

1. DWI defendants entitled to Alcotest machine data State v Maricic ___ NJ Super. ___ (App. Div. 2010) A-5247-08T4 8/31/2010

In this DWI matter, the Court held that defendant has the right to discover downloaded Alcotest results from the subject instrument from the date of last calibration to the date of defendant's breath test and any repair logs or written documentation relating to repairs of the subject Alcotest machine, without a showing of prior knowledge of flawed procedures or equipment.

2. Plea to indictable offense barred DWI prosecution based on double jeopardy State v Hand 416 NJ Super. 622 (App. Div. 2010)

In this appeal by the State, the Court determined whether a guilty plea to fourth-degree creating a risk of widespread injury or death, N.J.S.A. 2C:17-2(c), precluded defendant's subsequent prosecution for driving under the influence (DWI), N.J.S.A. 39:4-50. The municipal court judge denied defendant's motion to dismiss the DWI and reckless driving charges on double jeopardy grounds. On appeal de novo to the Law Division, Judge Kryan Connor, citing the "same evidence" test, found defendant's prosecution for DWI and reckless driving was barred. He vacated the guilty pleas and dismissed the charges.

The Court affirmed, rejecting the State's argument that the "same evidence" test set forth in *State v. De Luca*, 108 N.J. 98, cert. denied, 484 U.S. 944, 108 S. Ct. 331, 98 L. Ed. 2d 358 (1987), should not apply to guilty pleas but should instead apply to the actual evidence to be presented at trial. Because defendant's operation of his motor vehicle under the influence of alcohol was the reckless act upon which the indictment was based and also because the State required defendant, as part of his plea to the indictment, to admit that he operated his motor vehicle under the influence of alcohol, his subsequent prosecution for DWI was barred on double jeopardy grounds.

3 Mun Court not bound by another court order that dwi conviction could not be used for enhanced penalty State v Enright 416 NJ Super. 391 (App. Div 2010)

After defendant's conviction and sentence in the municipal court as a third-time DWI offender, he obtained a post-conviction order from a different municipal court in which his second DWI conviction had occurred confirming that conviction but directing that no court could use it to enhance his sentence on a subsequent DWI conviction. The Court held that the municipal court order was an erroneous application of *State v. Laurick*, 120 N.J. 1, and that on de novo review of the third DWI conviction, the Law Division correctly declined to follow the municipal court's order.

4. Discovery expanded for speeding tickets

State v Green ___ NJ Super. ___ A-6199-08T4 11-09-10

In this case, the court decided that a motorist who has been charged with speeding is entitled to discovery respecting

- (1) the speed-measuring device's make, model, and description; (2) the history of the officer's training on that speed-measuring device, where he was trained, and who trained him;
- (3) the training manuals for the speed-measuring device and its operating manuals;
- (4) the State's training manuals and operating manuals for the speed-measuring device;
- (5) the officer's log book of tickets written on the day of defendant's alleged violation;
- (6) the repair history of the speed-measuring device used to determine defendant's speed for the past twelve months; and
- (7) any engineering and speed studies used to set the speed limit at the section of highway where defendant's speed was measured.

The court also found that the Stalker Lidar speed-measuring device had not been proven to be scientifically reliable and, as such, the results of its operation should not have been admitted during the municipal court proceedings or considered by the Law Division. The court remanded the matter to the Law Division for a plenary hearing on the scientific reliability of the Stalker Lidar. If it is determined to be reliable, then the matter is remanded to the municipal court for trial after the State has provided all of the discovery required by this opinion.

Editorial Assistance provided by Associate Editor _____

5. Prior refusal does not count for 3rd DWI

State v. Ciancaglini __ NJ __ (A-92/93-09)

Defendant Ciancaglini's conviction in 2006 for refusing to take a breathalyzer test does not constitute a prior conviction for purposes of determining her sentence for driving while intoxicated in 2008. Appellate Division reversed

6. Photo 2010 MUNICIPAL COURT COLLEGE

Professors/Speakers include... KENNETH A. VERCAMMEN, ESQ., [JOHN E. HOGAN, ESQ.](#), JOHN MENZEL, ESQ. STEPHEN D. WILLIAMS, ESQ. NORMA M. MURGADO, ESQ. Chief Prosecutor (Elizabeth)
Assistant Prosecutor (Woodbridge) **Co-Sponsored by NJSBA Municipal Court**

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CD with forms and Materials were provided to all attendees! If you would like some of these forms, send an email to VercammenLaw@Njlaws.com and select up to five forms or motions you request.

Speaker Kenneth A. Vercammen, Esq. □ Edison, NJ, will send the materials to you
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2005 NJSBA Municipal Court Attorney
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