

.COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

**TRIAL COURT OF THE
COMMONWEALTH
SUPERIOR COURT DEPT.
INDICTMENT NOS.
0979CR01068, 0979CR01069;
0779CR00770; 0979CR00097;
1279CR00226; 0579CR01159;
1279CR00624; 1279CR00083;
0779CR01072, 0979CR01072,
1079CR00253**

Commonwealth

v.

**JERMAINE WATT
ERICK COTTO
LIZARDO VEGA
GLENDA APONTE
OMAR BROWN
FIORI LIQUORI
ROLANDO PENATE
BRYANT WARE**

**AFFIDAVIT OF ATTORNEY LUKE RYAN IN RESPONSE TO PARAGRAPHS 408-410
OF THE OFFICE OF THE ATTORNEY GENERAL'S
PROPOSED FINDINGS OF FACT**

I, Luke Ryan, state under the pains and penalties of perjury that:

1. I currently represent Lizardo Vega, the defendant in the above-referenced case of *Commonwealth v. Lizardo Vega*, Hampden County Indictment Number 0979CR0097.
2. I previously served as trial counsel for Rolando Penate, the defendant in the above-referenced case of *Commonwealth v. Rolando Penate*, Hampden County Indictment No. 1279CR0083.
3. On February 17, 2017, I received certain pleadings filed by the Attorney General's Office (AGO).

4. One of these pleadings was the AGO's "Proposed Findings of Fact."
5. Paragraphs 408 through 410 of this pleading state as follows:
 408. In the summer of 2014, Mr. Ryan approached the AGO to see if he could inspect the physical evidence that had been seized in the Farak case. Tr. V:70.
 409. Because the Farak criminal case was now closed, the AGO did not have any objection to counsel for third party defendants viewing the evidence. Tr. V:71, 223-224.
 410. The emails among the Assistant Attorneys General indicate that all readily and immediately agreed that they would assent to the inspection. See Ex. 257.
6. These representations do not accurately reflect how the AGO responded to my 2014 efforts to inspect this evidence.
7. Prior to 2014, I had made a number of informal and formal attempts to gain access to the physical evidence.
8. On October 2, 2013, Judge C. Jeffrey Kinder denied a motion to inspect I filed on behalf of Mr. Penate based, in part, on the fact that the prosecution against Sonja Farak (Farak) was still pending.
9. On January 6, 2014, Farak pled guilty to the charges against her.
10. On March 5, 2014, I filed, on behalf of Mr. Vega, a number of pleadings including a motion to inspect the physical evidence seized by the AGO during the Farak investigation and prosecution, as well as a motion to compel the production of Farak's personnel file.
11. At 4:19 that afternoon, I sent an email to Assistant Attorney General (AAG) Kris Foster (Foster) and attached a copy of these pleadings.
12. Upon receiving this email, the AGO did not readily and immediately agree to assent to the inspection.

13. Instead, Foster forwarded my email to AAGs Randy Ravitz (Ravitz) and Susanne Reardon (Reardon) to solicit their "Thoughts." **Ex. A**, Email from Foster to Ravitz & Reardon (Mar. 5, 2014; 4:26 pm).
14. Two days later, Foster advised AAG Anne Kaczmarek (Kaczmarek) that I was "now arguing that because Farak's case is over, [I] should get access to her personnel file," as well as "the evidence locker where the evidence against Farak is stored." **Ex. B**, Email from Foster to Kaczmarek (Mar. 7, 2014; 1:00 pm).
15. Foster concluded this email by stating: "I figure we're opposing these requests, but I wanted to let you know and see if you had any thoughts." *Id.*
16. Before a hearing could be scheduled on the Vega motion to inspect, I began representing Wayne Burston, the defendant in the Hampshire County case of *Commonwealth v. Wayne Burston*, Indictment Number 1380CR00113.
17. On June 23, 2014, I sent the following email to Foster:

Hi Kris,

Hope this finds you well. I am writing today because I represent a Hampshire County client charged with narcotics offenses and the substances at issue were deposited at the Amherst lab in December, 2012, never assigned to anybody, then brought to a state police lab where they were tested. I am moving to dismiss the drug charges and would like to take a look at the evidence seized during the Farak investigation.

