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September 21, 2000

via: FACSIMILE #(508) 879-8966  
and FIRST CLASS MAIL

Framingham District Attorney's Office  
100 Concord Street  
Framingham, MA 01701

RE: Commonwealth v. Michael Elbery  
Docket No. 0049CR1893

Dear Sir/Madam:

In compliance with the court's ruling on September 13, 2000 on the Defendant's Motion for Disclosure of Exculpatory Evidence, please note that exculpatory evidence exists in this particular case.

First, the Defendant has knowledge of the existence of video taping equipment at the scene of the alleged incident. He specifically requested his manager, Dolly Olecki, to save the video tape. The Framingham police obtained a video tape and allowed Defense counsel to view it at the police station. The video tape shown to Defense counsel was the wrong tape. The Defendant demands the production of the correct video tape which will contain exculpatory evidence.

The Defendant also demands that the Commonwealth provide the Defendant the following information:

1. The date and time all video tapes were received by the police in this case.
2. The full name of the officer who received the video tape in this case.
3. The full name and address of the person who provided the police with the video tape in this case.
4. The complete chain of custody of all video tapes collected by the police in this case.

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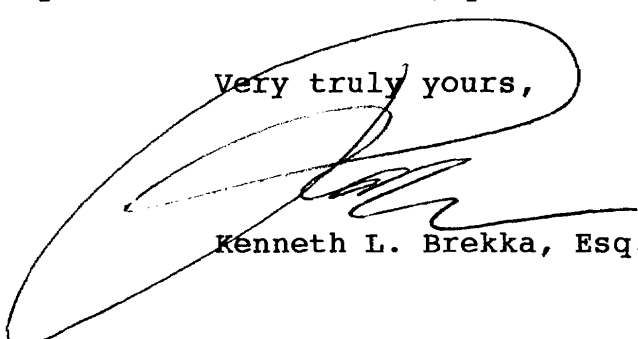
5. All facts observed by the police officer who received the video tape in this case, including, but not limited to the location of the video tape prior to receiving the tape.
6. All statements by any individual related to the video tapes in this case.
7. The time and date that the police viewed all video tapes in this case.
8. All information related to any attempts to obtain additional video tapes in this case.
9. All information related to the whereabouts of the correct video tape in this case.

Second, the Defendant has knowledge that four (4) individuals witnessed him being assaulted by Peter Gear. These four (4) individuals reported this to David Correia, 17 Centennial Street, Foxboro, MA, 1-508-543-8834; Carmen T. Grandinetti, Jr., 78 Pennacook Drive, Leominster, MA, Beeper #978-320-2479; and Brian Warren, 361 Union Street, Ashland, MA, Beeper #781-579-1070, Home #508-881-8875. Mr. Correia, Mr. Grandinetti and Mr. Warren immediately responded to assist the Defendant and stayed at the scene when members of the Framingham police arrived at the scene.

The names of Mr. Correia, Mr. Grandinetti and Mr. Warren were obtained by the Defense by sending Subpoenas to Maximum Security and Mary Floyd as outlined in the Motion. The attendance of Mr. Correia, Mr. Grandinetti and Mr. Warren at trial is essential. Also, the names and addresses of the four (4) unnamed individuals who reported that the Defendant was being assaulted by the complaining witness is essential exculpatory evidence needed by the Defendant in order that he receive a fair trial.

Should you have questions or comments, please feel free to contact me.

Very truly yours,



Kenneth L. Brekka, Esq.

KLB/mf

cc: Michael Elbery