

Mass. S.J.C.

C. 211 s. 3

Commonwealth

#2001-0119

v.

Michael Elbery

Document Listing

Certificate of Service	1 pg.
Motion to Amend Petition C. 211 s. 3	2 pg.
Petition Amendment	7 pgs.
Exhibit 1 - "Defendant's Motion to Compel Alleged Victim's Medical Records from ER & Past Provider (See document listing Exs. A thru F)	5 pgs.
Exhibit 2 - Judge Stoddart's denial of Exhibit #1	1 pg.
Exhibit 3 - Defendant's Motion to Compel Discovery of 3-13-01	3 pg.
Exhibit 4 - Defendant's Motion to Compel "Omnibus" Discovery (Supporting Exhibits A thru D)	5 pgs.
Exhibits 5 -Defendant's Motion to Reconsider "Omnibus" Requests	4 pgs.
Exhibit 6 - Defendant's Motion to Compel Pre-Trial Conference Report, Bill of Particulars. Mobil Testing (Exs. A thru D)	3 pgs.

Michael Elbery, C57634  
SECC Prison  
12 Administration Rd.  
Bridgewater, Mass. 02324  
6-30-01

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  
Com. v. Michael Elbery #0049CR1893 (Amended 00-3006AB)

Dear Clerk:

Please find for immediate filing and review,

Petitioner's Motion to Amend

C. 211 s. 3 Petition

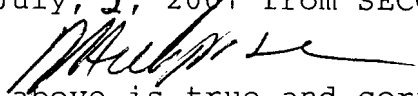
and Document Listing  
Certificate of Service

Thank You.

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

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 Framingham D.A. 's Office, 100 Concord St., Framingham, Mass. 01701 and the Clerk-Criminal Framingham District Court, 600 Concord St., Framingham, Mass. 01701 allvia U.S. certified mail return receipt -prepaid on July, 2, 2001 from SECC Prison mail.

  
The above is true and correct and signed under the pains and penalties of perjury on this 2d day of July, 2001. This under 28 U.S.C. s 1746 is the filing date of this document.



COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

C. 211 s. 3

Commonwealth

#2001-0119

v.

Elbery

Petition's Motion For Second Amendment

to

C 211 s. 3 Petition

The petitioner/defendant motions the Court to allow an amendment to the above docketed petition under M.G.L. C. 211 s. 3 in order to stop the continuing injustice and violations of this defendant's Constitutional Rights at the underlying case at Framingham District Court (6 man jury session 00-3006), Judge Douglas Stoddard presiding.

At this late date (1 year from issuance of the criminal complaint and 10 months of pro se discovery motions) this defendant is still being deprived a Pre-Trial conference Report signed by a representative of the Middlesex D.A.'s Office. In addition, this defendant is being deprived by Judge Stoddard and the Middlesex D.A. 's Office of the most important and at the same time basic "Brady evidence" in violation of this defendant's 14th Amendment Due Process Rights under the U.S. Constitution.

See Petition Amendment - attached

WHEREFORE,

The defendant pro se asks the court to allow this second amendment to his original C. 211 s. 3 petition in order to stop the injustice and deliberate violations of this defendant's Constitutional Rights.

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

Michael Elbery, pro se  
SECC Prison  
12 Administration RD.  
Bridgewater, Mass. 02324  
6-29-01

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

C. 211 s. 3

Commonwealth

#2001-0119

v.

Michael Elbery

Petitioner's Amendment  
to

Petition Under C. 211 s.3

This defendant at Framingham District Court (#00-3006, six man jury session) again amends his petition to the Massachusetts S.J.C. in order to stop the continued injustice and violations of this defendant's Constitutional Rights by Judge Douglas Stoddart regarding that criminal action.

This defendant, after 10 months of prose discovery motions on this 1 year old case, has not been provided a Pre-Trial Conference Report, a "Bill of Particulars" in conformity with Mass. law, and some of the most important "Brady evidence" of the case. This "Brady Evidence" is in the form of the alleged victim's medical records and police evidence produced as a result of the underlying "alleged criminal episode". An even bigger point is that nobody, Judge Stoddart or the prosecution deny this same "Brady evidence" exists.

The petitioner/defendant makes reference to various Motions this defendant has filed in that same Framingham District Court

case with Judge Stoddart in order to expose the above injustices and violations of this defendant's substantive rights to the Supreme Judicial Court of Massachusetts.

Exhibit #1 - The Defendant's "Motion To Compel the Alleged Victim's Emergency Room Records and Past Primary Care Provider Records".

The alleged victim, Peter H. Gear, went to an Emergency Room for medical attention after stealing from and assaulting this defendant at a Mobil station where this defendant was a cashier, (the underlying event causing this action).

As per Exhibit #1, the prosecution refuse to produce this specifically requested mandatory "Brady" and Rule 14a evidence, the medical records resulting from Gear's Emergency Room visit immediately after the alleged underlying criminal episode. Judge Douglas Stoddart, per Exhibit #2, denied that same defendant's "Motion to Compel", (Exhibit #1), that would reveal obvious exculpatory Emergency Room medical evidence and the alleged victim's "Past Primary Care Provider Records".

The prosecution's case-in-chief is that the alleged victim has injuries. The Emergency Room records, as above, will give an unbiased instant account of exactly what injuries the alleged victim had immediately after fleeing from that Mobil, and the police due to his armed robbery. The Emergency Room records will also indicate Gear's sobriety which is also a major issue of the case.

#### "Past Primary Care Provider's Records"

A specialist, Dr. Tamara Martin, who looked at the alleged victim, Gear, revealed that Gear's claim of permanent disability, allegedly caused by this defendant, was actually a disease Gear has had for over a decade.

The prosecution mistakenly produced the specialist's (Dr. Martin and Dr. Docken) medical reports on Gear to this defendant during discovery.

This specialist, Dr. Martin, revealed in her 10-12-00 medical report on Gear, see Exhibit A of Exhibit #1, that Gear had been

treated by a "Past Primary Care Provider" for that same disease that the specialist indicate is the reason for Gear's (alleged victim) right foot problem or permanent disability. It was also Dr. Martin that revealed Gear initially went to an Emergency Room. Per Dr. Martin's report of 10-12-00, Gear refused to disclose to Dr. Martin the name of the Emergency Room Hospital or the name of the "Past Primary Care Provider", but left the identities of both "Unknown".

The prosecution is claiming their alleged victim has a permanent right foot disability that they claim was caused by this defendant at the alleged criminal episode at the Mobil Station where the defendant was a cashier.

Coincidentally, the prosecution in conspiracy with Judge Douglas Stoddart seek to conceal the 2 specialists medical records. Judge Stoddart's conspiratorial tactic, in order to achieve his Unconstitutional deprivation of this defendant's "Brady discovery";

was to order , on 5-17-01, that all Gear's medical records had to be certified under C. 233 s. 79G in order to be admissable in Court (even though Gear's primary physician, Schissel, is a prosecution witness). The new set of certified medical records do not include any of the originally produced sspecialists' records on Gear that reveal some of the truth. Dr. Schissel's final opinion on Gear's right foot's permanent disability is based on the 2 specialists' diagnosis.

To make matters of this case regarding the alleged victim's medical records absolutelycontradictory,if not stupid, is that Judge Stoddart already had ordered the prosecution to produce all of Gear's medical records, see Exhibit #3.- item #7.

Also the "Past Primary Care Provider's" records on Gear may disclose more information about his drug addiction and other histories that are relevant to fraud in this case.

Exhibit #4 - "Defendant's Motion To Compel Prosecution to Produce Evidence Requested by Defendant's Omnibus Motion"

(All police evidence produced during the underlying incident & subsequent complaint by the alleged victim)



The defendant in this Exhibit #4 is asking the court to compel "Brady" discovery that per Exhibit A of Exhibit 4, Judge Stoddart has refused to order through the defendant's "Omnibus Discovery Motion". The evidence this defendant seeks are police documents and a 911 tape produced by the Framingham Police Dept. (F.P.D.), as a result of the alleged victim's 911 calls regarding the crime and other evidence produced as a result of the underlying incident. A summary of those discovery items motioned to be compelled by the defendant are summarized in the "Wherefore" clause of the defendant's "Motion to Compel Omnibus Requests", Exhibit #4 and are as follows:

- a. The 2 F.P.D. 911 computerized printouts resulting from the 2 911 calls the alleged victim made to the F.P.D. several hours after the alleged criminal incident. These printouts will show the time the alleged victim actually made the calls.
- b. The F.P.D. dispatch report that resulted from this defendant calling the F.P.D. for help at his cashier's job when the alleged victim would not pay for his \$25.00 worth of Mobil gas and snacks immediately before the alleged criminal incident.
- c. The F.P.D. 911 tape and related computer printout of the call the alleged victim made to the F.P.D. complaining about this defendant on 7-5-00 at 7:21am.
- d. The two missing pictures Sgt. Sanchez of the F.P.D. took of the alleged victim and the missing F.P.D. turret tape saying "Just another gas evasion".

The above is, once again, classic specifically requested "Brady" evidence that must be produced by the prosecution.

This defendant asked Judge Stoddart to reconsider his denial of the basic "Brady" and Rule - 14a (M.R.C.P.) evidence requested in the "Omnibus Motion" , see Exhibit #5. There has been no reply by the Judge.

Although the Judge, Douglas Stoddart, denied the "Brady" evidence in Exhibit A of Exhibit #1 (the "Omnibus Motion"), he again contradicts himself, as per the defendant's "Motion to Compel" of 3-13-01 Judge Stoddart ordered the prosecution to produce the same evidence. See Exhibit #3 (request #6d).

Exhibit #6 - "Defendant's Combined Motion to Compel A Bill of Particulars, Pre-Trial Conference Report, and Mobil Testing".

2 months after the initially set trial date of 5-17-01 this pro se defendant has not received a Pre-Trial Conference Report signed by a representative of the Middlesex D.A.'s Office. The reason is simple, - the D.A.'s Office gave the alleged victim immunity (a deal) in a Mass. District Court in violation of Mass. law. No one from the D.A.'s Office wants to sign the report because it includes a request regarding, all deals or immunities given to prosecution witnesses. The current prosecutor, Special A.D.A. Ford, is pretending, as is the entire Middlesex D.A.'s Office, that no agreement was made with alleged victim - witness, Peter H. Gear, regarding his testimony. No one from the Middlesex D.A.'s Office will sign the Pre-Trial Conference Report because they don't want to be the one held responsible for lying about Gear's obvious immunity.

The alleged victim-witness, Peter H. Gear, had an outstanding felony larceny charge dismissed after giving a complaint against this defendant which caused this action. Gear's crimes as reported by this defendant have also been allowed to go unprosecuted.

Judge Stoddart refuses to make the D.A.'s Office sign the defendant's proposed Pre-Trial Conference Report. Instead, Stoddart, at the 5-17-01 hearing of this case, pretended with the prosecutor they never received a copy of this defendant's proposed Pre-Trial Conference Report as mailed by this defendant. This defendant immediately sent another U.S. certified mail.