I know that the last time I sought to do this, your office objected on the ground that the charges against Ms. Farak were pending and you did not want to introduce the possibility of a chain of custody defense by giving defense counsel access to it.

Now that Ms. Farak has pled guilty and been sentenced, would it be possible for me to view the evidence seized from, among other places, her car?

Sincerely,

Luke

Ex. C, Email from Ryan to Foster (June 23, 2014; 10:06 am).

18. Upon receiving this email, the AGO did not readily and immediately agree to assent to the inspection.
19. Instead, Foster once again forwarded my email to Ravitz and Reardon to solicit their “Thoughts.” **Ex. D**, Email from Foster to Ravitz & Reardon (June 23, 2014; 10:24 am).
20. Six minutes later, Ravitz sent this response: “This makes me uneasy and I’m not sure how it would actually be useful to him, but why don’t you run it by Anne Kaczmarek.” **Ex. E**, Email from Ravitz to Foster & Reardon (June 23, 2014; 10:30 am).
21. Later that day, Foster forwarded my email to Kaczmarek and asked her for “[a]ny thoughts on Luke Ryan’s request to see the evidence in Farak’s case.” **Ex. F**, Email from Foster to Kaczmarek (June 23, 2014; 3:05 pm).
22. I do not know what thoughts, if any, Foster received from Reardon, and/or Kaczmarek.
23. I do know Foster did not respond to my email.
24. On July 21, 2014, I filed a motion to inspect on behalf of Mr. Burston.
25. In this pleading, I acknowledged my previous efforts to obtain access to this evidence and attached a copy of Judge Kinder’s ruling denying the Penate motion to inspect.
26. “Now that Ms. Farak’s prosecution had concluded with convictions for evidence tampering,” I wrote, “there is no compelling reason why defendants like Mr. Vega should be forced to accept representations concerning the nature of critical evidence from an agency that consistently turned a blind eye toward anything suggesting that the target of its prosecution committed other crime with which she was not charged.”
27. When she received a copy of this pleading from the First Assistant District Attorney for the Northwestern District, Kaczmarek said she was “going to forward this to our appeals people. Mostly because today is my last day at the office.” **Ex. G**, Email from Kaczmarek to Steven Gagne (July 21, 2014; 11:29 am.)
28. When Ravitz received a copy of the Burston motion, he voiced the opinion it would be “reasonable to oppose [my] motion . . . at least some extent.” **Ex. H**, Email from Ravitz to Kaczmarek, John Verner, Dean Mazzone, Cara Krysil & Beth Lux (July 21, 2014; 1:5 pm).

29. According to Ravitz,

Lampron calls for a showing of relevance, admissibility, necessity and specificity, and more than a mere “fishing expedition.” His request sounds like more of a fishing expedition. And his line about not having to accept the representations of an agency that turned a blind eye is just name-calling. The discovery process does involve a certain degree of trust in representations made by the government, and the system would break down if it didn’t.

Id.




LUKE RYAN
BBO#664999
SASSON, TURNBULL, RYAN & HOOSE
100 Main Street, 3rd Floor
Northampton, MA01060
(413) 586-4800
lryan@strhlaw.com

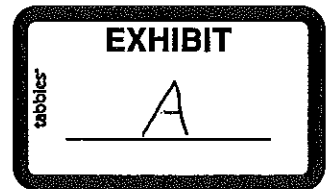
Date: March 17, 2017

CERTIFICATE OF SERVICE

I, Luke Ryan, hereby state that one (1) true copy of the foregoing has been sent via email and first-class mail to Assistant Attorneys General Judy Zeprun Kalman and Kimberly West at Judy.Zeprun@massmail.state.ma.us and Kimberly.West@massmail.state.ma.us, Office of the Attorney General, One Ashburton Place, Boston, MA, 02108, and Assistant Attorney General Heather Valentine at Heather.Valentine@massmail.state.ma.us, Office of the Attorney General, 1350 Main Street, Springfield, MA 01103, and Assistant District Attorney Deborah Alstrom, at deborah.ahlstrom@state.ma.us and 50 State Street, 3rd floor, Springfield, MA, on March 17, 2017.



