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THE STATE OF NEW JERSEY

v.

Defendant

MUNICIPAL COURT OF _____

SUMMONS NO.

Offense: DWI, refusal, reckless, lane
vio Quasi Criminal Action- DWI

Brief to Dismiss Refusal Summons
Based on Police Failure to read
correct refusal statement as required
by NJ Attorney General

The New Jersey Attorney General's office on April 27, 2004 issued a new directive to all Police Departments revising the standard DWI Refusal Statement.

The Attorney General wrote: "Effective Monday, April 26, 2004, Governor James M. McGreevey signed Assembly Bill No. 2259, into law. This bill amends the penalties for refusing to submit to chemical breath testing, N.J.S.A. 39:4-50.4a. The provisions in this bill became effective immediately upon adoption (A2259 [1R], §4).

With the adoption of this bill, it was necessary to have the Chief Administrator of the New Jersey Motor Vehicle Commission (formerly the Director, Division of Motor Vehicles) approve a revised Standard Statement for Operators of a Motor Vehicle, pursuant to N.J.S.A. 39:4-50.2(e). The NJ MVC Chief Administrator approved that revision to become effective immediately upon the adoption of Assembly Bill No. 2259, First Reprint, into law. A copy of the revised Standard Statement for Operators of a Motor Vehicle is attached. It is also available, in an Adobe Acrobat PDF format, on the Division of Criminal Justice internet website at www.njdcj.org or at www.state.nj.us/lps/dcj, under the heading Attorney General Guidelines, DWI Enforcement, "NJ MVC Standard Refusal Statements."

Accordingly, this Letter-Memorandum superseded the Letter-Memorandum dated January 22, 2004 entitled, "New DWI 0.08% Per Se Offense, Revised Standard Refusal Statement."

Effective immediately ALL law enforcement officers in this State who place a person under arrest for a DWI violation (N.J.S.A. 39:4-50) are required to use the attached April 26, 2004 revised Standard Statement. Officers who place a person under arrest for a CDL/DWI violation (N.J.S.A. 39:3-10.13) or operating a vessel while intoxicated (OVWI) violation (N.J.S.A. 12:7-46) are to continue to use the Standard Statements for those offenses, as revised effective February 1, 2001. Please note,

however, that the content of the Standard Statements cannot be altered or changed in any manner, and cannot be translated to any other language."

If the police officer reads an out dated statement, or does not read the statement "word for word", the refusal must be dismissed. The Appellate Division in State v Kayes reversed the Refusal where officer read outdated statement. State v. Kayes (App. Div. decided October 19, 2004). A-759-03T3, unreported

Convictions for refusing to submit to chemical tests and indecent exposure by urinating in public reversed; because the police officer read an outdated standardized refusal statement to the defendant, his conviction for refusing to submit to a chemical test was reversed; the officer's failure to sign the complaint did not require the dismissal of the urinating in public charge because the statute of limitations under the ordinance was one year and because the direction of the Municipal Court to the officer to sign the complaint cured the defect within the limitations period; however, the State failed to satisfy its burden of establishing indecent exposure or an act in a public place within the meaning of the ordinance where the defendant did not expose himself to anyone other than a consenting passenger in his car and where he had taken precautions to ensure that he would not be seen by pulling several feet off the road into a dark parking lot and by standing behind his car. Source: NJ Facts-on-Call Order No. 17186.

