your Honor, and there is case law, and this has been well documented and well thought out. There is one personal that generally reviews it, and that person was Amanda Chandler, but then their findings are also reviewed by another person who makes an independent conclusion as to those findings. And that has been well satisfied to satisfy the confrontational clause. That person in this case would be Lisa Noble. And this is not a new area of law and it's well settled.

(Whispered conversation)

THE COURT: Okay.

MS. THORRSIN-BAHRI: And Your Honor, Bullcoming, I think, is the recent case.

MR. TRAINI: This is all post Bullcoming. Defense attorneys and public defenders have litigated this and lost in this jurisdiction.

MS. THORRSIN-BAHRI: And the state talks about a machine, but, I mean, there's a person that is inputting the information or whatever needs to be done with the machine. We have a right to cross-examine this person. Having somebody else say, well, [***7**] I don't know where the blood was put, I don't know where we took it from, is not sufficient --

THE COURT: Well, here's what we'll do, is we'll --

MS. THORRSIN-BAHRI: -- to satisfy the confrontational clause.

THE COURT: -- put it on for a status on Friday. I need the defendant here. She needs to be physically present in court.

* * *

[***11**] STATUS HEARING, CONTINUED
BEFORE THE HONORABLE GREGORY HEATH
SUPERIOR COURT JUDGE

Palmer, Alaska
September 16, 2016
11:25 a.m.

* * *

[***12**] MS. THORRSIN-BAHRI: And so I think the issue was who is going to be coming up from the --

MR. TRAINI: And the state's going to be --

MS. THORRSIN-BAHRI: -- crime lab.

MR. TRAINI: -- calling Lisa Noble. She is a reviewer on the lab report, Your Honor.

THE COURT: Okay.

MR. TRAINI: She's the supervisor who reviewed the data that Amanda Chandler -- or that, you know, on the report.

THE COURT: Well, what I'm going to ask the parties to do [***13**] is that at least by Monday afternoon, I'm going to need briefing if you're going to oppose the expert testifying.

MS. THORRSIN-BAHRI: And we will. I mean, the defense --

THE COURT: But I need to know exactly how it's factually set up down there, you know, who's doing the test, what the test is, what's her position in the lab, all those factual bases, so I can track all that. So I'm going to need something by noon Monday to make a decision before she comes up to testify.

* * *

[***43**] TRIAL BY JURY, CONTINUED (EXCERPT)
BEFORE THE HONORABLE GREGORY HEATH
SUPERIOR COURT JUDGE

Palmer, Alaska
September 20, 2016
11:09 a.m.

* * *

[***54**] MS. THORRSIN-BAHRI: And Your Honor, I just want to state for the record that the defense maintains its objection to calling Ms. Noble or any other person besides the people that actually performed the test. We are not waiving our objection.

THE COURT: That is fair enough. I will note that for the record. Okay. Go ahead, Mr. Traini.

* * *

[**TESTIMONY OF LISA NOBLE**]

[***55**] **DIRECT EXAMINATION**

THE CLERK: You may be seated. Could you please state and spell your name for the record?

A Lisa Noble. N-o-b-l-e.

THE CLERK: And your first name?

A L-i-s-a.

THE CLERK: Okay. And your occupation?

A I'm a forensic toxicology supervisor at the Washington State Patrol Toxicology Laboratory.

* * *

BY MR. TRAINI:

Q Ms. Noble, how long have you worked at the crime lab? [***56**]

A Just over 10 years.

Q And what education have you received to allow you to get this job?

A I have a bachelor of science degree in biochemistry and a minor in chemistry from the University of Washington.

Q And you indicated you've worked at the crime lab for 10 years?

A Yes.

Q And what are your duties -- or what have your duties been there?

A When I first started, I was an analyst, so that would be working in the laboratory, processing samples. And in 2013, I became a supervisor, so now my duties mainly consist of reviewing scientist data and checking for any errors, looking through the data, so that we can send out case reports.

Q Now tell us a little bit about the Washington state crime lab.

A The Washington State Patrol Toxicology Laboratory. We have only one tox lab in the state of Washington and we process all of the DUI, death investigation or sexual assault samples for the presence of drugs and alcohol. We also are a contract laboratory for the states of Alaska and Oregon, so we do the drug testing for those two states as well. [***57**]

Q And this lab is accredited?

A Yes, we are. We have two accreditations, one from ABFT, which stands for American Board of Forensic Toxicology, and the other is from ASCLD LAB, which is American Society of Crime Laboratory Directors, Laboratory Accreditation Board.

Q Okay. Now in addition to your bachelors degree, you said, in biochem or chemistry --

A Biochemistry and a minor in chemistry.

Q A minor in chemistry. What additional training have you received?

A When you start at the toxicology laboratory, the first year is spent in training. So before you can start processing case samples, you're not only learning all of the methodologies that are in the laboratory, but also learning a lot about the effects of drugs and alcohol. We get to go to several different external trainings, two of which are at the University of Indiana, and they are each one week long. One is about the effects of alcohol on the human body and the second is about the effects of drugs. We also get to go to -- so drug recognition experts are police officers that are specially trained to recognize the effects of drugs in individuals. When they are being tested to become a DRE, they bring individuals off of the street that are using drugs and they offer them a free [***58**] meal in exchange to be doing some field sobriety tests and other tests on them. So we get to witness that, so we get to see what different individuals look like with different drugs in their system.

Q And additionally, you've had other training even beyond that? There's numerous courses you've been to throughout your --

A Yes.

Q Okay. Now you mentioned that the Washington crime lab is a contract lab for Alaska?

A That's correct.

Q Okay. And specifically, Washington tests -- I mean, how does that contract work and what's Washington's role in there?

A Alaska sends us up to 550 cases a year as part of the contract and we process those samples for the presence of drugs. They are either driving-under-the-influence cases or fatality accidents that are involved with traffic information.

Q And Alaska's not able to do that at their laboratory?

A Correct.

Q Okay. Now so if someone gets stopped for a DUI, a sample of their blood is taken. That's sent to the Alaska crime lab. And then what takes place?

A If the sample is needing drug testing, then the Alaska [***59**] crime laboratory will ship it to the Washington State Patrol Toxicology Laboratory.

Q And what happens once that blood is received at the Washington state crime laboratory?

A We have two property and evidence custodians currently and their job is to intake evidence from all of the agencies, whether it comes via FedEx or UPS or mail or hand delivery, and they will accession those samples into our laboratory and

assign them each their own unique case number. And then the cases are assigned to one of our 14 analysts in batches of 40. So they get 40 cases at a time on a rotation basis and then they can begin testing those samples.

Q You indicated they get 40 cases at a time. How many cases does each analyst get a year?

A Well, this year -- we're already at 10,000 cases for this year, so it's going to probably end up being about 12 hundred to 13 hundred cases per analyst.

Q So 13 hundred cases a year?

A Approximately, yes.

Q Approximately. So after the blood is, you know, the blood sample's assigned to a specific analyst, what do they do?

A Depending on the type of testing -- if it were a Washington case, we would start with blood alcohol testing. Alaska does not contract with us to do blood [***60**] alcohol testing. It's my understanding they do that themselves. So with an Alaska case, we would start with a drug screen and this screen is going to give us an idea of several classes of compounds, whether those might be present. So it won't say which drug or how much, just sort of a preliminary direction in which way we should start our testing.

