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Attorney for Defendant d1

THE STATE OF NEW JERSEY

v.

d1

Defendant.

MUNICIPAL COURT OF \_\_\_\_\_  
COUNTY OF MIDDLESEX

SUMMONS NO.

Quasi Criminal Action- DWI

WAIVER OF ARRAIGNMENT  
and NOTICE OF MOTIONS

PLEASE TAKE NOTICE that on \_\_\_\_\_ or as soon thereafter as counsel may be heard, the undersigned, counsel for the defendant D1, will move before the above court, for an order on the attached Motions.

Dated: \_\_\_\_\_

BY: \_\_\_\_\_  
KENNETH A. VERCAMMEN, ESQ.

### **TABLE OF CONTENTS**

#### **Appearance and Arraignment Waiver General Provisions**

#### **Pretrial Motions**

1. Jury Trial
2. Punishment
3. Vagueness
4. Suppress Evidence
5. Miranda/Privilege
6. Test Ampoules
7. Exclude Breath Tests
8. Discovery
9. Reciprocal Discovery
10. Speedy Trial
11. Notice of Objection

#### **Post Disposition motions**

12. Enhanced Penalties
13. Protective Order
14. Stay

## APPEARANCE AND ARRAIGNMENT WAIVED

### PRE-TRIAL MOTIONS

At a time to be set by the Court, Defendant will move for Orders pursuant to R. 3:10-5, 3:13-1, and 7:7-7, as follows and requests oral argument pursuant to R. 1:6-2(d) to preserve all of defendant's rights and defenses:

**1. Jury Trial.** Defendant will move for trial by jury. Blanton v. North Las Vegas, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989).

**2. Punishment.** Defendant will move to dismiss the 39:4-50 complaint because statutory punishments are cruel unusual in that they are disproportionate to a motor vehicle violation and contrary to US Constitutional.(Amendments VIII and XIV N.J. Const. Art. 1, para. 1'. See Gregg v. Georgia, 428 U.S. 96 S.Ct. 2909. 49 L.Ed.2d 859 (1976); State v. Smith, 58 N.J (1971).

**3. Vagueness. Defendant** will move to dismiss the 39:4-50 complaint because the statute, at least as to the so called "per se" violation, is vague and contrary to U.S. Amends. V, VI, IX, and XIV, and N.J. Const. Art.1, paras.1, 5, See Kolender v. Lawson, 461 US. 352, 103 S.Ct. 18S 903 (1983).

**4. Suppress Evidence.** Defendant will move to suppress, evidence obtained by the State during its investigation of case, pursuant to R. 3:5-7 and 7:5-2, because evidence--ie defendant's person, breath, blood, and/or other things--was seized unlawfully, without a warrant and contrary to U.S. Const. Amends. IV and XIV and N.J. Const. Art.1, para.7. Defendant believes the State will use this evidence in proceedings before this Court on the above captioned charges.

**5. Miranda/Privilege.** Defendant will move to exclude statements by, and evidence obtained from, Defendant during the State's investigation of this case because the statements and evidence (a) create substantial danger of undue prejudice to Defendant contrary to Evid.R. 403 (previously Evid.R. 4), (b) are privileged under Evid.R. 503 (previously Evid.R. 25), and (c) were obtained contrary to U.S. Const. Amends. V, VI, IX, and XIV, NJ Constitution 1, paras.1, 10, and 2], and requirements stated in Miranda v. Arizona, 384 US. 486, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and its progeny.

**6. Test Ampoule.** If police used a breath testing instrument in this case, Defendant will move to either dismiss the N.J.S. 39:4-50 complaint or exclude evidence of breath test results because the State destroyed material relevant evidence--i.e., test ampoules used in Defendant's breath tests--contrary to U.S. Const. Amends. V, VI, IX, and XIV, and N.J. Const. Art.I, paras.1, 10, and 21.

**7. Exclude Breath Tests.** If police used a breath testing instrument in this case,

Defendant will move to exclude evidence(- of breath test results because (a) the Attorney General failed to exercise administrative authority and prescribe methods and procedures for periodic inspection of breath testing instruments as required by N.J.S. 39:4-50.3, and (b) without such properly prescribed methods and procedures, the State cannot lay the foundation needed for admission of breath test results into evidence at trial. See Romano v. Kimmelman, 96 N.J. 66, 81 (1984).

