

STATE OF ILLINOIS)
COUNTY OF McHENRY) ss.

IN THE CIRCUIT COURT OF THE 19TH
JUDICIAL CIRCUIT, McHENRY COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
and/or)
VILLAGE/CITY of _____) No.
and/or _____)
and/or _____)
VS. _____)
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PRETRIAL MOTION PURSUANT TO COURT ORDER

- Motion for Discovery/police reports in lieu of Discovery (Section A below)**
- Motion to Quash Arrest and Suppress Evidence (Section B below)**
- Motion to Suppress Statements (Section C below)**
- Motion for Fitness Examination and Hearing (Section D below)**
- Motion in Limine (Section E below)**
- Motion to Modify Bond (Section F below)**
- Motion for Bill of Particulars (Section G below)**
- Motion for Filing of Verified Complaint (Section H below)**

- A. The Defendant through his/her attorney moves for discovery, including a list of witnesses, any confession of the defendant, evidence negating the defendant's guilt, and, if applicable, the results of the breathalyzer test; any arrest report must be available at trial for impeachment purposes. *People v. Schmidt*, 56 Ill.2d 572, 575, 309 N.E.2d 557, 558 (Ill. 1974)

Per local custom, the Defendant does accept police reports tendered in lieu of Schmidt discovery.

- B. The Defendant through his/her attorney moves this Honorable Court to quash the defendant's arrest and suppress any evidence and in support thereof states as follows:
1. The defendant has been charged with criminal misdemeanors and/or petty offenses.
 2. The defendant was detained, searched and arrested by a sworn law enforcement officer.
 3. The defendant was subsequently detained, his/her person and property searched, and the defendant subsequently arrested.
 4. The detention, search, and seizure of both the Defendant and his/her property were without, without exigent circumstances, without consent, without probable cause, without warrant and were, therefore, illegal.
 5. During the arrest and subsequent detention, the police and prosecution became aware of the existence of physical evidence, witnesses, and other evidence all of which were the direct and indirect fruits of the illegal arrest and detention, and which the State intends to introduce at trial.
 6. The search and seizure of the Defendant's person violated the Defendant's rights under the 4th, 5th, 6th, and 14th Amendments of the United States Constitution and Article One, Sections Two, Six, and Ten of the State of Illinois.

WHEREFORE, Defendant respectfully requests this Honorable Court to find that his/her arrest was illegal because of the absence of a proper basis to effect it, and to quash the arrest and suppress as evidence in this cause the following:

- A. Physical evidence discovered directly and indirectly as a result of the illegal arrest and detention, including but not limited to identification cards or papers, drivers license, glass/ceramic pipes, alleged residue, any alleged green leafy substance or cannabis, any - _____ colored water pipe, any smoking pipes and metal postal scale, any brass knuckles, or any multi-colored glass smoking pipe.
 - B. Statements, utterances, reports of gestures and responses by the Defendant during the detention that followed his/her arrest, including any statements.
 - C. Testimony of witnesses who viewed the Defendant during his/her detention following the arrest, as well as the testimony of witnesses discovered as a result of the arrest, provided that the Defendant has the right to call said witnesses to testify for the purpose of protecting his/her constitutional rights.
 - D. Photographs, fingerprints, and other information that are the products of the processing of the Defendant following his/her arrest, and the fruits thereof;
 - E. All other knowledge and the fruits thereof, witnesses, statements, whether written, oral, or gestural, and physical evidence that are the direct and indirect products of the arrest.
- C. The defendant through his/her attorney moves, pursuant to 725 ILCS 5/114-11, that this Honorable Court suppress as evidence in this cause any and all communications, confessions, statements, and admissions, whether written or oral, and whether inculpatory or exculpatory, alleged to have been made by the Defendant prior to, at the time of, or subsequent to his/her arrest in this cause, and in support of this motion states as follows:

