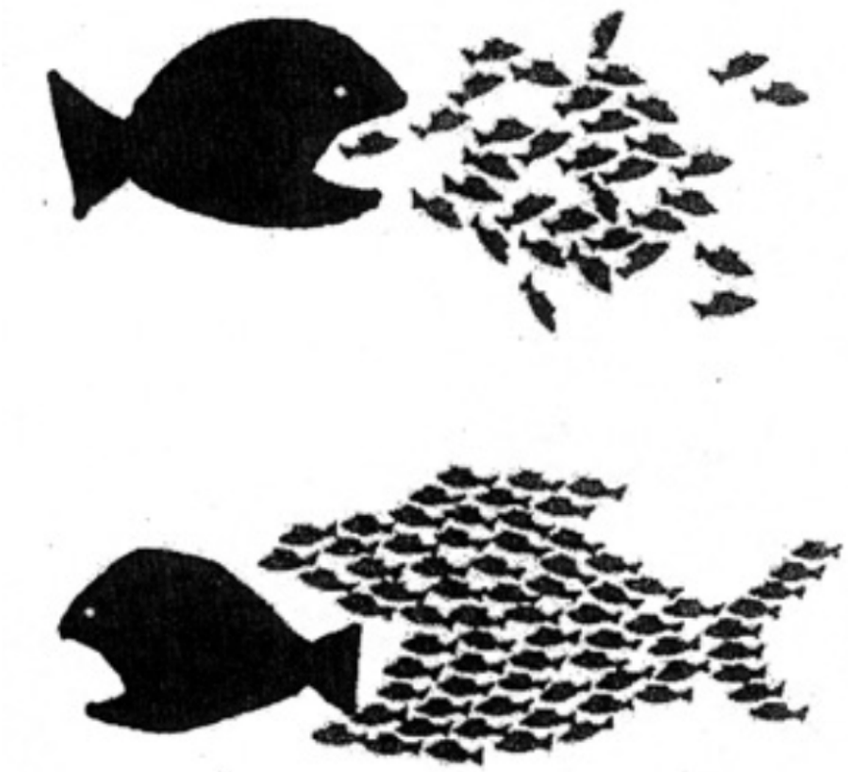
Garden State CLE Presents:

Organizing Alcotest Discovery for Trial



Lesson Plan

Presentation of the State's Alcotest Proofs - NJRE 104(a)

a. Preliminary hearings

Evidence considered during the R. 104(a) hearing must be relevant, trustworthy and in the interests of justice.

RULE 101. SCOPE; DEFINITIONS

(a) *Applicability; exceptions.*

(2) *Court proceedings; relaxation.* --These rules of evidence shall apply in all proceedings, civil or criminal, conducted by or under the supervision of a court. Except as provided by paragraph (a) (1) (Privileges) of this rule, these rules may be relaxed in the following instances to admit relevant and trustworthy evidence in the interest of justice:

(E) proceedings to determine the admissibility of evidence under these rules or other law.

RULE 104. PRELIMINARY QUESTIONS

(a) *Questions of admissibility generally.* --When the qualification of a person to be a witness, or the admissibility of evidence, or the existence of a privilege is subject to a condition, and the fulfillment of the condition is in issue, that issue is to be determined by the judge. In making that determination the judge shall not apply the rules of evidence except for Rule 403 or a valid claim of privilege. The judge may hear and determine such matters out of the presence or hearing of the jury.

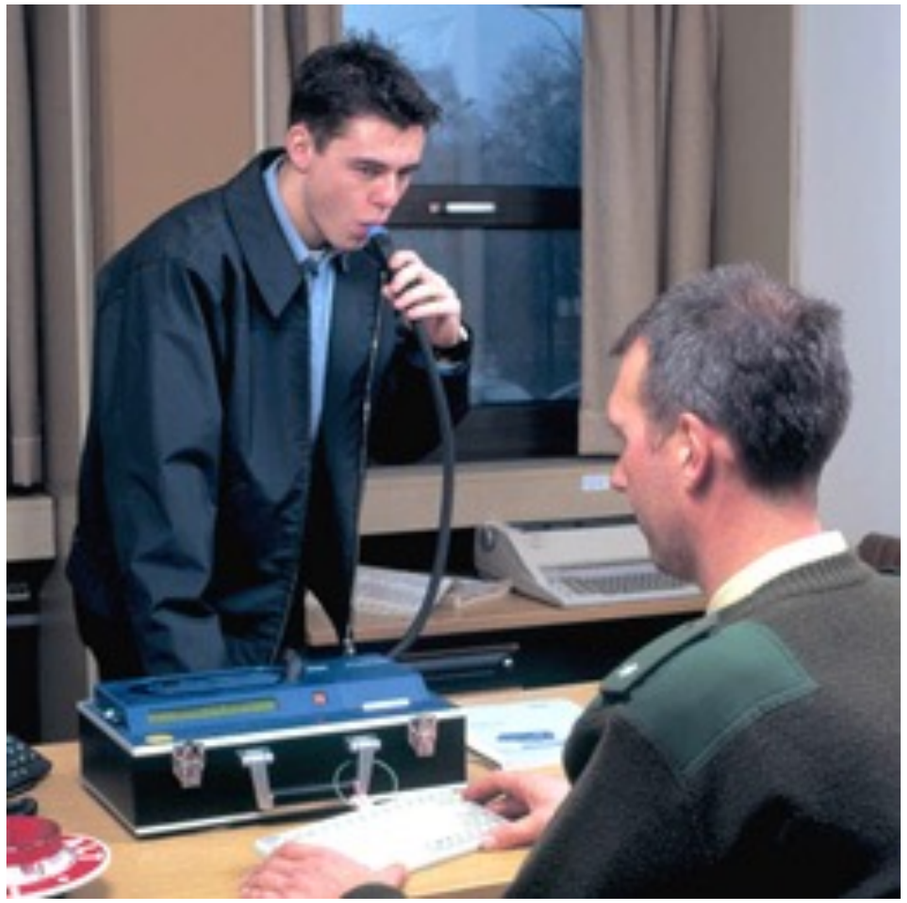
Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Except as otherwise provided by these rules or other law, relevant evidence may be excluded if its probative value is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury or (b) undue delay, waste of time, or needless presentation of cumulative…

As a result of the foregoing, discovery documents apart from the core foundational documents are either irrelevant (NJRE 101(a)(2)) or would constitute a waste of time (NJRE 403).

Note - Defendant may testify and be subject to testimonial immunity. See NJRE 104(d)

(d) Testimony by accused. By testifying upon a preliminary matter, the accused does not become subject to cross-examination as to other issues in the case. See also Harris v. New York, 401 US 222 (1971).



b. Burden of Proof during the Preliminary hearing

This precise issue was not discussed in Chun. The case law supports the idea that the prior law expressed in Romano v. Kimmelman, 96 NJ 66, 90-91 (1984) requiring clear and convincing evidence still controls.

[I]n this case we hold that the burden of proof prescribed under *State v. Johnson, [citation omitted]*, is to be followed to establish all of the conditions necessary for the admissibility of a breathalyzer test.

Under *Johnson*, conditions of admissibility must be "clearly established." To avoid any confusion over what is intended by this level of proof, it should be understood that it conforms to that standard conventionally referred to as "clear and convincing proof." The conditions of admissibility to which this burden of proof shall apply include those presently required to establish the admissibility of the results of a breathalyzer test, namely, the proper operating condition of the machine, the requisite qualifications of the operator, and the proper administration of the test.

We hold further that the responsibility for establishing all conditions as to the admissibility of the breathalyzer results is properly allocated to the State. This is the rule with respect to the usual conditions of admissibility under *Johnson*.

c. Clear and Convincing Evidence – Defined

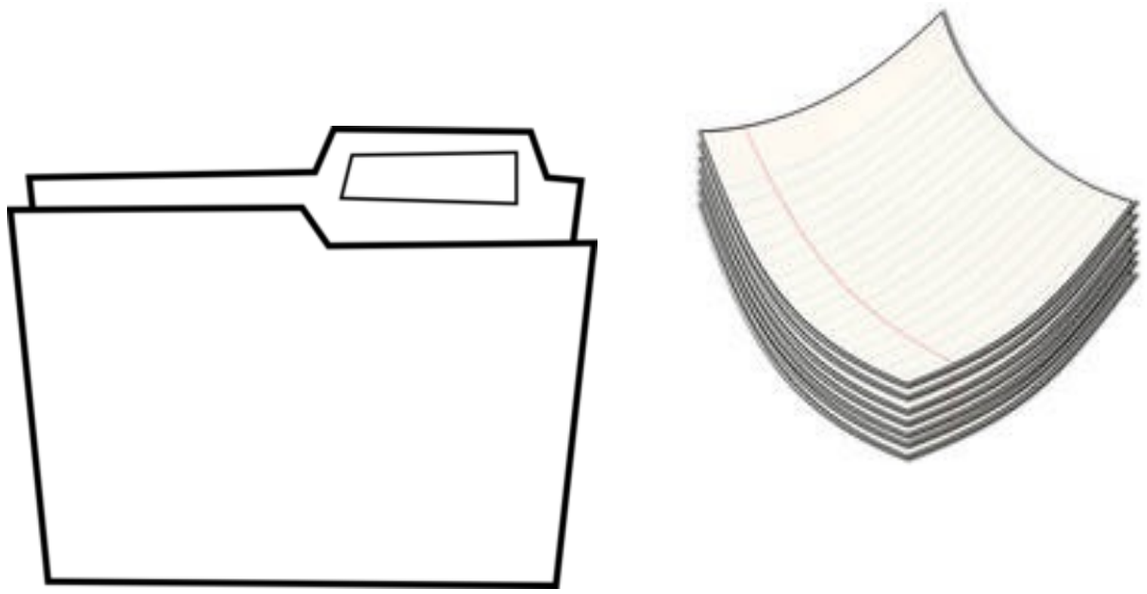
Clear-and-convincing evidence is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact-finder to come to a clear conviction, without hesitancy, of the precise facts in issue. In re Seaman, 133 NJ 67, 74 (1993).

d. Core Foundational Documents - Defined

Our analysis of the general scientific reliability of the Alcotest is grounded, in part, on our expectation that there will be proof that the particular device that has generated an AIR being offered into evidence was in good working order and that the operator of the device was appropriately qualified to administer the test. This requirement that the test results be supported by foundational proofs for admissibility has been part of our jurisprudence since we decided *Romano.* There we demanded that, as a precondition for admissibility of the results of a breathalyzer, the State was required to establish that: (1) the device was in working order and had been inspected according to procedure; (2) the operator was certified; and (3) the test was administered according to official procedure.