Q What are the classes of drugs that you're talking about here?

A There are nine. I'm not sure I can name them all, but I'll try. It's cocaine and metabolites, opiates, benzodiazepines, barbiturates, cannabinoids,

Methadone, PCP, tricyclic antidepressants. And I'm missing one, but I can't recall it.

Q But these are just the classes of drugs?

A Yes.

Q And so it's kind of like a broad test?

A Correct.

Q And then once you get a result on this broad test, what do you do then?

A Depending on the results of that and/or depending on what was written on the submission form, we would move on to what's called a basis drug screen. This is a different type of test where we can now detect what specific compounds are there. It won't tell us how much yet. This [***61**] is just a screen to tell us specific compounds that might be present. And this includes several hundred drugs, most of them either prescription or illicit medications.

Q And are there various instruments that do this testing, then, or how are you able to, you know, find this information out?

A That particular test is done on what we call a gas chromatography mass spectrometer. So basically, it's -- we extract the blood so that we -- we don't want to inject blood on the instrument, so we need to get it down into a small extract in the solvent. That's extracted on the instrument and ran on the instrument, and it can separate out different compounds that are detected. And then as they hit a detector at the end of this long, thin column, they're bombarded with electrons and it breaks these molecules up into small pieces. And every drug predictability breaks up

into the same size fragments every time. So we're collecting those fragments and looking at the pattern of the masses of those fragments. And it's sort of like a fingerprint. So if we see a certain fragmentation pattern, then we can compare that to a library of known standards and determine what drug is causing that fragmentation pattern.

Q You said a library of known standards. What is that exactly? [***62**] So it's a library. This one is from the AAFS, which is American Academy of Forensic Sciences. So they use NIST traceable standards and do the same process repeatedly with information -- they know what they're putting in the instrument. And then they can get that fragmentation pattern out. So we have that as a library that we can compare the unknown against.

Q Okay. So you have -- what you know is -- for example, Methadone, you know what that fragment or that fingerprint is of that drug?

A Correct.

Q And then you're looking to see if the fingerprint and the data that the instrument produces matches that fingerprint?

A That's correct.

Q Okay. And you said that's using -- you said the gas --

A Yeah, gas chromatography mass spectrometry.

Q Okay. And there's some other instruments that are used as well?

A Yes.

Q And what are those?

A We have other confirmatory instruments. So the GCMS we use for the screen that we just talked about to determine what drugs are there, and then we use some other methodologies to -- to quantitate or determine how much of [***63**] a certain drug is present. We use these other methodologies because they might be more sensitive, so we can see down to lower levels. And we would use either liquid chromatography, mass spectrometry, or liquid chromatography tandem mass spectrometry. So that's just -- it's got two of those mass spectrometers that's bombarding electrons. So the first one to break it up into pieces, the second one breaks it up into smaller pieces so we can fine-tune that fingerprint that we're looking at.

Q Now these instruments, are they a new development?

A No, they've been around for quite some time. Most laboratories use the LCMSMS for most of their testing in the toxicology room.

Q In fact, you previously have testified about this in other cases?

A Yes.

Q How many times, roughly?

A Probably 200 or so times that I've testified.

Q Okay. Now so you were at -- I think you said it was the GCMS, the gas chromatography mass spectrometry.

A Correct, yes.

Q Okay. So that does that initial -- the second screening. And then you did the other results -- or the other test to see how much quantitative there is? [***64**]

A Correct.

Q Okay. And what do these instruments do that allows you -- I mean, how is the data outputted?

A The data is collected electronically, so all of the instruments have electronic integrators. But the data gets printed out onto pieces of paper, so we have software that can analyze the data and it's actually using some mathematical calculations to calculate the area under a peak. So when you have those little electrons that are bombarded and hitting the detector, it's creating a signal, and the signal looks like a small bell curve. So basically the instrument is recording that signal rise and then calculating the area underneath that peak. We can use that to help us determine how much might be present by injecting a known amount of the standards that we're looking at, and looking at those peak areas and comparing the unknown to the known to create a calibration curve.

Q And can you explain what quality controls or safeguards you have in place?

A Sure. Each of our tests that we have, we have standard operating procedures for, so there's clear direction to the analyst on how they are to do the test and also what criteria must be met for the results to be acceptable and reportable. So we have those. And then also when the analyst is completed with their testing and they do their [***65**] analysis and print out their paper, part of

our accreditation is that they thoroughly review their own work to make sure that it meets all the SOP's and the criteria. And they have to initial every page to show that they're looking at every page and that the criteria are met on every page of the data they produce. They would then submit that batch to either the supervisors or the laboratory manager, and we would do a complete batch review. So all of the injections that they had for that run, we're doing the same thing. We're looking at -- looking at the data. We know our standard operating procedures and what criteria have to be met. And then we, as the supervisors that are reviewing that data, would initial and date every page to show that we have looked at this data and accept this data. And then if there was anything wrong, if there's any restrictions on reporting, those are all notated on a work list and this work list has a list of all the samples that were ran in that batch. There are bar codes on the tubes, so they scan the bar codes to show which samples they ran. And then we write on there whether everything passes or not. We keep track of quality control, so we do have both positive and negative controls. Negative controls would be samples that we purposely run that we know are negative. We use just blank blood from a blood bank that we test to make [***66**] sure it's drug-free. So we want to make sure the extraction's working properly, but that we can accurately detect cases that are free of drugs. And then we also have positive controls where we put a known amount of the drugs of interest into that same blank blood and extract it right alongside all of our unknown samples. So

we know the target concentration of those controls and we run them at different levels throughout the run. So those controls have to meet within a 20 percent criteria of the value we're looking for in order to report the unknowns.

Q And again, you review all of this as part of your job as a supervisor?

A Yes, I do.

Q Okay. And do you create your own independent conclusion regarding this data?

A Yes, we do.

Q Okay. Now specifically, did the Washington crime lab receive a blood sample concerning Teresa Johnson?

A Yes, we did.

Q And are you familiar with that case?

A Yes, I am.

Q And how are you familiar with that case?

A I was the final reviewer of the case report before it left our laboratory, so my signature is on the report as the reviewer. [***67**]

Q Okay. So what was your involvement in this case then? Can you explain to the jury what your role is and what you did?

A Sure. So after all of the testing has been completed by the analyst or other analysts -- sometimes we batch-test, so analysts might do testing for one another to save time and resources. After all the testing's been completed for a batch, that primary analyst will prepare a report. They'll put the report in the case file, and

that case file is going to contain all of that data that was printed out from the instruments that already have their initials on it, already has a supervisor's initials on it. The batch reviews have already been done and the data's been accepted, but now it's all collected from all of the different tests that are done into one place. Then that file's put up for review. And so again, a supervisor or the laboratory manager or the state toxicologist, we all have authorization to review final case reports. So then we will pull case files down and look through them to make sure, again, that everything meets criteria, everything's been signed off on. There are calibration curves that are included in there, so we're looking to make sure those are accurate. And then also looking at administrative things as well, like did they transfer the correct number from one place to another, is the name spelled correctly, [***68**] agency case number, et cetera. And then once I've determined that I've accepted all the data in the file, I will sign alongside her name. So the primary analyst has already signed the report and I will sign as the reviewer. And at that point, the report can leave the laboratory to go to the agency.

