

A Prior DWI Can Enhance Punishment For A Subsequent Refusal

June 17, 2014 | by Matheu Nunn

For those of you that do not know, when you get a driver's license at the ripe age of 17, you have implied your consent to take a breath test to determine your blood alcohol content (a test to determine whether you are driving while intoxicated). Stated differently, you *must* take a breath test if asked by law enforcement personnel. Now, that is not to say that a good attorney cannot "knock out" the basis for your motor vehicle being stopped in the first instance, however, even if you believe that the stop of your vehicle was unlawful, you must take the breathalyzer.



Image courtesy of
Stuart

Miles/freedigitalphotos.net

That said, driving while intoxicated (DWI) and "Refusal" are contained in separate portions of the New Jersey Statutes (DWI is located at N.J.S.A. 39:4-50; and Refusal at N.J.S.A. 39:4-50.4a). They are, in a word, "separate" offenses. A driver can be driving while intoxicated (and convicted of that offense), yet, agree to take the breath test (in New Jersey, the Alcotest), and have complied with the "Refusal" statute. The converse is also true. An individual may be found "not guilty" of being under the influence/intoxicated, yet, because he or she refused the breath test, a conviction for "Refusal" may be entered.

So what happens if you were convicted of DWIs in, say, 2008 and 2011; and, in 2014, you are convicted of Refusal? In [State v. Roger Paul Frye \(A-30-12\)](#), decided on June 3, 2014, the New Jersey Supreme Court held that a prior DWI conviction may enhance the sentence for a subsequent refusal conviction under the refusal statute, N.J.S.A. 39:4-50.4a.

What does this mean?

Well, under my example (2 prior DWI convictions in 2008 and 2011), the 2014 “Refusal” would result in a loss of license for a period of 10 years. This is so because a third-time Refusal offender “shall” be subject to a 10-year loss of license, a \$1,000 fine, and other penalties prescribed by statute. Had the decision in [Frye](#) been the converse – that prior DWIs do not enhance a later refusal – the Refusal would have been treated as a “first” offense and the license revocation would have been for a period of between 7 months and 1-year.

So, be careful when your buddies give you “legal” advice and tell you that DWI and Refusal are not interchangeable – you may end up doing a lot of walking for 10 years.