State v. Chun, 194 NJ 54, 134 (2008)

The foundational documents that we conclude need to be entered into evidence therefore are few. They are: (1) the most recent calibration report prior to a defendant's test, with part I-control tests, part II-linearity tests, and the credentials of the coordinator who performed the calibration; (2) the most recent new standard solution report prior to a defendant's test; and (3) the certificate of analysis of the 0.10 simulator solution used in a defendant's control tests. Absent a pre-trial challenge to the admissibility of the AIR based on one of the other foundational documents produced in discovery, we perceive of no reason to require that they be made a part of the record routinely. State v . Chun, 194 NJ 54, 145 (2008).



e. List of Core Foundational Documents

1. **Operator's Qualification Card (*Chun* at 134) [Good for the year granted + 2 calendar years - See NJAC 13:51-1.8(d)];**
2. **Most recent calibration report from NJSP - (*Chun* at 145);**
3. **Most recent standard solution change report prior to defendant's test (*Chun* at 145) (Note – this document may sometimes be included as part of #2 above);**
4. **Certificate of analysis used in defendant's control tests - (*Chun* 145);**
5. **The Alcohol Influence Report; (*Chun* at 134)**
6. **Worksheet A Tolerance Calculations (*Chun* 150-151).**

S-2 C #6

Alcotest 7110 Calibration Record

Equipment	Alcotest 7110 MKIII-C			Serial No.:	ARWE-0359
Location:	LAWRENCE TWP POLICE				
Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00079	Cert. Date:	10/23/2006	Cert. No.:	00002
Linearity File No.:	00080	Lin. Date:	10/23/2006	Lin. No.:	00002
Solution File No.:	00201	Soln. Date:	10/20/2007	Soln. No.:	00033
Sequential File No.:	00203	File Date:	10/23/2007		
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDWJ S3-0355
Control Solution %:	0.100%			Expires:	02/22/2009
Solution Control Lot:	07B045			Bottle No.:	0024

Coordinator

Last Name: SNYDER First Name: THOMAS MI: J.

Badge No.: 5792

Signature: TPR. II Thomas J. Snyder #5792 Date: 10/23/2007

*Black Key Temperature Probe Serial .....# DDUNP2-229 TJS

*Ertco-Hart Digital Temperature Measuring System Serial# A29881 TJS

Pursuant to law, and the "Chemical Breath Testing Regulations" N.J.A.C. 13:51, I am a duly appointed Breath Test Coordinator/Instructor. In my official capacity, and consistent with "Calibration Check Procedure for Alcotest 7110" as established by the Chief Forensic Scientist of the Division of State Police, I perform calibration checks on approved instruments employing infrared analysis and electrochemical analysis when utilized in a single approved instrument as a dual system of chemical breath testing. Pursuant to and consistent with, the current "Calibration Check Procedure for Alcotest 7110" as established by the Chief Forensic Scientist, I performed a Calibration Check on the approved instrument identified on this certificate. The results of my Calibration Check are recorded on this certificate, which consists of two parts on two pages: Part I - Control Tests; and Part II - Linearity Tests. 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 wilfully false, I am subject to punishment.

S-2 A #6

Alcotest 7110 Calibration Certificate

Part I - Control Tests

Equipment	Alcotest 7110 MKIII-C			Serial No.:	ARWF-0359
Location:	LAWRENCE TWP POLICE				
Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00204	Cert. Date:	10/23/2007	Cert. No.:	00003
Linearity File No.:	00080	Lin. Date:	10/23/2006	Lin. No.:	00002
Solution File No.:	00201	Soln. Date:	10/20/2007	Soln. No.:	00033
Sequential File No.:	00204	File Date:	10/23/2007		
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDWJ 33-0355
Control Solution %:	0.100%			Expires:	02/22/2009
Solution Control Lot:	07B045			Bottle No.:	0024

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	14:15D		
Control 1 EC	0.099%	14:16D	33.9°C	*** TEST PASSED ***
Control 1 IR	0.100%	14:16D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:16D		
Control 2 EC	0.099%	14:17D	33.9°C	*** TEST PASSED ***
Control 2 IR	0.101%	14:17D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:18D		
Control 3 EC	0.100%	14:18D	33.9°C	*** TEST PASSED ***
Control 3 IR	0.100%	14:18D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:19D		

All tests within acceptable tolerance.

Coordinator

Last Name: SNYDER First Name: THOMAS MI: J

Badge No.: 5792

Signature: TJS Thomas J. Snyder 105722 Date: 10/23/2007

Pursuant to law, and the "Chemical Breath Testing Regulations" N.J.A.C. 13:51, I am a duly appointed Breath Test Coordinator/Instructor. In my official capacity, and consistent with "Calibration Check Procedure for Alcotest 7110" as established by the Chief Forensic Scientist of the Division of State Police, I perform calibration checks on approved instruments employing infrared analysis and electrochemical analysis when utilized in a single approved instrument as a dual system of chemical breath testing. Pursuant to and consistent with, the current "Calibration Check Procedure for Alcotest 7110" as established by the Chief Forensic Scientist, I performed a Calibration Check on the approved instrument identified on this certificate. The results of my Calibration Check are recorded on this certificate, which consists of two parts on two pages: Part I - Control Tests; and Part II - Linearity Tests. 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 wilfully false, I am subject to punishment.

S-2 B #6

Alcotest 7110 Calibration Certificate

Part II - Linearity Tests

Equipment	Alcotest 7110 MKIII-C			Serial No.:	ARWF-0359
Location:	LAWRENCE TWP POLICE				
Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00204	Cert. Date:	10/23/2007	Cert. No.:	00003
Linearity File No.:	00205	Lin. Date:	10/23/2007	Lin. No.:	00003
Solution File No.:	00201	Soln. Date:	10/20/2007	Soln. No.:	00033
Sequential File No.:	00205	File Date:	10/23/2007		
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDRK S3-0003
Control Solution %:	0.040%			Expires:	01/26/2009
Solution Control Lot:	07A041			Bottle No.:	0452
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDXD S3-0184
Control Solution %:	0.080%			Expires:	01/26/2009
Solution Control Lot:	07A042			Bottle No.:	0236
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDSC S3-0009
Control Solution %:	0.160%			Expires:	01/26/2009
Solution Control Lot:	07A043			Bottle No.:	0589

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	14:34D		
Control 1 EC	0.040%	14:35D	34.0°C	*** TEST PASSED ***
Control 1 IR	0.041%	14:35D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:36D		
Control 2 EC	0.041%	14:37D	34.0°C	*** TEST PASSED ***
Control 2 IR	0.041%	14:37D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:38D		
Control 3 EC	0.081%	14:39D	34.0°C	*** TEST PASSED ***
Control 3 IR	0.081%	14:39D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:41D		
Control 4 EC	0.081%	14:41D	34.0°C	*** TEST PASSED ***
Control 4 IR	0.080%	14:41D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:43D		
Control 5 EC	0.159%	14:43D	34.0°C	*** TEST PASSED ***
Control 5 IR	0.161%	14:43D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:45D		
Control 6 EC	0.159%	14:45D	33.9°C	*** TEST PASSED ***
Control 6 IR	0.160%	14:45D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:47D		

All tests within acceptable tolerance.

Coordinator

Last Name: SNYDER First Name: THOMAS MI: J.

Signature: TPR II Thomas J. Snyder #5792 Badge No.: 5792

Date: 10/23/2007

S.2
D #6

DEPARTMENT OF
Law and Public Safety
This is to certify that

Thomas J. Snyder
Breath Test Coordinator/Instructor

IS QUALIFIED AND COMPETENT TO CONDUCT CHEMICAL BREATH ANALYSES PURSUANT TO CHAPTER 142 OF
THE LAWS OF 1966 IN THE OPERATION OF THE Alcotest 7110 MKIII-C
A METHOD TO DETERMINE INTOXICATION.
GIVEN UNDER MY HAND AT TRENTON, NEW JERSEY THIS 13th DAY OF June
TWO THOUSAND AND SIX

SUPERINTENDENT
NEW JERSEY STATE POLICE

ATTORNEY GENERAL
STATE OF NEW JERSEY

ORIGINAL COURSE DATES _____

	DATE	Refresher Course PLACE	INSTRUCTOR
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

S.P. 293B (Rev. 01/99)

DEPARTMENT OF
Law and Public Safety
This is to certify that

Thomas J. Snyder
New Jersey State Police

IS QUALIFIED AND COMPETENT TO CONDUCT CHEMICAL BREATH ANALYSES PURSUANT TO CHAPTER 142 OF
THE LAWS OF 1966 IN THE OPERATION OF THE ALCOTEST 7110 MKIII-C
A METHOD TO DETERMINE INTOXICATION.
GIVEN UNDER MY HAND AT TRENTON, NEW JERSEY THIS 22nd DAY OF February
TWO THOUSAND AND SIX

SUPERINTENDENT
NEW JERSEY STATE POLICE

ATTORNEY GENERAL
STATE OF NEW JERSEY

ORIGINAL COURSE DATES _____

	DATE	Refresher Course PLACE	INSTRUCTOR
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

S.P. 293B (Rev. 01/99)

DEPARTMENT OF
Law and Public Safety
This is to certify that

Thomas J. Snyder
New Jersey State Police

IS QUALIFIED AND COMPETENT TO CONDUCT CHEMICAL BREATH ANALYSES PURSUANT TO CHAPTER 142 OF THE LAWS OF 1966 IN THE OPERATION OF THE Breathalyzer TO DETERMINE INTOXICATION

GIVEN UNDER MY HAND AT TRENTON, NEW JERSEY THIS 11th DAY OF Aug.
TWO THOUSAND AND 00

SUPERINTENDENT
NEW JERSEY STATE POLICE

ATTORNEY GENERAL
STATE OF NEW JERSEY

ORIGINAL COURSE DATES _____

Refresher Course

	DATE	PLACE	INSTRUCTOR
1.	11-14-01	ACTC	
2.	2-5-03	ACTC	
3.	4-4-05	ACTC	
4.			
5.			
6.			
7.			
8.			
9.			