### Bill of Particulars

Although Judge Stoddart ordered the prosecution to produce a "Bill of Particulars" within the definition of Mass. law- the prosecution have produced nothing of meaning. Why would the prosecutor think he was required to obey the law considering the tempo of this case, as partially exposed, by this defendant's Petition and related amendments under C. 211 s. 3 to the Mass. S.J.C.?

This defendant will in the near future file a complaint with the Mass. Committee on Judicial Conduct and expose Judge Stoddart's illegalities in this case, including a conspiracy to violate this defendant's Constitutional Rights, as above. This defendant will also file a criminal complaint in the Federal Court against Judge Stoddart and other state actors involved in this case under 18 U.S.C. s. 242 (Federal criminal violation of civil rights).

WHEREFORE,

the defendant, pro se, asks the Mass. S.J.C. to bear witness and to stop the above injustice and violations of this defendant's Constitutional Rights by Judge Stoddart at the Framingham District Court and make Judge Stoddart obey the United States Constitution and order the prosecutor to produce the evidence, as above, and summarized as follows:

- a. The alleged victim's, Peter H. Gear's, "Emergency Room & Past Primary Care Provider" Records as per Exhibit #1.
- b. The specialists' medical records resulting from their observations of Gear regarding the injuries at issue in this case, as per Exhibit #1.

c. The specialists', Dr. Tamara Martin and Dr. William Docken, testimony for trial regarding their treatment and observations of Gear due to his claim of alleged injuries in this case. Exhibit #1.

d. The police evidence, including the F.P.D. 911 tape & computer printouts & dispatch report per Exhibit #4.

e. A Pre-Trial Conference Report, Bill of Particulars and Testing of the Mobil Video Surveillance System as requested in Exhibit #6.

The various "Brady" evidence denied by Judge Stoddart and motioned for Reconsideration via Exhibit #5.

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

Michael Elbery, pro se

SECC Prison

12 Administration Rd.

Bridgewater, Mass. 02324

6-30-01

Ex 1

Michael Elbery, c57634  
SECC Prison  
12 Administration Rd.  
Bridgewater, Mass. 02324  
5-22-01

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

RE: Commonwealth v. Michael Elbery 00-3006

Dear Clerk:

Please find enclosed for immediate filing and review,

"Defendant's Motion to Compel Alleged Victim's Medical Records  
From  
Emergency Room and Past Primary Care Provider  
As  
Exposed By Dr. Tamara Martin "

and Certificate of Service and Supporting Documents and Affidavits

Thank you.

*Mit, p. 10*

COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH

Framingham District Court

v.

00-3006

Michael Elbery

Document Listing

Affidavits in Support

3pgs

Exhibit A - Drs. Schissel, Martin and Docken's Report

17 pgs

Exhibit B - Norwood Health Care Ass. - Notes

8 pgs

Exhibit C - Defendant's Motion to Preserve/Impound by Court  
& Compel for Production & Inspection of Prosecution  
Controlled Evidence

4 pgs

Exhibit D - Defendant's Motion for Discovery

3 pgs

Exhibit E - Defendant's Motion for Additional Discovery

4 pgs

Exhibit F - Defendant's Motion to Compel Prosector to Produce  
Discovery Motions

7 pgs

Certificate of Service

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Criminal Docket

Michael Elbery

00-3006

Defendant's Motion to Compel Alleged Victim's Medical Records

From

Emergency Room and Past Primary Care Provider

As

Exposed By Dr. Tamara Martin

Per Dr. Martin-Peter H. Gear, alleged victim, went to an Emergency Department

1. On 3-08-01 Judge Paul Healy, as a result of this defendant's Motion To Compel and Numerous discovery motions, (See Exhibits C, D, E, F, ' ), ordered the prosecutor to produce all medical records of Peter H. Gear, alleged victim, relating to care of his injuries he suffered on 7-4-00 regarding the underlying incident at the Route 30 Mobil that caused this action.

2. The prosecution produced, on 5-3-01, only Exhibits A and B, which are Gear's medical records from Drs. Schissel, Martin, and Docken.

3. Per Exhibit A, Dr. Tamara Martin, who treated Gear at the referral of Dr. Schissel, documents that Gear admits he went to an Emergency Room or Department at an "Unknown Facility" prior to being treated by Dr. Schissel at Brigham Internal Medicine, Boston. See paragraph 2 of Dr. Martin's 10-12-00 report per exhibit A.

4. Making that Emergency Room's records even more crucial and relevant, material and Exculpatory to this defendant is that Dr. Martin reveals, per her report in 3, above, that Gear discloses that Emergency Room did studies on Gear's right foot and the Study's results were "Negative".

5. Gear and the prosecution are claiming that Gear has a "right foot injury" causing him to be permanently disabled and that same "right foot injury" was caused by this defendant on 7-4-00 and is the central issue to the prosecutions assault charges against this instant defendant.

6. This fraudulent "right foot injury" is what Gear and the Prosecutor are using as alleged injury evidence to put this defendant in prison and sue the Mobil Corp.

7. Dr. Martin reveals in this same 10-12-00 medical record that Gear has not disclosed the name of that "Unknown Facility" where the Emergency Room was that Gear's right foot was studied to have no injury.

Per Dr. Martin, Gear has Exculpatory Evidence from a "Past Primary Care Provider"

8. Dr. Martin also reveals, per her 10-12-00 report, Ex. A, that Gear was diagnosed with Fibromyalgia from an "Unknown Primary Care Provider" some 10-12 years ago. See paragraph 2 of that same report.



9. Dr. Schissel documents, per his report of 3-14-01, Exhibit A, that Gear's "right foot pain", per evaluation of referral doctors Martin and William Docken, is a "Non-Specific Pain Syndrome" (likely Fibromyalgia) possibly triggered by over-use of his right foot after his left leg trauma this past summer".

10. Gear evidently refuses to disclose the name of this "Past Primary Care Provider" to his doctors because he has to conceal evidence that is exculpatory to this defendant.

### ARGUMENT

#### "Past Primary Care Provider's" Records

One of Peter H. Gear's objectives per his taped 911 call to the Framingham Police (F.P.D.) on 7-4-00 is to sue Mobil Corp. (the alleged incident occurred at the Route 30 Mobil, Framingham). It is likely that Gear's "Past Primary Care Provider" has information not only of an exculpatory nature about Gear's "right foot pain" and his Fibromyalgia but that he has a history of phony personal injury lawsuits.

Drs. Schissel, Martin, and Docken evaluate Gear's "right foot injury/pain" as "likely caused by Fibromyalgia". This makes this "Past Primary Care Provider's" records on Gear relevant, material, and exculpatory under Federal "Brady" laws and Mass. Rule 14 of the M.R.C.P.. Obviously, this alleged "right foot injury/pain" problem with Gear is nothing new but has been ongoing for over a decade.

#### Gear's Medical Records - Emergency Room at "Unknown Facility"

Gear's medical records at the "Unknown Emergency Room" revealed by Dr. Martin via her 10-12-01 report, Exhibit A, are exculpatory, relevant, and material because, as above 1-7, there was nothing wrong with Gear's, now, allegedly lame right foot, immediately after the incident on 7-4-00. These "ER" records of Gear's will

, at a minimum, provide medical evidence Gear's foot was fine and injury free immediately after the 7-4-00 incident at the Mobil. Just as Dr. Martin reveals a "Negative Study".

Obviously, Gear and the prosecutor are hiding something they don't want this defendant and the Jury to know. Better to disclose this evidence before trial rather than letting the Jury and public know evidence is being allowed to be concealed during trial.

A.D.A. Ford's Cover-Up & Concealment of the Exculpatory "Emergency Room evidence/records

The prosecutor, A.D.A. Ford, on 5-17-01 claimed that the "Unknown Emergency Room" is actually Dr. Schissel's Association. This is Foolishness! The two documented Schissel associations per Exhibits A & B (Brigham Internal Medicine and Norwood Health Care Associates), are not Emergency Rooms and do not have Emergency capability. Additionally, as per Dr. Schissel's 3-14-01 report, EX. A, Schissel referred Gear to Dr. Martin and Dr. Docken. As a result Dr. Martin would not call Schissel's organization an "Unknown Facility". Further, per Dr. Schissel's reports, Exs. A & B, Schissel did no tests or studies on Gear's right foot on 7-5-00. Schissel per those same reports did not examine Gear's right foot until 7-26-00. It is debatable what Schissel is claiming about Gear's alleged right foot, per Schissel's reports subsequent to 7-26-00 but it is certainly not "Negative". Per Dr. Schissel's 8-7-00 report, EX. A, Schissel claims the right foot injury is a "soft tissue injury" caused by this defendant during the "original trauma on 7-4-00".

WHEREFORE,

The defendant asks the Court to order the prosecutor to produce Gear's medical records at the "Emergency Department of the Unknown Facility" and the "Past Unknown Primary Care Provider" as itemized above in this motion. Otherwise, the Jury will be allowed to know only that there is all kinds of exculpatory evidence being concealed preventing the truth from being known. This defendant cannot get a "Fair Trial" and "Present a Complete Defense" as

is his Constitutional Right under the 6th and 14th Amendments of the United States without these exculpatory medical documents.

See affidavits in Support, attached.

A handwritten signature in black ink, appearing to read "Michael Elbery, pro se". The signature is stylized with a large, looped "M" and "E".

Michael Elbery

12 administration Rd.

SECC Prison

Bridgewater, Mass. 02324

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Six Man Jury Session

Commonwealth

Criminal Docket

v.

00-3006

Michael Elbery

Affidavits In Support

of

Defendant's Motion to Compel Alleged Victim's Medical Records

1. I am the defendant, pro se, Michael Elbery.
2. I motioned for the alleged victim's, Peter H. Gear's, medical records via 4 of my discovery motions, See exhibits C, D, E, F.
3. On 3-08-01, Judge Paul Healy ordered the prosecution to produce the alleged victim's, Peter H. Gear's, medical records to this defendant. This after the case was 8 months old.
4. I was brought into court on 5-3-01 without any advanced notice that a hearing would be held. At this 5-3-01 alleged Discovery Compliance Hearing a trial date was set on this case for 5-17-01. Noteworthy, not one word was spoken about discovery at that 5-3-01 Discovery Compliance Hearing.
5. On 5-17-01 the trial was continued and without any notice the new Judge, Stoddard, held a "Discovery Motion Hearing". The alleged "Pre-Trial Hearing" was held on 3-08-01.
6. I had none of my discovery motions on 5-17-01, as I was prepared for trial not a "Motion Hearing" that should have been held by the 3-08-01 Pre-Trial Hearing.

7. I alerted Judge Stoddard at that 5-17-01 "Surprise Motion Hearing" that Judge Healy ordered all of the alleged victim's medical records concerning his injuries to be produced to the defense.