Q So a toxicology report cannot leave until this final step has been done?

A Correct.

Q And would you, as part of your, you know, review, would you be able to catch any errors or any mistakes or anything like that, that have been done in the case?

A Yes. So if any errors are found either in the numbers or additional testing is needed, or something didn't meet reporting criteria, then I would return the report to the analyst and let them know what further follow-up is needed. And then they can make those changes or perform additional testing as necessary and re-submit that folder to the same reviewer that returned it to them so that we can track that process and make sure that everything that you requested to be fixed is fixed before the final report is then released.

Q And again, you're reviewing the same data that the analyst who tested the blood would have reviewed?

A Correct. [***69**]

Q And when I say the analyst who tested the blood, I mean, let's just be clear here. Is the analyst going under a microscope and trying to determine what's in this blood or is that what the instrument's doing?

A Yeah, there's no microscopes involved. They are removing some blood samples into other tubes and then following the standard operating procedure, kind of like a recipe, add these solvents, do this, do that, centrifuge, transfer, you know, following the steps of a standard operating procedure so that they can get those drugs out of the blood to run on the instrument. So most of it's all -- once they've gotten the extraction done, then it's all automated on the instrument.

Q And the extraction part, again, if there's any errors or any mistakes, I mean, that has to be documented and you review all of that data?

A Yes. And that's why we have the positive and negative controls. So if they had made an error and spiked the incorrect level for a calibrator, for example, then those controls would not quantitate correctly. So that's why we have positive and negative control space throughout the run.

Q Just another quality control set into there?

A Correct, yeah.

MR. TRAINI: I'm going to show this witness state's [***70**] Exhibit 4, Your Honor.

THE COURT: Okay.

(Whispered conversation)

Q Do you recognize that?

A Yes, I do.

Q And can you explain what that is?

A This is a copy of the final report that was prepared in this case.

Q And specifically, who is the subject of this report?

A Teresa A. Johnson

Q Okay. And you're looking at, you said, a final report?

A Correct.

Q And can you explain who signed off on page 2 of that report?

A Sure. So there are two signatures on page 2. The first is from Amanda Chandler. She was the

primary analyst for this case, so she did the majority of the extractions of that blood sample. And then my own signature.

Q Now when you said she did the primary, you know, analysis, was there other individuals there involved as well?

A Yes.

Q And who are those?

A There was two tests conducted by Christie Mitchell-Mata and one by Justin Knoy.

Q Okay. And again, you mentioned that you kind of have [***71**] other individuals break it up, depending on what drug they're looking for?

A That's correct. So, you know, every scientist has their batch of 40 that they're working on. And let's say there's, you know, benzodiazepines that so-and-so only has five cases, I only have five cases, she only has five cases. Well, if we were to do three runs each with only five cases, we have all the calibration, all of the controls for each one. So that would waste a lot of resources. So we say, okay, somebody's going to sign up to do benzodiazepine tests for that day and they would pull the evidence from all of the scientists that need it for that day and then run them all in one run.

Q Okay. Now when you reviewed the data, did you review the data from all three analysts then?

A Yes. All the data that is associated with this case was contained in the case file, so I looked over all of that data before I signed the report.

Q And again, you know, just to be clear, what I've marked as state's Exhibit number 4, is that an accurate representation of the tox report that was prepared by the Washington crime lab?

A Yes, it is.

MR. TRAINI: Your Honor, I'd ask that 4 be admitted into evidence. [***72**]

THE COURT: With the objection already noted --

MS. THORRSIN-BAHRI: Yes.

THE COURT: -- I will let it in.

(Plaintiff's Exhibit 4 admitted)

MR. TRAINI: Okay.

Q Now let's go through and talk a little bit about state's Exhibit 4. There are some things, you know, on that front page. Can you explain what's there and what's going on?

A Sure. So the way our toxicology reports look, we have, you know, a header with our information, and then the agency's information. So in this case, the State of Alaska crime laboratory is where we're going to send it to. The subject's information and some chain of custody information, so who submitted the sample to us, how did it get here, what day did it get here. And then some information about the type of sample that was submitted. And then there's a drug analysis result section where we list the results that we have found.

Q Okay. And there were some presumptive positive on this one. What was it positive for?

A So the presumptive positive is from that very first screen that we talked about that just told us what classes of compounds were there. So the reason we say presumptive is because we haven't, at that point yet, identified specifically what it's going to be, so we'll further [***73**] confirm. So we had presumptive positive for benzodiazepines and Methadone.

Q Okay. And then you do some more testing?

A Yes.

Q A second screen?

A Correct.

Q And what was the result on that second screening?

A So that second screening, now this is the one on GCMS that tells us specifically what drugs are there, and we're looking at those fingerprints to tell us which drug. We found Alprazolam, Diazepam, Diphenhydramine, Methadone, Nordiazepam, Oxycodone and Tapentadol.

Q Okay. And then you then quantitate those amounts?

A Correct. So after those are detected, then the analyst can start performing or delegating the performance of quantitation of each of those compounds.

Q Okay. And there's specifically Methadone. It lists an amount there?

A Yes, it does.

Q What is that amount?

A 0.44 milligrams per liter.

Q Okay. And what does the milligrams-per-liter mean?

A That's the units that we use to quantitate most drugs in our laboratory.

Q Okay. And again, that test was conducted by -- [***74**]

A This one was conducted by Christie Mitchell-Mata.

Q Okay. And she's a scientist in your lab?

A Correct.

Q And again, you reviewed her data?

A I did.

Q And did you reach your own independent conclusion, again, as to all of the data in there?

A Yes. I accepted that result.

Q Okay. Let's talk a little bit about Methadone. What is Methadone?

A Methadone is a narcotic analgesic. So what that means is, it does two things. Narcotic means it relieves pain -- or sorry, I have that backwards. Narcotic means it causes sleepiness and sedation. Analgesic means it relieves pain. So it's basically going to do those two things to the human body. So it can be prescribed either for severe pain. It can also be prescribed for opiate dependence. So people that have an addiction to another opiate might be put on a Methadone maintenance program. So this is where they're trying to give them Methadone in order to wean them off of other opiates they might be taking.

Q Okay. And what does that amount .44 mean? Is there any significance to that or what is that?

A Well, individuals obviously have great variance in what they're prescribed, how long they've been taking it, [***75**] whether this is a new prescription for them or not a new prescription for them. So we can't really say a whole lot about the level. It is a higher level. It's certainly not small. But that doesn't necessarily mean that that isn't the normal level for that person if they've been taking it for quite some time and developed quite a bit of tolerance to the drug.

Q So this isn't like alcohol where you can say .08 means something?

A Correct.

Q In fact, is it fair to say you have to take what you found in this lab report and combine it with what the officer observed?

A Yes. I mean, we can talk about what the drugs are and what types of effects they have on the person, and then we can look at the signs and symptoms that were observed and determine if that's consistent with what these drugs can cause.

Q Okay. Well, let's talk about Methadone then. What would the signs and symptoms be if, you know, someone is on Methadone?

