

Michael Elbery, C57634
SECC Prison
12 Administration RD.
Bridgewater, Mass.02324
4-5-01

Supreme Judicial Court - Mass.
1300 New Court House
Pemberton Sq.
Boston, Mass. 02108

RE: Petition under M.G.L. C. 211 s.3
Framingham District Court case
Com. v. Michael Elbery #0049CR1893 (Amended 3006AB)

Dear Clerk:

Please find enclosed for immediate filing and review,

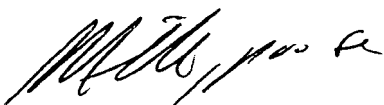
Petitioner's Motion to Amend

C. 211 s. 3 Petition

The amendment which is comprised of 3 exhibits/motions filed at
Framingham District Court

Certificate of Service

Thankjyou.

A handwritten signature in dark ink, appearing to read "Michael Elbery", is written over the typed name "Thankjyou.".

Errata Sheet

Please note I was banned from using my typewriter by Sgt. Antune at SECC so I was not able to correct the typing errors on the second page of the motion. There should only be one "alleging" on page 2.

Will [signature]

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

C. 211 s. 3 Docket

#SJ - 2001-0119

Commonwealth

v.

Michael Elbery

Petitioner's Motion To Amend

C. 211 s. 3 Petition

The petitioner/defendant motions the Court to allow an amendment to his Petition under C. 211 s.3 (SJ-2001-0119).

The amendment is comprised of 3 motions which this petitioner/defendant filed with the Framingham District Court since the 3-8-00, alleged, Pre-Trial Hearing of the underlying case in controversy. The motions are as follows:

Exhibit #1 - "Defendant's Motion for Docket Entries & Letter to Clerk"

Exhibit #2 - "Defendant's Objection to Case Proceedings etc."

Exhibit #3 - "Defendant's Motion to Compel Discovery Evidence Requested by Discovery Motions"

These 3 above motions demonstrate the continued injustice this petitioner/defendant is experiencing at the Framingham District Court (# 0049CR1893 amend 3006).

The District Attorney's Office is committing fraud via this case at the Framingham District Court and they got caught. It has been nine months since my arrest and the prosecution refuses to produce the alleged victim's medical records.

The prosecution refuses to produce the alleged victim's F.P.D. arrest booking photo and report taken 10 hours after the incident causing the criminal charge against this defendant.

The prosecution, ~~enow~~ even refuses to produce to this pro se defendant the 6 photos alleging injuries to the victim. These 6 photos were taken 36 hours after the incident causing this criminal case. One of those photos disclosed a huge red and bloody wound on the alleged victim's forehead. These pictures were shown to me in August of 2000 by my, then, attorney. The attorney claims he had to give the pictures back to the prosecution.

According to my investigating attorney, as above, the booking photos do not show the huge bloody wound on the alleged victim's forehead.

I remain in jail as a result.

Wherefore,

As per the original petition, this petitioner asks the Mass. S.J.C. to acknowledge and witness the injustice as per the 3 attached motions and

1. to order the state actors at Framingham District Court to docket this defendant's motions and filings on that criminal case, as above, and to send this defendant the docket entries. (See Exhibit #1).

2. to order the state actors at Framingham District Court to comply with Mass. Rules regarding criminal case discovery procedures and produce the requested exculpatory, relevant, material evidence as required by Brady and the M.R.Cr.P. - Rule 14a. (see Exhibits #2 and #3).

As per the original Petition, this petitioner/defendant has filed numerous discovery motions, including the "Omnibus Discovery Motion", with the District Court. Nine months later this defendant has, only, the police report and complaint. The Judge refuses to act as both Federal and Mass. law requires regarding this petitioner's discovery requests. The motive is to keep this petitioner in prison as long as possible so he cannot defend his multi-million dollar 42 U.S.C. s. 1983 lawsuits in the Federal Court against the Shrewsbury Police et al. (97-11743MLW) and Attorney Robert Scheketoff (98-10163 MLW).

Michael Elbery, Pro se
12 Administration Rd.
Bridgewater, Mass. 02324
4-5-01

A handwritten signature in black ink, appearing to read "Michael Elbery" followed by a stylized flourish or "pro se".