Judge Stoddard claimed there was no record of such an order.

8. I alerted Judge stoddard, at the "Surprise 5-17- 01 Motion Hearing, that Gear went to an Emergency Room prior to being seen by Schissel on 7-5-00 and that there was exculpatory, relevant and material medical evidence being concealed , as revealed by Dr. Martin's 10-12-01 medical report, see Ex. A.

9. Judge Stoddard did not want to talk about the concealed exculpatory medical evidence as revealed in Dr. Martin's report and as alerted to him by me.

10.\*\* During that 5-17-01 "Surprise Discovery Motion Hearing" I was allowed only 10 minutes to argue my 12 discovery motions that were filed over the past 10 months.

11.\*\*During that same 5-17-01 "Surprise Discovery Motion Hearing" I asked Judge Stoddard to remove my manacles (not leg irons)so I could write and hold paper. Stoddard refused. There were 6 cops in the small courtroom.

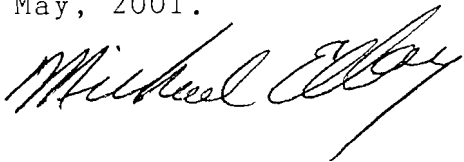
12.\*\*The Judge, cops, Assistant District Attorneys, and representative from the local chapter of a well-known hate group watched me struggle as I was publicly mocked and degraded.

13. On 5-17-01, during that "Surprise Motion Hearing", I spoke briefly to A.D.A. Ford, who claimed that Dr. Martin's reference to an "Unknown Emergnecy Department" was simply Dr. Schissels Norwood Healthcare Association and that I would not be getting the "Past Unknown Primary Care Provider;s" medical records of Gear's.

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14. Norwood Healthcare Associates has no Emergency Room or facilities and Dr. Martin was referred to Gear by Dr. Schissel so it would be impossible that Schissel's organization could be the "Unknown Emergency Dept."

Signed under the pains and penalties of perjury on this 22d day of May, 2001.

A handwritten signature in cursive script, appearing to read "Michael Elbery". The signature is written in dark ink and is positioned below the typed text of the signature.

Michael Elbery, pro se  
SECC Prison  
12 Administration Rd.  
Bridgewater, mass. 02324  
5-22-01

Certificate of Service

I the defendnat, Michael Elbery, sent this Motion for Gear's concealed medical evidence to the clerk criminal - Framingham District Court, 600 Concord St. Framingham, Mass. 01701 and to the D.A.'s Office at 100 Concord St., Framingham, Mass. 01701 all via U.S. certified mail - return receipt prepaid on May 25, 2001 . all from Prison mail.

*Michael Elbery*

BRIGHAM AND WOMEN'S HOSPITAL  
HARVARD TEACHING AFFILIATE  
BOSTON, MASSACHUSETTS 02115

084-49-52-2

GEAR, PETER

--NOTES-- (continued)

Ex A  
4  
Ex B

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Schissel, Scott Lewis, M.D.

Note by SCHISSEL, SCOTT LEWIS, M.D. (SS138)

8 pages of Ex B  
~~17~~ pages of Ex. A  
at

Gear's medical  
record not  
included



my  
copy

MIKE ELBERG, CJ1857  
12 Administration Rd  
SECC Prison A-406  
Bridgewater, Ma. 02324  
0128-01

Ex. (

Clerk - Criminal  
Framingham Dist. Ct.  
600 Concord St. - P.O. Box 828  
Framingham, Mass.

RE: Com. v. Elberg  
Criminal Docket # 0049 CR1893

Dear Clerk: See # 4's  
Gear's Hospital  
reports

Please mark-up for hearing at the  
next available date the enclosed

"Defendant's Motion To Preserve/Impound  
By Court &  
Compel For Production & Inspection of  
Prosecution Controlled Evidence"

You may already have been forward a copy  
of this Motion via the 1-31-01 hearing.  
Thank you.

Mike Elberg

Commonwealth of Mass.

Middlesex, ss

Framingham Dist. Ct.

Com. of Mass.

Criminal Docket

v.

# 0049 CR1893

Michael Elberg

Defendant's Motion To Preserve/Impound  
By Court  
#

Compel for Production & Inspection  
of

Prosecution Controlled Evidence

1. The defendant, above docketed, requests/  
motions that the Court Impound for the  
defendant's inspection and use at trial  
the following evidence controlled by the  
prosecution.

2. The F.P.D. Booking Photo, Booking  
Report, Booking Video, Booking Sheet &

related documentation of the F.P.D.'s 7-400 arrest of Peter H. Gear (alleged victim - this instant case). Including all statements recorded of Gear at that 7-400 arrest/bookings.

3. The ⑥ pictures & related negatives that produced those ⑥ pictures, taken by the F.P.D., allegedly on 7-5-00, of Peter H. Gear's injuries supposedly causing the above docketed action.
4. The therapeutic reports and Doctors/Hospital reports of Peter H. Gear that Gear claims exist as a result of his alleged beating that caused this action.
5. All A.D.A.'s & D.A.'s notes regarding this case including the 1<sup>st</sup> A.D.A. handling this case.

Request Hearing

Mick, pro se  
Michael Elbery pro se

S.E. C. C. Prison A-406  
12 Administration Rd.  
Bridgewater, Mass. 02324  
1-29-61

Certificate of Service

I the defendant, Michael Elbery, sent  
this Motion To Impound to the Clerk  
Framingham Dist. Ct - ~~ADO~~ Concord St.,  
Framingham, & the Framingham Dist.

A.H. Office, 100 Concord St., Framing-  
ham, Mass., all via U.S. 1<sup>st</sup> class -  
prepaid mail on 2-1-61.

W. Elbery

004  
C05M

M. Elbery, (5763)  
SECC A-406  
12 Administration Rd  
Bridgewater, Ma. 02322  
2-4-01

Ex.D

Clerk-Criminal  
Framingham Dist. Ct.  
600 Concord St.  
Framingham, Ma. 01704

Legal  
Hospitals  
Records  
#11

RE: Com. v. Elbery #0049CR1893

Dear Clerk:

Please find for immediate filing & review  
"Defendant's Motion for Discovery." This was  
originally written by my attorney for pay  
who withdrew and a Continuance given  
by the Court on the Conference Report  
and Pre-Trial Conference date on this  
case.

Thank you.

M. Elbery

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

TRIAL COURT OF THE COMMONWEALTH  
DISTRICT COURT DEPARTMENT  
FRAMINGHAM DIVISION  
DOCKET NO. 0049 CR 1893

*NOT  
Filed  
Client to  
make dec  
on motion*

COMMONWEALTH OF MASSACHUSETTS )

VS. )

MICHAEL ELBERY )

MOTION FOR DISCOVERY


Now comes the Defendant, MICHAEL ELBERY, and moves this Honorable Court pursuant to Rule 14 of the Massachusetts Rules of Criminal Procedure to order the Commonwealth to provide the following information to the Defendant in addition to the discovery information contained in the pretrial conference memorandum:

1. The date and time that all video tapes were received by the police in this case.
2. The full name of the officer who received any video tape in this case.
3. The full name and address of the person who provided the police with the video tape in this case.
4. The complete chain of custody of all video tapes collected by the police in this case.
5. All facts observed by the police officer who received the video tape in this case, including, but not limited to the location of the video tape prior to receiving the tape.
6. All statements by any individual related to the video tapes in this case.
7. The time and date that the police viewed all video tapes in this case.
8. All information related to any attempts to obtain additional video tapes in this case.
9. All information related to the whereabouts of the correct video tape in this case.
10. All hand written notes of all police officers related to this matter.
11. All medical records of the complaining witness, Peter

Gear, related to this incident.

- \* 12. The name and address of any medical facility, including but not limited to any hospital, clinic, emergency room or doctor's office, that the complaining witness, Peter Gear, sought medical attention as a result of this incident.
13. Copy of all police log entries of all telephone calls related to this incident.
14. All photographs related to this incident.
- \* 15. The address and phone number of the location from which the complaining witness, Peter Gear, called the police on two occasions on July 4, 2000 and the name and address of all persons present at that location on that day who saw or spoke to Peter Gear.
16. All Framingham police documents related to Peter Gear's arrest on July 4, 2000, including but not limited to, booking sheets, police reports, photographs, computer images, statements by Gear, etc.

Respectfully submitted  
By his attorney,

  
Kenneth L. Brekka, Esquire  
Brekka & Brekka  
32 Main Street  
Hubbardston, MA 01452  
(508) 928-5000

*Pro Se Defendant - Approved*  
*Michael Elbey*

CERTIFICATE:

*Certificate of Service - Pro Se Defendant*

*I the defendant, Michael Elbey, sent this Motion to the Clerk-Criminal Framingham Dist. Ct via U.S. 1st class*

Ex. E



Mike Elbery  
C57634  
S.E. C.C. - O.V.A  
12 Administration Rd.  
Bridgewater, Me. 03324

Clerk - Framingham Dist. Ct.  
600 Cambridge Concord ST.  
Framingham, Mass. 01701

R.E. Com. v. Elbery  
Criminal # 0049 CR/893

Dear Clerk:

Please find for immediate filing review,

"Defendant's Motion for Additional  
Discovery"

Thank you.

see I in  
year's Hospital  
records

Mike Elbery



Commonwealth of Massachusetts

Framingham Dist. Ct.  
Middlesex ss

Criminal Docket  
#0049CB1893

Commonwealth

v.

Michael Elbery

Defendant's Motion for Additional Discovery

1. The defendant requests additional discovery. He submits this motion prior to the scheduled discovery hearing of 11/14/00 regarding this case. The defendant asks as follows:

a. List of all F.P.D. (Framingham Police Dept.) officers on duty the 11<sup>th</sup> Shift during the month of May, '00. Please indicate officer, day worked, & Shift via official F.P.D. documentation.

b. The relationship between the A.D.A. handling this case, Hurley, and Lt. James Hurley of the Shrewsbury Police Dept.

c. Viewing by the defendant (personally) of the 7-3-00 Mobil video which is currently being held by the F.P.D.

1 2 Th.

e. The tape, 911, recorded by the F.P.D. of the defendant, Michael Elbery, calling the Framingham Police between 10pm-July 6 and 3:00am July 7, '00. In this tape Elbery leaves a message for a Sgt. Sanchez telling him that he can find the (3) men who witnessed the alleged criminal episode by contacting Mary Floyd who works at the same Mobil Station.

f. The police log containing the second call (gear made on 7-8-00) to the F.P.D.

g. Copy of all pictures the prosecution will use at trial

h. ~~Names of all prosecution witnesses.~~

i. All H-Spital Records of Peter H. Gear, the alleged victim, resulting from the incident at the Mobil on 7-8-00.

j. ~~All written statements of all defense & prosecution witnesses held by or taken by the prosecution team.~~

k. The defendant's inculpatory & exculpatory statements both written & verbal.

l. The Mobil Video of 7-8-00.

xx m. The names & addresses & identification of  
1 all witnesses interviewed by the Com-

monwealth, police, D.A.'s Office & team.  
Include when, how many times, where, what  
was said regarding the interviews of these  
witnesses.

