

# SUPREME COURT OF NEW JERSEY

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January 10, 2006

Hon. Michael Patrick King, P.J.A.D. (ret.)  
216 Haddon Avenue, Suite 700  
Westmont, NJ 08108-0815

Hon. Philip S. Carchman, J.A.D.  
Acting Administrative Director of the Courts  
25 W. Market Street  
POB 037  
Trenton, NJ 08625-0037

Re: *State v. Jane Chun, etc., et al.* (Docket No. 58,879)

Dear Judges King and Carchman:

Enclosed please find a copy of an Order from the Supreme Court in respect of the Alcotest cases currently before Judge King as a Special Master. The intent of the Order is to provide guidance and instructions to judges who are hearing DWI trials and appeals. Although I am asking Judge King to forward a copy of the Order to all counsel who participated in his recent management conference, the Order also directs Judge Carchman to provide a general distribution of the Order to all municipal court judges and judges of the Superior Court, Law Division, and Appellate Division.

Respectfully yours,

/s/ Stephen W. Townsend

enc.

SUPREME COURT OF NEW JERSEY  
September Term 2005  
58,879

STATE OF NEW JERSEY,  
  
Plaintiff-Appellant,

v.

O R D E R

JANE H. CHUN, et al.,  
  
Defendants-Respondents.

The Court having previously certified the within matter directly pursuant to Rule 2:12-1 and having contemporaneously appointed retired Appellate Division Presiding Judge Michael Patrick King as Special Master,

And the Court having remanded the matter to Judge King to develop a record, conduct hearings, and report his findings and conclusions on an accelerated basis,

And the Court having concluded that it should expand on its prior Order by addressing issues that affect the prosecution of N.J.S.A. 39:4-50 offenses statewide,

And good cause appearing;

IT IS ORDERED that this Order shall apply to all N.J.S.A. 39:4-50 prosecutions in Municipal Courts and appeals in the Law Division and Appellate Division of Superior Court; and it is further

ORDERED that N.J.S.A. 39:4-50 prosecutions and appeals that do not involve the use of an Alcotest device are to proceed in the normal course; and it is further

ORDERED that the prosecution and appeal of cases involving repeat offenders under the statute shall proceed in the normal course, and sentences imposed on such defendants shall not be stayed unless the conviction is based solely on Alcotest device readings; and it is further

ORDERED that first offender prosecutions involving the use of an Alcotest device shall proceed to trial based on clinical evidence when available, including but not limited to objective observational evidence, as well as the relevant Alcotest readings; and it is further

ORDERED that at the conclusion of each such first offender trial, if the court determines that the defendant is guilty of an N.J.S.A. 39:4-50 offense, it shall include, whenever applicable, an articulation of the alternative bases for that finding when imposing a sentence pursuant to the statute, see State v. Sisti, 209 N.J.Super. 148, 151

(App.Div. 1986), State v. Kashi, 360 N.J.Super. 538, 544 (App.Div. 2003); and it is further

ORDERED that the execution of sentences imposed on first offenders shall be stayed pending disposition of the within appeal unless the court determines, after considering the severity of the incident and the prior record of the defendant, that the public interest requires the immediate execution of the sentence; and it is further

ORDERED that any and all requests for a reliability hearing in respect of Alcotest devices are stayed pending the filing of the Court's final decision herein, at which time all pending challenges to an Alcotest device's reliability shall be decided consistent with the Court's disposition; and it is further

ORDERED that any and all orders of municipal courts and the Superior Court, including but not limited to the December 12, 2005, orders of Judge Walter R. Barisonek, A.J.S.C., (State v. Casey L. Grogan) and Judge B. Theodore Bozonelis, A.J.S.C. (State v. Michael Dilger, et al.) are vacated to the extent that they conflict with this Court's Order of December 14, 2005, as modified and supplemented by the within Order; and it is further

ORDERED that consistent with the Court's prior reminder in its December 14, 2005, Order that

all Superior Court and Municipal Court judges before whom N.J.S.A. 39:4-50 proceedings are pending, or before whom such proceedings are brought during the pendency of this appeal, must ensure that the Court's Guidelines for Operation of Plea Agreements in the Municipal Courts of New Jersey are strictly enforced,

a defendant who challenges the use of Alcotest-related evidence may enter a conditional guilty plea pursuant to Rule 7:6-2(c), reserving the right to apply for relief from the municipal court should the appeal before the Court result in a determination that the Alcotest devices are not reliable; and it is further

ORDERED that the Acting Administrative Director of the Courts shall circulate this Order forthwith to all judges of the municipal courts and the Superior Court, Law Division and Appellate Division.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 10th day of January, 2006.

/s/ Stephen W. Townsend

Clerk of the Supreme Court

**CHIEF JUSTICE PORITZ and ASSOCIATE JUSTICES LONG, LaVECCHIA, ZAZZALI, ALBIN, WALLACE, and RIVERA-SOTO join in the Court's Order.**