A Primarily, it's going to be that sleepiness and sedation. They also are going to have constricted pupils. So that means small pupils. That's a side effect of taking opiate-type medications. They can sometimes have lower [***76**] blood pressure and pulse, and lowered body temperature, so

they might have cold or clammy skin. It can also cause itchiness, so they can be exhibiting, like, facial itching, for example.

Q What effects does it have upon mental state or physical dexterity?

A Since it does cause sedation, it is going to have some effect on your motor control and motor coordination, as well as thought processes.

Q Now let's go down to -- well, you said on thought processes?

A Correct.

Q Okay. Would confusion be, you know, in line with someone that was impaired by Methadone?

A Yes.

Q Okay. Let's talk about the next substance that was tested. It was Diphenhydramine?

A Correct.

Q And that also is commonly known by another name?

A Yes. Either Benadryl or some formulations of Unisom.

Q Okay. Let's go to page 2. There's a whole bunch of drugs listed at the top of page 2. And again, who tested those ones?

A This test was performed by Amanda Chandler.

Q Okay. And she was the primary analyst? [***77**] A Correct, yes.

Q And what are these drugs that were detected on page 2?

A So at the top of page 2 is the benzodiazepines test. So when we got that initial emit positive result, presumptive positive for the class of benzodiazepines, then we can move and perform this targeted screen where we're going to look at all the benzos we can test for and determine which ones are there and how much are there. So we found the same benzos that we had detected earlier, which was Alprazolam, Diazepam and Nordiazepam. And then this test is more sensitive and can detect more things than that original basic drug screen that we did. So we also found Clonazepam and its metabolites of an amino Clonazepam in that test as well.

Q And again, there is an amount listed there?

A Yes.

Q Okay. Now let's talk about benzodiazepines. You mentioned some class of drugs earlier. What type of -- or narcotic analgesics. What are these class of drugs characterized as?

A Benzodiazepines are central nervous system depressants.

Q And in fact, what's the most common CNS depressant?

A The most common that people would be familiar with is alcohol.

Q Would you expect these drugs to have the same effect as [***78**] alcohol?

A Yes. They're going to have very much the same types of effects on a person that alcohol would.

Q Let's talk about Alprazolam specifically. What are the effects that you associate with that?

A Again, just like the Methadone, since it's a central nervous system depressant, that means it's going to slow down all of the processes in your body. So you're also going to get that lower pulse rate, blood pressure, body temperature. So it's going to cause sleepiness and sedation as well, again depending on the person's experience with that drug and how much they've ingested. So motor control is going to be affected, reaction time is going to be affected. It's going to take longer to react to something than somebody normally would.

Q Would someone who was under the influence of these substances appear to an individual to be intoxicated or drunk?

A It depends on the individual and how experienced they are. Especially when you start combining the medications, that's when you get more propensity to be impaired by these compounds.

Q Okay. If an officer testified that, you know, someone was failing balance tests and, you know, had poor dexterity, would that be consistent with the effect of these drugs? [***79**]

A Yes, it would be.

Q If someone was confused, unable to remember why they're at a store, would that be consistent with these drugs?

A Yes, it could be.

Q Okay. And again, Alprazolam, Clonazepam, Diazepam, Nordiazepam, you know, I can go through and ask you individually the effects of

these drugs. Are they all going to be basically the same?

A Yes. They're all in that central nervous system depressant class, so they're all going to have the same type of effect on people.

Q Okay. And you mentioned kind of an additive or multiple effect?

A Sure. I mean, whenever you ingest one medication and it has an effect on you, then you ingest another one and it's having an effect as well, and then another one and it's having an effect as well. So as you start to add them all together, the grand total of the effects is larger than any of the individual parts.

Q Okay. Next you go down and there's a test for opiates?

A Correct.

Q And what was the result on that?

A Oxycodone, 0.049 milligrams per liter.

Q And what is Oxycodone?

A Oxycodone is a prescription opiate. So this is in the [***80**] same class as Methadone, a narcotic analgesic as well, so it's going to relieve pain and also cause sleepiness and sedation.

Q And again, is there a additive or multiple effect between this and all the other drugs?

A Yes. Since the primary effect on a person's mental status and coordination is going to be that sleepiness, sedation and lack of motor control, these are going to add up in that regard.

Q Now specifically, you mentioned that Methadone is an opiate. And what's the effect of, you know, Methadone and the Oxy?

A We can't say specifically, but it is going to be additives. So any of the individual drugs is having an effect on the person, and the more drugs you're going to ingest the greater the overall effect.

Q Now last, you said Tapentadol or --

A Tapentadol.

Q Tapentadol.

A Yeah.

Q Okay. What is that drug?

A That's a newer prescription opioid that was just approved by the FDA in 2009. So it's also going to be a narcotic analgesic, so the same type of effects as the Oxycodone and the Methadone. [***81**]

Q Now that one, you don't have an amount listed.

A That's correct.

Q Why is that?

A This is not a drug that we had seen in our laboratory before. I don't think there's a whole lot of prescriptions that are being written by physicians yet, so we had to order a standard so that we could verify that this is what that compound is. But in our laboratory, when we perform any kind of quantitative testing where we're determining how much, we go through a full method validation. So this is usually, you know, half a year long worth of testing this method to make sure that it's, you know, rugged

and precise and accurate. So since this was a new drug for us, we had not done any method validation to show we can accurately quantitate it, so we just reported it as positive. We can verify that it is present, but we didn't have a validated method to determine how much.

Q Okay. Now if drugs are present in someone's system, are they having an effect on them?

A Yes. It's just a degree of effect that's going to vary based on how much they've ingested and what their experience is with the compounds.

Q Now does it matter if a drug is a prescription drug or not? [***82**]

A No. I mean, all prescription medications that are CNS depressants or narcotic analgesics are having an effect on the person. It just depends on the degree of effect.

Q Okay. And to look at the degree of effect, where would we find that information at?

A The contact with the individual, how they behaved, how their speech was, what their driving behavior was. Often field sobriety tests are performed so the officer can evaluate their motor control and their mental functions.

MR. TRAINI: Your Honor, at this point I would like to admit state's Exhibit 4 and publish that to the jury.

THE COURT: I think it was admitted, so you can publish it to the jury.

Q So just in summary, how many different narcotic analgesics did you find in the blood?

A Three.

Q And how many CNS depressants?

A You should have asked me that before you took away the report.

Q Let's see. If I -- I have a copy, if I could show you.

A That would be great. Thank you. I didn't not count prior. Six.

Q And are you aware if these substances are controlled?

A I believe all of them are scheduled in some fashion with the exception of Diphenhydramine. [***83**]

Q Or Benadryl?

A Yes.

Q Okay.

MR. TRAINI: Your Honor, I have no further questions of this witness.

* * *

CROSS EXAMINATION

BY MS. THORRSIN-BAHRI:

Q Good morning, Ms. Noble.

A Good morning.

Q I would like to start -- you talked a little bit about your degree in biochemistry. You talked about some classes you've taken on toxicology.

A Yes. I have taken classes in school, but also trainings that we took as part of my employment.

Q But someone could obtain a separate degree in toxicology; correct?

A You can, yes.

Q Okay. And toxicology is sort of dealing with the adverse effects of drugs in the body?

A That's correct.