The list of witnesses should include  
Dolly Olecki, James Regal & any and  
all Mobil employees.

r. All notes taken by the responding F.P.D.  
officers on 7-4-00 at the Mobil Station,  
696 Lockhate Rd, Framingham where the  
alleged criminal episode took place that  
caused this action.

### a. Bill of Particulars

The cause of each injury as depicted  
in each of the F.P.D. photos taken of  
the alleged victim, (rear). The date the  
pictures were taken.

p. List of all police & members of the prosecution team  
that spoke to Mobil Managers, Dolly Olecki, & James J.  
Regal.

Wherefore,

The defendant motions for the above  
discovery, as the law allows & requests.

Michael Elbery

Certificate of Service

I the defendant, Michael Elbery, sent this "Motion  
for Additional Discovery" to the Clerk-Framingham  
Dist. Ct., 600 Concord St., Framingham, Ma. 01701 &  
to the D.A.'s Office 60 Concord St., Framingham,  
01701.

Ex. 1  
Ex. F

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.



Thahnk you.

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket  
#0049CR1893A (3006)

v.

Elbery

Defendant's  
Defendant's  
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 dark 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<sup>\*</sup> - return receipt prepaid on 3-15-01 from SECC prison mail.

*Mike Elbery*

\* Clerk # 7099 3400 0010 7041 6111  
D.A. # 7099 3400 0010 7041 6108

Michael Elbery, c57634  
SECC Prison  
12 Administration Rd.  
Bridgewater, Mass. 02324  
5-22-01

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

RE: Commonwealth v. Michael Elbery 00-3006

Dear Clerk:

Please find enclosed for immediate filing and review,

"Defendant's Motion to Compel Alleged Victim's Medical Records

From

Emergency Room and Past Primary Care Provider

As

Exposed By Dr. Tamara Martin "

and Certificate of Service and Supporting Documents and Affidavits

*See Document Listing*

Thank you.

*Michelle*

*6/11/01*  
*Denied. The*  
*D.A. has until*  
*6/15/01 to*  
*comply*  
*Dr. [Signature]*  
*Spodick*

## COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket  
#0049CR1893A (3006)

v.

Elbery

5/17/01  
See  
Margin  
notations  
which  
constitute  
order of  
court  
Dmy Gaudy

Defendant's  
Motion

Defendant's Motion to Compel Prosecutor  
to

Produce Discovery Evidence

as

Requested by Defendant's Discovery Motions

N/A  
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.

See  
other  
order  
5/17/01  
2. There has been no Pretrial Conference or Pretrial Report regarding this instant case.

Denied  
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.

Denied -  
Disc.  
Hearing  
today  
5/17/01  
4. At this late date the Court has yet to discuss the defendant's discovery requests made via his motions to the prosecution.

NA 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.

See Omnibus motion 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"

allowed 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".

allowed 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".

denied 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".

allowed 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

See  
omnibus  
motion

allured  
any  
new records  
to be provided  
ch. 233  
79(6)  
at least  
10 days  
before  
trial

Ex. 4

COMMONWEALTH OF MASSACHUSETTS

Commonwealth

Framingham District Court

v.

Six Man Jury Session

Michael Elbery

00-3006

Defendant's Motion To Compel Prosecution

To

Produce Evidence Requested By Defendant's Omnibus Motion

&

Ordered by the Court

The Court at the 5-17-01 discovery hearing ordered the Prosecution to produce the evidence as requested via the defendant's "Omnibus Discovery Motion", as itemized below the prosecution has failed to Comply with those discovery orders.

Reference is made to numbered requests of the Defendant's Omnibus Discovery Motion already on file with the Court. See Exhibit A.

1. Request #2 - 2 concealed F.P.D. photos

The defendant still demands the 2 pictures of Peter Gear taken by the F.P.D. that shows a "massive bloody head wound" on Gear's right forehead. These pictures were shown to the defendant by Attorney Ken Brekka . The other picture showed a huge 1 foot diameter bruise on Gear's right side.

All pictures the F.P.D. has on this case were ordered preserved by Judge Stoddard on 9-13-00. See Exhibit B.

2. Request #3a-e - Gear's dismissed felony larceny charge

The defendant demands the evidence requested regarding the charge dismissed against Gear in Taunton District Court for felony larceny and outstanding 6 year warrant on that charge.

3. Request #4 - Evidence produced when Gear reported alleged Crime

The defendant requests the Court to order the prosecution to produce the evidence requested in #4a-d of the defendant's "Omnibus Motion". Some of this evidence was requested in #6 & #8 of the defendant's "Omnibus Motion".

This evidence includes the computer printouts the F.P.D. maintains of the two calls Gear made to the F.P.D. - 911 on 7-4-00. Also the tape and 911 computer printout of the 911 call made by Gear on 7-5-01 at 7:21 am.

Also requested was the dispatch reports resulting to the response by the F.P.D. to this defendant's 911 call made at 2:22 am on 7-4-00.

This communication evidence was already ordered preserved by Judge Stoddard on 9-13-00, see Ex. B.

4. Requests #6 & #8 - Telephone & Dispatch Evidence

This evidence in these requests concerning the telephone and dispatch evidence in this case, including the 911 computer print out of Gear's calls to the F.P.D. on 7-4-00 (these computer printouts tell what time the calls were made). Also requested were the dispatch evidence resulting from this defendant calling the F.P.D. -911 on 7-4-00 at 2:22am. And the defendant requested the 911 tape and computer printout of the call Gear made to the F.P.D. on 7-5-00 at 7:21am.

Note, these requests were allowed as a result of the defendant's



first "Motion to Compel Discovery" #6d. see Exhibit C.

All this evidence was ordered Preserved for the defendant by Judge Stoddard on 9-13-00, see Exhibit B.

5. Request #16 - the turret, phone tapes, radio communications

The radio and turret communications are resulting from the F.P.D. response to this defendant's 911 call at 2:22am on 7-4-00. The phone tape missing is Gear's call on 7-5-00 at 7:21am.

At this date the defendant knows there is a F.P.D. radio tape missing that says " Just another gas evasion". This radio communication was probably by Officer Vizikas at about 3:00am on 7-4-00.

This evidence was ordered preserved by Judge Stoddard for the defendant on 9-13-00, see Exhibit B.

6. Request #19 - the documents the Prosecution does not want to present until trial to cause surprise.

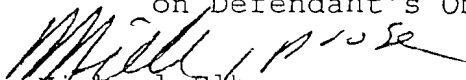
The prosecution claims it will produce additional documents at trial which have not yet been identified. The defendant wants those documents well before trial or now.

WHEREFORE,

the defendant, pro se, motions the Court to Compel the discovery as above including

- a. the F.P.D. pictures of Gear's massive bloody head bruise and wound & 1 foot diameter side bruise
- b. The F.P.D. 911 computerized printout of the 2 calls Gear made to the F.P.D. on 7-4-00 so the jury knows the time he made the calls
- c. The F.P.D. 911 tape and computerized printout of Gear's call to the F.P.D. on 7:21am at 7-5-00
- d. the F.P.D. dispatch report resulting from this defendant's 911 call to the F.P.D. at 2:22 am
- e. the F.P.D. radio/turret tapes of 7-4-00 at approximately 3:00am recording the responding officers to the underlying incident at the Mobil saying "It was only a gas evasion".
- f. All documents the prosecution will present at trial and Gear's felony larceny information.

See also Exhibit D, 'Commonwealth's Response to Court Order on Defendant's Omnibus Discovery Motion'

  
Michael Elbery, pro se

SECC Prison  
12 administration Rd.  
Bridgewater, Mass. 02324  
6-19-01

Ex. A  
of  
Exhibit  
4

1 of 9

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth of Massachusetts

v.

Michael Elbery

Criminal Docket

#0049CR1893#

CR 3006

5/17/01  
see notations  
in margins  
which constitute  
court order  
Dmy Stoddard

Defendant's Omnibus Discovery Motion

Due to the Court refusing to docket this Pro se defendant's Discovery Motions the Pro se defendant files this discovery motion. The defendant, Pro se, makes the following discovery demands which will yield discovery that is mandatory per M.R.Cr.P.- Rule 14.

1. Regarding the arrest of Peter H. Gear (alleged victim) by the Framingham Police (hereinafter the F.P.D) on 7-4-00 the defendant requests

- Book to motion 5/17  
imposed photo  
allayed  
allayed  
denied  
allayed  
Denied  
allayed
- the booking photos of that arrest by the F.P.D.
  - the booking sheet and booking report of that arrest
  - the booking video of that arrest
  - all information the F.P.D. has of that arrest
  - the amount of bail, date of bail and who paid the bail regarding that arrest
  - All statements made by Gear during that arrest

2. Regarding the alleged injuries that the alleged victim, Peter H. Gear,

sustained causing this instant action the defendant demands

- a. 2 sets of the 6 photos the F.P.D. has of those injuries
- b. to know the type of camera the F.P.D. used to take the 6 photos in (a), above.

c. Where and When were the 6 photos in (a), above, taken?

d. Who took the 6 pictures in (a), above?

e. Who developed those same 6 pictures?

f. Court impound the negatives that produced those 6 pictures

3. Regarding the larceny charge originating/filed at the Taunton Dist. Court (docket #9431CR4589A) that the F.P.D. arrested Peter H. Gear for on 7-4-00 the defendant requests

- a. all court and probation records regarding that arrest
- b. the amount of the larcenies, number of larcenies, date of larcenies/offenses that caused that arrest
- c. date the charges were disposed of
- d. the disposition of the charges
- e. Per Gear's CORI - what does PTP mean and what is its significance - see Ex. A.

4. Where and when did Peter H. Gear (alleged victim) report the alleged crime to the F.P.D. that caused this instant action.

- a. to whom was the alleged crime reported?
- b. state the exact address where the alleged crime was reported
- c. Produce a copy of the tape recording, log and computer printout of any phone call that preceded the report by Gear and that caused the F.P.D. to take Gear's complaint.
- d. State the time that Gear reported the alleged crime to the F.P.D. which resulted in a police report to Sgt. Sanchez.

5. State the name of the therapist and address that, as per Mass. Region #9 Parole officer - Karen Rouke-Gatty, Gear went to for therapy or treatment. See Ex. D.

1 set allowed

Beatty notes 9-13  
of impound photo  
index  
1/4 - body

denied  
denied  
denied  
denied

Mr. P. - just in 1/16  
info of state  
a. pending under  
control of prob.  
denied  
However  
the prob. do  
shall provide  
Def. with a  
copy of Mr.  
Gear's record

denied  
but any  
documents  
which  
reflect same  
shall be  
provided

- denied*
- a. Produce all reports from that therapist regarding Gear's treatment needed because of the incident that caused this action
  - b. Produce all reports from that therapist via reports or otherwise indicating or revealing where Gear went in terms of a physician or hospital treatment regarding his alleged injuries.

