



*State of New Jersey*

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF CRIMINAL JUSTICE  
PO BOX 085  
TRENTON, NJ 08625-0085  
TELEPHONE: (609) 984-6500

November 3, 2017

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

CHRISTOPHER S. PORRINO  
*Attorney General*

ELIE HONIG  
*Director*

TO: ALL COUNTY PROSECUTORS

Re: State v. Eileen Cassidy

Dear Prosecutors:

As you are aware, it is alleged that in October 2015, New Jersey State Police (NJSP) Sergeant Marc Dennis failed to use a NIST-traceable digital thermometer prior to calibrating the Alcotest instruments located in the Asbury Park, Long Branch and Marlboro Police Departments as is required by the Calibration Protocol established by the Chief Forensic Scientist, and then certified on the calibration documents produced at the time of these calibrations that he performed this procedurally-required step. In June of 2017, Sergeant Dennis was indicted in a superceding indictment and charged with third degree tampering with public records or information and fourth degree falsifying records. The allegations in the underlying criminal case may call into question whether he performed this step in the calibration protocol in all of the calibrations that he conducted as a coordinator in the Alcohol Drug Testing Unit (ADTU) of the NJSP. Sergeant Dennis was a coordinator in the ADTU for over seven years and calibrated instruments in Middlesex, Monmouth, Ocean, Somerset and Union Counties (“the affected counties”). Records show that approximately 20,667 individuals provided breath samples on Alcotest instruments calibrated by Dennis during this period of time. The affected counties have all been provided with the names and addresses of these individuals, and either have already provided, or will be providing, notice to these individuals the current proceedings before the Special Master.

In October 2017, DCJ asked the Supreme Court to grant direct certification of the above-captioned case and to appoint a Special Master to determine the issue of whether “the failure to test the simulator solutions with the NIST-traceable digital thermometer before calibrating an Alcotest machine undermine[s] or call[s] into question the scientific reliability of breath tests subsequently performed on the Alcotest machine.” The Supreme Court granted the State’s motion and appointed the Honorable Joseph F. Lisa, P.J.A.D. (retired and t/a on recall), to be the Special Master and preside over a hearing to determine this issue. The Court also invited the New Jersey State Bar Association and several of the defense attorneys from State v. Chun to participate in the hearing. There have been five case management conferences since July 2017 and the exchange of discovery is nearing completion.



On October 17, 2017, at the request of several of the affected counties, DCJ filed a motion for an order granting a stay of all proceedings in other courts that raise issues that are potentially affected by the Court's decision after the hearing in Cassidy.

The final Case Management Conference was held on November 2, 2017. Judge Lisa granted the State's motion and ordered a "stay of proceedings in other courts that raise issues potentially affected by the Supreme Court's ultimate determination in this matter, i.e. a DWI prosecution in which a BAC reading derived from an Alcotest device calibrated by coordinator Marc Dennis..." The stay also applies to sentences for DWI convictions or driving while suspended cases, as well as cases where a DWI conviction in a Dennis case constitutes a predicate offense to enhance the gradation or applicable punishment in a subsequent prosecution for another charge. Please note that cases in counties other than the affected counties may be impacted by this stay order. For example, if a second DWI offense is committed in a county that is not an affected county, but the first DWI conviction/offense was committed in an affected county and is a Dennis case, the second DWI case should be stayed unless the defendant expressly waives the right to the stay.

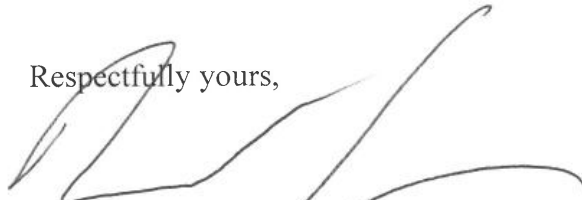
During the final status conference, Judge Lisa enforced a turn-over order signed by the Honorable Marcy C. Jacobson, A.J.S.C. allowing for the production and release of several documents from the underlying Dennis criminal matter to be provided to all participating counsel in the Cassidy matter. The consent order signed by all parties indicates that no party may use, copy, reproduce, duplicate or otherwise disclose the materials for any purpose not related to the litigation in State v. Cassidy without leave of the Court. Any unauthorized use or disclosure of the materials may result of contempt of court proceedings. The materials were released to SDAG Robert Czepiel Jr. and DAG Robyn Mitchell, Michael R. Hobbie Esq., Sharon Balsamo, Esq. (and attorneys appointed on behalf of the State Bar Association), Samuel Louis Sachs, Esq., John Menzel, Esq., and Matthew Reisig Esq.

