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August 8, 2001

Michael Elbery, C57634
Southeastern Correctional Institute
12 Administration Road
Bridgewater, MA 02324

RE: Commonwealth v. Michael Elbery
Docket No. 0049CR003006

Dear Michael:

As per your request, enclosed please find the two (2) checks from the Commonwealth of Massachusetts in the amount of ninety (\$90.00) dollars each.

Please note that due to your previous correspondence, I went to Framingham District Court on July 18, 2001 for your trial. I was told that you had subpoenaed many witnesses. You were not brought to the court until close to 11:00 a.m. from the prison. Maureen Ferguson had to go to the eye doctor for a corneal abrasion on that day, and I had her cell phone number to contact her if she was required to testify. In the afternoon session of the court, the Commonwealth's witness, Gear, was still on the witness stand. Officer Sanchez was in the hall and stated that he was going to testify after Gear. Around 3:00 p.m., two (2) doctors arrived and the court decided to let them testify so they did not have to wait. Brian Warren was in the hallway and stated that he had to leave the state the next day for work. I told him to write you a note so that you could call him on the first day. I also told him he better make arrangements to postpone his trip. I asked him why David and Carmen weren't there. He said he didn't know. I called David's house from the courthouse and spoke to his mother. She said David was at work and could not reach him. I told her to tell him he had to be in court and to try and get him there as soon as possible. I also called Carmen's beeper number several times and asked Brian Warren to try and reach Carmen. Later, David had left a message at my office and I spoke to him that night. He said he didn't get a notice to go to court, but that he would go in the morning. I told him I had to be in another court in the morning and would be late getting to court. I asked him to contact Maureen immediately if we were required to testify in the morning.

August 8, 2001

Maureen called the court in the morning and told Darlene in the clerk's office that I would be late because of a morning court appearance and that she would be late because of another eye doctor appointment. She also told Darlene we would be available to testify that day.

Later in the morning, I called Darlene to check on the status of the case, and she told me that the court room was closed because the judge was already giving his final instructions to the jury. I could not believe that the case had moved so quickly! By the time I got down to the courthouse, you had been found not guilty by the jury.

I do not know what happened in the courtroom. Why didn't the judge allow you additional time to call your witnesses? We were available on the 18th and the 19th, and the court was aware of that fact.

In any event, I was happy to hear that you were found not guilty. The jury made the right decision.

Very truly yours,

Kenneth L. Brekka, Esq.

KLB/mf
Enc.