*9-13*  
*Ch. order - Brekka*  
*motion - Longhouse*  
*communication*

6. A viewing and listening by the defendant to the F.P.D. recording machine that records the times and phone calls to the F.P.D., the same recording machine Attorney Ken Brekka obtained the information regarding the defendant's 911 call on 7-4-00 to the F.P.D. and their response to that call, See Ex. B.

*Did patch report*

- a. Including all 7 known phone calls involved in this instant case to the F.P.D. - See #8 below for a list of the 7 phone calls
- b. In particular the 2 phone calls Gear made on 7-4-00 to the F.P.D.
- c. Also the phone call made by F.P.D. Vizikas from the Route 30 Mobile on 7-4-00 upon arrival to the Mobil as a result of the defendant's 911 call from the Mobil.

*9-13-1-394*  
*motion - Brekka*  
*motion - Longhouse*  
*communication*

7. Produce all information for the last 6 years of Peter H. Gear with the Mass. Registry of Motor Vehicles regarding his registration of automobiles

- 9-13-1-394*  
*motion - Brekka*  
*motion - Longhouse*  
*communication*
8. Regarding the phone calls made to or from/by the F.P.D. concerning the above docketed case, the defendant requests (See calls listed below)
- a. A computer print out of each phone call
  - b. that he listen to the original tape recording of each call on the original F.P.D. recording machine
  - c. that he get or receive a transcript of the recording of each call
  - d. a print out of the F.P.D. log of each call
- See #4*

	<u>Caller</u>	<u>Time Call Made</u>	<u>Date</u>	<u>Source</u>
1.	Elbery	2:22 a.m.	7-4-00	-

3.	Gear	?	7-4-00	F.P.D. 911 tape
4.	Elbery	2:37 a.m.	7-4-00	F.P.D. log
5.	Gear	7:21 a.m.	7-5-00	F.P.D. log
6.	Elbery	3:30 a.m.	7-7-00	Attorney Ken Brek & F.P.D. tape
7.	F.P.D. Sanchez	7:30 a.m,	7-6-00	F.P.D. tape

9. Meaning of the abbreviations, all, on the F.P.D. computer printout . See Ex. C.

10. A copy of the 7-3-00 Mobil video that is in possession of the F.P.D for the the defendant's viewing.

a. or a viewing of that tape by the defendant at the Court.

11. The synagogue or temple Gear was bartmitzvahed at.

12. The Docket Entries of this instant case.

13. 4 applications for criminal complaint.

14. Provide the "Chain of Custody" of the Mobil video of 7-2-00 through 7-3-00 that the F.P.D. possess and the Court ordered impounded during this instant action/case.

*Denied*

*Allowed*

*Denied*

*allowed*

*Denied*

*Denied*

*Denied*

- b. State the date and time the officer in (a), above, picked-up that video tape or any video tape from the Route 30 Mobil
- c. State the name of the F.P.D. officer who brought back that same video tape or any video tape to the Route 30 Mobil
- d. State the time and day and date that the officer in (c), above, brought back that Mobil video tape to the Mobil and which Mobil employees did you give the tape to.
- e. Describe all activrty of the F.P.D regarding the Mobil video, above, after it was initially picked-up until Sanchez put it in evidence at the F.P.D. on 7-7-00
  - i. Include the names of all F.P.D.employees and prosecutic team members who participated in any and all of the requested "chain of custody" and activities
  - ii. The date, day and time of all requested activity of the video "chain of custody"
  - iii. State the name of any and all Mobil employees contacte regarding any and all Mobil video tapes

*Allowed*

15. State the meaning of the number S56078321 per the F.PD. tape 911 re-cording of Peter H. Gear on 7-4-00.

*Back to Motion 9-13*  
*Denied*

- 16. Produce all recordings of the F.P.D. regarding the above docketed case, including all phone tapes and radio communications of the underlying incident.
  - a. Include all turret tapes.
  - b. Include the recording of F.P.D. Dones and Vizikas' radio communi-cation from the Chinese Restaurant after leaving the Mobil on 7-4-00 after the incident that caused this action.

*Allowed*

Produce all transcripts made by the prosecution of any and all tapes and recordings involving this instant action.

*Allowed*

- a. Produce all transcripts the prosecution intends on using during the trial of this instant case.

18. The criminal CORI records of the defendant

*Allowed*

19. Produce all documentary evidence the prosecution will use at trial  
a. including all documents signed by the defendant

*Allowed only if D.A. has same in its possession*

20. Provide an "out-of-state" and Federal rap sheet or criminal convictions of the alleged victim, Peter H. Gear, for the other 49 state and Federal jurisdiction.

21. Provide for inspection by the defendant the prosecutor's file regarding this instant case.

22. Prosecutor to search and turn over to the defendant all records of Peter H. Gear's involvement with drugs.

23. Produce a list of all F.P.D. officers on duty the 11-7 shift during the month of May and June of 2000.

24. State the relationship between the Special A.D.A. handling this case, Hurley, and Lt. James Hurley of the Shrewsbury Police Dept.

25. Provide a viewing by the defendant, pro se, of the video tape taken from the Route 30 Mobil, 696 Cochituate Road, Framingham now being held by the F.P.D.

26. State the ancestry of the alleged victim, Peter H. Gear.  
a. Religion of Gear  
b. state whether Gear is a Jew

*See next page*

27. State the names, addresses, and ids of all people and



*Any statements reduced to writing by police or a narrative by a witness reduced to writing by a D.A. are allowed other requests denied*

witnesses interviewed by the Commonwealth, the F.P.D., D.A.'s Office and prosecution team regarding the above docketed case.

- a. describe the content of the subject matter of each of these interviews of each person.
- b. state day, time, and date of each such interview.

*allowed* 28. Produce all notes taken by the responding F.P.D. officers on 7-4-00

at the Mobil gas station, 696 Cochituate Road, Framingham, where the incident took place that caused this above docketed action.

*Denied* 29. List of all F.P.D. members that spoke to the following employees at the Route 30 Mobil, 696 Cochituate Road, Framingham, regarding the alleged criminal episode and anything related to that alleged criminal episode

- a. Mgr. Dolly Olecki
- b. Ast. Mgr. James "J" Regal
- c. Bill Fairbanks
- d. Mary fleyd
- e. Richard Gedsoe
- f. State the date and substance or content of each conversation

*Denied* 30. Provide a record of all mail this defendant, Michael Elbery, sent out of Concord State Prison from 7-7-00 through 10-10-00

- a. Include the name and address of all destinations of that mail
- b. include the date sent for each piece of that outgoing mail

*Denied - Def. may seek same on his own by filling out a request* 31. Provide an audible copy of the tape of the 10-17-00 evidentiary hearing held at the Framingham District Court on this action.

*Denied* 32. Provide the results of the eyesight tests done on this defendant between 7-7-00 and 10-10-00 at Concord State Prison's H.S.U. unit.

33. Reserve a VCR and TV for trial date in order to show video evidence.

34. State who on the F.P.D. and prosecution team or any other state actor viewed any of the Mobil videos taken from the Mobil gas station, 696 Cochituate Road, Framingham

- a. state date each state actor viewed any of the videos taken from that same Mobil
- b. state the time of each viewing by each state actor

35. Provide an expert witness, independent of the prosecution and approved by the defendant, to test the

- a. the 6 F.P.D. pictures and related negatives of the alleged victim Peter H. Gear
- b. various F.P.D 911 tapes in this , as in #8 above
- c. pictures and documents depicting injuries in this case by a physician

38. State the address of the prosecution's star witness, Peter H. Gear, from 7-4-00 to present.

39. Produce all statements held by F.P.D. internal affairs of percipient witnesses regarding this case

- a. in particular involving any investigation of the missing Mobil video tape of 7-4-00

40. State the time F.P.D. Dones and Vizikas left the Mobil after responding to this defendant's 911 call on 7-4-00

*Denied*  
41. See also Defendant's Bill of Particulars, Motion for Expert Testing on the F.P.D. phone tapes and recording machine and negatives of the pictures/photos (6) the F.P.D. has of the alleged victim's alleged injuries, Motion for a Medical witness to testify regarding the injuries sustained by Peter H. Gear and the defendant as per medical records and photos.

*Denied - atty Brekka has ethical obligations outside this motion*  
42. See also defendant's Motion to compel Attorney Brekka to disclose exculpatory evidence he gained during his investigation of this case to the defendant so the defendant can be prepared for trial.

*N/A*  
43. See defendant's Motion for Evidentiary Hearing of Peter H. Gear so the defendant can gain exculpatory evidence.

*Brady still applies*

*?*  
44. See also defendant's Motions for hospital and medical records to the Deaconess-Glover Hospital and the M.C.I. Concord H.S.U. and to Mobil Oil Corp. for documents.

*Michael Elbery*  
Michael Elbery, Pro se  
SECC Prison A 406, C57634  
12 Administration Rd.  
Bridgewater, Mass. 02324  
2-14-01

Certificate of Service

I the defendant prose, Michael Elbery, sent this Omnibus Motion to the Clerk-Criminal-Framingham District Court, 600 Concord St., Framingham, Mass. and to the Framingham D.A.'s Office, 100 Concord St., Framingham, Mass. all via U.S. certified mail-prepaid on 2- -01 from SECC Prison Mail.

