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Charles A. Lutz
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of counsel

•CERTIFIED BY THE SUPREME COURT OF
NEW JERSEY AS A CIVIL TRIAL ATTORNEY

February 6, 2006

Sandy Sandford, Case Manager
Supreme Court Clerk's Office
Hughes Justice Complex
25 W. Market Street
P.O. Box 970
Trenton, NJ 08625-0970

Re: State v. Chun, et al. (#58,879)
MOTION FOR RECONSIDERATION nunc pro tunc

Dear Ms. Sandford:

Enclosed please find an original and nine copies of a Motion for Reconsideration nunc pro tunc and a Certification in Support of this Motion. The Brief in Support of the Motion for Reconsideration was filed last week under separate cover.

Please file the Motion, and return a copy stamped "filed" in the enclosed envelope.

Please advise the parties as to the scheduling of this motion.

Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. Levow", written over the typed name.

EVAN M. LEVOW

EML:bs

c: Hon. Michael Patrick King, P.J.A.D., retired
Andrew S. Maze, Esq.
Christopher Hewitt, Esq.
Samuel L. Sachs, Esq.
Matthew W. Reisig, Esq.
John Menzel, Esq.
Peter Lederman, Esq.
Jeffrey Evan Gold, Esq.
Arnold Fishman, Esq.
Stephen H. Monson, D.A.G.

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(856) 428-5055
ATTORNEYS FOR DEFENDANTS
Chun, Miralda, Demirelli, Ogbutor, Slater and Tirado

STATE OF NEW JERSEY,

Plaintiff,

vs.

JANE H. CHUN, et al.,

Defendants,

SUPREME COURT OF
NEW JERSEY

Docket No. 58,879

QUASI-CRIMINAL ACTION

**NOTICE OF MOTION
FOR RECONSIDERATION
nunc pro tunc**

PLEASE TAKE NOTICE that on a date and time to be set by this Court, Evan M. Levow, Esquire will request that this Court reconsider its *sua sponte* Order of January 10, 2006, nunc pro tunc.

Counsel relies on the attached Certification, the Brief submitted by Counsel dated January 27, 2006, and the prior filing of John Menzel, Esq.



EVAN M. LEVOW, ESQUIRE

Dated: February 6, 2006

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STATE OF NEW JERSEY,

Plaintiff,

vs.

JANE H. CHUN, et al.,

Defendants,

SUPREME COURT OF
NEW JERSEY

Docket No. 58,879

QUASI-CRIMINAL ACTION

**CERTIFICATION IN SUPPORT OF
MOTION FOR RECONSIDERATION
nunc pro tunc**

Evan M. Levow, Esquire, upon his oath as an attorney of this State, does hereby certify:

1. I am an attorney representing Chun, Miralda, Demirelli, Ogbutor, Slater and Tirado in this case, and, as such I am familiar with this matter.

2. A Motion for Reconsideration was filed in this Court by John Menzel, Esq., on January 27, 2006, asking this Court to reconsider it's *sua sponte* Order of January 10, 2006.

3. It was my understanding that the Motion filed by Mr. Menzel was to all defendants in this case, and the Brief that I was filing at that same time was being submitted as to all defendants, as well.

4. After receiving a phone call from Sandy Sandford, Case Manager to this Court, I was advised that I had to file a separate Motion for Reconsideration on behalf of my clients, as

well as seek filing of this Motion nunc pro tunc due to the ten day filing deadline having passed, pursuant to R. 2:11-6.

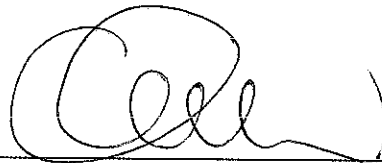
5. For the reasons expressed in the Brief filed last week, I ask that this Court accept this Motion nunc pro tunc or enlarge the time for filing provided for in R. 2:11-6.

6. I also rely on the statements and issues as set forth in Mr. Menzel's Motion papers.

7. This Court's Order of January 10, 2006 is attached hereto, pursuant to the Rule.

8. I have filed nine copies of this Motion with the Clerk of this Court, have sent two copies of the Motion to Stephen Monson, D.A.G., and have copied all co-counsel on the Motion.

I certify that the foregoing statements made by me are true and correct to the best of my knowledge and belief. I am aware that if these statements are wilfully false, I may be subject to punishment.



EVAN M. LEVOW, ESQUIRE

Dated: February 6, 2006

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.