Certificate of Service

I the petitioner, Michael Elbery, sent this Motion to Amend 211 s
3 Petition to the Clerk - Mass. SJC, 1300 New Court House, Boston,
Mass. 02108 and The Mass. Attorney General's Office, 1 Ashburton
Place, 20th Floor, Boston, Mass. 02108 and D.A.'s office, 100
Concord ST., Framingham, Mass. 01701 and Clerk-Criminal, Framing
ham District Court, 600 Concord St., Framingham, mass. 01701
all via U.S. certified mail return receipt on 4-7-01 from
S.E.C.C. Prison.

A handwritten signature in cursive script, appearing to read "Mike Elbery".

Ex. 1

my copy
Served

Michael Elbery, Pro se
Secc Prison
12 Adminstration Rd.
Bridgewater, Mass. 02324
3-16-01

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

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

Dear Clerk:

Please find for immediate filing and review,

"Defendant's Motion for Docket Entries"

Also find a letter to you, **The clerk**, for docket entries to the
above docketed case.

Thank you.

Mike, pro se

Michael Elbery, Pro Se
SECC Prison C57634
12 Administration RD.
Bridgewater, Mass. 02324
3-16-01

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

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

Dear Clerk:

Please send me, the above pro se defendant, at the above address, the most current copy of the docket entries of the above docketed case.

I have sent this request for docket entries via U.S. certified mail - return receipt. The last request I made for docket entries of this case was ignored. As you know many of my most crucial motions regarding this case have not been docketed and as a result I petitioned the Mass. S.J.C. about this problem and others.

Thank you.

A handwritten signature in black ink, appearing to read "Michael Elbery".

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket
#0049CR1893 (Amended 3006)

v.

Elbery

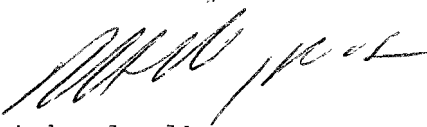
Defendant's Motion For Docket Entries

1. The defendant-pro se, above docketed, motions the Court to order the Clerk to send the defendant docket entries of this case.

2. As the Court is aware many of this defendant's most crucial motions for discovery, and other issues, have not been docketed in this case causing this defendant to Petition the S.J.C. about this problem and others.

Wherefore,

The defendant requests that the most current docket entries of the above docketed case be sent to him.



Michael Elbery, Pro se
SECC Prison C57634
12 Administration Rd.
Bridgewater, Mass. 02324
3-16-01

Certificate of Service

I the defendant - pro se sent this Motion for Docket Entries to the Clerk - Criminal - Framingham District Court, 600 Concord St., Framingham, Mass. 01701 and to the D.A. 100 Concord St., Framingham, Mass. 01701 via U.S. certified mail - Return receipt prepaid on 3-19-01.

Also sent with this the "letter to the Clerk - Framingham District Court regarding request for docket entries.

W. Hill, pro se

Clerk # 7099 3400 0015 1038 6530

My 1/7/01

Ex. 2

Michael Elbery, C5763
SECC Prison O.U.
12 Administration RD.
Bridgewater, Mass.
3-13-01

Clerk Criminal
Framingham District Court
600 Concord ST.
FRamingham, Mass. 01701

RE: Com. v. Michael Elbery, #0049CR1893A (Amended 3006)

Dear clerk:

Please find for immediate filing and review,

"Defendant's Objection to Case Proceedings etc. and Motion to Compel"

Thank you.

M. Elbery

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Ct.

Docket #0049CR1893A

(Amended 3006)

Commonwealth

v.

Michael Elbery

Defendant's Objection to Case Proceedings

No Pre-Trial Conference

No Pre-Trial Conference Report

Limitation of Defendant's Participation at Pre Trial Hearing

&

Defendant's Motion to Compel Mandatory Exculpatory Discovery

1. The defendant, above docketed, Michael Elbery-pro se, objects to the proceedings of this instant case, as above docketed.

No Pre-Trial Conference

2. The defendant never received a Pre-Trial Conference in this case. The defendant raised this issue at the Pre-Trial Hearing of this case on 3-08-01. A Pre-Trial Conference is required by Mass. law in this case. See Mass. Rule Cr. P.-Rule 11.

Pre-Trial Conference Report

3. There has been no Pre-Trial Conference Report filed at this late date in this case. This is required by Mass. law. See Mass. Rules of Criminal Procedure - Rule 11, a PreTrial Conference Report is required by law in order to hold a PreTrial Hearing.