Luke Ryan



From: Foster, Kris (AGO)
Sent: Wednesday, March 05, 2014 4:26 PM
To: Ravitz, Randall (AGO); Reardon, Susanne (AGO)
Subject: FW: Lizardo Vega, 09-97

Hi Randy and Sue,
Looks like we've gotten another Hampden county Farak case with Luke Ryan. Attached are five motions he's filed. Looks like many of them are the same as the Penate case. Thoughts?

Thanks,
Kris

*Kris C. Foster
Assistant Attorney General
Appeals Division, Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2833*

From: Luke Ryan [<mailto:LRyan@strhlaw.com>]
Sent: Wednesday, March 05, 2014 4:19 PM
To: Flannery, Frank (WES)
Cc: Foster, Kris (AGO)
Subject: RE: Lizardo Vega, 09-97

Greetings,

Attached is a cover letter along with some pleadings I am getting out the door in the above-referenced Hampden County case. Any questions, please don't hesitate to call.

Sincerely,

Luke



Sasson Turnbull Ryan & Hoose
Experience. Dedication. Integrity.

Luke Ryan
Sasson, Turnbull, Ryan & Hoose
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Northampton, MA 01060
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From: Flannery, Frank (DAA) [<mailto:frank.flannery@state.ma.us>]
Sent: Friday, February 28, 2014 4:23 PM
To: Luke Ryan
Subject: RE: Lizardo Vega, 09-97

Yes, no problem.

From: Luke Ryan [<mailto:LRyan@strhlaw.com>]
Sent: Friday, February 28, 2014 2:58 PM
To: Flannery, Frank (WES)
Subject: Lizardo Vega, 09-97

Hi Frank,

I was wondering whether you'd be willing to assent to a motion to permit me to file my discovery motion by the end of the day on Wednesday. I have another case that is presently requiring more of my attention than anticipated.

Thanks,

Luke



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From: Foster, Kris (AGO)
Sent: Friday, March 07, 2014 1:00 PM
To: Kaczmarek, Anne (AGO)
Subject: another Farak case

Hey Anne,

On Wednesday I received another couple motions in another Farak-related case out of Hampden County. Luke Ryan is now arguing that because Farak's case is over, he should get access to her personnel file, "including but not limited to performance evaluations, employment application(s) for the position of chemist, the results of any psychosocial evaluations, drug testing, and/or background checks"

He's also seeking access to the evidence locker where the evidence against Farak is stored, and wants a "visual inspection" with state police supervision and wants to photograph, etc.

I figure we're opposing these requests, but I wanted to let you know and see if you had any thoughts.

Thanks,
Kris

*Kris C. Foster
Assistant Attorney General
Appeals Division, Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2833*

Luke Ryan

From: Luke Ryan
Sent: Monday, June 23, 2014 10:06 AM
To: Foster, Kris (AGO) (kris.foster@state.ma.us)
Subject: Farak Evidence

Hi Kris,

Hope this finds you well. I am writing today because I represent a Hampshire County client charged with narcotics offenses and the substances at issue were deposited at the Amherst lab in December, 2012, never assigned to anybody, then brought to a state police lab where they were tested. I am moving to dismiss the drug charges and would like to take a look at the evidence seized during the Farak investigation.

I know that the last time I sought to do this, your office objected on the ground that the charges against Ms. Farak were pending and you did not want to introduce the possibility of a chain of custody defense by giving defense counsel access to it.

Now that Ms. Farak has pled guilty and been sentenced, would it be possible for me to view the evidence seized from, among other places, her car?

Sincerely,

Luke



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Luke Ryan

Sasson, Turnbull, Ryan & Hoose

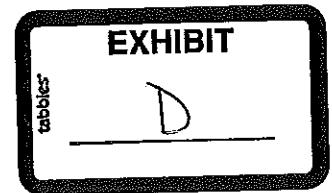
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From: Foster, Kris (AGO)
Sent: Monday, June 23, 2014 10:24 AM
To: Ravitz, Randall (AGO); Reardon, Susanne (AGO)
Subject: FW: Farak Evidence

Good morning Randy and Sue,
I just got this email request from Luke Ryan re: Sonja Farak. Thoughts?

