

John Menzel, J.D.  
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Attorney for Defendant

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STATE OF NEW JERSEY, : SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION, CRIMINAL PART  
: MIDDLESEX COUNTY  
Plaintiff, :  
: Docket Number MAM-29-2005  
v. :  
: Quasi-Criminal (Traffic) Action  
: JANE H. CHUN, :  
: ANGEL MIRALDA, :  
: JAMES HAUSLER, :  
: JEFFREY WOOD, :  
: DARIA L. DECICCO, :  
: JEFFREY LOCASTRO, :  
: ANTHONY ANZANO, :  
: DAVID WHITMAN, :  
: DAVID WALKER, :  
: HUSSAIN NAWAZ, :  
: JEFFREY LING, :  
: ~~MICHAEL SAWLER,~~ :  
: MEHMET DEMIRELLI, :  
: FREDERICK OGBUTOR, :  
: LARA SLATER, :  
: ELINA TIRADO, :  
: RAJ DESAI, :  
: PETER LIEBERWIRTH, :  
: PETER PIASECKI, :  
: CHRISTOPHER SALKOWITZ, and :  
: JAIRO J. YATACO, :  
: Defendants. : ORDER re 7110 LITIGATION  
: in MIDDLESEX COUNTY

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**FILED**  
OCT 14 2005  
JUDGE JANE B. CANTOR

THIS MATTER comes before the Court on the motions of the State (a) to consolidate certain matters to resolve issues concerning the admissibility of Alcotest Model 7110 MK III-C using version 3.11 firmware ["7110"] common to the above captioned defendants, (b) to have this Court take judicial notice

of *State v. Foley*, 370 N.J. Super. 341, 851 A.2d 123 (Law Div. 2003), in lieu of expert testimony and to accept and recognize this decision as binding authority in Middlesex County, and (c) to limit pretrial discovery. Deputy Attorneys General Stephen H. Monson and John L. Dell'Aquilo, Jr., represented the interests of the State.

The State sought to consolidate these matters:

- Jane H. Chun, New Brunswick City Municipal Court (Rutgers), represented by Evan M. Levow, Esquire, and Andrew S. Maze, Esquire
- Angel Miralda, New Brunswick City Municipal Court, represented by Evan M. Levow, Esquire, and Christopher G. Hewitt, Esquire, of Garces & Grabler, P.C.
- James Hausler, Cranbury Township Municipal Court, represented by Samuel Sachs, Esquire
- Jeffrey Wood, Cranbury Township Municipal Court, represented by Samuel Sachs, Esquire
- Daria L. DeCicco, East Brunswick Township Municipal Court, represented by Robert Musto, Esquire

John Menzel, J.D., representing the interests of these defendants, moved to intervene on their behalves:

- Jeffrey LoCastro, East Brunswick Township Municipal Court
- Anthony Anzano, East Brunswick Township Municipal Court
- David Whitman, East Brunswick Township Municipal Court
- David Walker, New Brunswick City Municipal Court
- Hussain Nawaz, New Brunswick Township Municipal Court
- Jeffrey Ling, Piscataway Township Municipal Court

Evan M. Levow, Esquire, representing the interests of these defendants, moved to intervene on their behalves:

- Mehmet Demirelli, East Brunswick Township Municipal Court
- Frederick Ogbutor, East Brunswick Township Municipal Court
- Lara Slater, Woodbridge Township Municipal Court
- Elina Tirado, Woodbridge Township Municipal Court

Matthew W. Reisig, Esquire, representing the interests of these defendants, moved to intervene on their behalves:

- Raj Desai, East Brunswick Township Municipal Court
- Peter Lieberwirth, New Brunswick Township Municipal Court
- Peter Piasecki, East Brunswick Township Municipal Court
- Christopher Salkowitz, East Brunswick Township Municipal Court

Christopher Hewitt  
~~Jonathan A. Kessous~~, Esquire, of the law firm of Garces &

Grabler, P.C., representing the interests of the following defendant, moved to intervene on his behalf:

- Jairo J. Yataco, Perth Amboy City Municipal Court

Robert Ritacco, Esquire, of the law firm of Teitelbaum & Geldhauser, moved to intervene on behalf of Michael Simkovich, pending appeal in Superior Court, Law Division, from East Brunswick Township Municipal Court.