Attached please find the November 2<sup>nd</sup> Order granting the Stay, as well as the Certification that was filed in support of the State's motion for a Stay. Please provide a copy of this Order and Certification to every municipal prosecutor in your respective counties. Please also advise your municipal prosecutors of the terms and conditions of limited release of documents in the Dennis criminal file.

Finally, Judge Lisa ordered the Cassidy hearing to begin on December 4, 2017. The Court is blocking four days a week through December 21, for testimony from the State's expert witnesses. The defense will start its case on January 8, 2018. The hearings will take place in the

old courthouse in Burlington County.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Robert Czepiel, Jr.", written over the typed name below.

Robert Czepiel, Jr.  
Supervising Deputy Attorney General  
Deputy Chief  
Prosecutors Supervision and Training Bureau

w/enclosures

CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY  
BY: ROBERT CZEPIEL, JR.  
SUPERVISING DEPUTY ATTORNEY GENERAL  
DIVISION OF CRIMINAL JUSTICE  
PROSECUTORS SUPERVISION & TRAINING BUREAU  
25 MARKET STREET  
P.O. BOX 085  
TRENTON, NEW JERSEY 08625  
(609) 984-0941

SUPREME COURT OF NEW JERSEY  
DOCKET NO. M-244/245/246  
SEPTEMBER TERM 2016 078390

---

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Movant,	:	ORDER GRANTING STAY
	:	OF PROCEEDINGS IN OTHER COURTS
V.	:	THAT RAISE ISSUES POTENTIALLY
	:	AFFECTED BY THE SUPREME COURT'S
EILEEN CASSIDY,	:	DETERMINATION IN THIS CASE
Defendant-Respondent.	:	

---

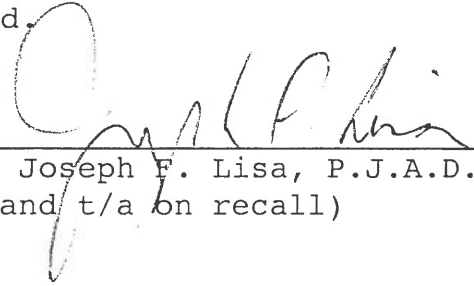
This matter having been brought before this Court by Robert Czepiel, Jr., Supervising Deputy Attorney General, appearing for the State of New Jersey, and Michael R. Hobbie, Esq., appearing on behalf of the defendant, Eileen Cassidy, and Sharon A. Balsamo, Esq., appearing on behalf of the New Jersey State Bar Association, and Samuel Louis Sachs, Esq., appearing as amicus curiae, and John Menzel, J.D., appearing as amicus curiae, and Matthew W. Reisig, Esq., appearing as amicus curiae, on the State's Motion for a Stay of all proceedings in other courts that raise issues potentially affected by the Supreme Court's determination to be made in this matter; and the Court having heard oral argument and for good cause shown;

It is on this 2nd day of November, 2017 ORDERED that, based on the attached certification of Mr. Czepiel, the State's Motion for a stay of proceedings in other courts that raise issues potentially affected by the Supreme Court's ultimate determination in this matter, i.e. a DWI prosecution in which a BAC reading derived from an Alcotest device calibrated by coordinator Marc Dennis, is hereby GRANTED.

It is FURTHER ORDERED that the stay of proceedings contained in this Order shall not preclude other courts from ordering that sentences for DWI convictions or sentences for driving while suspended under N.J.S.A. 39:3-40(f)(2) and (3) or N.J.S.A. 2C:40-26 in, or as a result of, adjudicated Dennis cases be stayed pending the ultimate determination by the Supreme Court in this matter;

It is FURTHER ORDERED that if a DWI conviction in a Dennis case constitutes a predicate offense to enhance the gradation or applicable punishment in a subsequent prosecution for another charge, proceedings in the subsequent prosecution shall be stayed, unless the defendant expressly waives the right to the stay (and therefore the right to challenge his or her DWI conviction in the Dennis case regardless of the determination

ultimately made by the Supreme Court in this matter), and agrees to allow the prosecution to proceed.

