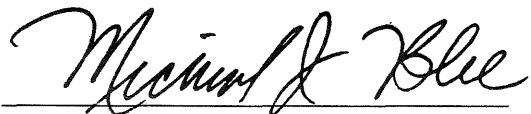


NOTICE TO THE BAR

SUPREME COURT LIFTS LIMITED STAY OF DWI MATTERS

The Supreme Court previously granted direct certification in State v. Cunningham (A-38-22) (087913) and simultaneously imposed a limited stay of DWI matters that involved the use of Alcotest 9510 machines, subject to certain conditions. Today, by the attached order, the Court dismissed the Supreme Court litigation and lifted the stay, effective immediately. The Court's order is attached.



Michael J. Blee, J.A.D.
Acting Administrative Director of
the Courts

Date: December 19, 2025

SUPREME COURT OF NEW JERSEY
A-38 September Term 2022
087913

State of New Jersey,

Plaintiff,

v.

O R D E R

Colleen A. Cunningham,

Defendant-Movant.

This matter was first opened to the Court in January 2023 on the State’s motions for various forms of relief, including to directly certify nine separate prosecutions pending in municipal court for driving while intoxicated (DWI). In each of the matters, the defendants had challenged the scientific reliability of evidential breath samples generated by the Alcotest 9510, a replacement for the Alcotest 7110 MKIII-C. The Court previously found the earlier model sufficiently reliable to be admissible as evidence in DWI cases. See State v. Chun, 194 N.J. 54, 65 (2008).

On May 1, 2023, the Court directly certified the matter involving only defendant Colleen Cunningham, not the other eight matters. The Court also appointed Judge Richard J. Geiger, J.A.D., to serve as a Special Adjudicator “to develop a record, conduct hearings, and make findings and conclusions

regarding the scientific reliability of the Alcotest 9510.”

Importantly, also on May 1, 2023, the Court imposed a limited stay of DWI matters that involved the use of Alcotest 9510 machines, subject to certain conditions.

The Court directed that remand proceedings be conducted on an accelerated basis. At all times, Judge Geiger has conducted them with due pace and diligence, notwithstanding repeated delays.

Since the Court imposed a stay, numerous motions have prevented the remand from proceeding apace. Most involved the issue of who would pay for defense experts and the costs of transcripts for the remand proceedings:

- On July 28, 2023, defendant filed a motion with Judge Geiger to have the State pay the cost of defense experts and daily transcripts. Defendant argued that the Court has directed the provision of financial assistance to defendants “who could not otherwise afford legal services in defense of their case.” Defendant analogized her circumstances to State v. Cassidy, 235 N.J. 482 (2018), in which the Court granted an indigent defendant’s motion to compel the State to pay the costs of defense experts. Defendant noted that here, as in Cassidy, it was the State that sought a global resolution of the scientific reliability of the Alcotest 9510, and “by mere happenstance,” she was “the named party in a case with broad implications.” Under those circumstances, defendant argued, “[i]t would be a manifest injustice . . . to impose the burden of financing defense experts solely upon [defendant] . . . even if she does not qualify as indigent.”
- On August 22, 2023, Judge Geiger granted defendant’s motion.
- The State moved before the Supreme Court to vacate Judge Geiger’s order (M-247-23) on September 26, 2023. The State distinguished Cassidy, contending that this matter does not involve an indigent defendant or alleged malfeasance by a member of law

enforcement -- both of which were present in Cassidy -- and argued that there is no precedent to require it to pay for defense experts in the circumstances of this matter. Doing so, it argued, would present “an untenable conflict of interest” in that the State necessarily would be required to exercise discretionary oversight involving decisions that affect litigation strategy (e.g., which experts to hire and how many). As a practical matter, the State also argued that defendant Cunningham would have had to pay experts to support her own challenge to the Alcotest 9510 regardless of the State’s motion to directly certify the matter and seek a global resolution.

- In October 2023, the Court granted the State’s motion to vacate Judge Geiger’s August 22, 2023 order. The Court’s ruling was without prejudice to defense counsel applying for payment from the Office of the Public Defender (OPD) to fund ancillary services, if defendant qualified. Defendant Cunningham later applied for and was denied ancillary services based on the OPD’s determination that she was not eligible.
- In June 2024, defendant Cunningham moved before the Court to compel the State to pay for defense experts and daily transcripts of the remand proceedings. The Court referred the matter to Judge Geiger, who denied relief in July 2024.
- Judge Geiger denied defendant’s motion for reconsideration in August 2024.
- In September 2024, defendant filed anew with the Supreme Court, again seeking to compel the State to pay for defense experts and daily transcripts of the remand proceedings (M-233-24). Defendant concluded her briefing in November 2024.
- On July 25, 2025, the Court (1) again declined to compel the State to pay for defense experts, and (2) directed the State to pay for daily transcripts.
- On August 5, 2025, defendant filed a motion for reconsideration, again asserting that defendant should not bear the costs of defense experts. The Court denied the motion on August 11, 2025.

Defendant Cunningham now seeks to withdraw her underlying motion challenging the scientific reliability of the Alcotest 9510. The withdrawal of defendant's challenge at this late date leaves the Court without a party in interest to challenge the admissibility of evidential breath samples generated by the Alcotest 9510.

The Court has considered the submissions from all counsel. Some proposed alternatives to dismissal include proceeding without a named defendant in an adversarial proceeding, having the Court provide and fund experts, or adding back defendants to the appeal. None of the proposals are viable, and all would cause delays in a matter that has been pending for a long period of time.

In sum, defendant Cunningham no longer challenges the scientific reliability of the Alcotest 9510, and none of the other eight defendants originally identified by the State have asked to have their case certified for review by this Court. There is therefore no legal question for this Court to decide. Moreover, defendants statewide are entitled to their day in court, and the public is entitled to have DWI matters adjudicated in a timely manner that promotes fairness and addresses safety concerns. The Court therefore dismisses the pending appeal and lifts the limited stay of DWI matters so that prosecutions may proceed, including prosecutions that rely on the Alcotest 9510. Defendants in individual cases may of course challenge the scientific

reliability of the Alcotest 9510 if they so choose. The Court's May 1, 2023 order in this matter is therefore vacated.

Jurisdiction is not retained.

For the Court

A handwritten signature in blue ink, appearing to read "Stuart Rabner", written in a cursive style.

Stuart Rabner
Chief Justice

December 19, 2025