

Commercial Driver Can Be Charged Simultaneously with General and CDL DWI

The New Jersey Appellate Division has ruled in State v. Nunnally that a commercial driver suspected of drunk driving may be charged under both the law addressing DWI for personal automobiles and the law dealing DWI and commercial drivers. In this case, a group of school children flagged down a Glen Rock police officer and reported that a DPW plow truck had hit two traffic signs and driven away. The police officer followed the truck to the DPW yard and observed Gerald Nunnally emerge the truck. Nunnally allegedly had bloodshot eyes, slurred speech, smelled of alcohol and could not walk or stand without assistance. He was arrested for suspicion of operating a commercial vehicle with a BAC in excess of .04% (NJSA 39:3-10.13). Nunnally then repeatedly failed to blow properly into the Alcotest machine. He was then read the warnings pertaining to CDL refusal and was cited for refusal to take a breath test under the general refusal statute (NJSA 39:4-50(a)), not the CDL refusal statute.

The Municipal court (and eventually the Law Division) found that Nunnally could not be charged with general refusal. Additionally, the court found that the State could not amend the general refusal charge to a CDL refusal as the 90 days statute of limitations had expired.

The Appellate Division found that the lower court's decision was correct. Specifically, the Appellate Division found that "a driver of a commercial vehicle who is arrested and charged only with CDL DUI, and who thereafter refuses a breath test, may only be charged under the cognate CDL refusal statute, and may not be prosecuted under the general refusal statute." However, the Appellate Division did find that the laws governing general DWI and commercial DWI are separate and distinct. Accordingly, the Court held that if a driver violates general and CDL DWI statutes, he can be arrested and charged under both sets of statutes. The Court further noted that a CDL refusal is not a lesser included offense of general refusal and an individual can be found guilty of violating each separate statute.

Finally, the Court found that the statute address commercial DUI does not allow prosecutions based only on observations.

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