

Name **Removed**
Address **Removed**
Address **Removed**
Phone: **Removed**
Email: **Removed**

DATE REMOVED

MUNICIPAL COURT OF **REMOVED**, COUNTY OF **REMOVED**

STATE OF NEW JERSEY)	SUMMONS No.: REMOVED
Plaintiff)	ISSUED: DATE REMOVED
vs.)	
REMOVED)	MOTION FOR DISMISSAL:
Defendant)	SPEEDY TRIAL
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Defendant, charged with violation of N.J.S.A. 39:4-98 hereby moves to dismiss the charge. Defendant will show the Court that the Sixth and Fourteenth Amendments of the US Constitution guarantees of Due Process and Speedy Trial, further supported by Article 1, 10th Right and Privilege of the New Jersey State Constitution have been violated in this case.

I.

LENGTH OF DELAY: 296 days as of the upcoming court date of 10/26/2016. When deciding the reasonableness of this delay, please consider other US States and the lengths of time for traffic infractions that violate Defendant's right to a Speedy Trial including New York at 30 days (CPL 30.30), California at 45 days (PC 1382(a)(3)), and Florida at 180 days (TCR 6.325).

II.

REASON FOR DELAY: State has caused the majority of delay by failing to make timely disclosure of evidence, misleading the Court, waiting 2 months to follow a Court order, and hindering the Defendant's Court ordered review of evidence. Also, the Municipal Court schedule itself has caused significant delay.

- The State broke NJ Court Rule 7:7-7(g) by taking 35 days to initially respond on 4/27/16 to the discovery request of 3/23/16.

NJ Court Rule 7:7-7(g): “The municipal prosecutor shall respond to the discovery request in accordance with paragraph (b) of this rule within 10 days after receiving the request.”

- On 5/25/16, the State, without authority or reason, misled the Court and caused considerable delay. Lt. **Removed** reported on record that the State could not release the radar operating manual PDF file to the Defendant because it is copyrighted material.

There can be no interpretation of copyright law that prevents the State from transferring the PDF file of the radar operating manual. The use of this copyrighted material is for nonprofit research to prepare an adequate defense.

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

“Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”

PLEASE NOTE, the Rules Governing Practice in the Municipal Courts of New Jersey specifically provide for the transfer of this material:

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 pursuant to paragraphs (a), (b), (c), and (h) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format.”

- The State took an unreasonable amount of time to follow a Court order. On 5/25/16, Lt. **Removed** was ordered by the Court to email MPH Industries to gain permission for the release of the radar operating manual PDF file.

Over 2 months later, on 7/27/16, Lt. **Removed** finally confirmed with the Defendant that he contacted MPH Industries.

- The State has not shown due diligence in making government Discovery available to the Defendant in a timely manner. Lt. **Removed** did not return Defendant’s emails or phone calls from 5/23/16 to 7/12/16.

Lt. **Removed** suggested a course of action, which the Court was aware of, and which the Defendant followed in good faith to obtain Discovery from MPH Industries: MPH

Industries was contacted on 5/23/16 in an effort to get the Radar Operating Manual PDF file, but **Removed** at MPH Industries said she wouldn't release the file unless a police officer authorized it and to have Lt. **Removed** contact her.

Defendant emailed Lt. **Removed** multiple times for the purpose of asking him to contact MPH Industries regarding the release of the PDF file. Defendant emailed Lt. **Removed** on 5/23/16, 5/31/16, 6/9/16, 6/14/16, 6/20/16, 6/29/16, 7/2/16, and 7/10/16 without a single reply.

Defendant also made at least 6 unanswered phone calls to Lt. **Removed** from 5/23/16 to 7/10/16 in an effort to obtain the PDF file.

Defendant reported to the **Removed** Police Station on or about 7/9/16 to find out why Lt. **Removed** was not answering her calls or emails.

On 7/13/16, Lt. **Removed** finally called the Defendant back, apologized for not calling sooner, and said he would call the Defendant the following week with information concerning Discovery.

But Lt. **Removed** did not call the following week.

Lt. **Removed** finally emailed Defendant 7/27/16 saying he authorized MPH Industries to transfer the PDF file.

PLEASE NOTE, Defendant argues it is the Municipal prosecutor's duty to provide access to evidence. The State has the burden of making Discovery available to the Defendant.

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

- The State did not make a diligent effort to comply with an ordered and legally proper Discovery request, causing further delay. On 8/24/16, Lt. **Removed** was ordered by the Court to make the radar operating manual and training manual available to the Defendant for review at the Police Station on the day of 9/7/16.

The State limited, controlled, and made unreasonable the review of evidence to the Defendant on 9/7/16. Specifically, Lt. **Removed** scrolled through electronically stored manuals on his computer while Defendant was prevented from touching the computer and forced to view the material from the opposite side of the desk.

- The Municipal Court, having only 12 calendar dates a year, has limited scheduling opportunities and cannot reasonably cope with delays caused by opposing parties.

State Vs Farrell (1999): "As a general rule in applying the evaluative features of the four-part test of Barker in fundamental fairness terms, delays of scheduling and other failures

of the process for which the trial court itself was responsible are attributable to the State and not to the defendant."

III.

ASSERTION: Defendant continues to assert her right to a speedy trial.

IV.

PREJUDICE: Defendant has lost wages, arranged for babysitters, missed her daughter's musical program, and felt a great stress because of this unresolved charge.

Moore Vs Arizona (1973): Prejudice can be found from a variety of factors including employment interruptions, anxieties concerning unresolved prosecution, and the drain on finances.

WHEREFORE, Defendant prays unto this Court that the Motion for Dismissal be granted.

I certify that a copy of this Motion has been mailed or delivered to the Municipal Court and also to the Prosecuting Attorney, within the deadlines specified by the Rules of 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.

Removed, Defendant

Date