

Garden State CLE Presents:

DWI Annual Review - 2025



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Lesson Plan

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Introduction

Update on State vs. Cunningham

Progress before special master

Payment for Defense Experts

Anticipated date for Supreme Court final ruling

Part I Insanity Defense

The Supreme Court and Appellate Division have banned the use of certain defenses in a DWI case over the years, usually due to the risk of the defense advancing a defense based upon a mere pretext. Among the banned defenses are:

All Statutory defenses under the Code of Criminal Justice.
State vs. Hammond, 118 N.J. 306(1990).

Retrograde extrapolation. State vs. Tischio, 107 N.J. 504
(1987).

Hyper-sensitivity to alcohol. State vs. Cryan, 363 N.J.Super
442,457(App.Div.2003).

Quasi-entrapment – State vs. Fogarty, 128 N.J. 59(1992).

Involuntary intoxication (vapors). State vs. Federico, 414
N.J.Super 321(App.Div.2010) (spiked drink); State vs.
Hammond, 118 N.J. 306(1990).

The Appellate Division has now added insanity to the list:

Insanity - State vs. Baverov, 482 N.J.Super
344(App.Div.2025), 2025 WL 2301219 (adopting State vs.
Inglis, 304 N.J.Super 207(LawDiv.1997)).

Part II **Sentencing**

a) The amendment to N.J.S.A. 39:4-50(a)(3) was signed into law by the governor on April 3, 2025, and reads as follows:

Any person who is required to forfeit the right to operate a motor vehicle over the highways of this State pursuant to this section may, in lieu of forfeiting the right to operate a motor vehicle, install an ignition interlock device and receive a one day credit against the period that the person is required to forfeit the right to operate a motor vehicle over the highways of this State pursuant to this section for every two days that the person has the ignition interlock device installed. A person shall not be entitled to this credit if the violation of this section resulted in serious bodily injury as defined in N.J.S.A. 2C:11-1 to another person. In addition, a person who has been arrested or convicted of operating a motor vehicle while under the influence of a narcotic, hallucinogenic, or habit-producing drug or permitting another person who is under the influence of a narcotic, hallucinogenic, or habit-producing drug to operate a motor vehicle owned by the person or under the person's custody or control pursuant to the provisions of this section or a person who has been convicted of operating a commercial motor vehicle under the influence of a controlled substance pursuant to section 5 of P.L.1990, c.103 (C.39:3-10.13) shall not be eligible for this credit.

N.J.S.A. 39:4-50(i)(2)

This act shall take effect immediately, shall apply to any offense occurring on or after the effective date, and shall expire on January 1, 2029.

b) License Suspension/Interlock Table:

<u>BAC</u>	<u>Offense number</u>	<u>d/l loss</u>	<u>Interlock</u>
NONE	1	NONE	90 days
.08-.099	1	NONE	90 days
.10 -.149	1	NONE	7 mo. – 1 year
.15 +	1	3 mo.	12 – 15 mo.
N/A	2	1 – 2 yrs	2 - 4 yrs
N/A	3	8 yrs	2 – 4 yrs

See N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.17

c) All Qualified Alcohol Offenders: The availability of the two for 1 day credit against an alcohol related license suspension following a conviction for N.J.S.A. 39:4-50 applies to first, second and subsequent offenders. New Jersey may be the only statute in the United States that allows ALL alcohol-intoxicated drivers to avoid a loss of driving privileges.

d) Continuation of Pre-Conviction Credits - The amendments for N.J.S.A. 39:4-50(a)(3) can be thought of as an extension of the pre-conviction 2 for 1-day credits against a license suspension that are currently available to DWI defendants who install an ignition interlock device (IID) on their vehicles and receive a restricted use license from MVC following their arrests and prior to the disposition of their cases.

e) Qualifications for Credits:

Pre-conviction – A defendant seeking two for 1 day credit prior to conviction must meet the following criteria:

- i) Be charged with a DWI offense that is alcohol based;

ii) Cannot have been involved in a DWI accident where there was serious bodily injury (SBI) (bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.); and

iii) Must have obtained a restricted use driver's license from MVC based upon proof of installation of the IID.

