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December 21, 2000

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

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

Dear Michael:

In response to your letter dated December 6, 2000, please note the following:

1. The times on my notes were taken directly from the recording machine at the police station when I listened to the original tape. (#5). The phrase "assault took place" is on the tape. You have the tape. (#6). Phonetic for Chicago- listen to tape of Sanchez. Gier is phonetic for Gear. All of my comments were my notes while listening to the original tape.

2. The video tape I saw was not in color and difficult to discern details. The woman appeared to be white. You need to view the tape.

3. Your answers are on the tape of the hearing. Listen to the tape of the court proceeding. You need to obtain Gordon's address through discovery.

4. Star was not made by me. A star highlights anything to do with this case. My recollection is that I asked Trask to look for a call from Gear on 7/5/00 at 7:21 a.m., but no call was recorded at that time. According to the police, we have all of the communications. Any further information that you need must be obtained by you through discovery.

5. Notes of conversations with Mobil attorney: he said that he was told by the manager that the video tape does not exist.

6. Exhibit F is a continuation of Exhibit A. Listen to the tape of the police communications. My notes indicate that the first time I listened to the tape, we listened to all communications from your 911 call on July 4, 2000 to July 4, 2000 at 5:15 a.m. Then we went to July 5, 2000 at 7:15 a.m. to try to find the Gear call referred to in Exhibit D, page 2. No call found.

7. The only document dealing with the chain of custody is Exhibit G. They said that there is no other written documentation.

8. Mobil's phone number according to 411 information is (508) 389-1898. This was the only listing for Mobil in Westboro, other than for Mobil service stations. You need to obtain their address.

9. Exhibit I is my notes from my second visit to the police station. The police record and print out all 911 calls and keep a record of the calls. The time of the call is recorded on the print-out. There was no log entry for your call to the station on July 6, 2000 - July 7, 2000. Your call came in on July 7, 2000 at 2:56.31 a.m. according to the time displayed on their recording machine. According to Trask, no log entrees are made unless an officer is sent out. I looked at the video tape of July 3, 2000 from before 7:00 a.m. to the end. I was looking for the shift change between 7:00 a.m. and 8:00 a.m. when Dolly normally comes in. The dispatcher you spoke to on July 7, 2000 at 2:56.31 a.m. was Officer Christopher Murtagh.

10. I don't know what picture you are talking about. My duplicate picture does not show a divider in the middle. SEE copy of picture I have enclosed. Please note the same cars in the exact same places. The tapes are the cassette tapes of the police communications given to me by the police .

In response to your letter dated December 8, 2000, please note the following:

1. The original pictures are at the police station. I have copies made on a copy machine. I already sent them to you.
2. The booking picture is at the police station. You have a right to look at these pictures through discovery at the courthouse.
3. The Commonwealth must provide you with any medical record of the alleged victim. It is your obligation to pursue this matter through discovery.
4. You need to obtain the booking sheet through discovery.

5. In my previous letter to you, I stated what Sargent Trask told me about where they log calls.

6. The police provided me with a tape of all communications in this matter. If you believe there are other calls, you need to pursue this in court.

7. I gave you everything I received from the police department. If there is something else you need, you need to pursue it in court.

8. You need to obtain your own workers compensation documents.

9. You need to pursue the answers to your questions through discovery.

Also, please note that you have not responded to my letter regarding my fees. Please advise.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Kenneth L. Brekka', with a large, sweeping flourish extending to the right.

Kenneth L. Brekka, Esq.

KLB/mf
Enc.