*Michael Elbery*

Ex  
A

PRIM NAME: GEAR, PETER H

DOB: 02/15/1962 PDF#: 8092446

SEX: M SS #: 034-38-1958 MOTHER: CAROLE KIRBY

FATHER: NORMAN

HOME ADDR : 58 CLINTON ST FRAMINGHAM MA

ZIP CODE : 01702-

DOB: 02/15/1962

MASSACHUSETTS  
COURT ACTIVITY  
RECORD INFORMATION

ETHNICITY: WHITE

HGT: 507 WGT: 170 HAIR: BROWN

EYES: GREEN

DT: 07/05/2000 RAY CRT: TAUNTON DISTRICT ( 21 )

DKT# 9431CR45596

OFFENSE: LARCENY BY CHECK (LAP CK)

DISPOSITION: PTD 9/2/02 REST PD DISM

STATUS: CLOSED

DT: 10/18/1993 CRT: NEWTON DISTRICT ( 12 )

DKT# 9312CR12461

OFFENSE: OPER UND INFL OF LIQ (1110)

DISPOSITION: C 11/8/93 G PROB 11/7/94 VWF PD NOV/94 PROB VOP STATUS: CLOSED  
PROB 8/14/95 FINE 9/1/94 R/R PROB 3/2/95 PROB TERM

Box 7/26/00 15:30

Ex B

End Time 7/3/00 16:15

24 hour  
TAPE

View Whole TAPE NO ELBey

911

2:24:27 #1 Line

INITIAL 911 -

HANG ON I GOT T. get his license plate -

2:26:33 Phone disconnect

2:28:12 - Cop NOT there yet -

2:28:19 - Police ARRIVE

2:29:13 - ASSAULT TOOK PLACE -

2:30 - Chica, (Gien)

2:33 - Phone call

000) 000-0000 TK003 00:33:29 | TO 00:33:29 | RLS 00:33:29 | DUR 00:00:01  
2000/07/04 HIT CALL

Current time: 00:45 (2000/07/04)  
System message: APU # 002 RMT SEND BY 0000 07/04 00:47:26

(508) 877-0916 TK001 00:47:05 | RI 00:47:07 | C0002 00:47:11 | TT013 00:47:21  
| DI002 00:47:41 | RLS 00:47:43 | DUR 00:00:38

2000/07/04

201 RESD 00:47 07/04 (508) 877-0916 LEWIS,ERMOND F 5 BURBANK CIR FRAMINGHAM ESN=  
204 INP FRAMINGHAM PD FRAMINGHAM FD FRAMINGHAM FD

Current time: 00:59 (2000/07/04)  
Current time: 01:11 (2000/07/04)  
Current time: 01:23 (2000/07/04)  
Current time: 01:35 (2000/07/04)  
Current time: 01:47 (2000/07/04)  
Current time: 01:59 (2000/07/04)  
Current time: 02:11 (2000/07/04)  
Current time: 02:23 (2000/07/04)

(508) 875-1424 TK002 02:22:09 | RI 02:22:11 | C0001 02:22:16 | DI001 02:24:11  
| RLS 02:24:14 | DUR 00:02:05

2000/07/04

202 BUSN 02:22 07/04 (508) 875-1424 MOBIL OIL CORP 696 COCHITUATE RD FRAMINGHAM  
ESN=204 INP FRAMINGHAM PD FRAMINGHAM FD FRAMINGHAM FD

Current time: 02:36 (2000/07/04)  
Current time: 02:48 (2000/07/04)  
Current time: 03:00 (2000/07/04)  
Current time: 03:12 (2000/07/04)

Page# 001 Calls on this page Cumulative calls today Total calls  
All Calls TIU:03 MIU:00 LIU:00 TIU:0003 MIU:0000 LIU:0000 today:0003

Tuesday 2000/07/04 03:24 \*\*\*\* FRAMINGHAM \*\*\*\* Page # 002

Current time: 03:24 (2000/07/04)  
Current time: 03:36 (2000/07/04)  
Current time: 03:48 (2000/07/04)  
System message: APU # 002 RMT SEND BY 0000 07/04 03:55:37

(508) 879-6978 TK003 03:55:10 | RI 03:55:12 | C0002 03:55:18 | C0004 03:55:30  
| A0152 03:55:30 | TT013 03:55:31 | DI004 03:55:31  
| C0004 03:55:31 | A0152 03:55:31 | DI004 03:55:32  
| C0004 03:55:32 | A0152 03:55:32 | DI002 03:55:56  
| DI004 03:55:58 | RLS 03:55:59 | DUR 00:00:49

2000/07/04

203 BUSN 03:55 07/04 (508) 879-6978 PATHWAYS RESIDENTS 70 PEARL FRAMINGHAM ESN=2  
204 INP FRAMINGHAM PD FRAMINGHAM FD FRAMINGHAM FD

Current time: 04:08 (2000/07/04)  
Current time: 04:20 (2000/07/04)  
Current time: 04:32 (2000/07/04)  
Current time: 04:44 (2000/07/04)  
Current time: 04:56 (2000/07/04)  
Current time: 05:08 (2000/07/04)  
Current time: 05:20 (2000/07/04)  
Current time: 05:32 (2000/07/04)

6-14-00 V 2:40pm. PO met with subject and viewed final checks from Merrit Gas periods ending 5-26,6-2-00 for 17½ hours each week. PO also viewed most receipt check stubs from Mobil Gas for 35 hours which is an avg. of 17.25 hours per week. Subject is meeting a standard number of hours imposed by the Board which is 35 hours weekly. Subject reports no changes other than that in employment. No problems.KR/jd

6-30-00 M PO on vacation from 7-3-00 to 7-7-00.KR/jd

7-6-00 TC/SI PO Stanford spoke with Officer Sanchez of Framingham PD. Subject was involved in an A&B at a gas station, investigation on-going.KR/jd

7-7-00 DET. PS advised by Framingham PD that a criminal complaint was filed against the subject for A&B D/W. PS authorized a WTC. PO Bello and Stanford along with Needham PD arrested subject at his residence at 6:30pm. Subject proclaimed his innocence.KR/jd

7-10-00 TC/PH PH set for 7-17-00 at MCI-Concord.KR/jd

7-11-00 PH PH rescheduled to 7-19-00.KR/jd

7-11-00 RI Computer check reveals no pending cases.KR/jd

7-12-00 L Form A faxed to MCI-Concord this date.KR/jd

7-12-00 TC PO spoke with the victim who informed PO that he sought medical treatment after the assault and was still under doctors care. The victim told PO that he was traumatized and fearful of the subject. PO referred victim to the Victims Service Unit. KR/jd

7-12-00 PVR Submitted. PO recommends Provisional Revocation.KR/jd

7-20-00 PBV Provisional Revocation. KR/jd

7-26-00 L Return of service received this date.KR/jd

8-7-00 L Subject postpone his final revocation hearing.KR/jd

Ex. B  
of  
Ex. Y

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH  
FRAMINGHAM DISTRICT COURT

DOCKET # 0049 CR 1893

COMMONWEALTH OF MASSACHUSETTS )

VS. )

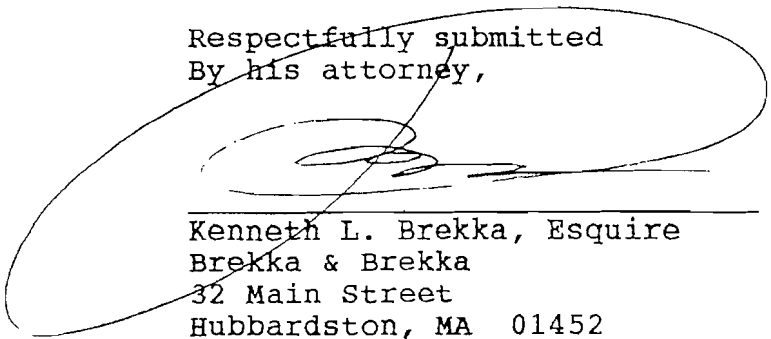
MICHAEL ELBERY )

MOTION TO PRESERVE  
EVIDENCE

9/13/00  
Allard  
Dwyer  
Shush

Now comes the Defendant, MICHAEL ELBERY, in the above  
entitled matter and respectfully moves this Honorable Court to  
direct the Commonwealth to preserve all evidence in its custody or  
under its control, including but not limited to: all police notes;  
video tape evidence taken from the Framingham Mobil Station,  
located at 896 Cochituate Road, Framingham, Massachusetts; all  
communications related to this incident recorded at the Framingham  
Police Station; and photographs.

Respectfully submitted  
By his attorney,



Kenneth L. Brekka, Esquire  
Brekka & Brekka  
32 Main Street  
Hubbardston, MA 01452  
(508) 928-5000  
BBO # 548299

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.



Ex. C

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket  
#0049CR1893A (3006)

v.

Elbery

5/17/01  
See  
Margin  
notations  
which  
constitute  
order of  
court  
Dmy Gaddy

Defendant's Motion to Compel Prosecutor  
to

Produce Discovery Evidence

as

Requested by Defendant's Discovery Motions

N/A  
1. The defendant-pro se, Michael Elbery, Motions the Court to Compel the proesection to produce the exculpatory, relevant and material evidence asked for in the defendant's 12 discovery motions filed in this instant case.

See  
other  
order  
5/17/01  
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.

Disc.  
today  
5/17/01  
4. At this late date the Court has yet to discuss the defendant's discovery requests made via his motions to the prosecution.

N/A 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.

See Omnibus motion 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"

allowed 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".

allowed 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".

denied 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".

allowed 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.

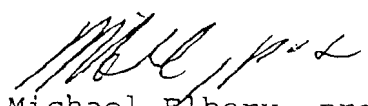
These same hospital records were requested in 3 of the defendant's Discovery Motions already filed with the Court in this case as follows:

- 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

Ex. D

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

FRAMINGHAM DISTRICT COURT  
DOCKET NO. 00-3006

COMMONWEALTH

v.

MICHAEL ELBERRY

---

COMMONWEALTH'S RESPONSE TO COURT ORDER  
ON DEFENDANT'S OMNIBUS DISCOVERY MOTION

---

Now comes the Commonwealth in the above-entitled matter and in response to this Court Order (Stoddart, J., May 17, 2001) on Defendant's Omnibus Discovery Motion as follows:<sup>1</sup>

Request Number 1

- (a) the booking photos were provided to defendant prior to this Court's Order;
- (b) a copy of the booking sheet is attached hereto;
- (c) there is no such video in the possession, custody or control of the District Attorney's Office;
- (d) see response to 1(a) and 1(b);
- (f) see response to 1(b).

Request Number 2

- (a) a copy of the set of photographs were provided to defendant prior to this Court's Order and the originals of the same have, are and will be available for inspection.

Request Number 3

Not applicable to District Attorney's Office.

Request Number 4

- (a) – (d) see the Framingham Standard Offense Report (Case Number 0004248), a copy of which was previously provided to defendant.

---

<sup>1</sup> Only those requests which were allowed are responded to herein.

Request Number 10

A copy of the video is enclosed.

Request Number 12

An original certified copy of the docket is enclosed.

Request Number 15

According to Framingham Police Department, the number used is simply an identification number for Mr. Gear, having no independent significance to the Department.

Request Number 17

A copy of a portion of the Framingham Police Department Police Log is enclosed herewith. There are no other such transcripts in the possession, custody or control of the District Attorney's Office, nor does it intend to use any transcripts at the trial in this action.

Request Number 18

See copy of defendant's record enclosed herewith.

Request Number 19

See copies of defendant's criminal convictions, the receipt for Mr. Gear's purchase of gasoline, and Mr. Gear's medical records which have been certified pursuant to G.L. c. 233, sec. 79G, copies all of which are enclosed herewith. The Commonwealth also reserves the right to use additional documents at trial, which have not yet been identified, including, but not limited to any and all motions and papers sent to the Court by defendant.

Request Number 20

There are no such documents in the possession, custody or control of the District Attorney's Office.

Request Number 25

See response to Request Number 10.

Request Number 27

See the Framingham Standard Offense Report (Case Number 0004248), a copy of which was previously provided to defendant.

Request Number 28

See the Framingham Standard Offense Report (Case Number 0004248), a copy of which was previously provided to defendant. According to the Framingham Police Department, no other notes exist.