SP-293B (Rev. 11/99)

S-B2 #9
E

Calibrating Unit
New Standard Solution Report

Equipment	Alcotest 7110 MKIII-C			Serial No.:	ARWF-0359
Location:	LAWRENCE TWP POLICE				
Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00204	Cert. Date:	10/23/2007	Cert. No.:	00003
Linearity File No.:	00205	Lin. Date:	10/23/2007	Lin. No.:	00003
Solution File No.:	00206	Soln. Date:	10/23/2007	Soln. No.:	00034
Sequential File No.:	00206	File Date:	10/23/2007		
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDWJ S3-0355
Control Solution %:	0.100%			Expires:	08/21/2008
Solution Control Lot:	06H035			Bottle No.:	0373

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	16:00D		
Control 1 EC	0.100%	16:00D	33.9°C	*** TEST PASSED ***
Control 1 IR	0.100%	16:00D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	16:01D		
Control 2 EC	0.100%	16:01D	33.9°C	*** TEST PASSED ***
Control 2 IR	0.099%	16:01D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	16:02D		
Control 3 EC	0.099%	16:03D	33.9°C	*** TEST PASSED ***
Control 3 IR	0.100%	16:03D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	16:03D		

All tests within acceptable tolerance.

On this date, I installed the above indicated "NEW SOLUTION" in acordance with Alcotest 7110 operator training and procedures established by the (NJSP) Chief Forensic Scientist.

TEMPERATURE PROBE SERIAL NUMBER: DDWAP2-213 TJS

Changed By:

Last Name: SNYDER First Name: THOMAS MI: J.

Signature: TJS II Thomas J. Snyder #5792 Badge No.: 5792

Date: 10/23/2007

S-3 #1

Calibrating Unit
New Standard Solution Report

Equipment	Alcotest 7110 MKIII-C			Serial No.:	ARWF-0359
Location:	LAWRENCE TWP POLICE				
Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00204	Cert. Date:	10/23/2007	Cert. No.:	00003
Linearity File No.:	00205	Lin. Date:	10/23/2007	Lin. No.:	00003
Solution File No.:	00247	Soln. Date:	01/20/2008	Soln. No.:	00037
Sequential File No.:	00247	File Date:	01/20/2008		
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDWJ S3-0355
Control Solution %:	0.100%			Expires:	08/21/2008
Solution Control Lot:	06H035			Bottle No.:	0358

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	10:09S		
Control 1 EC	0.100%	10:09S	33.9°C	*** TEST PASSED ***
Control 1 IR	0.101%	10:09S	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	10:10S		
Control 2 EC	0.099%	10:11S	33.9°C	*** TEST PASSED ***
Control 2 IR	0.100%	10:11S	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	10:11S		
Control 3 EC	0.099%	10:12S	33.9°C	*** TEST PASSED ***
Control 3 IR	0.100%	10:12S	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	10:13S		

All tests within acceptable tolerance.

On this date, I installed the above indicated "NEW SOLUTION" in acordance with Alcotest 7110 operator training and procedures established by the (NJSP) Chief Forensic Scientist.

Changed By:

Last Name: SIMON First Name: STEVEN MI: R

Signature: #212

Badge No.: 212

Date: 01/20/2008

S-4 #2

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7068
WEST TRENTON NJ 08628-0068
(609) 882-2000

JON S. CORZINE
Governor

STUART RABNER
Attorney General

COLONEL JOSEPH R. FUENTES
Superintendent

CERTIFICATION OF ANALYSIS
0.10 PERCENT BREATH ALCOHOL SIMULATOR SOLUTION

ACCEPTANCE SPECIFICATIONS FOR BREATH ALCOHOL SIMULATOR SOLUTION: Ethyl alcohol concentration within, but not exceeding, the range of 0.117 to 0.125 grams per 100 milliliters of solution.

MANUFACTURER: Drager Safety, Inc. ANALYSIS DATE: 9/15/06

BREATH ALCOHOL SIMULATOR SOLUTION LOT NUMBER: 06H035

Representative samples of the above-referenced Lot Number were tested by Gas Chromatography and found to have an ethyl alcohol concentration range of 0.1213 to 0.1215 grams per 100 milliliters of solution.

This lot of breath alcohol simulator solution may be utilized as a known traceable standard for the purpose of conducting periodic tests, pursuant to N.J.A.C. 13:51-3.4, of approved breath test instruments (N.J.A.C. 13:51-3.5) utilized by law enforcement agencies in this State. The manufacturer's expiration date for this lot of breath alcohol simulator solution is August 21, 2008.

As Chief Forensic Scientist of the Division of State Police, I hereby certify and attest that the tests and results documented in this Certificate of Analysis were performed at my direction and under my supervision by personnel of, and at, the Office of Forensic Sciences of the Division of State Police on properly functioning and calibrated instruments and equipment. All procedures utilized are accurate, objective, and performed on a routine basis by personnel within the Office of Forensic Sciences, in accordance with their professional duties and responsibilities.

Ajit R. Tungare
Chief Forensic Scientist
Division of State Police

Sworn to and subscribed before me this 11th day of October, 2006.

Notary

Linda L. DeSantis
My Commission
Expires Aug. 17, 2009

HONOR STATE COURAGE DUTY LOYALTY

S-1

DEPARTMENT OF

Law and Public Safety

This is to certify that

Thomas J. Everist

Lawrence Township

IS QUALIFIED AND COMPETENT TO CONDUCT CHEMICAL BREATH ANALYSES PURSUANT TO CHAPTER 142 OF THE LAWS OF 1966 IN THE OPERATION OF THE ALCOTEST 7110 MK IIIC A METHOD TO DETERMINE INTOXICATION.

GIVEN UNDER MY HAND AT TRENTON, NEW JERSEY THIS 23rd DAY OF September TWO THOUSAND AND FIVE

SUPERINTENDENT
NEW JERSEY STATE POLICE

ATTORNEY GENERAL
STATE OF NEW JERSEY

ORIGINAL COURSE DATES

Refresher Course

	DATE	PLACE	INSTRUCTOR
1.	12-19-07	OCEA	[illegible]
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

S.P. 2938 (Rev. 06/03)

S-5

ALCOHOL INFLUENCE REPORT FORM, ALCOTEST 7110 MKIII-C
LAWRENCE TWP POLICE #6673

Department Case No.: 08-004382
Summons No(s):
Sequential File No.: 00249

Subject

Last Name: First Name: MI:
D.O.B.: 05/17/1963 Age: 44 Gender: MALE Ht: 6 ft. 03 in. Wt: 295 lbs.
Driver License Number: Issuing State: NJ

Arresting Officer

Last Name: LEE First Name: ANDREW MI: F
Badge No.: 213 Arrest Date: 01/27/2008 Arrest Time: 19:03S Arrest Location: 1107

Instrument

Alcotest 7110 MKIII-C Serial No.: ARWF-0359
Location: LAWRENCE TWP POLICE

Calibration File No.:	00203	Calib. Date: 10/23/2007	Calib. No.: 00004
Certification File No.:	00204	Cert. Date: 10/23/2007	Cert. No.: 00003
Linearity File No.:	00205	Lin. Date: 10/23/2007	Lin. No.: 00003
Solution File No.:	00247	Soln. Date: 01/20/2008	Soln. No.: 00037
Sequential File No.:	00249	File Date: 01/27/2008	

Calibrating Unit:	WET	Model No.: CU-34	Serial No.: DDWJ S3-0355
Control Solution %:	0.100%		Expires: 08/21/2008
Solution Control Lot:	06H035		Bottle No.: 0358

Breath Test Information

Date of Test: 01/27/2008

Function	Result %BAC	Time HH:MM	Volume (L)	Duration Sec (s)	Temp. Sim.(°C)	Error Message
Ambient Air Blank	0.000%	20:01S				
Control Test 1					33.9°C	
EC Result	0.101%	20:01S				
IR Result	0.100%	20:01S				
Ambient Air Blank	0.000%	20:02S				
Breath Test 1			2.8L	5.4s		
EC Result	0.175%	20:03S				
IR Result	0.175%	20:03S				
Ambient Air Blank	0.000%	20:04S				
Breath Test 2			3.0L	5.9s		
EC Result	0.174%	20:06S				
IR Result	0.171%	20:06S				
Ambient Air Blank	0.000%	20:08S				
Control Test 2					33.9°C	
EC Result	0.098%	20:08S				
IR Result	0.099%	20:08S				
Ambient Air Blank	0.000%	20:08S				

REPORTED BREATH TEST RESULT: 0.17% BAC

Breath Test Operator

Last Name: EVERIST First Name: THOMAS MI: J
Signature: _____ Badge No.: 193
Date: 01/27/2008