Q Okay. How about pharmacology? Have you taken any classes in pharmacology? [***84**]

A I didn't take any classes specifically on pharmacology in college, but a lot of the knowledge that we obtain as part of our job is learning about pharmacology, which is what happens to a drug once it enters the body, how is it metabolized, how is it eliminated from the body.

Q Okay. And that's a separate degree though? Somebody could obtain --

A You could --

Q -- a degree in pharmacology?

A You could. But if you were to get one in toxicology, you're definitely going to have to take

pharmacology courses. So there's some crossover there.

Q Okay. But just to be clear, you didn't -- you haven't obtained your degree in pharmacology or toxicology?

A No. Mine was in biochemistry.

Q Okay.

A But there is some crossover with that as well.

Q Okay. I want to ask you how -- do you know the date that the sample was received in your lab?

A June 15th of this year.

Q Okay. And who -- how was it delivered to your lab?

A It was delivered via FedEx.

Q Okay. Who received the sample?

A I could look at my case file. That would have that information. [***85**]

Q Okay. And you can do that.

A Tony Mast was the property and evidence custodian at that time.

Q And is he the individual that is required to label the sample?

A Yes. Himself or one of the property and evidence custodians. So one might be going downstairs and picking up evidence, so they will keep track of -- on the exterior of the package, they initial and date that they received it. But maybe later, another property and evidence custodian might open the package. So the form that they sign is inside the package, so we can't sign it until it's been opened.

Q Okay. I'm sorry. We don't know who did that in this case. Is that accurate?

A Correct.

Q Okay. And just looking at the -- there's some notes by your lab where it says, you know, if the evidence was sealed or not.

A Uh-huh (affirmative).

Q Here, it's checked no. Can you tell us what that means?

A That looks to me as an error. So there's evidence sealed, a yes-or-no check box, but then there's also a box sealed, a bag sealed, a tube sealed, check boxes. And then we notate how they were sealed. So they had checked that the [***86**] bag was sealed, the tubes were sealed, and ET, for evidence tape. So I think the no was an error on the PEC's part.

Q Okay. Or it could be that the others were errors and that that is correct?

A We received so many samples that I'm guessing it was a quick check on the wrong side.

Q Okay. And who actually checked this? Do you -- who filled out this form and --

A Tony Mast.

Q Okay. So we don't know for sure what this means? I mean, it says evidence not sealed.

A That is what it says, yes.

Q Okay. So from there, as far as labeling, it is opened. It's opened, the sample's opened; correct?

A Correct.

Q Or the packaging. Where is it stored at that point once it is lab -- correctly labeled?

A We have an evidence vault. So inside this vault, we have five refrigerators. And the only people that have access to the vault are the property and evidence custodians and the supervisors and the laboratory manager. So we have in these refrigerators, we have large metal trays that have test tubes racks in them.

Q Uh-huh. [***87**]

A So the samples are put in test tube racks and stored in the refrigerator if they're not being tested.

Q Okay. Also on this form, there's a note that says -- MI not on tube. Can you tell me what that means?

A Yeah. The middle initial -- so the PEC is also looking at the request form and comparing it to what's written on the tubes, and making any notation of anything that differs between the two.

Q Okay. So how does the -- how, then, is the blood sent to the analyst for testing? Who picks it up and brings it to the analyst?

A So as the samples are being opened -- they are just in numerical order, so there's no manner in which the samples are assigned to any given analyst. It's just sequential -- here's your 40, here's the next 40. So they would be usually in two test tube racks. We typically get two samples from most agencies, one from Alaska, so it's usually more than one rack can hold. And then once they've all been labeled and all the

paperwork are in case files that just is a request form and a case file, the analyst is notified their set is ready for pick-up. And then we have a software program that we do all of our transactions in. So the PEC puts all of the samples in a container, which is just essentially a grouping of evidence items, in the software program. And then the [***88**] analyst would check it out from the PEC. So they would each put in their PIN number to indicate that they are doing this transaction, and then all of those evidence tubes that were in the container would be transferred to the analyst. And then they hit apply and it records that in the chain of custody.

Q Okay. And do we have that -- is that part of the bench notes in this case as to when it was checked out by the analyst?

A No. It's not typically part of our standard case file. We can print it out if it's requested, but it isn't something that we just keep in the case file.

Q Okay. So we don't -- do you know what time it was checked out by each analyst in this case or on what day?

A I don't know specifically what day she checked it out. The first test was performed on the 17th and the sample was received on the 15th, so she checked it out somewhere between then.

Q Okay. And the other -- some of the other testing was done on different days?

A Correct.

Q Okay. It looks like one was done on the 23rd.

A Yes.

Q And do you know when that sample was checked out by the analyst? [***89**] A No, I don't have the electronic chain of custody.

Q Okay. A It wasn't requested, so I didn't print that out.

Q Okay. You talked a lot about sort of preparing the sample for testing. You mentioned adding solvents. What types of solvents are added to the blood? If I understood that correctly, adding solvents --

A It depends on the test. All of the extractions are different, so it just depends on which one we're looking at. Some of them are what we call liquid-liquid, where you would add a solvent and they're put on a tube rotator so the liquids can mix. Some of them are what we call solid phase, so we have these little cartridges that have some filters in them and the samples are run through these cartridges. So all of them are a little bit different.

Q Okay. So is it the analyst who's responsible for doing that part?

A Yes. So in this case, either Amanda, Christie or Justin.

Q Okay. So Justin -- it looks like Justin Knoy did the testing for Benadryl?

A Correct.

Q So he would have been responsible for doing that first --

A Yes.

Q -- process?

A Correct. [***90**]

Q Okay. And do you know -- I mean, did he add the solvents or run it through -- how do you know that that was done?

A So after the extraction is performed, that's when the -- it's then ran on the instrument and then data is produced that is then printed out. So what I'm looking at is the printout of the data and there's things that we're looking at on the data printouts to verify that the run was successful. So we have those standard operating procedures, so we're looking at the negative controls, positive controls, calibration curves have to meet criteria, et cetera.

Q Okay. So just to be clear, you don't watch them perform these tests though?

A That's correct.

Q Okay. And exactly how many individual steps are done by the analysts? We have the solvents. Is there a washing of the sample that is done?

A They are all different.

Q Okay.

A So yeah, the solid phase one has multiple wash steps. Some of them have a back extraction, so we move it from a base environment to an acid environment, back to a base. So they're all -- I mean, all chemical extractions that are a little bit different, just --

Q Uh-huh. [***91**]

A -- depending on the chemical properties of the molecules we're trying to extract.

Q Okay. And as far as that process being done, you believe that if there were errors in that process, it would have been evident in the graphs?

A Yes.

Q Okay. As far as making sure -- you testified that each analyst sort of takes one class of drugs for the day. Is that accurate?

A Sometimes they might do more than one in a day. Some extractions are shorter than others, so they might be able to maybe, you know, do a Methadone run in the morning and maybe their basic drug screen in the afternoon.

Q Okay. So as far as making sure that this test is of this person's blood, how would you know from the graphs that the analysts matched the sample to the correct name?

A So we have -- I mentioned, I think, before, bar codes on the tubes. So when the analyst pulls the evidence to perform a certain test, they're scanning the bar codes of those tubes to indicate which tubes are being pulled and tested. And then those sample names -- so not the person's name, but the case number that we assign in our laboratory, are entered into a sequence on the instrument. So when the batch review process is happening, we're comparing the scanned bar codes next to the work list and [***92**] making sure that those are in the same order. We're also using -- we test every sample. Every drug is detected twice in a sample -- so once to detect it's there, once to quantitate it.