PreTrial Hearing

4. This defendant was not allowed to participate at the alleged PreTrial Hearing of 3-8-01 of this case.

5. The judge, Paul Healy, found this defendant in contempt during the scheduled 3-8-01 PreTrial Hearing after this defendant violated the judge's orders as follows:

- a. The defendant was not allowed to object on the record.
- b. The defendant was prohibited from arguing constitutional grounds.
- c. The defendant's participation at the PreTrial Hearing was limited to responding to the judge's questions.
- d. The defendant was only allowed to answer yes or no to the leading questions of the judge.

6.

6. The defendant was warned that he would be found in contempt if he did not obey the above orders in #5.

7. The defendant questioned the judge's, Paul Healy's, independence regarding the case and the defendant was found in contempt of Court.

8. The defendant's further participation at that 3-08-01 Pre-Trial Hearing, and avoidance of imprisonment via contempt, was conditioned on the defendant agreeing to the above orders and only speaking when allowed by the judge.

9. The defendant, pro se, was never allowed, as a result of the above unconstitutional conditions, to argue the various discovery motions he submitted on this case, as also documented by this defendant's Mass. G.L. C. 211 s.3 Petition to the S.J.C. regarding this case.

10. The defendant's numerous discovery motions to the Court were never considered by the Court at the 3-8-01 PreTrial Hearing.

11. This defendant has submitted over $\frac{1}{2}$ dozen discovery motions

on this case specifically seeking police and prosecution held and controlled exculpatory documents and other specifically requested evidence.

12. At this late date (case is 8 months old) the defendant has received a police report and application for complaint.

13. The result is that the prosecution team has been allowed to knowingly withhold relevant, material and exculpatory evidence from the defendant with the auspices of the Court.

14. The above concealment of evidence is a violation of Federal Brady laws and Massachusetts Rules of Criminal Procedure-Rule 14 and the Mass. Declaration of Rights - Article 12.

WHEREFORE,

This pro se defendant motions the Court to compel the prosecution to provide the mandatory exculpatory evidence as specifically requested by this defendant via hsi numerous discovery motions filed by this defendant in this case.



Michael Elbery, prose

SECC Prison

12 Administration Rd.

Bridgewater, Mass. 02324

3-12-01

Certificate of Service

I the defendant pro se, Michael Elbery, sent this Motion & Objection to the Clerk-Framingham District Court, 600 Concord St., Framingham, Mass. and to the D.A.'s Office, 100 Concord St., Framingham, Mass. all via U.S. certified mail ⁰⁰¹⁰return receipt prepaid on 3-14-01 from SECC Prison.



* DA 7099 3400 0010 7041 6128
1/2/01 7099 3400 0010 7041 6067

07/19/11

[Handwritten signature]

Ex. 3

Michael Elbery
C57634
SECC Prison
12 Administration RD.
Bridgewater, Mass.
3-13-01

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

RE: Com. v. Michael Elbery #0049CR1893 (Amended 3006)

Dear Clerk:

Please find for immediate filing and review,

Defendant's Motion to Compel Prosecutor to Produce Discovery
Evidence as Requested by Defendant's Discovery Motions.

[Handwritten signature]

Thank you.

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket
#0049CR1893A (3006)

v.

Elbery

Defendant
Defendant
Defendant's Motion to Compel Prosecutor
to

Produce Discovery Evidence

as

Requested by Defendant's Discovery Motions

1. The defendant-pro se, Michael Elbery, Motions the Court to Compel the prosecution to produce the exculpatory, relevant and material evidence asked for in the defendant's 12 discovery motions filed in this instant case.
2. There has been no Pretrial Conference or Pretrial Report regarding this instant case.
3. This defendant was allowed only limited participation at the Hearing Pretrial, see Defendant's "objection to Case Proceedings etc.," filed on this instant case.
4. At this late date the Court has yet to discuss the defendant's discovery requests made via his motions to the prosecution.

5. All the discovery per this defendant's discovery Motions are for relevant, material, exculpatory evidence.

Specific Evidence this defendant Motions the Court to Compel the Prosecution to Produce from the Defendant's already Filed Discovery Motions filed in this instant case.