Copy Given to Subject

S.6

WORKSHEET A

State v. Chun, et al.
Supreme Court of New Jersey
A-96 September Term 2006 (Docket No. 58,879)

Tolerance Worksheet (for use in connection with Alcotest New Jersey Firmware 3.11)
How to Calculate Whether Two Breath Samples are in Tolerance Under Acceptable Tolerance Standard

Line #	Subject Alcohol Results to be Input from Alcohol Influence Report		
1	*Valid Breath Sample 1 IR*		(Value entered from AIR)
2	*Valid Breath Sample 1 EC*		(Value entered from AIR)
3	*Valid Breath Sample 2 IR*		(Value entered from AIR)
4	*Valid Breath Sample 2 EC*		(Value entered from AIR)
	Breath Samples Tolerance Agreement Check		
5	Add Lines #1, #2, #3, and #4:		(This is the sum)
6	Divide Line #5 by 4:		(This is the arithmetic mean)
7	Multiply Line #6 by 1.05:		(This is relative tolerance upper limit)
8	Add 0.005%BAC to Line #6:		(This is absolute tolerance upper limit)
9	Multiply Line #6 by 0.95:		(This is relative tolerance lower limit)
10	Subtract 0.005%BAC from Line #6:		(This is absolute tolerance lower limit)
11	Report the greater of Line #7 or Line #8, to four digits after decimal point:		(This is the upper tolerance limit)
12	Report the lesser of Line #9 or Line #10, to four digits after decimal point:		(This is the lower tolerance limit)
13	Lines #1, #2, #3, and #4 are within the values of Lines #11 and #12. TRUE or FALSE?:		(If TRUE, breath samples are in tolerance and AIR is valid; if FALSE, breath samples are not in tolerance and the AIR is invalid)

f. Foundational Documents to be provided in discovery (*Chun* order at 153)

(1) New Standard Solution Report of the most recent control test solution change, and the credentials of the operator who performed that change;

(2) Certificate of Analysis for the 0.10 percent solution used in that New Solution Report;

(3) Draeger Safety Certificate of Accuracy for the Alcotest CU34 Simulator;

(4) Draeger Safety Certificate of Accuracy for the Alcotest 7110 Temperature Probe;

(5) Draeger Safety Certificate of Accuracy for the Alcotest 7110 Instrument;

(6) Calibration Records, including control tests, linearity tests, and the credentials of the coordinator who performed the calibration;

(7) Certificate of Analysis for the 0.10 percent solution used in the calibration control test;

(8) Certificate of Analysis for the 0.04, 0.08, and 0.16 percent solutions used in the calibration linearity test;

(9) New Standard Solution Report, following the most recent calibration;

(10) Draeger Safety Certificates of Accuracy for the Simulators used in calibration;

(11) Draeger Safety Certificate of Accuracy for the Alcotest 7110 Temperature Probe used in calibration; and

(12) Draeger Safety Ertco-Hart Calibration Report.

#1

Calibrating Unit
New Standard Solution Report

Equipment Alcotest 7110 MKIII-C — Serial No.: ARWF-0359

Location: LAWRENCE TWP POLICE

Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00204	Cert. Date:	10/23/2007	Cert. No.:	00003
Linearity File No.:	00205	Lin. Date:	10/23/2007	Lin. No.:	00003
Solution File No.:	00247	Soln. Date:	01/20/2008	Soln. No.:	00037
Sequential File No.:	00247	File Date:	01/20/2008		

Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDWJ S3-0355
Control Solution %:	0.100%			Expires:	08/21/2008
Solution Control Lot:	06H035			Bottle No.:	0358

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	10:09S		
Control 1 EC	0.100%	10:09S	33.9°C	*** TEST PASSED ***
Control 1 IR	0.101%	10:09S	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	10:10S		
Control 2 EC	0.099%	10:11S	33.9°C	*** TEST PASSED ***
Control 2 IR	0.100%	10:11S	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	10:11S		
Control 3 EC	0.099%	10:12S	33.9°C	*** TEST PASSED ***
Control 3 IR	0.100%	10:12S	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	10:13S		

All tests within acceptable tolerance.

On this date, I installed the above indicated "NEW SOLUTION" in acordance with Alcotest 7110 operator training and procedures established by the (NJSP) Chief Forensic Scientist.

Changed By:

Last Name: SIMON First Name: STEVEN MI: R

Signature: #212 Badge No.: 212

Date: 01/20/2008

#2

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7068
WEST TRENTON NJ 08628-0068
(609) 882-2000

JON S. CORZINE
Governor

STUART RABNER
Attorney General

COLONEL JOSEPH R. FUENTES
Superintendent

CERTIFICATION OF ANALYSIS
0.10 PERCENT BREATH ALCOHOL SIMULATOR SOLUTION

ACCEPTANCE SPECIFICATIONS FOR BREATH ALCOHOL SIMULATOR SOLUTION: Ethyl alcohol concentration within, but not exceeding, the range of 0.117 to 0.125 grams per 100 milliliters of solution.

MANUFACTURER: Drager Safety, Inc. **ANALYSIS DATE:** 9/15/06

BREATH ALCOHOL SIMULATOR SOLUTION LOT NUMBER: 06H035

Representative samples of the above-referenced Lot Number were tested by Gas Chromatography and found to have an ethyl alcohol concentration range of 0.1213 to 0.1215 grams per 100 milliliters of solution.

This lot of breath alcohol simulator solution may be utilized as a known traceable standard for the purpose of conducting periodic tests, pursuant to N.J.A.C. 13:51-3.4, of approved breath test instruments (N.J.A.C. 13:51-3.5) utilized by law enforcement agencies in this State. The manufacturer's expiration date for this lot of breath alcohol simulator solution is August 21, 2008.

As Chief Forensic Scientist of the Division of State Police, I hereby certify and attest that the tests and results documented in this Certificate of Analysis were performed at my direction and under my supervision by personnel of, and at, the Office of Forensic Sciences of the Division of State Police on properly functioning and calibrated instruments and equipment. All procedures utilized are accurate, objective, and performed on a routine basis by personnel within the Office of Forensic Sciences, in accordance with their professional duties and responsibilities.

Ajit R. Tungare
Chief Forensic Scientist
Division of State Police

Sworn to and subscribed before me this 11th day of October, 2006.

Notary

Dräger safety

ALCOTEST® 7110 TEMPERATURE PROBE

CERTIFICATE OF ACCURACY

This is to certify that the Alcotest® 7110 Temperature Probe has been tested for accuracy with instrumentation that is traceable to the National Institute of Standards and Technology (NIST). The manufacturer recommends accuracy verification of the Temperature Probe within 12 months of the certification date below, or sooner, according to your State Specification. For accurate temperature readings, the probe value on this certificate, noted below, must be programmed into the Alcotest® 7110.

Serial Number Temp. Probe	Certification date:	Next Certification due:
DDWAPZ-213	03/16/2007	03/16/2008

Probe Value: 104

Draeger Safety Diagnostics, Inc.
Technical Service Department

CRD

10 10

Dräger safety

CERTIFICATE OF ACCURACY

This Certificate of Accuracy verifies that the specified unit has been examined and found to be in compliance with National Highway and Traffic Safety Administration regulations for devices used to calibrate Evidential Breath Testers.
(F.R. Vol. 59 No. 249 12/19/94 Notices)

Draeger Safety Diagnostics, Inc.

⊗ Model: ALCOTEST® CU34
○ Model: MARK IIA
○ Other: _____

Serial Number: DDWJ 53-0355

Certification Date	Technician	Re-Certification Due Date
3/16/07	mlc	3/16/08

#5

Dräger safety

Alcotest® 7110 MKIII-C

CERTIFICATE OF ACCURACY

This is to certify that the Alcotest 7110 MKIII-C has been tested for accuracy and found to be in compliance with the National Highway Traffic Safety Administration Standard for evidential breath testing devices.
The Alcotest MKIII-C is compliant as a "mobile" and "nonmobile" EBT with 49 FR 48854, 49 FR 48864 and 58 FR 48705.
The manufacturer recommends accuracy verification of this instrument within 12 months of the calibration date below, or sooner, according to your State Specifications.

Certification Date: 08/18/2005

SERIAL NUMBER: ARWF-0359

Draeger Safety Diagnostics, Inc.
Durango, CO

#6

Alcotest 7110 Calibration Record

Equipment

Location:	Alcotest 7110 MKIII-C LAWRENCE TWP POLICE			Serial No.:	ARWF-0359
Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00079	Cert. Date:	10/23/2006	Cert. No.:	00002
Linearity File No.:	00080	Lin. Date:	10/23/2006	Lin. No.:	00002
Solution File No.:	00201	Soln. Date:	10/20/2007	Soln. No.:	00033
Sequential File No.:	00203	File Date:	10/23/2007		
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDWJ S3-0355
Control Solution %:	0.100%			Expires:	02/22/2009
Solution Control Lot:	07B045			Bottle No.:	0024

Coordinator

Last Name: SNYDER First Name: THOMAS MI: J.

Badge No.: 5792

Signature: TPR. II Thomas J. Snyder #5792 Date: 10/23/2007

*Black Key Temperature Probe Serial .....# DDUNP2-229 GJS

*Ertco-Hart Digital Temperature Measuring System Serial# A29881 GJS

NEW JERSEY STATE POLICE

Pursuant to law, and the "Chemical Breath Testing Regulations" N.J.A.C. 13:51, I am a duly appointed Breath Test Coordinator/Instructor. In my official capacity, and consistent with "Calibration Check Procedure for Alcotest 7110" as established by the Chief Forensic Scientist of the Division of State Police, I perform calibration checks on approved instruments employing infrared analysis and electrochemical analysis when utilized in a single approved instrument as a dual system of chemical breath testing. Pursuant to, and consistent with, the current "Calibration Check Procedure for Alcotest 7110" as established by the Chief Forensic Scientist, I performed a Calibration Check on the approved instrument identified on this certificate. The results of my Calibration Check are recorded on this certificate, which consists of two parts on two pages: Part I - Control Tests; and Part II - Linearity Tests. 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 wilfully false, I am subject to punishment.