Q So as far as making sure the bar codes, though, match with the samples, who is responsible for that?

A The analyst would be doing that when they're loading them on the instrument. And then also, the batch reviewer would be checking that on the printouts again when the date is reviewed.

Q And who is the batch reviewer? Who was the batch reviewer?

A Well, there's --

Q I mean, is there --

A -- multiple batches --

Q Okay.

A -- associated with -- yeah, each -- each test. So each test we talked about would have a reviewer --

Q Okay. So --

A -- of the batch.

Q -- do you receive those -- I mean, are you involved in that process?

A Yes.

Q Okay. So were you there when this testing was done to make sure that everything was matched up correctly? [***93**]

A I did not watch any analyst perform any of these tests.

Q Okay. And what is the purpose of washing or cleaning the sample that you described? I mean, what exactly is the purpose of that?

A So the extrac -- the purpose of the extraction is so we can get a clean extract of just the drugs that we're going to put on the instrument. So we don't want any of the other constituents that are in bloods. We don't want any of the proteins or lipids or fats, you know, pieces of blood cells or anything to run through our instruments that would, you know, gunk them up. So we've got to go through a chemical extraction process to just pull out the compounds of interest and put them into a clean solvent. So that's the purpose, is so that we can run these on an instrument.

Q Okay. And multiple samples were being tested at the same time. Is that correct?

A Correct.

Q Okay. But you'd agree with me that unless you actually observe the testing, you don't know for sure if each protocol was followed in the testing process?

A I can't say that they -- like let's say if it says rotate for five minutes, that they didn't let it rotate for six minutes or something like that. We can look at the -- the data printouts and make sure that all of our criteria are [***94**] met so that nothing was done that was, you know, fatal to the run or caused it not to meet our criteria. But you're right, I didn't watch them do it. We can only look at the data that's printed out.

Q Okay. And as far as -- you mentioned that a supervisor has to initial every page as well as the analyst. Is that correct?

A Yes, it is.

Q Is -- I'm looking at some of the pages. Does the supervi -- there's some numbers in addition to just one signature. Is that -- was does that mean?

A Can you point me to a page? I'd like to --

Q Yeah.

MS. THORRSIN-BAHRI: And if I may approach.

Q I can --

T HE COURT: You may.

A Sure.

Q -- show you an example.

A Oh, sure. I can explain that.

Q Okay.

A Yeah. So in addition to having -- so two things have to happen as part of administration of our case file. The case number that we assign has to be on every page that ends up in the case file.

Q Okay. [***95**]

A And then also, with any given batch that the analyst runs -- so let's say for that instance it's a basic drug screen. They -- there is a batch number that's associated with that batch that is associated to that date. So that batch number has to be on every page. So we would do the last two digits of the year, so 16 and then, you know 06 --

Q Uh-huh.

A -- 02, for example, if it was, like, the 2nd of June. So that batch ID has to be on every piece of paper that's submitted when that batch gets reviewed. So that's to identify if that piece of paper fell out, we would know exactly where it goes.

Q Where it went back?

A Yeah.

Q Okay. I don't see another set of initials, though, you know, on each page. Can you explain to me why that wasn't done in this case?

A So if it's a secured piece of data, so a stapled piece of data that's stapled together, the reviewer -- so not the analyst but the reviewer, only has to initial and date the front page of that data that's secured together.

Q Okay. Looking at the levels -- and do you have a copy of the report, the lab report, in --

A Yes. [***96**]

Q -- front of you? Okay, great. You're familiar with Winek's drug and alcohol blood level data?

A I'm familiar with it, yes.

Q Okay. Just looking -- I guess we'll start with -- well, let's -- so there are therapeutic levels and then toxic levels and lethal levels that that lays out?

A Yes. And in that table, there's a pretty large degree of overlap between those three, yeah.

Q Okay. I guess if we start with the -- start with Alprazolam -- and I think we have to do a little bit of math. It's easy math; right? I think we're just moving the decimal point to -- as your lab reports it in milligrams per liter and I think Winek puts it in milligrams percentage.

A I haven't looked at Winek's. Honestly, we don't use it --

Q Okay.

A -- in our laboratory. So I'm familiar with it, but --

Q Okay.

A -- we don't use it, typically.

Q And I can -- if you feel like you want to look at it today, I have a copy here. As far as the level of Alprazolam that was in the blood that was tested, that was within a therapeutic range; correct?

A I would say yes, I mean, it can be that that is the level that a person is prescribed. It could also be too high [***97**] for they're prescribed. We just don't know.

Q Okay. And the Methadone, we talked a litt -- you talked with Mr. Traini about that. That is also within the therapeutic range for people?

A Typically for maybe closer to the Methadone maintenance program, larger does, yes, it would be in that range.

Q Okay. And we talked a little bit -- you talked a little bit about a person's tolerance. Can you tell me how that works as far as the effects of drugs and how long a person has been taking --

A Sure. So when you first take a drug for the first time, you've never taken it before, you're going to have the maximum effect that this drug is going to cause on your body. And then each time you introduce that drug in the same amount at a regular interval, there will be a lessened response as time goes on if you keep that dose the same and you always are taking it regularly. So that wouldn't be the same for something that you just take, you know, as needed. So --

Q So if someone's been taking it for, say, 10 years, that would be different than somebody that has just started taking it perhaps?

A Yes. If you're considering that drug alone --

Q Uh-huh.

A -- and not in combination with others, then yes, you can [***98**] develop tolerance to some of the effects. And then there's other effects that you, you know, can't become tolerant to.

Q And you would agree that two individuals may also have different -- may experience different effects just based on their own unique chemistry?

A Yes.

Q Okay. And that's true of all of the medications in this case?

A Yes.

Q Okay. So let's -- going back to the numbers. We talked about Alprazolam and I think we talked about Methadone. Diazepam, that's also within the therapeutic range --

A Yes.

Q -- for a person? Okay. And moving next to the Oxycodone. It's also within the therapeutic range; correct?

A It can be. It's on the higher side, but it could potentially be a therapeutic range for a person.

Q Okay. So why not list the therapeutic range as .001 to .01? We have here .0049, if it's converted. So that is well within the therapeutic range.

A Which is why, I mean, we don't typically use that table. I think the data that it was pulled from

was kind of a large pool of data, so there's a lot of overlap. So they might say this is therapeutic, but then you look at the [***99**] toxic and it starts below where the therapeutic was. And then the fatal starts before -- so it doesn't offer clear --

Q There is some --

A -- information.

Q -- overlap, yes.

A Yes.

Q But this is used by people in court, I mean, you've heard it used in court before, I'm assuming.

A Mostly, it's actually the medical examiners that I find that are most interested in it because they're looking at that toxic and fatal.

Q Okay. So medical examiners, in your experience, rely on this?

A Yes.

Q Okay. And the Diphenhydramine, which you described as -- which is Benadryl?

A Yes.

Q That's also with the therapeutic range?

A Yes, it is.

Q Okay. And Nordiazepam, that's a metabolite of Diazepam?