1. The Prosecution has advised the Defense that it intends to introduce certain alleged oral statements made by the Defendant before, at the time of, or after, his/her arrest.
2. Said statements were made in response to interrogation of the Defendant by law enforcement officers.
3. Said interrogation of Defendant by law enforcement officers occurred at unknown locations.
4. Prior to his/her interrogation, the Defendant did not, and was not afforded the opportunity to, knowingly waive his/her constitutional rights, particularly:
 - a. his/her right to remain silent;
 - b. his/her right to consult with a lawyer at any time;
 - c. his/her right to have a lawyer present during any interrogation;
 - d. his/her right to have a lawyer provided if he/she were indigent;
 - e. his/her right to terminate questioning at any time, and
 - f. that what he/she said could be used against him/her in court.
5. Prior to his/her interrogation the Defendant was not:
 - a. informed that he/she had a right to remain silent;
 - b. informed that anything he/she might say or do could be used against him/her in a court of law;
 - c. informed that he/she had a right to consult with a lawyer prior to questioning;
 - d. informed that he/she had a right to have a lawyer present during the interrogation; nor
 - e. informed that, if he/she were indigent, a lawyer would be provided for him/her.
6. The Defendant did not knowingly and intelligently waive his/her right to remain silent and not otherwise incriminate himself/herself as required by *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966). After his/her arrest, he/she was not correctly or fully advised of his/her rights, including:
 - a. his/her right to remain silent;
 - b. that anything he/she might say or do could be used against him/her in court;
 - c. his/her right to consult with a lawyer at any time;
 - d. his/her right to have a lawyer present during any interrogation;
 - e. his/her right, if indigent, to have a lawyer provided for him/her;
 - f. his/her right to terminate questioning at any time, or obtain a lawyer.
8. That due to the physical, physiological, mental, emotional, educational, and/or psychological state, capacity, and condition of the Defendant, he/she was incapable and unable to and did not appreciate and understand the full meaning of he/her *Miranda* rights, so any relinquishment of such rights was therefore not the free and rational choice of the Accused and was not made voluntarily, knowingly, and intelligently.
9. The statements sought to be suppressed were obtained as a result of interrogation that continued after the Defendant had elected to remain silent and/or had elected to consult with an attorney prior to further questioning.
10. Therefore, any and all confessions, statements, admissions, or tests executed by the Defendant at the time of, prior to, and after his/her formal arrest were elicited in violation of her rights under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and §2, 8, and 10 of Article I of the Constitution of the State of Illinois.

IN ADDITION, the Defendant states as follows:

11. The statements sought to be suppressed were obtained as a result of psychological and mental coercion directed against the Defendant, and such statements were, therefore, involuntary.
12. The statements sought to be suppressed were obtained as the product of and as the result of confronting the Accused with certain evidence which had been obtained in violation of the Defendant's protection against illegal searches and seizures, as provided by the Fourth and Fourteenth Amendments of the United States Constitution, and Article I, §6, of the Constitution of the State of Illinois.
13. The statements sought to be suppressed were obtained as a result of confronting the Accused with certain material misrepresentations of fact known by the interrogator to be misrepresentations.
14. The statements sought to be suppressed were obtained as a result of promises of leniency and/or immunity and were, therefore, involuntary.

15. The statements made by the Defendant were induced by direct and indirect promises and threats and were, therefore, involuntary.
16. The statements sought to be suppressed were obtained as the result of an illegal arrest.
17. Therefore, any and all statements made by the Defendant were elicited in violation of his/her constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and his/her rights under the Constitution of the State of Illinois.

WHEREFORE, the Defendant prays this Honorable Court:

- A. Conduct a pretrial hearing to determine whether the statements were given as a result of *Miranda* violations, and/or whether the statements were involuntary.
 - B. Suppress as evidence in this cause any and all communications, confessions, statements, admissions, or tests, whether written or oral, and whether inculpatory or exculpatory, made by the defendant prior to, at the time of, or subsequent to, his/her arrest.
- D.** Now comes the attorney for the Defendant and moves this Honorable Court, pursuant to 725 ILCS 5/104-11, for an examination and hearing on the issue of Defendant's fitness to stand trial. In support thereof, Counsel states as follows:
1. The Defendant is charged with the misdemeanors and/or petty offenses.
 2. Counsel has been appointed to represent the Defendant.
 3. Counsel has interviewed Defendant.
 4. Counsel believes there is a bona fide doubt as to the Defendant's fitness to stand trial.

WHEREFORE, counsel requests this Honorable Court to appoint an expert to examine the Defendant and that a hearing be held to determine the Defendant's fitness to stand trial.