A handwritten signature in cursive script, appearing to read "Joseph F. Lisa", written over a horizontal line.

Honorable Joseph F. Lisa, P.J.A.D.  
(retired and t/a on recall)

CHRISTOPHER S. PORRINO  
ATTORNEY GENERAL OF NEW JERSEY  
BY: ROBERT CZEPIEL, JR.  
SUPERVISING DEPUTY ATTORNEY GENERAL  
DIVISION OF CRIMINAL JUSTICE  
PROSECUTORS SUPERVISION & TRAINING BUREAU  
25 MARKET STREET  
P.O. BOX 085  
TRENTON, NEW JERSEY 08625  
(609) 984-0941

SUPREME COURT OF NEW JERSEY  
DOCKET NO. M-244/245/246  
SEPTEMBER TERM 2016 078390

---

STATE OF NEW JERSEY,	:	<u>CRIMINAL ACTION</u>
Plaintiff-Movant,	:	CERTIFICATION IN SUPPORT OF STAY
	:	OF PROCEEDINGS IN OTHER COURTS
V.	:	THAT RAISE ISSUES POTENTIALLY
	:	AFFECTED BY THE SUPREME COURT'S
EILEEN CASSIDY,	:	DETERMINATION IN THIS CASE
Defendant-Respondent.	:	

---

I, Robert Czepiel, Jr., being of full age, do hereby  
certify as follows:

1. I am a Supervising Deputy Attorney General and am  
responsible for the above-captioned matter.

2. I submit this certification in support of the State's  
motion for a stay of all proceedings in other courts that raise  
issues potentially affected by the Supreme Court's determination  
in this matter.

3. It is alleged that in October 2015, New Jersey State  
Police ("NJSP") Sergeant Marc Dennis failed to use a NIST-  
traceable digital thermometer prior to calibrating the Alcotest

instruments located in the Asbury Park, Long Branch and Marlboro Police Departments as is required by the Calibration Protocol established by the Chief Forensic Scientist, and then certified on the calibration documents produced at the time of these calibrations that he performed this procedurally-required step.

4. On September 19, 2016, a Complaint-Summons was filed charging Dennis with third degree tampering with public records or information and fourth degree falsifying records.

5. On December 16, 2016, a State Grand Jury returned State Grand Jury Indictment Number SGJ693-16-24, charging Dennis with second degree official misconduct, third degree tampering with public records or information, and fourth degree falsifying records. Upon Dennis's motion and after a review of the Grand Jury presentment, the trial judge dismissed the official misconduct charges against Dennis.

6. After the official misconduct charge was dismissed, the case was re-presented to the State Grand Jury. On June 27, 2017, the State Grand Jury returned SGJ Superseding Indictment Number SGJ702-17-17-S, which supersedes SGJ Indictment Number SGJ693-16-24, charging Dennis with third degree tampering with public records or information and fourth degree falsifying records.

7. Because Dennis certified to performing a step in the calibration protocol that it is alleged he did not do, this false swearing may call into question whether he performed this



step in the calibration protocol in all of the calibrations that he conducted as a coordinator in the Alcohol Drug Testing Unit ("ADTU") of the NJSP.

8. Dennis was a coordinator in the ADTU for over seven years. Records show that approximately 20,667 individuals provided breath samples on Alcotest instruments that were calibrated by Dennis during this period of time.

9. On September 19, 2016, the same date that criminal charges were filed against Dennis, the State advised the Honorable Glenn Grant, J.A.D., of the criminal charges against Dennis and of the approximately 20,667 individuals who provided breath samples on Alcotest instruments that were calibrated by Dennis. The State also requested that a Special Master be appointed to handle any litigation arising from the charges against Dennis.

10. On October 4, 2016, Judge Grant denied the State's request, noting that a request for a Special Master should be made to the New Jersey Supreme Court. Judge Grant also proposed that the State file an application for direct certification and include a request for appointment of a special master in the application.

