

Fw: Formal Notice, IA Complaint & Request for Immediate Release of Vehicle (F35VLP)

From dTb33@pm.me <dTb33@pm.me>

To HTPD.Chief@hamiltonatlnj.gov, HTPD.ia@hamiltonatlnj.gov

Date Thursday, December 4th, 2025 at 6:24 PM

Chief Virga and Internal Affairs,

Please see the formal notice below regarding the impoundment and continued retention of my vehicle (2019 Volkswagen Passat, NJ Plate F35VLP). I have filed an Emergency Motion for Return of Property through JEDS and am requesting immediate corrective action, full evidence preservation, and Internal Affairs review. Given the ongoing deprivation of property and the procedural issues noted, I respectfully request written acknowledgment and response within 24-72 hours. The formal notice begins below. — Devon Tyler Barber

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----- Original Message -----

On Thursday, 12/04/25 at 18:23 [dTb33@pm.me](#) wrote:

Chief Michael Virga, Ph.D.
Chief of Police
Hamilton Township Police Department
6101 Thirteenth Street
Mays Landing, NJ 08330

Dear Chief Virga:

I submit this correspondence as a **formal notice**, a **comprehensive Internal Affairs complaint**, and a **litigation hold and evidence-preservation demand** regarding the seizure and continued retention of my 2019 Volkswagen Passat (NJ Plate **F35VLP**) following my arrest on October 30, 2024.

Earlier today, I filed an **Emergency Motion for Return of Property** through the Judiciary Electronic Document System (JEDS). This notice is provided to allow the Department the opportunity to resolve these issues *ab initio*—at the outset—before judicial intervention becomes necessary.

1. Absence of Statutory Authority (*Ultra Vires* Retention)

Although I was taken into custody, the arrest was **not** for any offense authorizing impoundment under Title 39 or any forfeiture statute. The Passat was not contraband, not evidence, and not subject to any enabling statute. Retention of property without clear statutory authority is *ultra vires*—beyond lawful power—and inconsistent with due-process guarantees. *State v. One 1990 Honda Accord*, 154 N.J. 373 (1998).

Warrantless impoundments are permissible only when police act pursuant to a legitimate community-caretaking function or follow standardized, non-discretionary procedures. *State v. Mangold*, 82 N.J. 575 (1980); *Colorado v. Bertine*, 479 U.S. 367 (1987). Neither condition was satisfied.

2. The Vehicle Was Fully Operable and Presented No Hazard

The Passat was operable, safely positioned, and presented no hazard whatsoever. I had responsibly scheduled routine brake service at Midas and had recently rescheduled because the brakes still retained **adequate usable life**. Nothing about the vehicle's mechanical condition or location created a safety issue that could justify a caretaking impoundment.

Under *State v. Edmonds*, 211 N.J. 117 (2012), a caretaking impoundment is lawful only where a vehicle is a genuine hazard or cannot be reasonably secured. Under *State v. Slockbower*, 79 N.J. 1 (1979), police must consider *the least intrusive alternative*. Several such alternatives—leaving the car legally parked, permitting retrieval by a licensed driver, or allowing a private tow—were readily available but were not considered.

3. Deviation from Accepted Practice (Selective Enforcement)

In New Jersey, motorists arrested for non-impoundable offenses are routinely given the option to have a licensed driver retrieve the vehicle, leave it legally parked, or arrange a private tow. None of these options were provided, despite the absence of any hazard. Such deviation raises concerns of inconsistent application of discretion and potential retaliatory escalation.

4. Procedural Due-Process Violations (*Mathews v. Eldridge*)

I received no impound notice, no inventory, and no written documentation establishing lawful towing authority. This absence of notice and process violates the due-process framework articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and the procedural-fairness principles recognized in *State v. Morales*, 390 N.J. Super. 470 (App. Div. 2007).

5. Denial of Access to Personal Property

Despite contacting the Department, I was not permitted to retrieve essential personal belongings, tools, work materials, or documents from the vehicle. New Jersey towing standards require owners to be given access to personal property unless it is evidence. None of my belongings are evidentiary. Denial of access functions as a punitive measure, not a lawful administrative act.

6. Conditioning Release on Fees from an Unlawful Impoundment

I understand the Department's position to be that the vehicle will be released only upon payment of towing or storage fees. Conditioning the return of property on payment of charges arising from an **unauthorized impoundment** is a due-process concern. Government may not profit from or impose financial burdens connected to an act that was *unlawful ab initio*. Such a requirement operates as coercive leverage rather than a lawful administrative fee.

This violates the principles in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and constitutes an unreasonable continuing seizure under *United States v. Place*, 462 U.S. 696 (1983). Because the impoundment lacked statutory authorization, no fees may lawfully be imposed *pro tanto*—to that extent.

7. Continued Retention Constitutes an Unreasonable Seizure

Even if the initial taking were arguable—which it was not—the **continued** retention of my vehicle without lawful justification constitutes an unreasonable seizure under the Fourth Amendment and Article I, Paragraph 7 of the New Jersey Constitution. See *Place*, 462 U.S. 696; *Ercolano*, 79 N.J. 25.

8. Use of Force and Retaliatory Enforcement (IA Complaint)

Throughout the encounter, I remained compliant—windows down, hands visible, identification provided. Nevertheless, officers applied force to my wrists and upper body, resulting in ongoing pain and functional impairment in both wrists, my left shoulder, and my back. This force was inconsistent with *Graham v. Connor*, 490 U.S. 386 (1989); *Kopec v. Tate*, 361 F.3d 772 (3d Cir. 2004); and *State v. Brown*, 118 N.J. 595 (1990).

The issuance of nine charges—six summonses and three special complaints—immediately after I questioned the impound raises serious concerns of retaliatory enforcement prohibited by *Nieves v. Bartlett*, 587 U.S. ____ (2019).

9. ACPO Indicates No Supporting Basis for the Stop

The Atlantic County Prosecutor's Office has confirmed that it possesses **no responsive 911 or call-for-service records** corroborating the basis officers articulated for initiating the encounter. This discrepancy warrants supervisory examination.

10. Litigation Hold / Evidence Preservation Demand

Please preserve the following:

- body-worn camera recordings;
- mobile video/dashcam footage;
- CAD logs and MDT entries;
- radio transmissions and dispatch audio;
- tow authorizations and impound sheets;
- incident and supplemental reports;
- use-of-force reports;
- GPS/AVL data.

11. Tow-Yard Notification

Please notify the tow yard that the retention is contested, that I assert full ownership rights, and that I request immediate release without fees arising from an unauthorized impound.

12. Requested Corrective Action

I respectfully request that the Department:

- **authorize immediate release** of the vehicle;
- **waive all towing, storage, and administrative fees** associated with the unauthorized impound;
- permit immediate retrieval of personal property;
- ensure preservation of all evidence listed above;
- notify the tow yard accordingly;

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- initiate appropriate Internal Affairs review.

13. Request for Response

I respectfully request a written response within **24 hours-72 hours**. I may be reached at (609) 862-8808 or by email. A prompt departmental resolution remains the most lawful and efficient outcome for all involved.

Respectfully,

Devon Tyler Barber

3536 Pacific Avenue, A5

Atlantic City, NJ 08401

(609) 862-8808

info@tillerstead.com and Court Email: dTb33@PM.Me

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