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## Middlesex DWI cases remain on hold

### Challenge to Alcotest is upheld

Friday, December 02, 2005

**BY TOM HAYDON**  
Star-Ledger Staff

Motorists convicted of drunken driving in Middlesex County got a temporary reprieve yesterday after an appeals court upheld an order halting the prosecution of cases that relied on a new machine to assess blood alcohol levels.

The decision was a setback for prosecutors who are hoping to defeat a challenge of the Alcotest 7110, the machine that has replaced the decades-old Breathalyzer.

The two-judge appeals panel ordered an accelerated hearing before Superior Court Judge Jane Cantor into issues surrounding the machine, which Middlesex County police departments began using this year.

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The appeals court decision upheld an Oct. 14 ruling by Cantor that halted the prosecution of all cases in Middlesex County involving the Alcotest machine until a hearing determines whether the test results can be used as evidence.

As a result of Cantor's ruling, hundreds of driving-while-intoxicated cases are on hold.

Evan Levov, a Cherry Hill attorney and the lead defense lawyer in the case

before Cantor, said there was no evidence about the validity of the software running the Alcotest systems.

But the state Attorney General's Office disputes this claim, citing a December 2003 ruling in the case of State vs. Foley, involving 330 consolidated drunken-driving arrests.

In that case, a judge in Camden ruled the results from the Alcotest are scientifically accurate.

However, in the appeals court ruling, Judge Robert Fall said the Camden County case was insufficient to serve as a precedent in other Superior Court cases.

Levow yesterday said the hearing in the Camden County case was on nonconsecutive days over a period of 18 months. The Middlesex County case could take longer, he said.

"This is extremely complex. It's not something that is going to be resolved in a few weeks," Levow said.

The Attorney General's Office was reviewing the decision yesterday, said spokesman John Hagerty. He said there was a small chance of taking the case to the Supreme Court, but most likely it would proceed before Cantor.

At least 470 cases were affected as of mid-November, the most recent survey, said George Stahanovich, the Middlesex courthouse liaison to municipal courts in the county.

New Jersey first began using the Alcotest 7110 in Camden. In January, the machines were put to use in Middlesex County, and they now are used by police in 11 counties in the state, replacing the Breathalyzer machine.

The Alcotest 7110 is to be used in the other 10 counties by November 2006.

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