

Garden State CLE Presents:

Modern DWI Trials Discovery Fights



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Lesson Plan

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PART I
DISCOVERY PROCEDURES IN A DWI CASE

a) What are the discovery items to which defense counsel is entitled?

Relevance - While Rule 7:7-7 sets forth general categories of discovery in municipal court cases, the primary criterion for discovery is relevance. In a DWI case, discovery is not limited to the material the prosecutor intends to use at trial. State vs. Green, 327 N.J.Super 334, 340–41(App.Div.2000). Rather, the scope of discovery extends to information and documents that are relevant. Relevant evidence in this context has the same definition as is contained in N.J.R.E. 401. It means evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action. A DWI defendant's right to discovery is limited to those items for which there is a reasonable basis to believe will assist a defendant's defense. (State v. Ford, 240 N.J.Super 44, 48(App.Div. 1990))

b) What are the five (5) steps that must be taken to obtain missing discovery items?

1) Initial Demand – Contemporaneously with the entry of appearance, make a timely written demand for discovery in conformity with Rule 7:7-7(b) directly upon on the prosecutor with a copy to the police. Prosecutor has 10-days to respond (Rule 7:7-7(g)).

Instructor Commentary - It is vital that the demand for discovery also contain notification to the prosecutor of the defense requirement that the State produce as live witnesses at trial laboratory personnel who tested forensic evidence and the associated people establishing the chain of custody. In the absence of such reasonable notice, a defendant shall be deemed to have waived his right to confrontation and the evidence will likely be admitted as a business or public record. State vs. Kent, 391 N.J.Super 352, 380-81(App.Div.(2007)).

2) Possession - Ascertain that the discovery is in the actual or constructive possession of the prosecutor.

3) Confer with Prosecutor - No motion to compel discovery can be made unless the prosecutor and defendant have conferred and attempted to reach agreement on any discovery disputes, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.

4) Motion to Compel Discovery – Rule 7:7-7(h). The supporting certification of attorney should aver that the evidence is relevant (or listed in Rule 7:7-7(b)), a timely demand was made upon the prosecutor and that the parties have conferred. If any discoverable materials known to a party have not been supplied, the party obligated with providing that discovery is required provide the opposing party with a listing of the materials that are missing and explain why they have not been supplied. Rule 7:7-7(g). A proposed time limit for production should be set forth in the form of discovery order.

5) Sanctions for Failure to Provide Discovery - Holop motions are available when discovery has not been provided in violation of the Court's discovery order. Proposed sanctions can include dismissal, banning the evidence at trial or money sanctions to be personally paid by the prosecutor. As stated in State vs. Holup, 253 N.J.Super 320, 325-326(1992):

By way of clarification of the situation where discovery has not been provided, we would also recommend that defense counsel serve a motion, on the papers, with certification similar to Rule 1:6-2, upon the municipal prosecutor, filing the original with the municipal court seeking an order limiting time for the production of discovery and upon the municipal prosecutor's failure to do so, dismissal of the action. Such an application and the ensuing order would alert the municipal prosecutor and enforcement authorities to their discovery responsibilities and avoid the inconvenience to litigants and witnesses that occurs with such frequency when all parties appear in court for trial.

c) What is the discovery obligation of defense counsel?

Rule 7:7-7(c) generally tracks the identical language as to the discovery items required of the prosecutor in Rule 7:7-7(b). The obligation to provide these materials is triggered upon a written request from the prosecutor. The defendant must provide the prosecutor with discovery within 20 days of the prosecuting attorney's compliance with the defendant's discovery request.

d) What about discovery items which qualify as work product?

i) Work product is defined in the case law in LaPorta vs. Gloucester County Freeholders, 340 N.J.Super 354, 259-60(App.Div.2001).