#6

Alcotest 7110 Calibration Certificate

Part II - Linearity Tests

Equipment Alcotest 7110 MKIII-C Serial No.: ARWF-0359
Location: LAWRENCE TWP POLICE

Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00204	Cert. Date:	10/23/2007	Cert. No.:	00003
Linearity File No.:	00205	Lin. Date:	10/23/2007	Lin. No.:	00003
Solution File No.:	00201	Soln. Date:	10/20/2007	Soln. No.:	00033
Sequential File No.:	00205	File Date:	10/23/2007		

Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDRK S3-0003
Control Solution %:	0.040%			Expires:	01/26/2009
Solution Control Lot:	07A041			Bottle No.:	0452
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDXD S3-0184
Control Solution %:	0.080%			Expires:	01/26/2009
Solution Control Lot:	07A042			Bottle No.:	0236
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDSC S3-0009
Control Solution %:	0.160%			Expires:	01/26/2009
Solution Control Lot:	07A043			Bottle No.:	0589

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	14:34D		
Control 1 EC	0.040%	14:35D	34.0°C	*** TEST PASSED ***
Control 1 IR	0.041%	14:35D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:36D		
Control 2 EC	0.041%	14:37D	34.0°C	*** TEST PASSED ***
Control 2 IR	0.041%	14:37D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:38D		
Control 3 EC	0.081%	14:39D	34.0°C	*** TEST PASSED ***
Control 3 IR	0.081%	14:39D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:41D		
Control 4 EC	0.081%	14:41D	34.0°C	*** TEST PASSED ***
Control 4 IR	0.080%	14:41D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:43D		
Control 5 EC	0.159%	14:43D	34.0°C	*** TEST PASSED ***
Control 5 IR	0.161%	14:43D	34.0°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:45D		
Control 6 EC	0.159%	14:45D	33.9°C	*** TEST PASSED ***
Control 6 IR	0.160%	14:45D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:47D		

All tests within acceptable tolerance.

Coordinator
Last Name: SNYDER First Name: THOMAS MI: J.

Signature: TPR. II Thomas J. Snyder #5792 Badge No.: 5792
Date: 10/23/2007

#6

Alcotest 7110 Calibration Certificate

Part I - Control Tests

Equipment	Alcotest 7110 MKIII-C			Serial No.:	ARWF-0359
Location:	LAWRENCE TWP POLICE				
Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00204	Cert. Date:	10/23/2007	Cert. No.:	00003
Linearity File No.:	00080	Lin. Date:	10/23/2006	Lin. No.:	00002
Solution File No.:	00201	Soln. Date:	10/20/2007	Soln. No.:	00033
Sequential File No.:	00204	File Date:	10/23/2007		
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDWJ S3-0355
Control Solution %:	0.100%			Expires:	02/22/2009
Solution Control Lot:	07B045			Bottle No.:	0024

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	14:15D		
Control 1 EC	0.099%	14:16D	33.9°C	*** TEST PASSED ***
Control 1 IR	0.100%	14:16D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:16D		
Control 2 EC	0.099%	14:17D	33.9°C	*** TEST PASSED ***
Control 2 IR	0.101%	14:17D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:18D		
Control 3 EC	0.100%	14:18D	33.9°C	*** TEST PASSED ***
Control 3 IR	0.100%	14:18D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	14:19D		

All tests within acceptable tolerance.

Coordinator

Last Name: SNYDER First Name: THOMAS MI: J.

Badge No.: 5792

Signature: TPR II Thomas J. Snyder #5792 Date: 10/23/2007

Pursuant to law, and the "Chemical Breath Testing Regulations" N.J.A.C. 13:51, I am a duly appointed Breath Test Coordinator/Instructor. In my official capacity, and consistent with "Calibration Check Procedure for Alcotest 7110," as established by the Chief Forensic Scientist of the Division of State Police, I perform calibration checks on approved instruments employing infrared analysis and electrochemical analysis, when utilized in a single approved instrument as a dual system of chemical breath testing. Pursuant to, and consistent with, the current "Calibration Check Procedure for Alcotest 7110," as established by the Chief Forensic Scientist, I performed a Calibration Check on the approved instrument identified on this certificate. The results of my Calibration Check are recorded on this certificate, which consists of two parts on two pages: Part I - Control Tests; and Part II - Linearity Tests. 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 wilfully false, I am subject to punishment.

#6

DEPARTMENT OF
Law and Public Safety
This is to certify that

Thomas J. Snyder
Breath Test Coordinator/Instructor

IS QUALIFIED AND COMPETENT TO CONDUCT CHEMICAL BREATH ANALYSES PURSUANT TO CHAPTER 142 OF THE LAWS OF 1966 IN THE OPERATION OF THE Alcotest 7110 MKIII-C A METHOD TO DETERMINE INTOXICATION.

GIVEN UNDER MY HAND AT TRENTON, NEW JERSEY, THIS 17th DAY OF June TWO THOUSAND AND SIX

SUPERINTENDENT
NEW JERSEY STATE POLICE

ATTORNEY GENERAL
STATE OF NEW JERSEY

ORIGINAL COURSE DATES _____

Refresher Course

	DATE	PLACE	INSTRUCTOR
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

S.P. 2938 (Rev. 01/06)

DEPARTMENT OF
Law and Public Safety
This is to certify that

Thomas J. Snyder
New Jersey State Police

IS QUALIFIED AND COMPETENT TO CONDUCT CHEMICAL BREATH ANALYSES PURSUANT TO CHAPTER 142 OF THE LAWS OF 1966 IN THE OPERATION OF THE ALCOTEST 7110 MKIII-C A METHOD TO DETERMINE INTOXICATION.

GIVEN UNDER MY HAND AT TRENTON, NEW JERSEY THIS 22nd DAY OF February TWO THOUSAND AND SIX

SUPERINTENDENT
NEW JERSEY STATE POLICE

ATTORNEY GENERAL
STATE OF NEW JERSEY

ORIGINAL COURSE DATES _____

Refresher Course

	DATE	PLACE	INSTRUCTOR
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

S.P. 2938 (Rev. 01/06)

DEPARTMENT OF
Law and Public Safety
This is to certify that

Thomas J. Snyder
New Jersey State Police

IS QUALIFIED AND COMPETENT TO CONDUCT CHEMICAL BREATH ANALYSES PURSUANT TO CHAPTER 142 OF THE LAWS OF 1966 IN THE OPERATION OF THE Breathalyzer A METHOD TO DETERMINE INTOXICATION.

GIVEN UNDER MY HAND AT TRENTON, NEW JERSEY THIS 11th DAY OF Aug. TWO THOUSAND AND 00

SUPERINTENDENT
NEW JERSEY STATE POLICE

ATTORNEY GENERAL
STATE OF NEW JERSEY

ORIGINAL COURSE DATES _____

Refresher Course

	DATE	PLACE	INSTRUCTOR
1.	11-14-01	ACTC	[illegible]
2.	5-5-03	OCCA	[illegible]
3.	4-4-05	ACTC	[illegible]
4.			
5.			
6.			
7.			
8.			
9.			

SP-2938 (Rev. 11/99)

#7

JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7068
WEST TRENTON NJ 08628-0068
(609) 882-2000

STUART RABNER
Attorney General

COLONEL JOSEPH R. FUENTES
Superintendent

CERTIFICATION OF ANALYSIS
0.10 PERCENT BREATH ALCOHOL SIMULATOR SOLUTION

ACCEPTANCE SPECIFICATIONS FOR BREATH ALCOHOL SIMULATOR SOLUTION: Ethyl alcohol concentration within, but not exceeding, the range of 0.117 to 0.125 grams per 100 milliliters of solution.

MANUFACTURER: Drager Safety, Inc. **ANALYSIS DATE:**04/04/07

BREATH ALCOHOL SIMULATOR SOLUTION LOT NUMBER: 07B045

Representative samples of the above-referenced Lot Number were tested by Gas Chromatography and found to have an ethyl alcohol concentration range of 0.1222 to 0.1227 grams per 100 milliliters of solution.

This lot of breath alcohol simulator solution may be utilized as a known traceable standard for the purpose of conducting periodic tests, pursuant to N.J.A.C. 13:51-3.4, of approved breath test instruments (N.J.A.C. 13:51-3.5) utilized by law enforcement agencies in this State. The manufacturer's expiration date for this lot of breath alcohol simulator solution is February 22, 2009.

As Chief Forensic Scientist of the Division of State Police, I hereby certify and attest that the tests and results documented in this Certificate of Analysis were performed at my direction and under my supervision by personnel of, and at, the Office of Forensic Sciences of the Division of State Police on properly functioning and calibrated instruments and equipment. All procedures utilized are accurate, objective, and performed on a routine basis by personnel within the Office of Forensic Sciences, in accordance with their professional duties and responsibilities.

Ajit R. Tungare
Chief Forensic Scientist
Division of State Police

Sworn to and subscribed before me this 20th day of April, 2007.

Notary

Linda L. DeSantis
My Commission
Expires Aug. 17, 2009

#8

JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7068
WEST TRENTON NJ 08628-0068
(609) 882-2000

STUART RABNER
Attorney General

COLONEL JOSEPH R. FUENTES
Superintendent

CERTIFICATION OF ANALYSIS
0.040 PERCENT BREATH ALCOHOL SIMULATOR SOLUTION

ACCEPTANCE SPECIFICATIONS FOR BREATH ALCOHOL SIMULATOR SOLUTION: Ethyl alcohol concentration within, but not exceeding, the range of 0.045 to 0.051 grams per 100 milliliters of solution.