Request Number 33

Not applicable to District Attorney's Office.

The Commonwealth reserves the right to amend or supplement this response at any reasonable time prior to or at trial.

Respectfully Submitted,  
For the Commonwealth

MARTHA COAKLEY  
DISTRICT ATTORNEY

A handwritten signature in dark ink, appearing to be 'M. Coakley', is written over a horizontal line.

Special Assistant District Attorney  
100 Concord Place  
Framingham, MA 01701  
(508) 875-4141

Dated: June 12, 2001

CERTIFICATE OF SERVICE

I the defendant, Michael Elbery, sent these 3 Motions,  
Compel 2 Gear pictures -Bloody wound / Massive Bruise  
Compel Omnibus ordered discovery  
Compel Bill of Particulars, Conference Report, Testing of Video  
Surveillance System at the Mobil

to the clerk-criminal, Framingham District Court, 600 Concord St.,  
Framingham, Mass. and to the Framingham District Attorneys Office  
at 100 Concord St., Framingham, Mass. all via certified mail-  
U.S. -prepaid on 6-23-01 from SECC Prison mail.

The above is true and correct - signed under the pains and penalties  
of perjury on this day of June 21, 2001.

A handwritten signature in cursive script, appearing to read "Michael Elbery", with a long horizontal flourish extending to the right.

Ex. 5

Michael Elbery, C57634  
SECC Prison  
12 Administration RD.  
Bridgewater, Mass.02324  
6-6-01

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

RE: Comm. v. Michael Elbey #00-3006

Dear Clerk:

Please find enclosed for immediate filing and review,

"Defendant's Motion to Reconsider Defendant's "Omnibus Discovery  
Motion" Requests"

Supporting Affidavits  
Certificate of Service

Thank you.

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



COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Michael Elbery

00-3006

Defendant's Motion to Reconsider

Defendant's "Omnibus Discovery Motion" Requests

The Court denied many of this defendant's "omnibus Motion" evidentiary discovery requests on 5-17-01. The defendant asks the Court to reconsider the decisions to deny the defendant's requests for evidence via the defendant's "Omnibus Motion", as below:

1. Per "Omnibus" request 1c - "The F.P.D. Booking Video" of Peter H. Gear's arrest on 7-4-00. This booking video is direct evidence that will show the jury, just as the 2 mug shots of Gear of that same arrest, that Gear was just fine only 10 hours after the underlying incident that Gear and the prosecution claim Gear suffered numerous injuries after an alleged "beating" at the hands of this defendant. Gear's injuries are the prosecution's "base in chief" per F.P.D. - SGT. Hector Sanchez during his 7-6-00 call to this defendant on 7-6-00.

This booking video is exculpatory, relevant, material evidence under Federal "Brady" laws and Rule 14a of the Mass. Rules of Criminal Procedure.

2. Omnibus request #1e - Amount of bail, date of bail and who paid Gear's bail regarding his arrest on 7-4-00 by the F.P.D. - This evidence will impeach the police investigation and decision to arrest this defendant. As well, it will show the jury Gear made a "deal" with the prosecutor to testify against this defendant and to show evidence of bias.

3. Omnibus request #2 (the 6 Gear photos and related evidence) - These "Omnibus Requests" have already been allowed via the defendant's Motion to Preserve Evidence on 9-13-00 by Judge Stoddard.

4. "Omnibus Requests" - #4, 5, 6, 8 - See defendant's "Motion for Gear's Therapist records" & defendant's "Motion for Clarification of Telephone & Dispatch Evidence".

5. "Omnibus Request #7 - the Mass. Registry records of the past 6 years per Mass. Criminal Practice, Vol. 1, p. 390 & Vol. 1 p. 421 n. 168 these government documents are under control of the prosecution and are public records.

6. "Omnibus Request" #14 - "Chain of Custody" of the Mobil video as controlled by the F.P.D. - This evidence is necessary and undisputably exists, to show the F.P.D. and Sgt. Sanchez stole the video that recorded the entire incident with Gear at the Mobil that caused this action. This is basic "Brady" and Rule 14 a required evidence.

7. "Omnibus Request" #9 - the F.P.D. computer printout Abbreviations - How can the defendant be prepared for trial if the police and prosecution know what all the abbreviations mean on the F.P.D. computer printouts of the the 911 calls in this case.

8. "Omnibus " #16 - The F.P.D. turret tapes and radio communications . This is basic "Brady Evidence" and Rule 14a evidence that has already been allowed/ordered via the defendant's 9-13-00 'Motion to Preserve Evidence" by Judge Stoddard!

How is this evidence now denied by Judge Stoddard?

IN particular, the defendant does not have the radio recording by Dones and Vizikas saying, "It's just another gas evasion".

See affidavit #1.

9. "Omnibus" #22 - Prosecution's search for Gear's involvement with drugs - Per "Brady" the prosecutor must search for and turn over to the defendant all records of Gear's involvement with (history of) drugs, see Mass. Criminal Practice, Vol. 1 p. 421.

10. "Omnibus" requests #27, 29 - Interviews of witnesses and Mobil employees by the prosecution team.

11. "Omnibus" request #34 - Names of prosecution team and others who viewed any of the videos taken from the Mobil, 696 Cochituate Rd. Since, the police stole and destroyed the Mobil video of the incident that caused this action this is relevant and exculpatory to the defense. This is a central issue of the case, hence, required evidence under "Brady" and Mass. Rule 14a.

12. "Omnibus" request #35 - Expert test the F.P.D. 911 tapes in this case - The tapes of 911 phone conversations and other conversations of this case have been tampered with or erased. See Affidavit #2.

WHEREFORE,

The defendant asks the Court to reconsider and allow the above "Omnibus" Requests as state and Federal discovery laws require under the 6th and 14th Amendments of the U.S. Constitution.

A handwritten signature in black ink, appearing to read 'M Elbery', with a stylized, cursive script.

Michael Elbery

SECC Prison

12 Administration Rd.

Bridgewater, Mass. 02324

6-7-01

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Michael Elbery

00-3006

Affidavits In Support  
of

Defendant's Motion to Reconsider  
Defendant's "Omnibus Discovery Motion" Requests

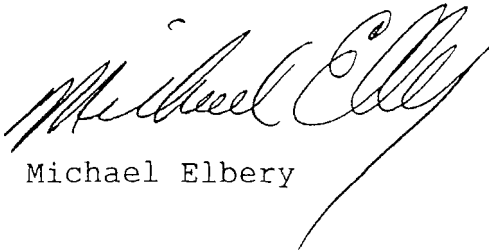
I am the defendant, Michael Elbery, I am currently at SECC Prison

1. I initially listened to the radio (turret tapes) calls taped regarding this case in August of '00. At that time one of the radio calls made by Vizikas and Dones said the underlying incident at the Mobil on 7-4-00 that gave rise to the above docketed action "was just another gas evasion".

I do not have a copy of that recording. I need a copy of that recording for trail.

2. I have reviewed the F.P.D. tapes of the above action that have been given to me and found that they all have numerous gaps caused by tampering.

Signed on this 7th day of June '00 under the penalties and pains  
of perjury.

A handwritten signature in cursive script, appearing to read "Michael Elbery". The signature is fluid and somewhat stylized, with a long, sweeping underline that extends to the right.

Michael Elbery

Certificate of service

I the defendant, Michael Elbery, sent this "Motion to Reconsider Defendant's Omnibus Motion Requests" to the Clerk -Criminal, Framingham District Court, 600 Concord St., Framingham, Mass.

01701 and to the D.A.'s Office, 100 Concord St., Framingham, Mass. 01701,

via U.S. Certified mail -return receipt prepaid all on

6-12-01 from SECC Prison mail

A handwritten signature in cursive script, appearing to read "Michael Elbery". The signature is written in dark ink on a white background.

Ex 6

Michael Elbery, C57634  
SECC Prison  
12 Administration RD.  
Bridgewater, Mass. 02324  
6-27-01

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

RE: Com. v. Elbery #00-3006

Dear Clerk:

Please find enclosed for immediate filing and review,

A corrected "Defendant's Combined Motion To Compel

Bill of Particulars, Pre-Trial Conference Report,  
and Testing of Mobil's Video Surveillance System"

AS ALREADY REQUESTED BY THIS DEFENDANT MARK-UP THIS MOTION TO  
COMPEL FOR HEARING ON 7-10-01.

Thank you.

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



Certificate of Service

I the defendant pro se, Michael Elbery, sent this corrected "Combined Motion to Compel Bill of Particulars, Pre-Trial Conference Report, and Testing of Mobil's Video Surveillance System" to the Clerk-Criminal, Framingham District Court, 600 Concord St., Framingham, Mass. 01701 certified U.S. mail - prepaid and to the D.A.'s Office 100 Concord St., Framingham, Mass. , same, all on 6-27-01 from SECC Prison mail.

The above is true and correct under the pains and penalties of perjury on this day of June 27, 01 in compliance with 28 U.S.C. s. 1746.

*Michael Elbery pro se*

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Michael Elbery

00-3006

Defendant's Combined Motion

To Compel

Bill of Particulars

Conference Report

Testing of Mobil's Video surveillance System

Defendant's Motion for Bill of Particulars - Time, Manner, means of alleged crimes.

1. The defendant motions the Court to Compel the prosecution to provide the defendant, in an informative manner, with enough detail of the alleged overt acts that constitute the alleged crimes that the defendnat can prepare an adequate defense against the charges. Com. v. Conceicao, 409 N.E.2d 816, 817 ('80).

The Court ordered the prosecution to detail the time, manner, and means that the alleged assault crimes occurred, as per EX. B (the Commonwealth's Bill of Particulars) the prosecution has provided less information than is included in the already vague criminal complaint.

The defendant asks that the prosecution answer the questions asked per the defendant's "Motion for Bill of Particulars", Ex. A.

This in order to avoid surprise at trial and alleviate the existing numerous ambiguous claims the defendant has received about Gear's claim of being kicked and beaten. Com. v. Whitehead, 400 NE 2 821 829.

#### Pre-Trial Conference Report

The defendant Motions the Court to Compel a Pre-Trial Conference Report. The defendant has filed a proposed and signed Pre-Trial Conference Report with the D.A.'s Office and Court, as required by M.R.C.P. -Rule 14a. At this late date, a month after the case was originally scheduled for trial, this defendant has not received the prosecution's signed Pre-Trial Conference Report and related/required evidentiary discovery.

Noteworthy, and of particular alarm is that District Attorney Martha Coackley's Office does not want to respond, via the standard Mass. Pre-Trial Report, to the defendant's request to the immunity/ deal the prosecution's only witness to the underlying incident received for his cooperation in testifying and changing his story in order to convict this defendant.

Little doubt, when the news of Gear's circumstances gets out, Coackley , who has been personally contacted by this defendant about this case, will not run for election again. See the Boston Globe, 9-27-00 front page. Proper spelling is Coackley.