Post-conviction – Under the newly amended statute, N.J.S.A. 39:4-50(a)(3), a defendant seeking two for 1 day credit following conviction must meet the following criteria:

i) Be charged with a DWI offense that is alcohol based;

ii) Cannot have been involved in a DWI accident where there was serious bodily injury (SBI).

Instructors' Commentary – The amended statute does not expressly apply to the refusal statute. Moreover, there is an enormous amount of confusion among judges as to its applicability to second and subsequent offenders.

It is vital to advise clients who do a pre-conviction, voluntary interlock installation that they will have to return to MVC with proof of their conviction and sentence in order to have their restricted-use driver's license properly endorsed.

Part III

Fourth Amendment

Impoundment under John's Law (N.J.S.A. 39:4-50-23) and subsequent vehicle searches. The police may conduct a roadside search of a motor vehicle stopped for drunk driving under the automobile exception even though it will be towed away under John's Law. State vs. Courtney, 478 N.J.Super 81(App.Div.2024).

Searches - When the car was parked in a State Police barracks parking lot; police had arrested the driver, removed the passenger, and obtained the keys; and the car was subject to imminent, mandatory impoundment, the automobile exception to the warrant requirement did not apply. The police were therefore required to obtain a warrant before searching the vehicle.

As an initial matter, there was no on-scene search here: the car was searched in a police barracks parking lot, not on the scene of a motor vehicle stop or any other incident. And the facts make clear there was no other inherent exigency to justify a warrant-less search under the automobile exception. Police were therefore required to obtain a warrant. State vs. Fenimore, 261 N.J. 364(2025) – distinguishing:

i) Probable cause searches – State vs. Witt, 223 N.J. 409(2015); State vs. Irelan, 375 N.J.Super 100(App.Div.2005).

ii) John's Law Mandatory Impoundment – N.J.S.A. 39:4-50.23.

iii) Inventory searches – When the owner or permissive user is present, inventory searches of lawfully impounded vehicles are not permitted unless the owner or permissive user has been given the option of either consenting to the inventory or making his own arrangements for the safekeeping of the property contained in the vehicle. State vs. Mangold, 82 N.J. 575, 587(1980).

Part IV

Driving on the Revoked List

State vs. Italiano, 480 N.J.Super 1(App.Div.2024)

This appeal raises the issue of first impression. We must decide whether a defendant, serving sequentially several consecutive periods of driver's license suspensions imposed for various convictions including DWI offenses, can be charged with violating N.J.S.A. 2C:40-26(b) for driving during the suspension period for a non-DWI-related offense while awaiting commencement **155 of a court-imposed DWI license suspension. For the reasons set forth below, we conclude that because the effective date of defendant's most recent DWI-related sentence was delayed only due to other consecutively imposed accumulated sentences, defendant violated N.J.S.A. 2C:40-26(b) when he operated his vehicle prior to the conclusion of the suspension for his DWI offense.

Instructors' Commentary - During suspension period defined - When it comes to suspensions based upon a conviction for drunk-driving or refusals, the challenge for prosecutors and defense counsel is reconciling the concept of "during the period of suspension" with the defendant's driving history. There are a number of possible permutations:

- i) The defendant was personally operating during the determinate term of the license suspension ordered by the Court;
- ii) The defendant's driving privileges remained revoked following the expiration of the determinate term of dwi/refusal suspension;
- iii) The defendant was operating a motor vehicle while revoked for an unrelated administrative or non-DWI/Refusal suspension and the determinate term of the DWI suspension had not yet begun.

iv) The defendant completed the determinate term, was restored but was suspended again by court order or on an administrative basis directly related to the drunk-driving/refusal case.

Relevant defining cases include:

State vs. Zalta, 217 N.J.Super 209(App.Div.1987).

State vs. Cuccurullo, 228 N.J.Super 517(App.Div.1988).

State vs. Luzhak, 445 N.J.Super 241(App.Div.2016).

State vs. Perry, 439 N.J.Super 514(App.Div.2015).