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DWI cases stalled

Defense lawyers argue that new device is unreliable

Posted by the Asbury Park Press on 11/26/05

THE ASSOCIATED PRESS

NEWARK — Dozens of drunken-driving cases are on hold as state judges address complaints from defense lawyers that the device replacing the Breathalyzer is not reliable.

However, the state maintains that a judge's ruling in Camden County in 2003 means that the Alcotest 7110 MKIII-C is certified as trustworthy and should be recognized as such by all state judges.

State Deputy Attorney General, John J. Dell'Aquilo, said that since the ruling, the Alcotest has been deployed in 10 other counties, with the remaining 10 to be on board by next November.

Dell'Aquilo said the 2003 hearing, a multiweek affair that included testimony from experts hired by the state as well as defense lawyers, cost prosecutors about \$250,000.

"We feel as a matter of judicial economy and the proper utilization of state resources, we don't want to have to repeat that hearing in 20 additional counties," he said.

That argument carries little weight with Cherry Hill lawyer Evan M. Levow, whose practice is devoted to representing people accused of drunken driving. He contended that he has seen erroneous readings of blood alcohol content in many of the 20 Alcotest cases he is handling.

"Properly configured . . . this machine is probably very, very good. However, as it stands now, it is not," Levow said. "The attorney general should recognize there are significant issues with this machine."

This fall, Levow won an order that put Alcotest prosecutions in Middlesex County on hold after persuading state Superior Court Judge Jane Cantor not to take judicial notice of the 2003 ruling by a fellow trial judge, Francis J. Orlando Jr.

Some 654 drunken-driving cases were pending in Middlesex in October, the most of any county except Monmouth. Statewide, 76,502 DWI cases have been brought over the past two years, and 6,505 are pending.

Levow said the state and Alcotest's maker withheld the software from the Camden County hearing in 2003, claiming it was proprietary information.

The state this month countered by asking an appellate panel for permission to challenge Cantor's refusal to accept the 2003 ruling. Prosecutors also want the panel to lift the hold on all Middlesex Alcotest cases.

Dell'Aquilo, who is leading the state's efforts on Alcotest, said delaying DWI cases "leaves dangerous drunken drivers free to drive while they are waiting for trial."

The Alcotest is made by Draeger Safety Diagnostics Inc. of Irving, Texas, a unit of Draegerwerk AG of Lubeck, Germany. A decade after it was first produced in 1993, Alcotest was being used in 20 nations and nine states.

Unlike the Breathalyzer, the Alcotest automatically takes readings. It uses two independent, simultaneous methods to analyze a suspect's breath to determine the level of intoxication: infrared light and an electrochemical reaction. It automatically



(ASSOCIATED PRESS)

Cherry Hill lawyer Evan M. Levow sits next to the Alcotest 7110 in his office. Dozens of drunken driving cases are on hold as state judges address complaints that the device, which is replacing the Breathalyzer, is not reliable.

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produces a printout with both readings.

The Breathalyzer requires its operator to compare the difference in the amount of light coming from two tubes of chemicals. The suspect's breath is introduced to one tube, which darkens if alcohol is detected.

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