A It is. It can also be prescribed and taken on its own.

Q Okay.

A But it is a metabolite of Diazepam.

Q And that is also within the therapeutic range? [***100**]

A Yes.

Q Okay. Based on these levels, can you say with any degree of medical certainty that these medications were impairing --

A Of a particular person?

Q Yes.

A I would say it's probably likely with the combination of all of them all together, but I would need more information about the specific individual and their behavior to make that determination.

Q Including how long they had been on the medication?

A Not so much that as just how were they behaving at that time.

Q Okay.

MS. THORRSIN-BAHRI: I have no other questions. Thank you.

* * *

REDIRECT EXAMINATION

BY MR. TRAINI:

Q Does a therapeutic level mean that a drug's not working?

A No.

Q Okay. For example, if I get my hand chopped off and I go [***101**] to the doctor, they're going to prescribe some type of pain pill, I would assume.

A I should hope so, yes.

Q And if it's, you know, my hand's bleeding, you know, I'm missing my hand, it's going to be a pretty serious pain pill?

A Yes.

Q If I'm on a therapeutic dose, I'm going to want it to do what?

A Relieve the pain.

Q Okay. Does that mean that I shouldn't be driving?

A Probably. So because those drugs are all -- they're relieving pain, but they are also causing the narcotic action, there's a lot of overlap. So there's side effects that are associated with those drugs. So in order to get to -- especially if a person is tolerant, you have to keep taking more and more to get the desired pain relief, but then you are also taking more and more, which causes more and more impairment. So that's another hurdle that you have to get over as far as becoming tolerant to that amount.

Q So therapeutic in the case of what we're talking about today is meaningless?

A I don't think --

MS. THORRSIN-BAHRI: And Your Honor, I object. [***102**]

A -- that it's meaningless.

MS. THORRSIN-BAHRI: Calls for speculation.

MR. TRAINI: Well --

THE COURT: Mr. Traini --

MR. TRAINI: -- let me rephrase that.

THE COURT: -- lay a better foundation.

MR. TRAINI: Okay.

Q What is the effect of therapeutic levels, then, as far as your testimony today?

A I guess just to give us an idea of, you know, whether a person is potentially taking the medication as prescribed or whether they could be abusing the medication. And I can't really say in this case.

Q And is there a therapeutic level for taking -- what did you say, six CNS depressants and three narcotic analgesics?

A Well, I mean, they each have their own level, obviously, that they are at, so it's just more important to look at the signs and symptoms that the officer observed to determine whether it seems likely that the combination of all those drugs together was affecting that person at the time.

Q And just to be clear, a therapeutic level does not mean that the side effects are not there?

A That's correct. [***103**]

Q And last, there were some questions about, you now, the testing the blood and who did what steps. Again, how many individual samples does each lab analyst get a year?

A Between 12 and 13 hundred this year, I think, we'll be.

Q Okay. When you -- you did an analyst point at one [sic] in your career; correct?

A Yes.

Q Now with that, did you remember every sample that you tested?

A No, I would not say that I would remember specifically each sample.

Q Why is that?

A Because there are so many.

Q Okay. Is that part of the basis of the quality controls that you have set up?

A Yes.

Q And is there anything in your review of the file, the data, any information at all, that indicates that this test was not conducted properly?

A No. I would not sign the report if I found anything to that effect.

Q Okay. So in your opinion, this is a correct analysis of her blood?

A Yes.

MR. TRAINI: I have no further questions.

* * *

[***142**] TRIAL BY JURY, CONTINUED (EXCERPT); VERDICT

BEFORE THE HONORABLE GREGORY HEATH

SUPERIOR COURT JUDGE

Palmer, Alaska

September 21, 2016

8:39 a.m.

* * *

[DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL]

[***205**] MS. THORRSIN-BAHRI: Your Honor, before we do that, I would like to move for a judgment of acquittal. I would have [***206**] done that after the state's case, but we should have went right into the defense's case. Specifically here, the state -- I mean, we heard from the crime lab expert, but really in the end she couldn't tell us if the blood that was tested was Ms. Johnson's blood. I mean, and that really what -- that's really what our objection to her testimony was, I mean, and that's --

THE COURT: Let me see the exhibits.

MS. THORRSIN-BAHRI: That's the -- that foundation just wasn't laid that, you know, she talked about bar codes, imaging bar codes, but she didn't have any of the bar code information. She couldn't, even in the end, tell us that it was definitely Ms. Johnson's blood, other than she believes it was and that the bar codes were matched. So for that reason, the defense moves for a judgment of acquittal, based on the fact that the state hasn't proven that this was her blood.

THE COURT: Mr. Traini.

MR. TRAINI: Under Lyon, the court has to view this in favor -- in the light most favorable to the state, Your Honor. That being said, it seems more what the defense is actually arguing is chain-of-custody type issues. Chain of custody doesn't deal with admission of evidence or anything like that. It goes to weight and it's a separate issue, Your Honor. Chain of custody does not deal with the admission of the evidence. Again, that's something the jury can consider. Regardless, we did hear testimony from the crime lab indicating, you know, [***207**] this was the blood of Teresa Johnson. And the officer testified, you know, the case number on that report matched his police case number. He's the one that sent the blood. And again, you know, the details behind allowing Ms. Noble to testify, you know, contained in Judge Smith's order and your order, it all goes back to that the individuals who test blood anyway, Your Honor, have no individual recollection when they get 13,000 samples of blood a year. And so she was able to testify that everything matched, you know, this, in her opinion, was the correct blood that was tested and here's the results of it.

THE COURT: Well, I'm going to make the following finding. It's a fairly high standard for a judgment of acquittal. I have to look at the light most favorable to the state. I don't recall her saying the name Teresa A. Johnson, but we did admit her report and it is on the report, along with the case number. And at this point in time, based upon that, I will deny the motion. You're free to argue that in your closing argument, though, Ms. Thorrsin-Bahri. Okay. Let's see.

* * *

[STATE'S CLOSING ARGUMENT]

[***226**] THE COURT: Okay. Mr. Traini, you may do your closing argument.

MR. TRAINI: Thank you, Your Honor. Ladies and gentlemen, at the beginning of this trial, in opening statement, I told you this case was going to be very straightforward. The evidence has bore that out and I want to draw your attention to some particular parts of the element, and then I'm going to go over some of the jury instructions.

* * *

[***227**] Next we heard from Lisa Noble. And again, at the onset of the case I told you that the State of Alaska has a contract with Washington to independently test the blood. We don't have those facilities or the equipment in Alaska, so we contract through Washington. And you heard from Lisa Noble. She is a supervisor at the crime lab and her job is to, you know, supervise the various analysts. And she explained what [***228**] happens, how the blood comes in, it's assigned and broken up to different individuals. And, you know, they do the testing. When I say they do the testing, it's a little bit misleading because there is no microscope. It's not like the analysts are actually, you know, looking at the blood, you know, under the lab. They don't do that. The reason is, instruments do all that. And she described the various instruments that they use. But the instruments produce, you know, this data. And Amanda Chandler reviewed part of the data -- in fact, all of the data, including the data that the other two

individuals tested, Christie Mitchell-Mata, and Amanda Chandler made her findings.