Thanks!
Kris

*Kris C. Foster
Assistant Attorney General
Appeals Division, Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2833*

From: Luke Ryan [<mailto:LRyan@strhlaw.com>]
Sent: Monday, June 23, 2014 10:06 AM
To: Foster, Kris (AGO)
Subject: Farak Evidence

Hi Kris,

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Sincerely,

Luke

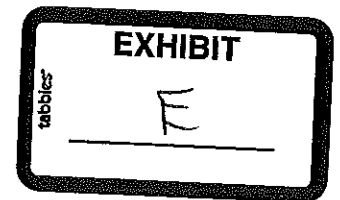


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Sasson, Turnbull, Ryan & Hoose

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From: Ravitz, Randall (AGO)
Sent: Monday, June 23, 2014 10:30 AM
To: Foster, Kris (AGO); Reardon, Susanne (AGO)
Subject: RE: Farak Evidence

This makes me uneasy and I'm not sure how it would actually be useful to him, but why don't you run it by Anne Kaczmarek.

Randall E. Ravitz
Chief, Appeals Division
Criminal Bureau
Office of Attorney General Martha Coakley
One Ashburton Place
Boston, MA 02108
Phone: (617) 963-2852
Fax: (617) 573-5358
E-mail: randall.ravitz@state.ma.us
Website: www.mass.gov/ago

From: Foster, Kris (AGO)
Sent: Monday, June 23, 2014 10:24 AM
To: Ravitz, Randall (AGO); Reardon, Susanne (AGO)
Subject: FW: Farak Evidence

Good morning Randy and Sue,
I just got this email request from Luke Ryan re: Sonja Farak. Thoughts?

Thanks!
Kris

*Kris C. Foster
Assistant Attorney General
Appeals Division, Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2833*

From: Luke Ryan [<mailto:LRyan@strhlaw.com>]
Sent: Monday, June 23, 2014 10:06 AM
To: Foster, Kris (AGO)
Subject: Farak Evidence

Hi Kris,

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From: Foster, Kris (AGO)
Sent: Monday, June 23, 2014 3:05 PM
To: Kaczmarek, Anne (AGO)
Subject: FW: Farak Evidence
Attachments: image001.jpg

Hi Anne,
Any thoughts on Luke Ryan's request to see the evidence in Farak's case?

*Kris C. Foster
Assistant Attorney General
Appeals Division, Criminal Bureau
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2833*

From: Luke Ryan [mailto:LRyan@strhlaw.com]
Sent: Monday, June 23, 2014 10:06 AM
To: Foster, Kris (AGO)
Subject: Farak Evidence

Hi Kris,

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I know that the last time I sought to do this, your office objected on the ground that the charges against Ms. Farak were pending and you did not want to introduce the possibility of a chain of custody defense by giving defense counsel access to it.

Now that Ms. Farak has pled guilty and been sentenced, would it be possible for me to view the evidence seized from, among other places, her car?

Sincerely,

Luke



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From: Kaczmarek, Anne (AGO)
Sent: Monday, July 21, 2014 11:29 AM
To: Gagne, Steven E. (NWD)
Subject: RE: Farak

Hi Steve-

I am going to forward this to our appeals people. Mostly because today is my last day at the office. I have taken a new position at the trial court.

I will cc you.

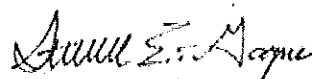
Anne

From: Gagne, Steven E. (NWD)
Sent: Monday, July 21, 2014 9:35 AM
To: Kaczmarek, Anne (AGO)
Cc: Lux, Beth Ann (AGO)
Subject: Farak

Anne,

I am prosecuting a drug case in which the crack cocaine that was purchased from the defendant initially went to Amherst, but then got re-routed to Sudbury in the aftermath of Farak. The defense attorney in my case has filed the attached motion, in which he seeks access to the physical evidence from the Farak case. He's asked that the motion be heard on July 31 (next Thursday). Please let me know whether, now that the Farak case is over, the AG's Office has any objection to this motion, and if so, whether someone from your office plans to attend next Thursday. Thanks.