## GENERAL PROVISIONS

**8. Discovery.** 8.1. Defendant requests that the State either produce or permit Defendant's attorneys to inspect and copy or photograph any relevant discovery as required by Rule 3:13-3, Rule 7:7-7(b) (Effective February 1, 1998), the Right to Know Law NJSA 47:1A-1 et seq. and the common law right to know under Shuttleworth v. City of Camden, 258 N.J. Super. 573 (App. Div. 1992). including all relevant items specifically listed on the DISCOVERY requests submitted. Defendant further requests that the Court enter a DISCOVERY ORDER, provided the prosecutor neither sends notice of specific objections in writing pursuant to R. 3:1-4 nor moves timely for a protective order pursuant to R. 3:13-3(d).

8.2. If the State fails to provide discovery as requested herein, Defendant may move either before or during trial pursuant to R. 3:13-3(f), R. 3:17-4, and Evid.R. 807 (previously Evid.R 64), as applicable, for an Order (a) permitting discovery or inspection of undisclosed materials, (b) granting a continuance, (c) prohibiting introduction in evidence of undisclosed material, (d) monetary sanctions, (e) dismissal of the charges, and (f) such other order as the Court deems appropriate.

**9. Reciprocal Discovery.** 9.1. Defendant may call certain fact witnesses to testify, inter alia, that:

a) they have known Defendant, b) they saw Defendant before or after police saw Defendant, c) Defendant was not under the influence of alcohol and was to operate a motor vehicle, d) there was no unexplained motor vehicle operation, and e) there was no articulable suspicion that Defendant had violated the law. The witnesses will be named following/ after the state provides complete discovery as set forth on Schedule A.

Defendant may call the following experts to testify, inter alia, about each breath testing instrument ["BTI"] or other analytical device ["AD"] used to test substances seized from Defendant:

a) BTI/AD was not approved, b) analysis method was not approved, c) BTI/AD used is scientifically unreliable, d) analysis method was scientifically unreliable, e) BTI/AD components were not properly inspected, f) BTI ampoules did not contain chemicals of proper quality or quantity to give reliable readings, g) BTI/AD was not properly inspected, h) BTI/AD operator was not properly qualified, i) test conditions, such as temperature and atmospheric pressure, at time of analysis and inspection were not proper, j) BTI/AD inspections were not properly periodic or blanked, k) BTI/AD was not

properly inspected for RFI, l) Defendant could not have given them m) BTI/AD test records were not properly used, n) BTI ampoules were not properly gauged, o) BTI/AD operation was not proper, and q) analytical tests were not done within a reasonable time of Defendant's alleged motor vehicle operation.

Expert Dr. Richard Saperstein, and/or Others to be provided if and when retained following receipt of the state's expert.

9.2. Defendant may use demonstrative and documentary evidence, which the State may inspect and copy or photograph after paying reasonable expenses therefor: a) photographs c) video e) maps g) pharmacy records h) films d) diagrams f) medical/hospital h) weather records

10. **Speedy Trial.** Defendant demands a speedy trial pursuant to U.S. Const. Amend. VI and N.J. Const. Art.1, para.10.

11. **Notice of Objection.** If the State gives notice of intent to proffer a certificate executed by a laboratory employee pursuant to N.J.S. 2C:35-19c, Defendant hereby objects to it on the grounds that Defendant intends to contest at trial the composition, quality, and quantity of substances submitted to the laboratory for analysis.

## **POST-DISPOSITION MOTIONS**

12. **Enhanced Penalties.** If defendant is a subsequent offender under either N.J.S. 39:3-40, 4-50, 4-50.2, 4-96, 6B-2, or other statute, Defendant may move to exclude use of prior convictions to enhance penalties pursuant to these statutes on grounds to be determined after further investigation.

13. **Protective Order.** If Defendant pleads guilty to any charge captioned above, Defendant will move that such plea shall not be evidential in any civil proceeding.

Very truly yours,

KENNETH A. VERCAMMEN