

(Defendant's name removed)  
(Defendant's address removed)

Phone: (Defendant's number removed)  
Email: (Defendant's email removed)

(Date removed)

MUNICIPAL COURT OF (REMOVED), COUNTY OF (REMOVED)

STATE OF NEW JERSEY	)	SUMMONS No.: (REMOVED)
Plaintiff	)	ISSUED: (REMOVED)
vs.	)	
	)	<b>MOTION TO COMPEL</b>
(DEFENDANT'S NAME	)	
REMOVED)	)	
Defendant	)	
	)	
	)	
	)	

Defendant, charged with a violation of N.J.S.A. 39:4-98, has served the Prosecutor with an Informal Discovery Request which was not answered on time nor answered in full. Defendant hereby moves the Court to order the disclosure and production of materials and information for the items below, pursuant to Rule 7:7-7 of the Rules Governing the Courts of the State of New Jersey:

- Defendant's driving history abstract. State has agreed to provide but has not.
- Any dispatch communication regarding this offense. State has agreed to provide but has not.
- The radar manufacturer's name and model name/number of the unit. State says they have provided, but Defense cannot find the information.
- Any favorable or exculpatory evidence, information, and documents, in possession of the Prosecutor, Police Department, or other agency or person available to the prosecution through due diligence regardless of State's intention to use such evidence at trial. (Brady v Maryland, 1963)
- A copy of the radar operating manual.

NJ Court Rule 7:7-7(b)(6): "...[Defendant] shall be provided with copies of.. electronically stored information..."

NJ Court Rule 7:7-7(g): "...the parties may provide discovery...through the use of CD, DVD, e-mail, internet or other electronic means."

NJ Court Rule 3:13-3(b)(1): "...the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at the prosecutor's office, rather than by copying and delivering such materials..."

Without citing authority, State says they are prevented from providing the manual due to copyright law. Defense argues a copy can legally be made in this situation.

Title 17 U.S. Code § 107 - Limitations on Exclusive Rights: Fair Use -

"...the fair use of a copyrighted work, including such use by reproduction...for purposes such as criticism, comment... or research, is not an infringement of copyright."

DENISON V. LARKIN N.D. ILL. 2014: "The US House Committee on the Judiciary explicitly listed 'reproduction of a work in legislative or judicial proceedings or reports' as an example of a fair use of copyrighted material."

- A copy of the radar training manual. (Same arguments as above).
- The repair history, maintenance history, and inspection history of the radar unit. State says the radar unit has no repair history.

(State v Green, 2010) – "...the judge erred when he refused to order the prosecutor to provide defendant with the repair history of the Stalker Lidar device for the twelve months preceding the request."

- A history of the citing officer's training and continuing education on all speed-measuring devices involved in this matter, who trained the officer, trainer qualifications, and where training took place.

(State v Green, 2010) – "The judge erred in limiting the scope of this request to the laser card as that hardly established the extent of [the officer's] training and experience in operating the Stalker Lidar device."

- State has provided a Radar Certification unsigned by the trainer. Defense asks for the citing officer's current Radar Operator Certification signed by a certified trainer.
- The Police Department's FCC License and/or authorization to use radar transmitters.

Defense argues that if Somerdale Police Department is not legally authorized to use radar transmitters, then any evidence collected by their radar units is inadmissible.

- All engineering and speed studies used to set the speed limit at the location of the alleged violation.

NJ Court Rule 7:7-7(a): "...the municipal prosecutor...shall be responsible for making government discovery available to the defendant."

(People of California v Abelson, 1980) – "...the burden was placed on the prosecution to demonstrate the existence of an engineering and traffic survey to justify the speed limit."

- Any certifications for the use of traffic control signs and devices used to regulate speed at the location of the alleged violation.

N.J.A.C 5:21-4.13 Street and traffic signs

(a) Design and placement of traffic signs included in "Manual on Uniform Traffic Control Devices for Streets and Highways" shall follow the requirements specified in "Manual on Uniform Traffic Control Devices for Streets and Highways," published by the U.S. Department of Transportation and adopted by the N.J. Department of Transportation.

- Citing Officer's cell phone, text, and data records, both personal and business, for the shift in question. Numbers and content can be blacked out. Defense would like to know if the Officer could have been distracted while at work.
- The citing officer's written description of the scene or a diagram including location, direction, and speed of all police vehicles. Defense respectfully asks the Court to consider Defendant's right to know exact position and direction of police vehicles, in order to return to the scene and collect relevant evidence.

WHEREFORE, Defendant prays unto this Court that a Motion to Compel Discovery Evidence be granted.

I certify that 2 copies of this Motion have been delivered to the Municipal Court within the deadlines specified by the Court.

I certify that the foregoing statements made by me are true. I am aware that if any of these statements made by me are not true, I am subject to punishment.

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Name Removed, Defendant

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Date