The work-product doctrine was first recognized by the Supreme Court of the United States in Hickman vs. Taylor and protects from disclosure those documents and other tangible things that a party or a party's representative prepares in anticipation of litigation. The doctrine recognizes the need for a lawyer to work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel. It is essentially a rule of procedure and has been recognized in New Jersey by court rule. Like the federal rule, New Jersey recognizes for protection documents and tangible things ... prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative. An attorney's work-product may not be discovered unless the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Even then, however, a court ordering such discovery is obligated to protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

ii) Work product discovery rule - Rule 7:7-7(d)

[The discovery] rule does not require discovery of a party's work product, consisting of internal reports, memoranda or documents made by that party or by that party's attorney or agents, in connection with the investigation, prosecution or defense of the matter. Nor does it require discovery by the government of records or statements signed or unsigned, by defendant made to defendant's attorney or agents.

e) What about discovery items which become relevant shortly before or during trial?

Under Rule 7:7-7(j), there is a continuing duty to provide discovery pursuant to Rule 7:7-7. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order that party to provide the discovery of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems appropriate.

f) What about the defendant's driving history in a DWI case?

Although Rule 7:7-7(b)(5) requires that discovery from the prosecutor include reports or records of defendant's prior convictions, this is an item that is rarely provided. By statute, in a DWI case, the prosecutor is responsible for obtaining the defendant's driving record and supplying it to the municipal court judge prior to the imposition of sentence. N.J.S.A. 2B:25-5.1. The Supreme Court has also ordered that information related to a prior conviction be made available to the court and defense counsel at the initial DWI conference. State vs. Zingis, 259 N.J. 1, 18(2024).

Instructor comment - The defendant's driving history is an indispensable piece of discovery that will impact on the legal fee, plea negotiations, PCR applications and other aspects of representation.

f) What about a protective order?

Rule 7:7-7(f) - Upon motion and for good cause shown, the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges recognized by law; and any other relevant considerations.

Procedure - The Court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court enters a protective order, the entire text of the statement shall be sealed and preserved in the court's records, to be made available only to the appellate court in the event of an appeal.

PART II

CASE-SPECIFIC DISCOVERY

In general - There are certain discovery items that are common to every DWI case. These include the police reports (narrative, accident report, supplemental, etc), specialized training that will be the subject of testimony (HGN testing), body-worn camera footage, in-car video and headquarters footage, Miranda warning cards (and waiver), John's Law release, DWI last drink questionnaire and other documents that allow defense counsel to develop an accurate timeline of events.

Apart from these standard items, some discovery is case-specific:

i) Alcotest 7110 cases

Chun foundational documents, State vs. Chun, 194 N.J. 54, 153(2008) [Order]

The prosecutor shall produce in discovery the twelve foundation documents identified by the Special Master as follows:

- (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; and it is further

Chun core foundational documents. State vs. Kuropchak, 221 N.J. 368, 385(2015) (“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.”)

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**

ii) Under the influence of drugs – DRE

Consent form or search warrant for blood draw

Chain of custody of forensic evidence

Laboratory reports

Names and functions of laboratory personnel

Training and certification of DRE witness

Detailed explanation of the 12 –steps taken in the DRE analysis

- (1) a breath alcohol test;
- (2) an interview of the arresting officer;
- (3) a preliminary examination and 1st pulse check;
- (4) a series of eye examinations;
- (5) four divided attention tests;
- (6) a second examination and vital signs check;
- (7) a dark room examination of pupil size and ingestion sites;
- (8) an assessment of muscle tone;
- (9) a check for injection sites and a third pulse reading;
- (10) an interrogation of the driver and documentation of statements made by the driver as well as any other observations; [*Miranda* waiver!]
- (11) a final opinion based on the totality of the examination; and
- (12) a toxicological analysis.

iii) Blood cases

The discovery issues implicate the procedures for the extraction, preservation and testing of blood samples. This portion of the process implicates four (5) foundational issues:

Consent form or search warrant for blood draw

The blood kit used by the police

Establishing the police chain of custody

Establishing the lab chain of custody

Testing procedures by laboratory

The ultimate issue in blood discovery is one of relevance under NJRE 401: Do the reported results of the blood test relate to a blood sample that was properly taken from the body of the defendant at or near the time he was arrested for operating a motor vehicle while under the influence of drugs or alcohol? Example: State vs. Zagroda, 472 N.J.Super 1(App.Div.2022).

