

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

O R D E R

JANE H. CHUN, et al.,

Defendants-Respondents.

The Appellate Division of Superior Court having granted the State's motion for leave to appeal in the within matters in an order filed December 1, 2005 (AM-153-05T5), and that court having denied the State's motion for a summary reversal and having remanded the matter to the trial court for an accelerated hearing on the validity of chemical breath tests obtained through the use of Alcotest instruments,

And the Court having determined that it should certify the matter on its own motion,

And good cause appearing;

IT IS ORDERED that the within appeal now pending in the Appellate Division is certified to this Court pursuant to Rule 2:12-1; and it is further

ORDERED that the remand to the trial court provided by the Appellate Division's order of December 1, 2005, is vacated; and it is further

ORDERED that this matter be remanded to retired Appellate Division Judge Michael Patrick King, now serving on recall, to sit as a Special Master; and it is further

ORDERED that on an accelerated basis, the Special Master shall undertake to:

1. Conduct a plenary hearing on the reliability of Alcotest breath test instruments, including consideration of the pertinent portions of the record in State v. Foley, 370 N.J. Super. 341 (Law Div. 2004) and the within matters in the Superior Court, Law Division, Middlesex County, together with such additional expert testimony and arguments as may be presented by the parties;

2. Determine whether the testimony presented by the parties should be supplemented by that of independent experts selected by the Special Master;

3. Grant, in the Special Master's discretion, motions by appropriate entities seeking to participate as amici curiae, said motions to be filed with the Special Master within ten days of the filing date of this Order;

4. Invite, in the Special Master's discretion, the participation of entities or persons as amici curiae or, to

the extent necessary in the interests of justice, as intervenors to assist the Special Master in the resolution of the issues before him; and

5. Within thirty days of the completion of the plenary hearing, file findings and conclusions with the Clerk of the Court and contemporaneously serve a copy on the parties and amici curiae, which service may be effectuated by the posting of the report on the Judiciary's website; and it is further

ORDERED that the parties shall serve and file initial briefs within fourteen days of the filing of the Special Master's report and a response, if any, within ten days thereafter; and it is further

ORDERED that all amici curiae permitted to participate in the plenary hearing may file a brief in response to the Special Master's report, the brief to be served and filed within fourteen days of the filing of that report; and it is further

ORDERED that the Clerk shall set the matter down for oral argument before the Court on the first available date after the completion of briefing by the parties; and it is further

ORDERED that the Court shall direct the Clerk to indicate which amici curiae, if any, shall be permitted to participate in oral argument; and it is further

ORDERED that, on the Court's own motion, the stay of N.J.S.A. 39:4-50 proceedings now pending in Middlesex County is vacated, effective immediately; and it is further

ORDERED 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.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 14th day of December, 2005.

/s/ Stephen W. Townsend

Clerk of the Supreme Court

CHIEF JUSTICE PORITZ and ASSOCIATE JUSTICES LAVECCHIA, ZAZZALI, ALBIN, WALLACE, and RIVERA-SOTO join in the Court's Order. ASSOCIATE JUSTICE LONG did not participate.