



## The Star-Ledger

### High court orders hearing on alcohol test's accuracy

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The state Supreme Court announced yesterday it will determine whether a device used by many police departments to identify drunken drivers is scientifically reliable.

The court appointed a retired judge to hold hearings on the accuracy of the Alcotest 7110 and make a recommendation.

The high court's action pleased the state Attorney General's Office, which vowed no let-up in drunken driving enforcement during the coming holidays.

The Alcotest has been adopted by police departments in 11 of the state's 21 counties in place of the older Breathalyzer. But defense lawyers have raised questions about its reliability, prompting judges to temporarily halt its use in Middlesex, Union, Morris and Sussex counties.

Superior Court Judge Jane Cantor in Middlesex County had been scheduled to hold hearings on its reliability. But the Supreme Court, acting on its own, decided to step into the fray. It appointed retired Appellate Division Judge Michael Patrick King as special master to make a recommendation directly to them.

The justices' unanimous order empowers King to hold a hearing, appoint his own scientific experts and invite interested parties to offer their views. He must present his conclusions to the high court within 30 days after the hearing is completed.

Prosecutors and defense lawyers will then have two weeks to file written arguments with the justices, who will hear oral arguments "on the first available date."

King's selection pleased both the Attorney General's Office and Cherry Hill defense lawyer Evan Levow, who won the appeals court ruling requiring hearings on the reliability of the software behind the high-tech Alcotest.

Levow called King "an excellent judge" and "a great pick for this undertaking."

John Hagerty, a spokesman for the Attorney General's Office, said it is "extremely pleased" with King's appointment. Hagerty added that his office is "confident the technology will prevail and that New Jersey will move forward with drunk driving enforcement."

"Law enforcement will not curtail drunk driving enforcement through the upcoming holidays," Hagerty added. "Questions concerning the accuracy of the Alcotest system will not prevent enforcement, arrest and prosecution."

He explained that even in the 11 counties where Alcotest is used, many municipalities continue to rely on the older Breathalyzer. Hagerty said police also can use their observations and videotape of a driver along with field sobriety tests to make a case of drunken driving.

Levow said the hearing on the Alcotest's reliability will not be a simple, one-day affair.

"Reality must reign with respect to the complexity and volume of the data," Levow said. He added that no single defendant, or even a collection of defense lawyers, can match the state's ability to hire scientists, so he will ask King to compel the state to pay for defense experts. "It's only fair," Levow said.

Acting as an adviser to the Supreme Court is a familiar role for King. In 1997 the justices picked him to make recommendations on how to improve education and dilapidated classrooms in the state's poorest school districts.

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