Additionally, the defendant is entitled in discovery to the charts and graphs produced during the testing process. State vs. Weller, 225 N.J.Super 274(LawDiv.1986)

Note that the identity of the phlebotomist, the state police (or hospital) testing personnel should be supplied in discovery. Upon serving a timely request upon the prosecutor, the defendant is entitled to demand the appearance of technicians and phlebotomists at trial. State vs. Berezansky, 386 N.J.Super 84(App.Div.2006); State vs. Renshaw, 390 N.J.Super 456(App.Div.2007).

iv) Prior Convictions under Zingis

Initial discovery demand under Rule 7:7-7(b), including a specific ZINGIS request.

- Examine municipal court portal and order an MVC abstract - <https://portal.njcourts.gov/webe41/MPAWeb/>, OR
- Await discovery related prior convictions from the prosecutor under Rule 7:7-7(b)(5).
- Demand ZINGIS discovery at initial case management conference if not already received.
- Search PCSAM.
- Move for a discovery order requiring production of ZINGIS discovery pursuant to State vs. Holup, 253 N.J.Super 320(App.Div.1992), at second case management conference if not already received.
- Decide whether to pursue PCR from prior ZINGIS convictions under Rule 7:10-2.
- If defendant is indigent and has no funds for the PCR application, help the defendant prepare a Form 5A and aid the defendant in filing it in the appropriate court.
- File PCR petition where prior conviction occurred with a copy to the court where the subsequent DWI is pending and to the municipal prosecutor assigned to that court.
- Prepare the case where the subsequent DWI is pending for trial so that it will be ready for disposition as soon as PCR is decided.

PART III
RULE 7:7-7

(a) Scope. If the government is represented by the municipal prosecutor or a private prosecutor in a cross complaint case, discovery shall be available to the parties only as provided by this rule, unless the court otherwise orders. All discovery requests by defendant shall be served on the municipal prosecutor, who shall be responsible for making government discovery available to the defendant. If the matter is, however, not being prosecuted by the municipal prosecutor, the municipal prosecutor shall transmit defendant's discovery requests to the private prosecutor in a cross complaint case, pursuant to Rule 7:8-7(b).

(b) Discovery by Defendant. Unless the defendant agrees to more limited discovery, in all cases the defendant, on written notice to the municipal prosecutor or private prosecutor in a cross complaint case, shall be provided with copies of all relevant material, including but not limited to the following:

(1) books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(2) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded;

- (3) grand jury proceedings recorded pursuant to Rule 3:6-6;
- (4) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports, that are within the possession, custody or control of the prosecuting attorney;
- (5) reports or records of defendant's prior convictions;
- (6) books, originals or copies of papers and documents, or tangible objects, buildings or places that are within the possession, custody or control of the government, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;
- (7) names, addresses, and birthdates of any persons whom the prosecuting attorney knows to have relevant evidence or information, including a designation by the prosecuting attorney as to which of those persons the prosecuting attorney may call as witnesses;
- (8) record of statements, signed or unsigned, by the persons described by subsection (7) of this rule or by co-defendants within the possession, custody or control of the prosecuting attorney, and any relevant record of prior conviction of those persons;
- (9) police reports that are within the possession, custody or control of the prosecuting attorney;

(10) warrants, that have been completely executed, and any papers accompanying them, as described by Rule 7:5-1 (a).

(11) the names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of the expert witness, or if no report was prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(c) Discovery by the State. In all cases the municipal prosecutor or the private prosecutor in a cross complaint case, on written notice to the defendant, shall be provided with copies of all relevant material, including; but not limited to, the following:

(1) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports within the possession, custody or control of the defendant or defense counsel;

(2) any relevant books, originals or copies of papers and other documents or tangible objects, buildings or places within the possession, custody or control of the defendant or defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(3) the names, addresses, and birthdates of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(4) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the government may call as a witness at trial; and

(5) the names and addresses of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert may, upon application by the prosecuting attorney, be barred from testifying at trial.

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product, consisting of internal reports, memoranda or documents made by that party or by that party's attorney or agents, in connection with the investigation, prosecution or defense of the matter. Nor does it require discovery by the government of records or statements signed or unsigned, by defendant made to defendant's attorney or agents.

