

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

WESTBOROUGH DIST. CT.
NO 9467 CR 1900

COMMONWEALTH)
)
v.)
)
MICHAEL ELBERY)
)

AMENDED MOTION TO SUPPRESS

Now comes the defendant Michael Elbery and respectfully moves this Honorable Court to order suppressed the fruits of warrantless entries and searches of his storage container numbered C341 at EZ Mini Storage on 869 Boston Turnpike in Shrewsbury on August 5, 1994 by the Shrewsbury police. The observations allegedly made as a result of said warrantless entries and searches served as the sole basis for a warrant search conducted later that day by the Shrewsbury police.

The defendant further moves that the fruits of the warrant search be suppressed since the affidavit in support thereof contained material misrepresentations without which the warrant could not have been issued or which taint the warrant and render it unsuitable.

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In support of his motion the defendant says that the initial entries were warrantless and without lawful justification and that the warrant was obtained unlawfully. The police thus violated the defendant's federal constitutional rights under the Fourth and Fourteenth Amendments and his state constitutional rights under art. 14.

Respectfully submitted,
By his attorney,



Robert L. Sheketoff
BBO# 457340
SHEKETOFF & HOMAN
84 State Street
Boston, MA 02109
(617) 367-3449

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October, 1994 I served the above Amended Motion to Suppress; Further Affidavit of Counsel in Support of Amended Motion to Suppress and Post Hearing Memorandum in Support of Amended Motion to Suppress on the Commonwealth by mailing a copy of same, postage prepaid, to: ADA John Revelle, c/o Westborough District Court, 175 Milk Street, P.O. Box 1449, Westborough, MA 01581-1449.



Robert L. Sheketoff

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FURTHER AFFIDAVIT OF COUNSEL IN SUPPORT
OF AMENDED MOTION TO SUPPRESS

Robert L. Sheketoff being duly sworn deposes and says:

1. That I represent the defendant in the above named case.
2. That attached hereto and marked Exhibits One and Two are records provided to me by the Commonwealth as discovery concerning the revocation of the defendant's license to carry firearms.
3. That in support of the Amended Motion the defendant also relies on the previously filed Affidavit of Counsel In Support of Motion To Suppress (Warrantless Search), and on the evidence presented at the hearing on the Motion to suppress.
4. That I have seen the defendant's firearm identification card and have been provided no discovery by the Commonwealth showing that said card has been revoked.

26 SIGNED AND SWORN UNDER THE PAINS AND PENALTIES OF PERJURY THIS
DAY OF OCTOBER 1994.

Robert L. Sheketoff
Robert L. Sheketoff
SHEKETOFF & HOMAN
84 State Street
Boston, MA 02109
(617) 367-3449

NOV 27 1994
PH 12:50
DIVISION



TOWN OF SHREWSBURY

DEPARTMENT OF POLICE

106 Maple Avenue
Shrewsbury, Massachusetts 01545-2949



Tel. 845-4681

Robert K. McGinley
CHIEF OF POLICE

February 28, 1990

John P. Coakley
Chief John P. Coakley
Worcester Police Department
9-11 Lincoln Square
Worcester, MA 0168

Dear Chief Coakley:

This is to advise you that on February 28, 1990, this department arrested Michael G. Elbery, 370 Oak Street, Shrewsbury, D.O.B. 2/8/52, on a Worcester Police Department warrant charging assault and battery by means of a dangerous weapon. At the time of his arrest he was armed with a loaded 9 mm. pistol.

I am forwarding to you herewith his License to Carry Firearms D676140 issued by your department due to his business address of 3 Mill Street, Worcester, for any action that you deem appropriate.

Yours very truly,

Robert K. McGinley
Robert K. McGinley
Chief of Police

RKM:ck
Enc.



JOHN F. COAKLEY
CHIEF OF POLICE

DEPARTMENT OF POLICE
CITY OF WORCESTER

MASSACHUSETTS 01608-1172
(508) 729-8400

March 20, 1990

Michael G. Elbery
370 Oak street
Shrewsbury, mass. 01545

RE: License to Carry Firearms, NO. D 676140.

Dear Mr Elbery

This letter is to inform you that your License to Carry Firearms, NO. D 676140 has been revoked because you are unsuitable to hold such a license. You are considered unsuitable for the following reasons:

1. Arrested on warrant for Assault and Battery with a Dangerous Weapon. to wit Handgun.
2. Previous charges for Assault and Battery with a Dangerous Weapon.

Very truly yours,

John F. Coakley
John F. Coakley
Chief of Police

JFC:lm
:cc Commissioner of Public Safety

We have in our possession your Handgun Permit # D 676140