John Hogan, Esquire, of the law firm of Wilentz, Goldman & Spitzer, moved to appear as *amicus curiae* on behalf of the Association of Criminal Defense Lawyers of New Jersey.

HAVING CONSIDERED the papers submitted, counsels' arguments, and good cause shown, the Court, on this 14th day of October, 2005, ORDERS:

1. *Amicus Curiae*. The Association of Criminal Defense Lawyers of New Jersey is GRANTED leave to appear as *amicus curiae* and is authorized to participate in the hearings on the above captioned cases in this Court.

2. *Consolidation*. All cases listed above are consolidated for this Court to determine reliability and admissibility of breath test results from the 7110, except Order re 7110 Litigation *State v. Jane H Chun, et al.* Law Div Dkt.No. MAM-29-2005

Michael Simkovich. The consolidated cases were pending in the municipal courts on or before May 23, 2005, and were the subject of motions to intervene filed on or before September 9, 2005.

3. Judicial Notice. The State's motion for this Court to accept and recognize as binding authority the opinion in *State v. Foley, supra*, is DENIED.

4. Objections to Discovery Requests. If the State objects to discoverability of any particular items requested by attorneys Levow, Sachs, Musto, and Menzel, it will so advise the defense and this Court by Tuesday, October 18, 2005.

*or any identified request submit by defense counsel by 10/17*

5. Discovery Motions. Defense attorneys may provide up to two briefs to the State's objections to discovery by Thursday, October 20, 2005.

6. Providing Discovery. To the extent that the State has not objected to the aforementioned discovery requests by attorneys Levow, Sachs, Musto, and Menzel, the State will provide such discovery by Friday, October 21, 2005. Evan Levow, Esquire, is designated to receive discovery on behalf of all defendants.

7. Discovery Hearing. This Court will hold a hearing to resolve then outstanding discovery issues on Monday, October 24, 2005, at 1:30 p.m.

8. Providing 7110s. The State will make available two 7110s for inspection by defense representatives at a State-designated facility by November 4, 2005. Details concerning inspections will be resolved later.

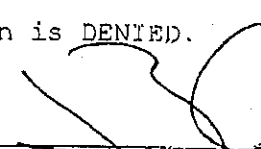
9. **Discovery Motions.** The defense will file motions for additional discovery, if any, by November 18, 2005.

10. **State's Response.** The State will respond to defense discovery motions, if any, by November 29, 2005.

11. **Case Management Conference.** This Court will hold a case management conference on December 2, 2005, at ~~a time to be set~~ <sup>9AM</sup>.

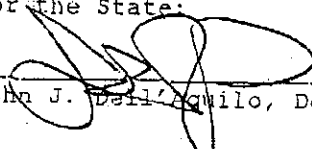
12. **Stay of Municipal Court Proceedings.** All litigation involving the 7110 now pending in Middlesex County is hereby stayed pending the outcome of the consolidated hearing in this Court as to the admissibility of breath tests using the 7110, except to the extent set forth in the next sentence or to the extent that the parties may consent. Potentially dispositive pretrial motions and hearings in the municipal courts on issues unrelated to the 7110 may proceed in the respective municipal courts, and if these motions dispose of the particular matters, defense counsel shall report the disposition to this Court so that its calendar may be adjusted accordingly.

13. **Stay Pending Interlocutory Appeal.** The State's motion to stay the proceedings in this Court concerning the 7110 pending an appeal to the Appellate Division is DENIED.

  
Hon. Jane B. Cantor, J.S.C.

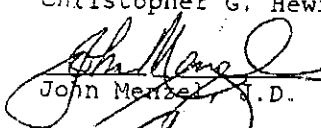
The State, Defense, and *Amicus Curiae* consent to the form of this Order.

For the State:

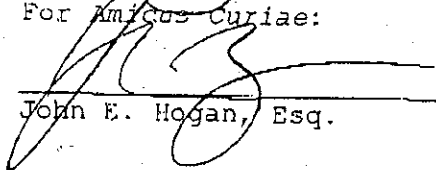
  
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John J. Deil Aquilo, Dep. Atty. Gen.

For the Defense:

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Christopher G. Hewitt, Esq.

  
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John Menzel, J.D.

For *Amicus Curiae*:

  
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John E. Hogan, Esq.