-Steve Gagne



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Cell: 413.588.4271 | Fax: 413.586.6997
steven.e.gagne@state.ma.us
<http://www.northwesterndistrictattorney.org>

From: Ravitz, Randall (AGO)
Sent: Monday, July 21, 2014 1:57 PM
To: Verner, John (AGO); Kaczmarek, Anne (AGO); Mazzone, Dean (AGO); Krysil, Cara (AGO)
Cc: Lux, Beth Ann (AGO)
Subject: RE: Farak
Attachments: image001.jpg

If we're okay with granting some limited access, then fine. But I do think it's reasonable to oppose his motion to at least some extent. He says he wants to raise a chain-of-custody issue, but he goes beyond asking to see any evidence that may relate to his client's own case or materials explaining Farak's method of tampering generally. Instead he asks to inspect all the evidence related to Farak. I don't see how it's necessary for him to inspect all of that in order to challenge the chain of custody in his case. Lampron calls for a showing of relevance, admissibility, necessity and specificity, and more than a mere "fishing expedition." His request sounds like more of a fishing expedition. And his line about not having to accept the representations of an agency that turned a blind eye is just name-calling. The discovery process does involve a certain degree of trust in representations made by the government, and the system would break down if it didn't.

As far as who should handle it, we now have a bunch of people who have handled some kind of Dookhan- or Farak-related motion. Kris Foster handled the Penate one that he references in his papers. But Ryan Ferch, Argie Kosmetatos, and Eva Badway have handled things too. Of course, that means that we have people with experience in these matters, but also that we have enough samples to give someone else if needed.

By the way, did he serve our office or the State Police? He should remember from Penate that we made an issue about the failure to serve all affected agencies.

Randall E. Ravitz

Chief, Appeals Division

Criminal Bureau

Office of Attorney General Martha Coakley

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Boston, MA 02108

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Fax: (617) 573-5358

E-mail: randall.ravitz@state.ma.us

Website: www.mass.gov/ago

From: Verner, John (AGO)
Sent: Monday, July 21, 2014 1:08 PM
To: Kaczmarek, Anne (AGO); Ravitz, Randall (AGO); Mazzone, Dean (AGO); Krysil, Cara (AGO)
Cc: Lux, Beth Ann (AGO)
Subject: RE: Farak

Randy, thoughts? My instincts tell me we should be as helpful as we can while maintaining control of the situation. We should appear in court with a position and solution. Don't know what motion asks for but I don't have a problem with taking photos of the stuff, photocopies of docs etc.

I do NOT want the stuff out of our control nor do I want us having to bring stuff to the defense lawyers out there nor should our troopers be inconvenienced. What are they actually asking for?

In the first instance, can we tell Steve we will appear. Thoughts on appeals person or one of Cara's folks?

From: Kaczmarek, Anne (AGO)
Sent: Monday, July 21, 2014 11:31 AM
To: Ravitz, Randall (AGO); Mazzone, Dean (AGO); Verner, John (AGO)
Cc: Lux, Beth Ann (AGO)
Subject: RE: Farak

Gentlemen-

I think we may want to address this issue. Please note that all of the Farak evidence is currently housed here in Ashburton due to a public record request. Devlin knows where the boxes are.

From: Gagne, Steven E. (NWD)
Sent: Monday, July 21, 2014 9:35 AM
To: Kaczmarek, Anne (AGO)
Cc: Lux, Beth Ann (AGO)
Subject: Farak

Anne,

I am prosecuting a drug case in which the crack cocaine that was purchased from the defendant initially went to Amherst, but then got re-routed to Sudbury in the aftermath of Farak. The defense attorney in my case has filed the attached motion, in which he seeks access to the physical evidence from the Farak case. He's asked that the motion be heard on July 31 (next Thursday). Please let me know whether, now that the Farak case is over, the AG's Office has any objection to this motion, and if so, whether someone from your office plans to attend next Thursday. Thanks.

-Steve Gagne

1 - signature

Steven E. Gagne

First Assistant District Attorney

Northwestern District Attorney's Office

One Gleason Plaza

Northampton, MA 01060

Office: 413.586.9225 | Direct: 413.437.5802

Cell: 413.588.4271 | Fax: 413.586.6997

steven.e.gagne@state.ma.us

<http://www.northwesterndistrictattorney.org> <<http://www.northwesterndistrictattorney.org/>>