(e) Reasonableness of Cost. Upon motion of any party, the court may consider the reasonableness of the cost of discovery ordered by the court to be disseminated to the parties. If the court finds that the cost charged for discovery is unreasonable, the court may order the cost reduced or make such other order as is appropriate.

(f) Protective Orders.

(1) Grounds. Upon motion and for good cause shown, the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges recognized by law; and any other relevant considerations.

(2) Procedures. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court enters a protective order, the entire text of the statement shall be sealed and preserved in the court's records, to be made available only to the appellate court in the event of an appeal.

(g) Time and Procedure. A defense request for discovery shall be made contemporaneously with the entry of appearance by the defendant's attorney, who shall submit a copy of the appearance and demand for discovery directly to the municipal prosecutor. If the defendant is not represented, any requests for discovery shall be made in writing and submitted by the defendant directly to the municipal prosecutor. The municipal prosecutor shall respond to the discovery request in accordance with paragraph (b) of this rule within 10 days after receiving the request. Unless otherwise ordered by the judge, the defendant shall provide the prosecutor with discovery, as provided by paragraph (c) of this rule, within 20 days of the prosecuting attorney's compliance with the defendant's discovery request.

If any discoverable materials known to a party have not been supplied, the party obligated with providing that discovery shall also provide the opposing party with a listing of the materials that are missing and explain why they have not been supplied. Unless otherwise ordered by the judge, the parties may provide discovery pursuant to paragraphs (a), (b), (c), and (h) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(h) Motions for Discovery. No motion for discovery shall be made unless the prosecutor and defendant have conferred and attempted to reach agreement on any discovery issues, including any issues pertaining to discovery provided through the use of CD, DVD, e-mail, internet or other electronic means.

(i) Discovery Fees.

(1) Standard Fees. The municipal prosecutor, or a private prosecutor in a cross-complaint case, may charge a fee for a copy or copies of discovery. The fee assessed for discovery embodied in the form of printed matter shall be \$0.05 per letter size page or smaller, and \$0.07 per legal size page or larger. From time to time, as necessary, these rates may be revised pursuant to a schedule promulgated by the Administrative Director of the Courts. If the prosecutor can demonstrate that the actual costs for copying discovery exceed the foregoing rates, the prosecutor shall be permitted to charge a reasonable amount equal to the actual costs of copying. The actual copying costs shall be the costs of materials and supplies used to copy the discovery but shall not include the costs of labor or other overhead expenses associated with making the copies, except as provided for in paragraph (i)(2) of this rule. Electronic records and non-printed materials shall be provided free of charge, but the prosecutor may charge for the actual costs of any needed supplies such as computer discs.

(2) Special Service Charge for Printed Copies. Whenever the nature, format, manner of collation, or volume of discovery embodied in the form of printed matter to be copied is such that the discovery cannot be reproduced by ordinary document copying equipment in ordinary business size, or is such that it would involve an extraordinary expenditure of time and effort to copy, the prosecutor may charge, in addition to the actual copying costs, a special service charge that shall be reasonable and shall be based upon the actual direct costs of providing the copy or copies. Pursuant to [R. 7:7-1](#), the defendant shall have the opportunity to review and object to the charge prior to it being incurred.

(3) Special Service Charge for Electronic Records. If the defendant requests an electronic record: (1) in a medium or format not routinely used by the prosecutor: (2) not routinely developed or maintained by the prosecutor: or (3) requiring a substantial amount of manipulation or programming of information technology, the prosecutor may charge, in addition to the actual cost of duplication, a special charge that shall be reasonable and shall be based on (1) the cost for any extensive use of information technology, or (2) the labor cost of personnel providing the service that is actually incurred by the prosecutor or attributable to the prosecutor for the programming, clerical, and supervisory assistance required, or both. Pursuant to Rule 7:7-1, the defendant shall have the opportunity to review and object to the charge prior to it being incurred.

(j) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order that party to provide the discovery of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems appropriate.

PART IV
LEADING DISCOVERY CASES

Supreme Court

Prior offenses - If a defendant's driving history reveals previous drunk-driving offenses that occurred between 2008 and 2016, he is entitled to discovery from the municipal prosecutor he can use to challenge his prior conviction through post-conviction relief. State vs. Zingis, 259 N.J. 1, 324 A.3d 991(2024).

