

Extra copy

Michael Elbery, C57634
SECC Prison ou -A
12 Administration Rd.
Bridgewater, Mass. 02324
3-15-01

Clerk- Framingham District Court
Criminal Division
600 Concord St.
Framingham, Mass. 01701

RE: Commonwealth v. Elbery #0049CR1893A (amended 3006AB)

Dear Clerk:

Please find for immediate filing and review,

"Defendant's Motion To Suppress Illegally Recorded Sanchez Call"

Affidavit in Support of Motion

Memorandum of Law in Support of Motion.

Certificate of Service

Thank you.

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket
#0049CR1893A (Amended 3006AB)

v.

Michael Elbery

Defendant's Motion To Suppress
Illegally Recorded Sanchez Call

1. The defendant Moves, pursuant to G.L. C. 272 s. 99, 18 USC s. 2510et seq, Article 14 of the Massachusetts Declaration of Rights to suppress the contents, as defined by G.L. C. 272s. 99, B5, the tape recording by Sgt. Sanchez of the F.P.D. of this defendant's phone conversation on 7-6-00.

2. The prosecution has designated that tape recording, in #1 above, as prosecution evidence.

The defendant further moves to suppress all evidence derived from the aforesaid intercepted wire communication:

As reasons therefore,

1. The communication was unlawfully intercepted (recorded).

2. The communication was not intercepted in accordance with the terms of G.L. C. 272 s. 99.

3. The evidence, alleged, of this 7-6-00 conversation between the defendant and F.P.D. - Sgt. Hector Sanchez wass illegally obtained.

See Defendant's Supporting Affidavits

See Defendant's Supporting Memorandum of Law

Michael Elbery, pro se

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Memorandum of Law

In Support of
Defendant's Motion to Suppress
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Per G.L. C. 272 S. 99 C 1 and 99 B 4 Mass. law outlaws electronic eavesdropping without the consent of all parties.

Article 14 of the Mass. Declaration of Rights protects citizens from violation of their expectation to privacy via electronic eavesdropping (tape recording). See Com. v. Blood, 507 N.E. 2d 1029, 1034, 400 Mass. 61.

"Consent by one party" to the conversation does not alter the need for a warrant by the police when recording a phone conversation. see Blood, p.1034 and 1037.

Electronic seizure by surreptitious recording is in violation of Article 14 of the Mass. Declaration of Rights. Blood, p. 1038. Such electronic seizure (tape recording) requires exclusion of the tape recording by Article 14 of the Mass. Declaration of Rights, id. The seizure (tape recording) being illegal, the fruits thereof must also be suppressed, id.

No testimony derived from either the transmission or recording is admissible. Therefore, no one who has listened to either the transmissions or the recordings may testify as to any thing thus heard. No evidence derived from those acts of eavesdropping may be admitted.

Michael Elbery, prose
3-15-01

COMMONWEALTH OF MASSACHUSETTS

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Affidavits in Support
of
Defendant's Motion to Suppress
Illegally Recorded Sanchez Call

1. I am the defendant, Michael Elbery.
2. I am not, nor have I ever been accused of being, associated with Organized Crime.
3. At approximately 7:30 a.m. on 7-6-00 I received a phone call at my residence at 168 Fairfield St., Needham, Mass., from a Sgt. Hector Sanchez of the Framingham Police Dept..
4. During that phone conversation in #3 I was not alerted that I was being recorded nor did I receive any signal indicating I was being recorded.
5. After several minutes of conversation it occurred to me that Sanchez could be illegally recording our conversation.

6. I immediately asked Sanchez if he was recording our phone conversation.

7. Prior to asking about the phone being recorded I had no idea Sanchez was recording me. The thought had not entered my mind until, as #5,6, I immediately asked Sachez about a recording.

8. Sanchez admitted that he was recording the conversation without alerting me as the law requires.

9. The police have altered that tape recording of the above conversation in order to subdue my question to Sanchez in #6 as inaudible.

Signed under the penalties and pains of perjury on this 15th day of March 2001.

Michael Elbery, pro se

Certificate of Service

I the defendant-pro se, Michael Elbery, sent this "Motion to Suppress" to the Clerk - Framingham Dist. Ct. , 600 Concord st., Framingham, Mass. 01701 and to the D.A.'s Office, 100 Concord St. Framinfham, Mass. 01701 all via U.S. Certified Mail-Return Receipt on 3-17-01 from SECC Prison.