MANUFACTURER: Drager Safety, Inc. **ANALYSIS DATE:** 03/06/07

BREATH ALCOHOL SIMULATOR SOLUTION LOT NUMBER: 07A041

Representative samples of the above-referenced Lot Number were tested by Gas Chromatography and found to have an ethyl alcohol concentration range of 0.0483 to 0.0489 grams per 100 milliliters of solution.

This lot of breath alcohol simulator solution may be utilized as a known traceable standard for the purpose of conducting periodic tests, pursuant to N.J.A.C. 13:51-3.4, of approved breath test instruments (N.J.A.C. 13:51-3.5) utilized by law enforcement agencies in this State. The manufacturer's expiration date for this lot of breath alcohol simulator solution is January 26, 2009.

As Chief Forensic Scientist of the Division of State Police, I hereby certify and attest that the tests and results documented in this Certificate of Analysis were performed at my direction and under my supervision by personnel of, and at, the Office of Forensic Sciences of the Division of State Police on properly functioning and calibrated instruments and equipment. All procedures utilized are accurate, objective, and performed on a routine basis by personnel within the Office of Forensic Sciences, in accordance with their professional duties and responsibilities.

Ajit R. Tungare
Chief Forensic Scientist
Division of State Police

Sworn to and subscribed before me this 29th day of March, 2007.

Notary

#8

JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7068
WEST TRENTON NJ 08628-0068
(609) 882-2000

STUART RABNER
Attorney General

COLONEL JOSEPH R. FUENTES
Superintendent

CERTIFICATION OF ANALYSIS
0.080 PERCENT BREATH ALCOHOL SIMULATOR SOLUTION

ACCEPTANCE SPECIFICATIONS FOR BREATH ALCOHOL SIMULATOR SOLUTION: Ethyl alcohol concentration within, but not exceeding, the range of 0.094 to 0.099 grams per 100 milliliters of solution.

MANUFACTURER: Drager Safety, Inc. **ANALYSIS DATE:** 03/06/07

BREATH ALCOHOL SIMULATOR SOLUTION LOT NUMBER: 07A042

Representative samples of the above-referenced Lot Number were tested by Gas Chromatography and found to have an ethyl alcohol concentration range of 0.0965 to 0.0972 grams per 100 milliliters of solution.

This lot of breath alcohol simulator solution may be utilized as a known traceable standard for the purpose of conducting periodic tests, pursuant to N.J.A.C. 13:51-3.4, of approved breath test instruments (N.J.A.C. 13:51-3.5) utilized by law enforcement agencies in this State. The manufacturer's expiration date for this lot of breath alcohol simulator solution is January 26, 2009.

As Chief Forensic Scientist of the Division of State Police, I hereby certify and attest that the tests and results documented in this Certificate of Analysis were performed at my direction and under my supervision by personnel of, and at, the Office of Forensic Sciences of the Division of State Police on properly functioning and calibrated instruments and equipment. All procedures utilized are accurate, objective, and performed on a routine basis by personnel within the Office of Forensic Sciences, in accordance with their professional duties and responsibilities.

Ajit R. Tungare
Chief Forensic Scientist
Division of State Police

Sworn to and subscribed before me this 29th day of March, 2007.

Notary

Linda L. DeSantis
My Commission
Expires Aug. 17, 2009

#8

JON S. CORZINE
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF STATE POLICE
POST OFFICE BOX 7068
WEST TRENTON NJ 08628-0068
(609) 882-2000

STUART RABNER
Attorney General

COLONEL JOSEPH R. FUENTES
Superintendent

CERTIFICATION OF ANALYSIS
0.160 PERCENT BREATH ALCOHOL SIMULATOR SOLUTION

ACCEPTANCE SPECIFICATIONS FOR BREATH ALCOHOL SIMULATOR SOLUTION: Ethyl alcohol concentration within, but not exceeding, the range of 0.188 to 0.199 grams per 100 milliliters of solution.

MANUFACTURER: Drager Safety, Inc. **ANALYSIS DATE:** 03/06/07

BREATH ALCOHOL SIMULATOR SOLUTION LOT NUMBER: 07A043

Representative samples of the above-referenced Lot Number were tested by Gas Chromatography and found to have an ethyl alcohol concentration range of 0.1932 to 0.1938 grams per 100 milliliters of solution.

This lot of breath alcohol simulator solution may be utilized as a known traceable standard for the purpose of conducting periodic tests, pursuant to N.J.A.C. 13:51-3.4, of approved breath test instruments (N.J.A.C. 13:51-3.5) utilized by law enforcement agencies in this State. The manufacturer's expiration date for this lot of breath alcohol simulator solution is January 26, 2009.

As Chief Forensic Scientist of the Division of State Police, I hereby certify and attest that the tests and results documented in this Certificate of Analysis were performed at my direction and under my supervision by personnel of, and at, the Office of Forensic Sciences of the Division of State Police on properly functioning and calibrated instruments and equipment. All procedures utilized are accurate, objective, and performed on a routine basis by personnel within the Office of Forensic Sciences, in accordance with their professional duties and responsibilities.

Linda L. DeSantis
My Commission
Expires Aug. 17, 2008

Ajit R. Tungare
Chief Forensic Scientist
Division of State Police

Sworn to and subscribed before me this 29th day of March, 2007.

Linda L. DeSantis
Notary

#9

Calibrating Unit
New Standard Solution Report

Equipment	Alcotest 7110 MKIII-C			Serial No.:	ARWF-0359
Location:	LAWRENCE TWP POLICE				
Calibration File No.:	00203	Calib. Date:	10/23/2007	Calib. No.:	00004
Certification File No.:	00204	Cert. Date:	10/23/2007	Cert. No.:	00003
Linearity File No.:	00205	Lin. Date:	10/23/2007	Lin. No.:	00003
Solution File No.:	00206	Soln. Date:	10/23/2007	Soln. No.:	00034
Sequential File No.:	00206	File Date:	10/23/2007		
Calibrating Unit:	WET	Model No.:	CU-34	Serial No.:	DDWJ S3-0355
Control Solution %:	0.100%			Expires:	08/21/2008
Solution Control Lot:	06H035			Bottle No.:	0373

Function	Result %BAC	Time HH:MM	Temperature Simulator (°C)	Comment(s) or Error(s)
Ambient Air Blank	0.000%	16:00D		
Control 1 EC	0.100%	16:00D	33.9°C	*** TEST PASSED ***
Control 1 IR	0.100%	16:00D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	16:01D		
Control 2 EC	0.100%	16:01D	33.9°C	*** TEST PASSED ***
Control 2 IR	0.099%	16:01D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	16:02D		
Control 3 EC	0.099%	16:03D	33.9°C	*** TEST PASSED ***
Control 3 IR	0.100%	16:03D	33.9°C	*** TEST PASSED ***
Ambient Air Blank	0.000%	16:03D		

All tests within acceptable tolerance.

On this date, I installed the above indicated "NEW SOLUTION" in acordance with Alcotest 7110 operator training and procedures established by the (NJSP) Chief Forensic Scientist.

TEMPERATURE PROBE SERIAL NUMBER: DDWAP2-213 TJS

Changed By:

Last Name: SNYDER First Name: THOMAS MI: J.

Signature: TJS II Thomas J. Snyder #5792 Badge No.: 5792

Date: 10/23/2007

10 .04

Dräger safety

CERTIFICATE OF ACCURACY

This Certificate of Accuracy verifies that the specified unit has been examined and found to be in compliance with National Highway and Traffic Safety Administration regulations for devices used to calibrate Evidential Breath Testers.
(F.R. Vol. 59 No. 249 12/19/94 Notices)

Draeger Safety Diagnostics, Inc.

☒ Model: ALCOTEST® CU34
○ Model: MARK IIA
○ Other: _____

Serial Number: DDRK33-0003

Certification Date	Technician	Re-Certification Due Date
FEB 19 2007		FEB 19 2008

10 .08

Dräger safety

CERTIFICATE OF ACCURACY

This Certificate of Accuracy verifies that the specified unit has been examined and found to be in compliance with National Highway and Traffic Safety Administration regulations for devices used to calibrate Evidential Breath Testers.
(F.R. Vol. 59 No. 249 12/19/94 Notices)

Draeger Safety Diagnostics, Inc.

☒ Model: ALCOTEST® CU34
○ Model: MARK IIA
○ Other: _____

Serial Number: DDXD53-0184

Certification Date	Technician	Re-Certification Due Date
FEB 19 2007		FEB 19 2008

10 of 16

Dräger safety

CERTIFICATE OF ACCURACY

This Certificate of Accuracy verifies that the specified unit has been examined and found to be in compliance with National Highway and Traffic Safety Administration regulations for devices used to calibrate Evidential Breath Testers.
(F.R. Vol. 59 No. 249 12/19/94 Notices)

Draeger Safety Diagnostics, Inc.

⊗ Model: ALCOTEST® CU34

○ Model: MARK IIA

○ Other: _____

Serial Number: DDSG53-0009

Certification Date	Technician	Re-Certification Due Date
FEB 19 2007	[signature]	FEB 19 2008

11

Dräger safety

ALCOTEST® 7110 TEMPERATURE PROBE

CERTIFICATE OF ACCURACY

This is to certify that the Alcotest® 7110 Temperature Probe has been tested for accuracy with instrumentation that is traceable to the National Institute of Standards and Technology (NIST). The manufacturer recommends accuracy verification of the Temperature Probe within 12 months of the certification date below, or sooner, according to your State Specification. For accurate temperature readings, the probe value on this certificate, noted below, must be programmed into the Alcotest® 7110.