Police patrol vehicle videotape - “The recordings from a patrol car's dashboard camera that depict the interactions between a DWI suspect and police officers or the sobriety tests performed by the suspect are clearly relevant, and if the recordings contradict an officer's testimony, such evidence has vital impeachment value to the defense. A video recording of a Breathalyzer test or a defendant's appearance, behavior, and motor skills at police headquarters is also relevant because it may have ‘a tendency in reason to prove or disprove’ that the defendant was under the influence. See N.J.R.E. 401. To ensure the availability of such relevant evidence, a defendant should give written notice to the municipal prosecutor to preserve pertinent videotapes pursuant to Rule 7:7-7. Although the defense carries this obligation, the State also has a duty to preserve evidence that it knows is relevant to a DWI prosecution.” State vs. Stein, 225 N.J. 582, 596–97, 139 A.3d 1174(2016).

Appellate Division

Destruction of data downloads and manufacturer repair records—The good faith destruction of both data download information by the State and Alcotest instrument repair records by the manufacturer was harmless. State vs. Robertson, 438 N.J.Super 47, 102 A.3d 381(App.Div.2014).

Discovery violations - Municipal court judges are to be afforded wide discretion to deal with discovery violations that are revealed before and during trial. Intent to mislead and prejudice are important factors for the court consider when seeking to cure a discovery violation, bar evidence or impose a sanction upon the offending party. State vs. Wolfe, 431 N.J.Super 356, 69 A.3d 164(App.Div.2013).

Inspection of Breath Test Area within Police Department - The need for internal security and the lack of any due process argument prohibits defendants charged with a violation of N.J.S.A. 39:4-50(a) from conducting a pre-trial inspection of the area within the police department where they were observed for 20-minutes prior to providing a breath sample for the Alcotest. State vs. Carrero, 428 N.J.Super 495, 54 A.3d 318(App.Div.2012).

Data downloads and repair logs - Data downloads from the date of the last calibration until the date of defendant's test and repair logs are relevant and must be supplied to the defendant upon request by way of a discovery demand. State vs. Maricic, 417 N.J.Super 280, 9 A.3d 1026(App.Div.2010).

Constantine vs. Bass River, 406 N.J.Super 305(App.Div.2009) (Fees for discovery)

Sanctions for failure to provide - The municipal court may impose sanctions upon a prosecutor who fails to comply with a request for discovery. Such sanction may take the form of a monetary penalty or limiting the admissibility of evidence at trial. State vs. Holup, 253 N.J.Super 320, 601 A.2d 777(App.Div.1992).

Role of court staff - The responsibility for providing discovery is a function uniquely committed to the prosecution. Thus, court officials and other court personnel have no responsibility or function in either providing discovery or managing discovery requests. State vs. Prickett, 240 N.J.Super 139, 572 A.2d 1166(App.Div.1990).

Relevant items - A defendant's right to discovery in a drunk-driving case is limited to those relevant items within the limitations of the Rules of Court related to discovery “which there is a reasonable basis to believe will assist the defense.” State vs. Ford, 240 N.J.Super 44, 49, 572 A.2d 640(App. Div.1990).

Entitlement to discovery - Because the Rules of Court permit discovery in any case involving a consequence of magnitude, a defendant charged with drunk driving is entitled to demand and receive discovery. State vs. Utsch, 184 N.J.Super 575, 446 A.2d 1236(App.Div.1982).

Law Division

Relevant items - Discovery in a drunk-driving case is restricted to relevant evidence. Relevant evidence for purposes of discovery constitutes evidence that concerns an issue involved in the prosecution and tends to prove (or disprove) a fact material to that issue. State vs. Tull, 234 N.J.Super 486, 560 A.2d 1331(LawDiv.1989) (Discovery demand made upon prosecutor was overly broad. Overruled by State vs. Ford, 240 N.J.Super 44(App.Div.1990).

Failure to provide - State vs. Polasky, 216 N.J.Super 549(LawDiv.1986) (Sanctions to prosecutor for failure to provide discovery)

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