- E.** The defendant through his/her attorney moves this Honorable Court to order Prosecution or witnesses to avoid all references to the following:
- 1) Disclosing defendant's status as indigent or that he/she is represented by the Public Defender's Office.
 - 2) Discussing the likelihood of pardon, parole, probation, conditional discharge, or court supervision. *People v. Murphy*, 276 Ill. 304, 114 N.E. 609 (1916).
 - 3) Referring to or introducing any evidence of other bad acts or crimes for which the defendant has not been charged or convicted. In support of said motion it is alleged as follows:
 - a) The police reports in this case refer to other offenses and acts of violence allegedly committed by the Defendant.
 - b) These unrelated acts and offenses are irrelevant to anything at issue in this cause.
 - c) If this evidence is introduced by the State during the case in chief, it will deny Defendant a fair trial, in violation of both the United States and Illinois Constitutions.
 - d) The prejudicial impact of evidence regarding other acts and offenses allegedly involving the Defendant will greatly outweigh any probative value.
 - e) *People v. Illgen*, 204 Ill.App.3d 701, 562 N.E.2d 341, 149 Ill.Dec. 877 (3rd Dist. 1990), provides persuasive authority that this Honorable Court has broad discretion to bar or limit prejudicial evidence in situations similar to this.
 - 4) Referring to or cross-examination with respect to arrests, indictments, or commission of offenses or bad acts. The credibility of any witness, including a reputation witness, may not be attacked upon cross-examination by questioning the witness concerning specific instances of his misconduct not leading to a conviction. *People v. Celmars*, 332 Ill. 113, 163 N.E. 421 (1928); *People v. Bennett*, 413 Ill. 601, 110 N.E.2d (1953); *People v. Norwood*, 54 Ill.2d 253, 296 N.E.2d 852 (1973).
 - 5) Accusing defense counsel of creating lies, innuendoes, misrepresentations, and trying to "dirty up the victim," which improperly shifts the issue from guilt-innocence to the relative credibility of counsel and therefore constitutes reversible error. *People v. Emerson*, 97 Ill.2d

487, 455 N.E.2d 41, 45, 74 Ill.Dec. 11 (1983). (It is also improper to suggest that the defendant's attorney is trying to "hoodwink" the jury.) *People v. Polenik*, 407 Ill. 337, 95 N.E.2d 414, 420 (1950).

- a) Introducing evidence of any prior convictions during its case in chief or during its rebuttal or by way of impeachment of the Accused. As grounds for said motion, it is alleged as follows:
 - b) If any convictions are introduced by the People during the case in chief, it will deny Defendant a fair trial.
 - c) If any convictions are introduced by the People during rebuttal, it will irreparably prejudice Defendant and deny his/her due process of law and a fair jury trial.
 - d) The prejudicial impact of any prior conviction on the jury will outweigh any probative value.
 - e) Any prior convictions have lost any probative value they may have once had.
 - f) *People v. Montgomery*, 47 Ill.2d 510, 268 N.E.2d 695 (1971), and *People v. Williams*, 161 Ill.2d 1, 641 N.E.2d 296, 204 Ill.Dec. 72 (1994), provide authority that this Honorable Court has broad discretion to bar or limit this prejudicial evidence.
- 6) Accusing defense counsel of attempting to create reasonable doubt through "confusion, indecision, and misrepresentation." *People v. Weathers*, 62 Ill.2d 114, 338 N.E.2d 880, 883 (1975).
 - 7) Stating that a defendant should not be believed because he/she has a motive to lie. *People v. Crowder*, 239 Ill.App.3d 1027, 607 N.E.2d 277, 280, 180 Ill.Dec. 383 (3rd Dist. 1993); *People v. Ellis*, 233 Ill.App.3d 508, 599 N.E.2d 498, 501, 174 Ill.Dec. 714 (3rd Dist. 1992). (It is also improper to state that a defendant is presumed to be untruthful. *People v. Watts*, 225 Ill.App.3d 604, 588 N.E.2d 405, 407, 167 Ill.Dec. 764 (3d Dist. 1992).)
 - 8) Commenting on the defendant's failure to testify, which has been extended to include comments about the defendant's failure to express remorse. *People v. Wollenberg*, 37 Ill.2d 480, 229 N.E.2d 490, 494-495 (1967); *Griffin v. California*, 380 U.S. 609, 14 L.Ed.2d 106, 85 S.Ct. 1229 (1965).
 - 9) Commenting on the defense's failure to present evidence, which is tantamount to commenting on the defendant's failure to testify—particularly if the only witness available to the defense is the defendant. *Williams v. Lane*, 826 F.2d 654 (7th Cir. 1987); *People v. Chellev*, 104 Ill.App.2d 100, 243 N.E.2d 49 (2d Dist. 1968).
 - 10) Commenting on defendant's post-arrest silence. *People v. Beller*, 74 Ill.2d 514, 386 N.E.2d 857, 25 Ill.Dec. 383 (1979); *Doyle v. Ohio*, 426 U.S. 610, 49 L.Ed.2d 91, 96 S.Ct. 224 (1976).
 - 11) Attempting to define "reasonable doubt." *People v. Speight*, 153 Ill.2d 365, 606 N.E.2d 1174, 180 Ill.Dec. 97 (1992); *People v. Weinstein*, 35 Ill.2d 467, 220 N.E.2d 432 (1966).
 - 12) Arguing facts that are not in evidence. *People v. Beier*, 29 Ill.2d 511, 194 N.E.2d 280 (1963).
 - 13) Labeling the defense attorney's argument as a "smoke screen." *People v. Kidd*, 147 Ill.2d 510, 591 N.E.2d 431, 445, 169 Ill.Dec. 258 (1992).
 - 14) Arguing that facts admitted for a limited purpose be considered for another purpose. *People v. Paradise*, 30 Ill.2d 381, 196 N.E.2d 689 (1964).
 - 15) Giving personal opinions as to the guilt of the accused. *People v. King*, 276 Ill.138, 114 N.E. 601 (1916); *People v. Provo*, 409 Ill. 63, 97 N.E. 802 (1951); *People v. Hoffman*, 399 Ill. 57, 77 N.E.2d 195 (1948); *People v. Caballero*, 126 Ill.2d 248, 533 N.E.2d 1089, 128 Ill.Dec. 1 (1989).
 - 16) Appealing to the sympathy, passion, or prejudice of the jury. *People v. Dukes*, 12 Ill.2d 334, 146 N.E.2d 14 (1957); *People v. Spreitzer*, 123 Ill.2d 1, 525 N.E.2d 30, 121 Ill.Dec. 224 (1988).
 - 17) Suggesting to the jury that they will be in danger from the accused should they acquit. *People v. Garreau*, 27 Ill.2d 388, 189 N.E.2d 287 (1963); *People v. Lurry*, 77 Ill.App.3d 108, 395 N.E.2d 549, 32 Ill.Dec. 319 (3rd Dist. 1979).
 - 18) Suggesting to the jury that defense counsel is a "paid advocate" and therefore lacks credibility. *People v. Hawkins*, 284 Ill.App.3d 1011, 675 N.E.2d 642, 645-646, 221 Ill.Dec. 447 (1996).