In 2001, the Attorney General previously issued a "Revised DMV Standard (Refusal) Statements". The Attorney General's Office wrote:

"In accordance with an amendment to N.J.S.A. 39:4-50.4a (P.L. 1999, c.185, §5) and to conform to a recommendation of the Supreme Court in State v. Widmaier, 157 N.J. 475, 498-499 (1999), the Standard Statements (commonly referred to as the "Refusal" statement), which must be read to every person arrested for a DWI violation under the provisions of N.J.S.A. 39:4-50, or for a DWI in a commercial motor vehicle violation under the provisions of N.J.S.A. 39:3-10.13, have been revised. These revisions, as adopted by the Acting Director of the Division of Motor Vehicles, will become effective

By law (N.J.S.A. 39:4-50.2(e); N.J.S.A. 39:3-10.24e), a standard statement prepared by the Director of DMV is required to be read to every person arrested by the police, based upon the officer's reasonable suspicion to believe that the person may have been operating a vehicle (N.J.S.A. 39:4-50) or a commercial motor vehicle (N.J.S.A. 39:3-10.13) while under the influence of alcohol or with a blood alcohol concentration at, or above, the per se level.

In State v. Widmaier, the Supreme Court recommended that the language of the supplemental or additional paragraph of the standard statement be simplified and clarified. Subsequent to that opinion, the Legislature adopted a substantive change in the penalties to be imposed by a court for a DWI refusal upon a finding that a defendant refused to submit to breath testing, in an amendment to N.J.S.A. 39:4-50.4a.2 As a result of these two independent actions, a comprehensive review all of the standard statements in use in this State was undertaken, and as a result, revisions were proposed and adopted for each one. Effective Thursday, February 1, 2001, all law enforcement officers in this State who place a person under arrest for a DWI violation (N.J.S.A. 39:4-50) or for a DWI in a commercial motor vehicle (CDL/DWI) violation (N.J.S.A. 39:3-10.13) are required to use the attached revised Standard Statement applicable to the offense charged. All preceding Standard (Refusal) Statements will no longer be valid after that date. Since these revisions do not become effective until Thursday, February 1, 2001, each law enforcement agency will have sufficient time to arrange for the reproduction and distribution of the new statements to all personnel and stations. Please note, however, that the content of the attached Standard Statements cannot be altered or changed in any manner, and cannot be translated to any other language. "

In April, 2004, the Standard Statement was revised.

Also, the Defense has filed a motion to Dismiss the DWI and refusal Summons Based on Police Failure to comply with NJ Attorney General Guideline on DWI and Refusal. The "ATTORNEY GENERAL GUIDELINE: PROSECUTION OF DWI & REFUSAL VIOLATIONS" of January 24, 2005 requires the arresting police officer to give the defendant a copy of the Alcohol Influence Report. The police failed to abide

by this mandatory instruction. Therefore, violation of an attorney General guideline should result in dismissal.

The Appellate Division recently court recognized that all Police Officers are bound by Attorney General Guidelines.

See In the Matter of William Carroll, 339 N.J. Super. 429 (App. Div. 2001) for a discussion of AG Guidelines and their enforceability. Judge [now Justice] Wallace wrote:

"In this regard we note that the Attorney General is the chief law enforcement officer of this State. N.J.S.A. 52: 17B s-98. The Legislature has authorized the Attorney General to provide for "uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State." Ibid. Consistent with this authority, the Attorney General has issued guidelines concerning the appropriate application of the criminal laws.

Our Supreme Court has acknowledged the validity of various guidelines issued by the Attorney General. See generally State v Brimage, 153 N.J. 1, 24-25 (1998) (the Attorney General was instructed to reevaluate and issue new plea offer guidelines to assist all counties in consistently applying the Comprehensive Drug Reform Act of 1997); Doe v. Poritz, 142 N.J. 1, 109-111 (1995)(holding constitutional, as modified, Attorney General's Guidelines for implementation of convicted sex offender registration and community notification statutes); Rawlings v. Police Dep't of Jersey City, 133 N.J. 182, 192 (1993) (Court cites with approval the Attorney General's Law Enforcement Drug Screening Guidelines); State v. Lagares, 127 N.J. 20, 32 (1992) (Court requires the Attorney General to issue guidelines which will assist prosecutors in rendering uniform decisions concerning enhanced drug testing)."

If a police officer fails to follow Attorney General's Guidelines on DWI and does not give the defendant a copy of the Alcohol Influence Report Form, then the DWI and refusal must be dismissed.