

ORDER ON MOTION

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STATE OF NEW JERSEY

v.  
ERNEST SPELL

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-4186-05T5  
BEFORE PART: H  
JUDGE(S): STERN  
SABATINO  
LYONS

MOTION FILED: 8/20/2007 BY: STATE OF NJ  
ANSWER(S) FILED: 8/24/2007 BY: ERNEST SPELL

SUBMITTED TO COURT: 8/27/2007

ORDER

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THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 28TH DAY OF AUGUST, 2007, HEREBY ORDERED AS FOLLOWS:

MOTION BY STATE OF NJ	GRANTED	DENIED	OTHER
- FOR STAY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

SUPPLEMENTAL: The State moves for a stay of our decision in this matter "pending disposition and resolution of the State's petition for certification." Defendant joins the application as he apparently will seek certification following our affirmance of the conviction for refusal to submit to a breathalyzer test.

The State contends that we acted beyond our authority when we "directed that the additional instruction [on the breathalyzer test standard statement] be read in all cases of refusal, a change which can only be promulgated by the Executive Branch."

Although no motion was presented to us for reconsideration, we note that we did not order the promulgation of any new rule or form, as opposed to the reading of the entire present form as a matter of proof to sustain a conviction. Moreover, we expressly stated that we were not promulgating a rule or exercising supervisory power, but were interpreting the requirements of evolving case law. N.J.S.A. 39:4-50.2a, now relied on by the State, refers to guidelines of the Attorney General, and we do not read State v. Widmaier, 157 N.J. 475, 498-99 (1999) as holding that only the Director of the Motor

Vehicle Commission can order a change to the form for purposes of sustaining a conviction.

Nevertheless, given the impact of our prospective decision concerning reading the additional instruction of the form, we grant the State's application for a stay pending proceedings on the State's petition for certification. If certification is granted, the stay shall continue pending the outcome of the appeal unless the Supreme Court decides otherwise. If the petition for certification is denied, the stay shall be vacated effective on the first day of the second month following the denial.

FOR THE COURT:

A handwritten signature in black ink, appearing to be 'E. Stern', written over a horizontal line.

EDWIN H. STERN, P.J.A.D.

(Electronically Submitted)

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



Paul M. Chocko  
CLERK OF THE APPELLATE DIVISION