- 19) Arguing that the jury would have to find all the prosecution's witness were lying in order to find the defendant not guilty. *People v. Roman*, 98 Ill.App.3d 703, 424 N.E.2d 794, 54 Ill.Dec. 44 (2d Dist. 1981).
- 20) Reference to the any alleged alcohol or substance abuse problem, any alcohol or substance abuse treatment, and any use of alcohol or substances, specifically but not limited to, on the date of the alleged occurrence.

WHEREFORE, Defendant prays this Honorable Court grant the following relief:

A. That the Prosecution be barred from referring to any of the foregoing during its opening statement and final arguments.

B. That the Prosecution be barred from questioning any witness about the foregoing matters in a manner that would communicate the same message.

- F.** The Defendant through his/her attorney moves this Honorable Court to modify the standard conditions of defendant's bail:
1. One of the standard provisions of defendant's bond sheet requires that he/she not depart the state of Illinois while this matter is pending.
 2. It is necessary for the defendant to leave the state of Illinois.
 3. Defendant does not pose a threat to flee the jurisdiction in an effort to evade prosecution or otherwise evade court proceedings.

WHEREFORE, Defendant prays that this Honorable Court modify the defendant's bond to allow him/her to leave the state of Illinois.

- G.** The Defendant through his/her attorney moves, pursuant to 725 ILCS 5/114-2, for a bill of particulars. As grounds for said motion it is alleged as follows:
1. The Defendant was charged by means of an information or complaint.
 2. The information in this cause fails to indicate the exact date that the crimes are alleged to have occurred.
 3. The indictment fails to provide the accused with notice of when the crime allegedly occurred and thus denies Defendant due process of law guaranteed by both the United States and Illinois Constitutions.
 4. Absent specific allegations regarding the date of the alleged crime, the Defendant is unable to prepare a defense.
 5. Should the People fail to prove the allegations in the information, the Defendant could be retried for the same offense and is therefore being denied the protection provided by double jeopardy law.

WHEREFORE, Defendant prays for the following relief:

A. That the People be ordered to provide an answer to this motion for a bill of particulars.

B. That the People be ordered to provide the defendant with the exact date, or dates, on which this crime is alleged to have occurred.

C. That this Court order whatever other relief it deems appropriate.

- H.** The Defendant through his/her attorney moves this Honorable Court to direct the prosecutor to file a verified complaint for the above captioned cases:
1. The defendant has been charged with misdemeanors and/or petty offenses.
 2. The complaints are traffic citations issued on Uniform Traffic Tickets.

3. 725 ILCS 5/111-3 entitled "Form of charge" states that, "(b) . . .the copy of such Uniform Ticket which is filed with the circuit court constitutes a complaint to which the defendant may plead, *unless he specifically requests that a verified complaint be filed.*"
4. Pursuant to 725 ILCS 5/111-3, the defendant has a right to a verified complaint upon request.

WHEREFORE, Defendant respectfully requests this Honorable Court to direct the state to cause a verified complaint to be filed.

Respectfully submitted,

Attorney for Defendant

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