11. On September 8, 2016, defendant Eileen Cassidy pled guilty in the Spring Lake Municipal Court to Driving While Intoxicated, in violation of N.J.S.A. 39:4-50.

12. On September 26, 2016, defendant filed a motion to withdraw and vacate her guilty plea on the grounds that Dennis calibrated the Alcotest on which she provided a breath sample, and because of the charges against Dennis, the breath testing process was flawed and inadmissible.

13. On October 17, 2016, the State filed a motion in the New Jersey Supreme Court to, inter alia, grant direct certification of State v. Cassidy, and to appoint a Special Master to determine the issue of whether the failure to use a NIST-traceable digital thermometer prior to beginning the calibration of the Alcotest instrument undermined the scientific reliability of the Alcotest instrument calibrated by Dennis and used in Cassidy's case.

14. On November 10, 2016, the Court invited several attorneys who represented named defendants in State v. Chun, as well as the New Jersey State Bar Association ("NJSBA"), to file a response to the State's motion.

15. On April 7, 2017, the Court granted the State's motion to relax the Court Rules and for direct certification. The Court also appointed the Honorable Joseph F. Lisa, P.J.A.D. (retired and t/a on recall) to consider and decide the issue of whether "the failure to test the simulator solutions with the NIST-traceable digital thermometer before calibrating an Alcotest machine undermine[s] or call[s] into question the scientific

reliability of breath tests subsequently performed on the Alcotest machine".

16. After the Court granted the State's motion and appointed Judge Lisa to be the Special Master to decide this issue, I directed the County Prosecutors Offices in the counties where Dennis calibrated Alcotest instruments ("the affected counties") to advise their municipal and assistant prosecutors to request a stay of the proceedings pending the outcome of the instant case before the Special Master when a defense motion is received relating to a breath test on a case in which Dennis calibrated the instrument (a "Dennis case").

17. I have been advised by prosecutors in the affected counties that some judges are no longer willing to adjourn and/or stay the Dennis cases. Thus, the prosecutors in the affected counties have requested that I seek an order from this Court ordering all judges in the municipal and superior courts to stay the Dennis cases pending the Supreme Court's determination in this matter.

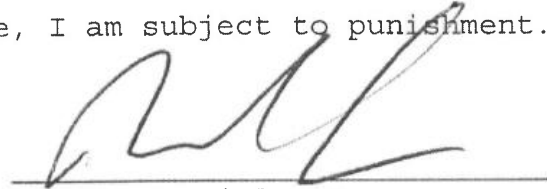
18. Refusal to stay the Dennis cases will irreparably harm the State's ability to prosecute those cases should this Court determine that the failure to test the simulator solutions with the NIST-traceable digital thermometer before calibrating an Alcotest instrument does not undermine or call into question the scientific reliability of breath tests subsequently performed on

the Alcotest instrument. Indeed, forcing the State to proceed on a Dennis case before the Supreme Court has had an opportunity to decide the State's motion in State v. Cassidy will, with absolute certainty, cause the State irreparable harm by either forcing the State to dismiss BAC readings that might, ultimately, not have to be dismissed.

19. Conversely, defendants in the Dennis cases will not be prejudiced by the temporary stay of their cases. For those defendants whose cases have not yet been adjudicated, they have had no loss of license or any other consequence of magnitude that would be affected by a stay. For those Dennis cases that have been adjudicated but the defendant would like to challenge the Alcotest reading simply because Dennis calibrated the instrument, those cases absolutely should not be adjudicated until the Supreme Court has decided Cassidy. If the Court finds that the skipped step does not affect the scientific reliability of the readings, then any such motion challenging the reliability of the readings simply because Dennis calibrated the instrument would be moot. If the Court ultimately finds that the skipped step does affect the scientific reliability of the readings, then and only then would such a motion be ripe.

20. Therefore, the State requests a stay of all proceedings in other courts that raise issues potentially affected by the Supreme Court's determination in this matter.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Robert Czepiel, Jr.  
Supervising Deputy Attorney General  
Deputy Chief  
Prosecutors Supervision and  
Training Bureau

Dated: October 17, 2017