But what's more important in this case is that Lisa Noble reviewed those findings. She independently reviewed those findings and that data and reached her own conclusion as to what was in the defendant's blood. And she testified as to, you know, what those substances were. And again, we heard Alprazolam, a CNS depressant, a central nervous system depressant. We heard Diazepam, also a central nervous system suppressant. Methadone, a narcotic analgesic. Nordiazepam, a CNS depressant. Oxycodone, a narcotic analgesic. Tapentadol, again, another narcotic, an opiate.

And when asked, she indicated there was numerous CNS depressants, and that's consistent with what the officers observed. A CNS depressant includes alcohol. And so someone under the influence of these drugs are going to act like they're under the influence of alcohol. And that's exactly what the witnesses observed in this case, the confusion, the staggering, the poor balance, unable to do simple tasks such as unlock the door right away, fumbling around, hitting windows, you know, several seconds just to figure out how to open a door or unlock a door.

Now I don't know what the defense is going to argue. They may argue that, well, we didn't bring up, you know, Justin from the crime lab, we didn't bring up Amanda, we didn't bring up Christie Mitchell-Mata. And that's correct, we didn't bring them up for, you know, cost reasons and things like that. We bring up the supervisor that reviewed all of the data and she was able to testify that if there were any mistakes and

errors, she would have caught it and it would have been noted, and there was none.

And I assume that defense is going to argue that's because that's their job and what they're trying to do is to kind of distract the jury from the evidence in this case that there was so many drugs in the defendant's blood -- so many impairing drugs. And Lisa Noble testified as to Alprazolam, you know, the confusion. And when I talk about all these CNS depressants, they all kind of have the same effect. They have that same effect of alcohol, the depression, the confusion, the poor dexterity. [***230**]

And again, she was on multiple CNS depressants. And it is true that Diazepam and Nordiazepam could be metabolites, so they could have been Alprazolam breaking down into another drug, which breaks down into another drug. That being said, that doesn't explain the Clonazepam, which was also found in her blood, a separate drug in and of itself. So we know that there was at least four CNS depressants right there and at least two of those are completely separate and not metabolites.

So she had at least two independent CNS depressants in her system.

And then going to the Methadone. We heard that that amount was a little bit more high. And again, I don't really talk about amounts because amounts don't tell us a lot. And there was some discussion about therapeutic doses. And again, why that's not relevant is because if you're taking, for example, sleep medication, something that's going to make you drowsy, you expect a therapeutic level to have some effect on you. It's going to make you drowsy. That's why you're taking the medication.

So therapeutic dosage is kind of misleading. If you're taking sleep medication at the therapeutic level, that's going to make you go to sleep. It doesn't mean that you're not going to be impaired while you're driving because you're on medicine that's supposed to make you go to sleep. And so therapeutic dosage, again, has no real meaning. She testified that's more [***231**] for, you know, ME's, and they look at toxic levels and fatalities -- just nothing that applies in this case.

So, you know, again, I would just caution the jury, that's not really relevant as to the levels in this case. What's more important is the observations, and that's what Lisa Noble said, the observations are what you have to look at. Again, finding the drugs is one half of the equation. We found these substances, now let's take what we found and look and see if it's consistent with what the officer observed -- and not only what the officer observed, but what Mr. Avery observed as well.

And I'm going to go back to the Methadone a little bit. She talked about how that level's a little bit higher, but what it's used for, treating opiate issues -- however, what's concerning is we found the Methadone in the blood, but we also found opiates even beyond that. We found the Oxycodone. We found the Tapentadol. Again -- so she has this opiate medication or drug in her system, Methadone, which again is impairing. But if we even move beyond that, we still found additional opiates in her system.

And Lisa Noble was, you know -- it's hard for an analyst to say just looking at the numbers whether someone's impaired. It's hard to do because, you know, it's only one-half of the equation. But when

asked about that, she said yes, there is a cumulative effect. So not only are we talking all of these individual drugs, but we're talking stacking those individual [***232**] drugs, multiple drugs all impairing have an additive effect. And again, that's consistent with what we heard, the testimony from, you know, Mr. Avery, Donovan Avery, that confusion.

* * *

[**DEFENDANT'S CLOSING ARGUMENT**]

[***238**] THE COURT: Ms. Thorrsin-Bahri.

MS. THORRSIN-BAHRI: Yes, Your Honor. Thank you. Good morning, everybody.

* * *

[***242**] I want to talk a little bit about Ms. Noble and her testimony. The state calls is [sic] a distraction, but I think it's important to consider that the analyst that came in and actually tested the blood were not here. And when I -- and what is not a distraction is that the report states that the evidence wasn't sealed. You know, we're talking about the government. We're talking about the State of Alaska. We're talking about the government. And, you know, and Ms. Noble was supposed to have looked at each page, but that seemed to be a surprise to her.

You know, and yeah, that is a problem for our government to, you know, be so sloppy in their work. I don't -- that's not a distraction, in my book. She -- Ms. Noble used a lot of the words, you know, could be, might be, maybe even probably impairing. You know, but -- even probably is not proof beyond a reasonable doubt. And again, not just impairing, but also not be

able to drive a vehicle with the care of an ordinary person.

You know, we heard about tolerance and, you know, if -- I asked her if, you know, having -- if you've taken these medications for, you know, a period of 10 years, for example, [***243**] would a person develop a tolerance. And, you know, you can look back at her testimony on that, and the answer was yes. So we don't know what level of tolerance, you know, Ms. Johnson has for the medications that were prescribed to her. What Ms. Noble did tell us was that they were all therapeutic doses, which means that they were taken sort of -- it looks like they were taken according to doctor's recommendations. We just -- we don't have all of that information.

And really, in the end, we don't know what behavior or whether to, you know, ascribe her behavior to her kind of wacky personality or to her various medical conditions. You know, we have the late-stage hepatitis-C, the rod, the pins, the hypoglycemia. And, you know, Benadryl was in her blood. Benadryl, you know, you guys probably have some experience with Benadryl over the counter. It's not a controlled substance. And it's probably a substance that somebody doesn't take on a regular basis as compared to medications prescribed by a doctor.

So, you know, and the officer told us a little bit, but he didn't -- he couldn't -- or he said that he doesn't know all the effects of Benadryl, but, you know, you may have that experience. But again, it's not a controlled substance. And so if you -- if there is a possibility that it was, you know, Benadryl alone that was causing whatever, or just her mental health

issues or her medical issues, that's not proof beyond a reasonable doubt. They have to show that it was a controlled substance.

* * *

[**STATE'S REBUTTAL ARGUMENT**]

[***247**] THE COURT: Go ahead, Mr. Traini, brief rebuttal.

MR. TRAINI: Thank you, ladies and gentlemen. I want to respond to a few points.

* * *

[***252**] MR. TRAINI: So this idea that, you know, the DRE report, we have it in this case -- but what we have is Officer Lopez, he went, he applied for a search warrant and got the search warrant for the blood in this case. And that is the evidence in this case. That's how we show impairment of a controlled substance. We get the blood and we have the blood tested. That is the evidence. And that is state's Exhibit 4 that talks about Alprazolam, Clonazepam, Diazepam, Nordiazepam, Methadone, Oxycodone, Tapentadol. Again, a long list of drugs, all of which have impairing side effects, all of which the defendant had in her blood on May 28th, 2016 when she was driving.