#### Testing of the Mobil Surveillance System

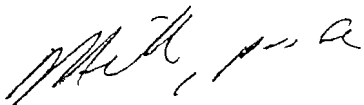
The Court, Robert Greco, allowed this defendant's motion to Preserve the Mobil's (696 Cochituate Rd.) Video surveillance system so this defendant could make necessary evidentiary tests and gain exculpatory evidence that will expose that the F.P.D.

erased the Mobil video that recorded the entire underlying alleged criminal incident. See Ex. C. The defendant motioned to enter the Mobil premises in order to test video system and gain evidence but that motion has been ignored as is usual in this case., see Ex.D.

Wherefore,

the defendant motions the Court as above, to Compel

1. A Bill of Particulars in compliance with Court order and state law and the defendant's motion.
2. A Pre-Trial Conference Report signed by a representative of D.A. Martha Coakley's Office, including an answer as to immunity given to star prosecution witness, Peter H. Gear.
3. Testing and inspection of the Mobil surveillance system to facilitate proof that the entire underlying incident was videod and Sgt. Sanchez and the F.P.D. erased it.



Michael Elbery, pro se

SECC Prison

12 Administration Rd.

Bridgewater, Mass. 02324

6-19-01

Ex. A

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham Dist. Co.

Commonwealth of Mass.

Criminal Docket

#0049CR1893A

CRJ006

v.

Michael Elbery

5/17/01  
Allowed  
in part.  
D.A. must  
comply  
with  
Crim.  
pro. rules  
(date, time,  
manner,  
means)  
and supply  
same in  
writing.  
Dory Stoddard

DEFENDANT'S MOTION FOR BILL OF PARTICULARS

The Pro se defendant Motions for a Bill of Particulars regarding the crime alleged in the above docketed action. The prosecution's discovery provided to this defendant does not adequately detail the alleged crime so that the defendant, pro se, can be prepared for trial and defer his case regarding the charges against him.

The Pro se defendant demands as the law requires

1. State how each alleged injury occurred as depicted via the 6 F.P.D. pictures of the alleged victim, Peter H. Gear.
2. State the number of times the alleged victim was battered causing his each of his alleged injuries.
3. State any weapons the prosecutor alleges were used to inflict each injury as depicted by the 6 F.P.D. photos.

victims' injuries.

5. State where each weapon contacted the alleged victim.

*Michael Elbery, pro se*

Michael Elbery, Pro se

SECC A 406 C57634

12 Administration Rd.

Bridgewater, Mass. 02324

2-14-01

I the pro se defendant, Michael Elbery, sent this "Bill of Particulars" to the Clerk-Criminal-Framingham District Court, 600 Concord St., Framingham, Mass. via U.S. certified mail<sup>\*</sup>-prepaid and the Framingham D.A.'s Office, 100 Concord St., Framingham the same all on 2- -01 from SECC Prison.

*Michael Elbery, pro se*

\* Sent Clerk - U.S. cert. mail return receipt - 7089 3400 0010 7041 6630

\* Sent D.A. - U.S. cert. mail return receipt - 7089 3400 0010 7041 6623

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham Dist. Cour

Commonwealth of Mass.

Criminal Docket

#0049CR1893A

CR 3006

v.

Michael Elbery

DEFENDANT'S MOTION FOR BILL OF PARTICULARS

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The Pro se defendant demands as the law requires

1. State how each alleged injury occurred as depicted via the 6 F.P.D. pictures of the alleged victim, Peter H. Gear.
2. State the number of times the alleged victim was battered causing his each of his alleged injuries.
3. State any weapons the prosecutor alleges were used to inflict each injury as depicted by the 6 F.P.D. photos.
4. State how many times each alleged weapon was used causing the alleged

victims injuries.

5. State where each weapon contacted the alleged victim.

*Mich, pro se*

Michael Elbery, Pro se

SECC A 406 C57634

12 Administration Rd.

Bridgewater, Mass. 02324

2-14-01

I the pro se defendant, Michael Elbery, sent this "Bill of Particulars" to the Clerk-Criminal-Framingham District Court, 600 Concord St., Framingham, Mass. via U.S. certified mail<sup>\*</sup>-prepaid and the Framingham D.A.'s Office, 100 Concord St., Framingham the same all on 2- -01 from SECC Prison.

*Mich, pro se*

\* Sent Clerk - U.S. cert. mail return receipt - 7089 3400 0010 7041 6630  
\* Sent D.A. - U.S. cert. mail return receipt - 7089 3400 0010 7041 6623



Ex-B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

FRAMINGHAM DISTRICT COURT  
DOCKET NO. 00-3006

COMMONWEALTH

v.

MICHAEL ELBERRY

---

COMMONWEALTH'S BILL OF PARTICULARS

---

Now comes the Commonwealth in the above-entitled matter and in response to defendant's request for a bill of particular states as follows:

**Date:** On or about July 4, 2000.

**Place:** The assault and battery and the assault and battery with a dangerous weapon took place at the Speen Street Mobil Gas station/market at 696 Cochituate Road/Route 30 in Framingham, Massachusetts.

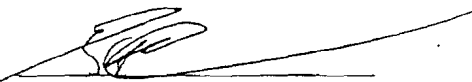
**Manner**

**and means:** On the above dates, the defendant intended to and did in fact did touch Peter Gear without having any right or excuse for doing so, and such touching was done without Mr. Gear's consent and was intended to and did in fact cause bodily harm to Mr. Gear. The dangerous weapon used by defendant was his shod foot.

The Commonwealth reserves the right to amend or supplement this bill of particulars at any reasonable time prior to or at trial.

Respectfully Submitted,  
For the Commonwealth

MARTHA COAKLEY  
DISTRICT ATTORNEY

  
Special Assistant District Attorney  
100 Concord Place  
Framingham, MA 01701  
(508) 875-4141

Dated: June 12, 2001

Ex. C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH  
FRAMINGHAM DISTRICT COURT

DOCKET # 0049 CR 3006

COMMONWEALTH OF MASSACHUSETTS )

VS. )

MICHAEL ELBERY )

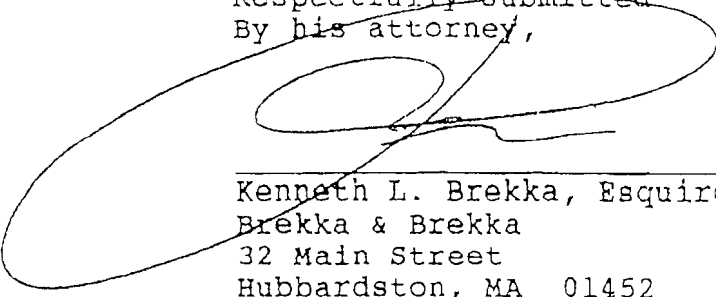
) MOTION TO PRESERVE  
) VIDEO SURVEILLANCE  
) EQUIPMENT  
)  
)

*Ordered. The  
owner and manager  
of Mobil Gas  
Station so  
ordered.*

*R. Brekka  
11/14/00*

Now comes the Defendant, MICHAEL ELBERY, in the above entitled matter and respectfully moves this Honorable Court to direct the Commonwealth and the owner and manager of the Mobil Gas Station located on Route 30 in Framingham with a mailing address of 696 Cochituate Road, Framingham, Massachusetts to preserve the video surveillance equipment used at the Route 30 Mobil Station on July 4, 2000 in order to allow the defendant to inspect and examine said evidence.

Respectfully submitted  
By his attorney,

  
\_\_\_\_\_  
Kenneth L. Brekka, Esquire  
Brekka & Brekka  
32 Main Street  
Hubbardston, MA 01452  
(508) 928-5000  
BBO # 548299

Please take notice that the above motion will be called for hearing in the Framingham District Court on November 14, 2000 at 9:00 A.M.



Ex. D  
Michael Elbery, CS76  
S. E. C. C. - O. U. A-52  
12 Administration Rd.  
Bridgewater, Ma, 01906  
10-22-00

Clerk - Framingham Dist. Ct.  
600 Concord St. P.O. Box 1969  
Framingham, Mass. 01701

RE: Com. v. Michael Elbery  
Criminal Packet # 0049CB1883

Dear Clerk:

Please find enclosed for immediate filing  
& review,

"Defendant's Motion for Court Order to  
Gain Entrance to the Mobil Premises where  
Alleged Crime Occurred  
In order to Test Video System & Gain  
Evidence as Directed by Defendant"

Michael Elbery, pro se

Commonwealth of Massachusetts

Framingham Dist. Ct.

Middlesex SS

Criminal Action

Docket #0049CR18

Commonwealth

v.

Michael Elbery

Motion for Court Order to Gain Entrance  
to the Mobil Premises where Alleged  
Crime Occurred

In Order to Test Video Surveillance System  
& Gain Evidence as Directed by Defendant

1. The defendant, above docketed, motions the  
Court to issue a Court Order allowing  
my attorney, who is also my investigator,  
to enter the Mobil Gas Station premises  
at 696 Cochituate Rd, Framingham, Mass.  
in order to test the video surveillance  
system & gain evidence as directed by this  
defendant. The attorney is Ken Bregha.

2. There is no other evidence.

that caused this alleged criminal action was filmed by the same video surveillance system. The resulting video tape of the underlying incident and related evidence is being covered-up via conspiracy by several State actors and co-conspirators.

3. The Mobil Gas Station, in #1 above, is the location of the incident that caused the above doctored action or criminal charges.

4. I ordered my attorney for pay, Ken Brekka, to do as I am asking in this motion, (Court Order to enter premises at Mobil to test & gain evidence), prior to the 10-17-00 hearing regarding this case.

5. As in item #4 I had a written list of instructions for Brekka to do at the Mobil including tests on the video/OCR surveillance system at that Mobil & taking pictures of the Mobil. I told Brekka to get a Court Order to do this from the judge at the 10-17-00 hearing.

6. Brekka has that with him.

to junk the video system at that location and buy an all new system in the very near future.

2. By not following my written & verbal orders to test the video surveillance system at the Mobil, via Court Order, Breffka has allowed the police, prosecution & Mobil to have time to eliminate more evidence that is crucial to this defendant.

Wherefore,  
I ask the Court to issue an Order that allows Breffka to test the VCR-video surveillance system & gain evidence as directed by this defendant at the above indicated Mobil Station so that crucial evidence for the defense can be gained.

Michael Elbery  
Michael Elbery, C57634  
S.E.C.C.

12 Administration Rd.  
Bridgewater, Ma. 02324  
10-23-00

## Certificate of Service

I the defendant, Michael Elbery, sent this Motion for Access to Mobil for testing & evidence to the Framingham Dist. Court 600 Concord St., Framingham, Mass. and to the District Attorney's Office Framingham at 100 Concord St., Framingham Mass, <sup>01701</sup> via U.S. 1<sup>st</sup>-class mail-prepaid from S.E.C.C. Prison all on 10-28-00.

Michael Elbery