Serial Number Temp. Probe	Certification date:	Next Certification due:
DDUN72 - 229	02/19/2007	02/19/2008

Probe Value: 102

Draeger Safety Diagnostics, Inc.
Technical Service Department [signature]

#4

Dräger safety

ALCOTEST® 7110 TEMPERATURE PROBE

CERTIFICATE OF ACCURACY

This is to certify that the Alcotest® 7110 Temperature Probe has been tested for accuracy with instrumentation that is traceable to the National Institute of Standards and Technology (NIST). The manufacturer recommends accuracy verification of the Temperature Probe within 12 months of the certification date below, or sooner, according to your State Specification. For accurate temperature readings, the probe value on this certificate, noted below, must be programmed into the Alcotest® 7110.

Serial Number Temp. Probe	Certification date:	Next Certification due:
DDWAPZ-213	03/16/2007	03/16/2008

Probe Value: 104

Draeger Safety Diagnostics, Inc.
Technical Service Department

CRD

#3

Dräger safety

CERTIFICATE OF ACCURACY

This Certificate of Accuracy verifies that the specified unit has been examined and found to be in compliance with National Highway and Traffic Safety Administration regulations for devices used to calibrate Evidential Breath Testers.
(F.R. Vol. 59 No. 249 12/19/94 Notices)

Draeger Safety Diagnostics, Inc.

⊗ Model: ALCOTEST® CU34
○ Model: MARK IIA
○ Other: _____

Serial Number: DDWJ 53-0355

Certification Date	Technician	Re-Certification Due Date
3/16/07	mlc	3/16/08

Dräger safety

Ertco-Hart Digital Temperature Measuring System

REPORT OF CALIBRATION

This is to certify that the Ertco-Hart Digital Temperature Measuring System has been tested for accuracy with instrumentation that is traceable to the National Institute of Standards and Technology (NIST). Draeger Safety Diagnostics, Inc. (DSDI) recommends accuracy verification of the Ertco-Hart Digital Temperature Measuring System within 12 months of the certification date below, or sooner, according to your state specification.

DSDI equipment used for temperature verification Serial Number: HH41 303176

Digital Units Serial Number: A29881

Probe Serial Number: 590802

Certification Date: 01/31/2007

Next Certification Due: 01/31/2008

At 34.00 °C digital unit displays 34.02 °C

Draeger Safety Diagnostics, Inc. Technician: CRD

ALCOHOL INFLUENCE REPORT FORM, ALCOTEST 7110 MKIII-C
LAWRENCE TWP POLICE #6673

Department Case No.: 08-004382
Summons No(s):
Sequential File No.: 00249

Subject

Last Name: First Name: MI:
D.O.B.: 05/17/1963 Age: 44 Gender: MALE Ht: 6 ft. 03 in. Wt: 295 lbs.
Driver License Number: Issuing State: NJ

Arresting Officer

Last Name: LEE First Name: ANDREW MI: F
Badge No.: 213 Arrest Date: 01/27/2008 Arrest Time: 19:03S Arrest Location: 1107

Instrument

Alcotest 7110 MKIII-C Serial No.: ARWF-0359
Location: LAWRENCE TWP POLICE

Calibration File No.:	00203	Calib. Date: 10/23/2007	Calib. No.: 00004
Certification File No.:	00204	Cert. Date: 10/23/2007	Cert. No.: 00003
Linearity File No.:	00205	Lin. Date: 10/23/2007	Lin. No.: 00003
Solution File No.:	00247	Soln. Date: 01/20/2008	Soln. No.: 00037
Sequential File No.:	00249	File Date: 01/27/2008	

Calibrating Unit:	WET	Model No.: CU-34	Serial No.: DDWJ S3-0355
Control Solution %:	0.100%		Expires: 08/21/2008
Solution Control Lot:	06H035		Bottle No.: 0358

Breath Test Information

Date of Test: 01/27/2008

Function	Result %BAC	Time HH:MM	Volume (L)	Duration Sec (s)	Temp. Sim.(°C)	Error Message
Ambient Air Blank	0.000%	20:01S				
Control Test 1					33.9°C	
EC Result	0.101%	20:01S				
IR Result	0.100%	20:01S				
Ambient Air Blank	0.000%	20:02S				
Breath Test 1			2.8L	5.4s		
EC Result	0.175%	20:03S				
IR Result	0.175%	20:03S				
Ambient Air Blank	0.000%	20:04S				
Breath Test 2			3.0L	5.9s		
EC Result	0.174%	20:06S				
IR Result	0.171%	20:06S				
Ambient Air Blank	0.000%	20:08S				
Control Test 2					33.9°C	
EC Result	0.098%	20:08S				
IR Result	0.099%	20:08S				
Ambient Air Blank	0.000%	20:08S				

REPORTED BREATH TEST RESULT: 0.17% BAC

Breath Test Operator

Last Name: EVERIST First Name: THOMAS MI: J

Signature: _____ Badge No.: 193
Date: 01/27/2008

Copy Given to Subject

DEPARTMENT OF

Law and Public Safety

This is to certify that

Thomas J. Everist

Lawrence Township

IS QUALIFIED AND COMPETENT TO CONDUCT CHEMICAL BREATH ANALYSES PURSUANT TO CHAPTER 142 OF THE LAWS OF 1966 IN THE OPERATION OF THE ALCOTEST 7110 MK IIIC A METHOD TO DETERMINE INTOXICATION.

GIVEN UNDER MY HAND AT TRENTON, NEW JERSEY THIS 23rd DAY OF September TWO THOUSAND AND FIVE

SUPERINTENDENT
NEW JERSEY STATE POLICE

ATTORNEY GENERAL
STATE OF NEW JERSEY

ORIGINAL COURSE DATES

	DATE	Refresher Course PLACE	INSTRUCTOR
1.	12-19-07	OCEA	[illegible]
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			

S.P. 2938 (Rev. 06/03)

WORKSHEET A

State v. Chun, et al.
Supreme Court of New Jersey
A-96 September Term 2006 (Docket No. 58,879)

Tolerance Worksheet (for use in connection with Alcotest New Jersey Firmware 3.11)
How to Calculate Whether Two Breath Samples are in Tolerance Under Acceptable Tolerance Standard

Line #	**Subject Alcohol Results to be Input from Alcohol Influence Report**		
1	***Valid Breath Sample 1 IR***		**(Value entered from AIR)**
2	***Valid Breath Sample 1 EC***		**(Value entered from AIR)**
3	***Valid Breath Sample 2 IR***		**(Value entered from AIR)**
4	***Valid Breath Sample 2 EC***		**(Value entered from AIR)**
	Breath Samples Tolerance Agreement Check		
5	Add Lines #1, #2, #3, and #4:		**(This is the sum)**
6	Divide Line #5 by 4:		**(This is the arithmetic mean)**
7	Multiply Line #6 by 1.05:		**(This is relative tolerance upper limit)**
8	Add 0.005%BAC to Line #6:		**(This is absolute tolerance upper limit)**
9	Multiply Line #6 by 0.95:		**(This is relative tolerance lower limit)**
10	Subtract 0.005%BAC from Line #6:		**(This is absolute tolerance lower limit)**
11	**Report the greater of Line #7 or Line #8, to four digits after decimal point:**		**(This is the upper tolerance limit)**
12	**Report the lesser of Line #9 or Line #10, to four digits after decimal point:**		**(This is the lower tolerance limit)**
13	**Lines #1, #2, #3, and #4 are within the values of Lines #11 and #12. TRUE or FALSE?:**		**(If TRUE, breath samples are in tolerance and AIR is valid; if FALSE, breath samples are not in tolerance and the AIR is invalid)**

g. - Alcotest Pre-Trial Check List

Client: _____

___ 1. All 12 foundation items received
___ 2. Validity of traffic stop
___ 3. Instructions given on FST
___ 4. Probable Cause to Arrest
___ 5. Suppression of Admissions
___ 6. Suppression of physical evidence
___ 7. Record of every reference to time
___ 8. Review data downloads for start time
___ 9. Paragraph 36 understood (Refusals)

h. - Alcotest Trial Check List

Client: _____

Part I - Core Foundational Documents

[Each of these must be in evidence to support admissibility of test results - State v. Kuropchak, 221 NJ 368 (2015)]

___ 1. Operator's Qualification Card

___ 2. Most recent calibration report from NJSP -

- **___ Calibration Record - Cover sheet**
- **___ Part I Control**
- **___ Part II Linearity**
- **___ New Standard Solution (if relevant)**
- **___ Trooper's Alcotest Cards**

___ 3. Most recent standard solution change report

___ 4. Cert. of analysis used in Def's control tests

___ 5. The Alcohol Influence Report

___ 6. Worksheet A Tolerance Calculations

Part II - Alcotest Official Testing Procedures

Client: _____

___ 7. Last solution change card valid?

___ 8. Twenty minute observation period

___ Began at: _____

___ Ended at: _____

___ No Mouth alcohol detected

___ Swallow

___ Regurgitate

___ Gum (restart)

___ Tobacco (restart)

___ Tongue rings & other oral devices

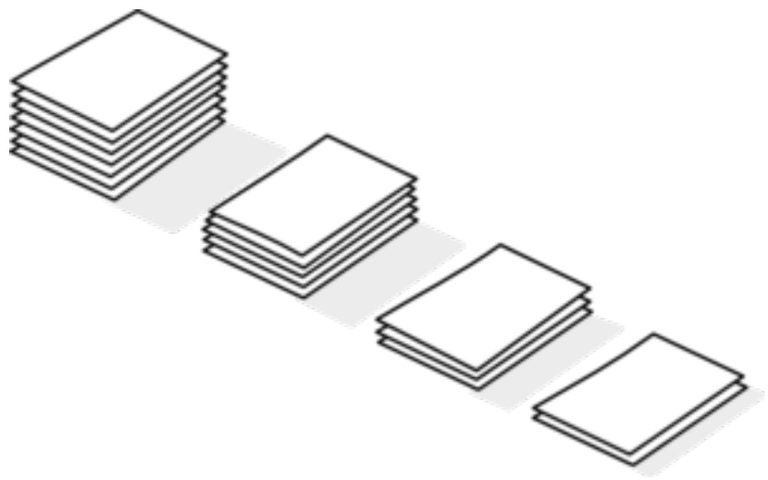
___ 9. Administration of test sequences

- **___ Woman over age 60**
- **___ New mouthpiece for each test**
- **___ Cell phone/portable electronics**
- **___ Proper test instruction (language)**

