

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket

v.

00-30067

Michael Elbery

DEFENDANT'S

MOTION TO SEQUESTER

&

EXCLUDE ANY POLICE OFFICERS FROM SITTING AT COUNSEL TABLE WITH A.D.A.

The defendant moves, pursuant to M.R.C.P. - Rule 21, that the Court sequester from trial all prosecution witnesses during the entire trial.

The defendant further moves the Court to not permit any police officer from sitting with the A.D.A. during pendency of the case, including the selection of the jury.

As reasons therefore, to permit a police officer to sit with the A.D.A. throughout the selection of the jury and the trial itself would, insofar as the jury were concerned, place that officer in a far more favorable light in terms of the jury's view of him as a witness, than any other witnesses at trial.

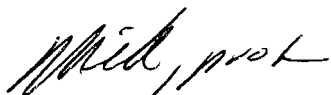
Further, the police officer is not "essential to the management of the case. Commonwealth v. Washburn, 5 Mass. App. Ct. 195,

197, 360 N.E. 2d 908, 909 ('77) quoting Com. v. Therrien, 359 Mass. 500, 508, 269 N.E.2d 687, 693 ('71). The case being conducted by highly experienced and able A.D.A. is a fairly routine and straightforward one. If any assistance is needed, another A.D.A., a paralegal or a non-testifying plain clothes police officer, may sit with and advise trial counsel/A.D.A.

"While we have recognized the essential role that an investigating officer often plays in the prosecution of a case, we have also noted the general undersirability of having a key prosecution witness sit at counsel table." Com. v. Salcedo, 405 Mass. 346, 348, 540, 540 N.E. 2d 1304, 1306 (1989) (Therrien citation, supra, omitted). See also Com. v. Perez, 405 Mass. 339, 342 ftnt. 4, 540 N.E.2d 681, 683 ftnt 4 ('89). Prosecutors should be mindful of the undersirability of endorsing a witness's credibility when deciding to have an essential witness sit at counsel table".

Wherefore,

The defendant moves to have all prosecution witnesses sequestered during entire trial and jury selection.



Michael Elbery, C57634

SECC

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5-11401