6. The defendant motions the Court to Compel the prosecution to produce the following specifically requested prosecution controlled evidence. This defendant already requested this discovery through his "Omnibus Discovery Motion"

a. The Booking evidence regarding the arrest of Peter H. Gear on 7-4-00 by the Framingham Police Dept. This evidence has already been asked for by the defendant via Request #1 of his "Omnibus Motion".

b. The 6 photos of Peter H. Gear taken by the Framingham Police alleging the injuries caused by this defendant. This has already been requested via #2 of the Defendant's "Omnibus Motion".

c. The therapists records and related information regarding treatment to the alleged victim, Peter H. Gear, needed due, allegedly, because of the beating he received causing this action. This evidence has already been requested by the defendant via his request # 5 of the defendant's "Omnibus Discovery Motion".

d. The Police telephone evidence in requests #'s 6 & 8 of the defendant's "Omnibus Discovery Motion". In particular the defendant requests the prosecution to produce the computerized print outs of the calls the alleged victim, Peter H. Gear, made to the Framingham Police on 7-4-00.

The Framingham Police informed my investigating attorney on this case, Attorney Ken Brekka, that the two Gear calls, as above, were made hours after the incident; not as the the prosecution now claim immediately after the incident. See Affidavit attached.

6. In addition, the defendant motions the Court to Compel the prosecution to produce #'s 3, 4, 7, 9, 10, 14, 15, 16, 18, 19, 20, 22, 23, 25, 27, 28, 29, 30, 31, 33, 34, 35, 38, 39, 40, 41, 42, 43, 44 of the defendant's "Omnibus Discovery Motion".

7. Gear's Hospital Records

The defendant further motions the Court to Compel the prosecution to produce the hospital and physicians records and reports that the alleged victim in this case, Peter H. Gear, incurred as a result of the underlying incident on 7-4-00 at the Route 30 Mobil that caused this instant case.


These same hospital records were requested in 3 of the defendant's Discovery Motions already filed with the Court in this case as follows:

- a. #11 Request of Defendant's "Motion for Discovery"
- b. #4 Request "Defendant's Motion to Preserve/Impound by Court & Compel for Production & Inspection of Prosecution Controlled Evidence"
- c. #1-i Request of the "Defendant's Motion for Additional Discovery"

But see Ex. D of the Defendant's "Omnibus Discovery Motion" which quotes the victim-alleged, Gear, that he went to the Hospital and was treated by a physician for weeks as a result of the underlying incident that gave rise to this action.

wherefore,

the defendant motions the Court to Compel the prosecution to produce the above discovery requests as the law of Massachusetts and Federal Brady laws require.


Michael Elbery, prose
SECC Prison 3-13-01

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket

#0049CR1893A (3006)

v.

Elbery

Affidavits in Support
of
Defendant's Motion to Compel Prosecutor
to
Produce Discovery Evidence

1. I am the defendant-pro se, Michael Elbery, I am illegally incarcerated at SECC Prison, Bridgewater, Mass.
2. While Attorney Ken Brekka represented me on this case he interviewed several Framingham Police regarding police phone calls of this instant case.
3. Brekka told me that every phone call that comes into the Framingham Police Dept. is recorded.
4. All 911 calls have an associated computerized information that keeps track of each call including time, source, duration of each call. Per the Framingham Police to Brekka that information is obtainable regarding each call as involved in this case, especially the Calls made by Gear on 7-4-00 regarding this instant case.

5. I have recieved from Attorney Brekka computer print outs of my call to the Framingham Police Dept. regarding this case.

6. Per Brekka interview notes on this case from a named Framingham police official the Gear calls that I seek computer print outs for where made after 5:00am.

7. Based on the above facts and information I believe the Prosecution have controll of computer information and related print outs of the calls Gear made to the Framingham Police on 7-4-00 regarding the underlying incident that caused this case.

Signed under the pains and penalties of perjury this 13th day of March 2001.

A handwritten signature in black ink, appearing to read 'Michael Elbery', with a stylized flourish at the end.

Michael Elbery, prose

SECC Prison

12 Administration Rd.

Bridgewater, Mass. 02324

3-13-01

Certificate of Service

I the defendant pro se, Michael Elbery, sent this Motion to Compel Discovery to the Clerk- Framingham district Court at 600 Concord ST., Framingham, Mass. and the D.A. 's Office at 100 Concord St., Framingham, Mass. all via U.S. certified mail^{*} - return receipt prepaid on 3-15-01 from SECC prison mail.

M. Elbery

* Clerk # 7099 3400 0010 7041 6111
D.A. # 7099 3400 0010 7041 6104