

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
FRAMINGHAM DISTRICT COURT

DOCKET # 0049 CR 1893

COMMONWEALTH OF MASSACHUSETTS)

VS.)

MICHAEL ELBERY)

) MOTION FOR DISCLOSURE
) OF EXCULPATORY EVIDENCE/
) REQUEST FOR
) HEARING
)

Now comes the Defendant, MICHAEL ELBERY, in the above entitled matter and respectfully moves this Honorable Court to direct the Commonwealth to provide to the Defendant the following exculpatory evidence and/or to order a discovery hearing on the subject as set forth below.

1. NAMES AND ADDRESSES OF WITNESSES:

The Defendant has personal knowledge of the existence of witnesses who were present during the alleged incident referred to in the complaint and that some of those witnesses were present during the initial police investigation at the scene on July 4, 2000 between 2:00 A.M. and 3:30 A.M. The names of those witnesses are not listed in the police report. The Defendant demands that this court order the Commonwealth to provide the names of these individuals or, in the alternative, order a discovery hearing in order for the Defendant to obtain the names of these witnesses. The Defendant has information that an employee of the Framingham Mobil Station, 896 Cochituate Road, Framingham, MA, by the name of

Mary Floyd has the names of these witnesses. She had promised the Defendant that she would provide the information to him but has refused to provide the names and addresses of the witnesses when contacted by counsel for the Defendant. Mary Floyd has been subpoenaed to court on September 13, 2000.

The Defendant also has information that one of these witnesses works for Maximum Security and his first name is Dave. Counsel for the Defendant has repeatedly contacted Maximum Security in an attempt to locate "DAVE", but Maximum Security refuses to cooperate and refuses to return telephone calls. The Defendant has also subpoenaed the keeper of payroll records from Maximum Security to court on September 13, 2000.

The Defendant must be allowed to use the court to obtain this valuable information in order for the Defendant to receive a fair trial in accordance with the United States Constitution and Article 12 of the Massachusetts Declaration of Rights.

2. VIDEO TAPE OF INCIDENT:

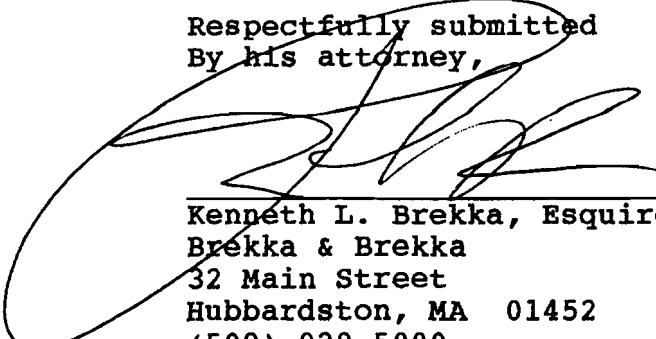
The Defendant has personal knowledge of the existence of video taping equipment that was in place at the scene of the alleged incident on July 4, 2000 between 2:00 A.M. and 3:30 A.M. The Defendant specifically requested his manager, Dolly Oleski, to save the video tape of the alleged incident. The police report

indicates that a video tape was given to the police from the Mobil Gas Station. Counsel for the Defendant reviewed the video tape at the Framingham Police Station. The video tape shown to Defendant's counsel does not contain any recorded information after July 3, 2000 at approximately 4:15 P.M. The Defendant demands that this court order the Commonwealth to provide the defense a copy of the correct video tape of the incident or, in the alternative, order a discovery hearing in order for the Defendant to obtain information related to the location of the correct video tape of the incident. The Defendant needs the following information in order to receive a fair trial in accordance with the United States Constitution and Article 12 of the Massachusetts Declaration of Rights. A copy of all records pertaining to the video cassette recorder located at the Framingham Mobil Station, 896 Cochituate Road, Framingham, MA, including but not limited to the following:

1. Make, model and serial number of the video cassette recorder.
2. Repair records of said recorder.
3. Manual related to said recorder.
4. Persons responsible for the repair or maintenance of the video recorder.
5. Persons with knowledge of the technical aspects of the video recorder.

Dolly Oleski, the store manager, has been subpoenaed to court on September 13, 2000.

Respectfully submitted
By his attorney,

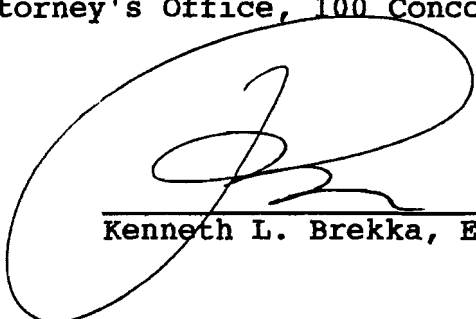


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Please take notice that the above motion will be called for hearing in the Framingham District Court on September 13, 2000 at 9:00 A.M.

CERTIFICATE:

I, Kenneth L. Brekka, hereby certify that on this 5th day of September, 2000 I mailed, via first class mail, a copy of this motion to the District Attorney's Office, 100 Concord Street, Framingham, MA 01701.



Kenneth L. Brekka, Esq.