___10. Two proper samples (1.5 litres/4.5 seconds)

___ 11. Test Administered within a Reasonable Time

___ 12. Copy of Result to Defendant (requested)



i. Supporting Law

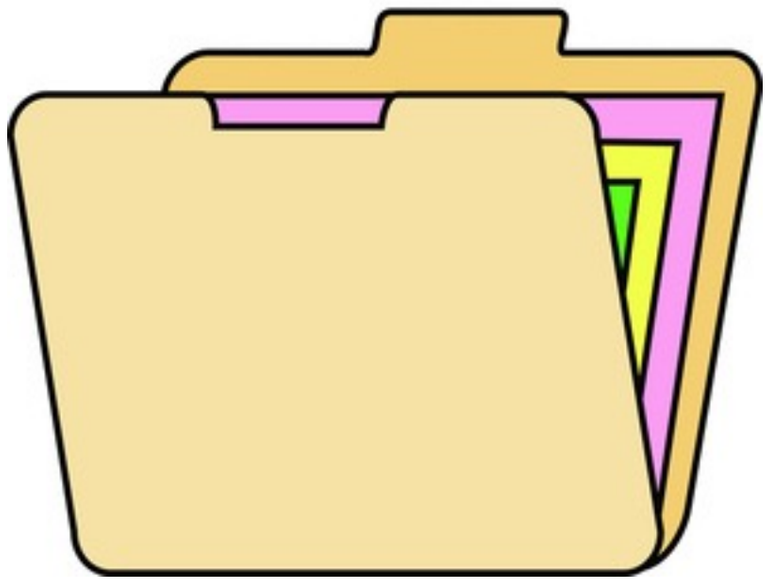
NJAC 13:51-1.8(d)

(d) Any test conducted to analyze a person's breath, pursuant to procedures and methods contained in this chapter, by an operator whose certification is suspended, revoked, or invalid at the time such test is conducted, shall be considered invalid for presentation in evidence or testimony in a court of law or administrative hearing.

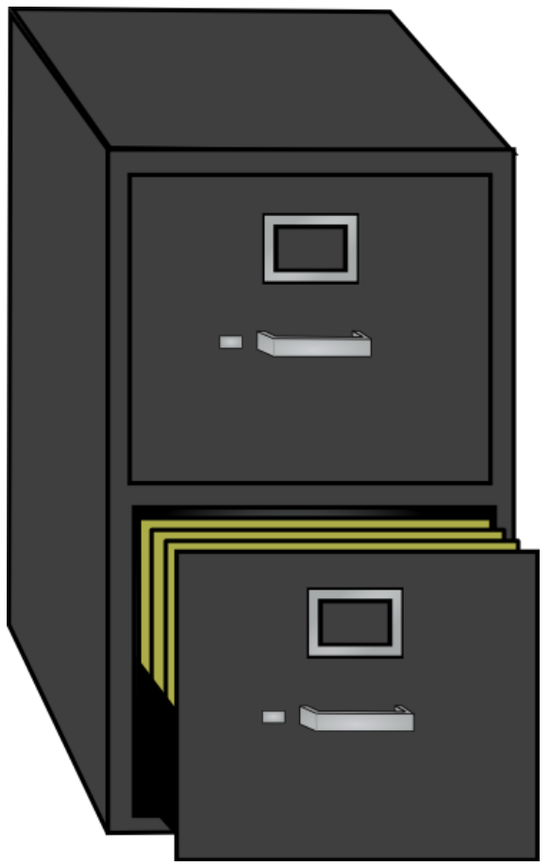
Operators must wait twenty minutes before collecting a sample to avoid overestimated readings due to residual effects of mouth alcohol. The software is programmed to prohibit operation of the device before the passage of twenty minutes from the time entered as the time of the arrest. Moreover, the operator must observe the test subject for the required twenty-minute period of time to ensure that no alcohol has entered the person's mouth while he or she is awaiting the start of the testing sequence. In addition, if the arrestee swallows anything or regurgitates, or if the operator notices chewing gum or tobacco in the person's mouth, the operator is required to begin counting the twenty-minute period anew. State v. Chun, 194 NJ 54, 79 (2008)

see also:

State v. Ugrovics, 410 NJ Super. 482 (App. Div. 2009);
State v. Filson, 409 NJ Super. 246 (Law Div. 2009);



Assuming that the results of the control test are within the established parameters, the instrument prompts the operator through a message on the LED screen to collect a breath sample. The operator then attaches a new, disposable mouthpiece and removes cell phones and portable electronic devices from the testing area. The operator is required to read the following instruction to the test subject: "I want you to take a deep breath and blow into the mouthpiece with one long, continuous breath. Continue to blow until I tell you to stop. Do you understand these instructions?" The arrestee then provides the first breath sample, which is measured in the IR and EC chambers. State v. Chun, 194 NJ 54, 80-81 (2008)



j. Alcotest Trial Tactics and Strategy

1. For first offenders (including step-down candidates), the 20-minute issues will be the best defense. It is vital to track every mention of time and compare it to the AIR to demonstrate either a lack of 20 minutes or interrupted observations. Also check data downloads to get precise time instrument was activated and defendant's pedigree data entered. See generally State v. Filson, 409 NJ Super. 246 (Law Div. 2009).

2. Without all core foundational documents properly in evidence, the test results are inadmissible.

> **We conclude that the foundational documents required under *Chun* were not admitted into evidence. Therefore, the State presented no evidence as to the reliability or accuracy of the Alcotest results. We thus hold that defendant's conviction of per se intoxication was improper. State v. Kurpochak, 221 NJ 368, 385 (2015)**

3. At what point should you challenge admissibility based upon missing, incorrect or incomplete documents or testing procedures?

At close of NJRE 104(a) to counter State's motion to admit test results?

At the close of all the proofs during summation?

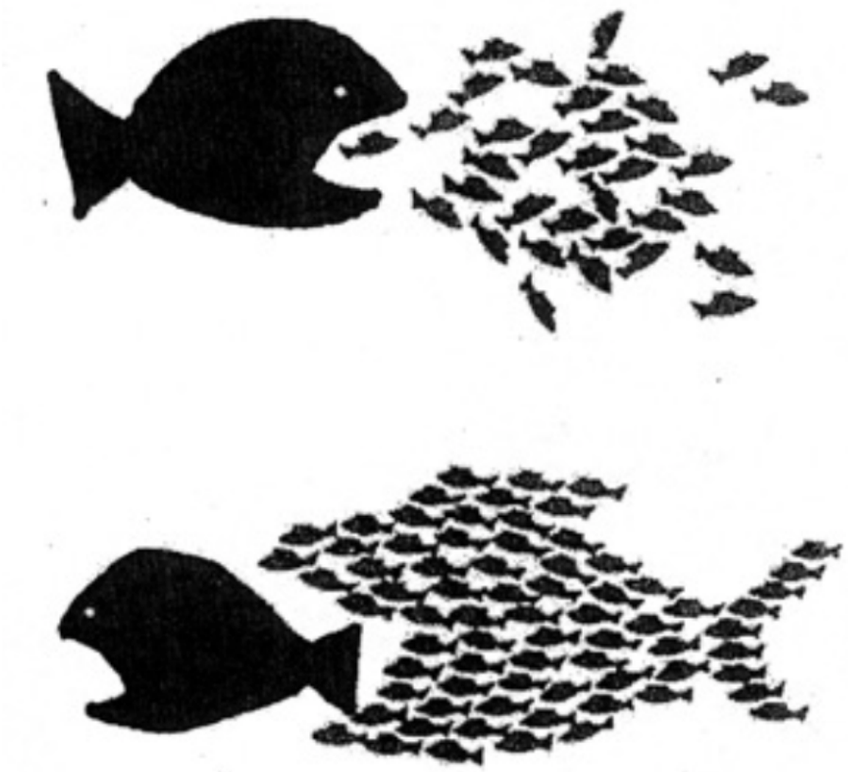
See State v. Campbell, 436 NJ Super. 264, 273 (App. Div. 2014)

In this hypothetical situation, it is conceivable that the trial judge might conclude, upon further reflection in light of the evidence as a whole, that the defendant's .08 percent BAC level was not sufficiently proven by the State beyond a reasonable doubt. The judge's earlier decision to admit the BAC proof—a ruling that is interlocutory in nature and surely can be reconsidered—does not prevent the court from doubting the strength of that admitted evidence at the end of the case. In fact, the court can even reconsider its previous decision to admit the evidence, if subsequent developments support such reconsideration.

To be sure, we are mindful that DWI defendants commonly do not "hang back" and save until the defense case at trial their competing witnesses and arguments challenging the prosecution's BAC results. Such a strategy may pose risk, perhaps depriving the defendant of a realistic chance to have the case dismissed at the suppression stage. Even so, regardless of the trial strategies that may bear on the actual flow of evidence, our conceptual point is simple and unassailable: the court's *threshold* decision to admit Alcotest results by clear-and-convincing evidence does not always dictate how the court *ultimately* will regard that same proof at the end of trial, when a more rigorous standard of persuasion applies.

Garden State CLE Presents:

Organizing Alcotest Discovery for Trial



Lesson Plan