

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

FRAMINGHAM DISTRICT COURT
DOCKET NO. CR 00-1893

COMMONWEALTH

v.

MICHAEL ELBERRY

COMMONWEALTH'S NOTICE OF DISCOVERY

Now comes the Commonwealth in the above-entitled matter and states the following:

1. The written or recorded statements of the defendant, if any, currently in the possession of the Commonwealth are contained in the following reports, both of which are enclosed herewith:
 - a. six page police report dated July 6, 2000 by Officer Hector M. Sanchez of the Framingham Police Department; and
 - b. one page report by Officer J. Dones (#234) of the Framingham Police Department dated July 7, 2000.
 - c. all attached booking, rights and evidence sheets, if any.
2. Cognizant of its ongoing duty to disclose, the Commonwealth is not presently aware of any facts of an exculpatory nature relating to the above-captioned matter, other than anything mentioned in the reports and attachments listed in paragraph one.
3. Please contact my office to arrange a mutually convenient time to inspect and copy the physical evidence in the Commonwealth's possession, including but not limited to the following:
 - a. Six photos of the alleged victim, Peter H. Gear.
4. The statements of potential Commonwealth witnesses, if any, that are currently in the possession of this assistant district attorney and that are written or reduced to writing

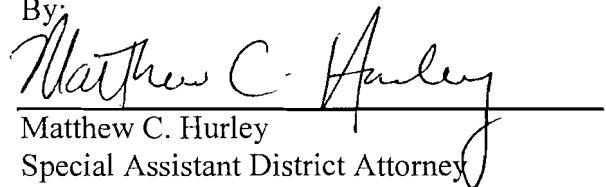
are contained in the reports and attachments listed in paragraph one. The Commonwealth is not in the possession of any other written or recorded statements, as defined by Mass. R. Crim. P. 14(d), of any witnesses other than those contained in the police report.

5. The Commonwealth intends to call some or all of the following witnesses to testify concerning the above-captioned matter:
 - a. Officer Hector M. Sanchez, Framingham Police Department
 - b. Peter H. Gear
 - c. Officer J. Dones
 - d. Officer J. Vizakis
 - e. any other individual mentioned in the reports and attachments listed in paragraph one.
6. The Commonwealth may also offer in evidence certified copies of court papers showing the defendant's previous convictions, if any.
7. There have been no promises, rewards or inducements given to any witness expected to testify for the Commonwealth in this matter.

The aforementioned responses to discovery are true and accurate to the best of the Commonwealth's knowledge. The Commonwealth reserves the right to amend or supplement these responses to discovery at any reasonable time prior to trial.

Respectfully submitted
For the Commonwealth,
District Attorney Martha Coakley

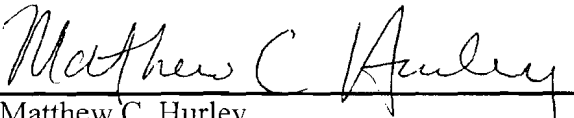
By:

A handwritten signature in black ink, reading "Matthew C. Hurley", is written over a horizontal line. The signature is cursive and fluid.

Matthew C. Hurley
Special Assistant District Attorney
Framingham Regional Office
100 Concord Street, 3rd Floor
(508) 875-4141

Dated: October 16, 2000

I hereby certify that I served true and accurate copies of the foregoing on the defendant by hand/regular mail/facsimile to counsel of record this 17th day of October 2000. Signed under the pains and penalties of perjury:


Matthew C. Hurley

| | | | | | |
|--|---|--|---|--|-------------------|
| APPLICATION FOR COMPLAINT | | <input checked="" type="checkbox"/> ADULT <input type="checkbox"/> JUVENILE | NUMBER | Trial Court of Massachusetts District Court Department | |
| <input type="checkbox"/> ARREST <input type="checkbox"/> HEARING <input type="checkbox"/> SUMMONS <input checked="" type="checkbox"/> WARRANT | | | | COURT DIVISION Framingham District Court 600 Concord St. - P.O. Box 828 Framingham, MA 01701 | |
| The within named complainant requests that a complaint issue against the within named defendant, charging said defendant with the offense(s) listed below. | | | | | |
| DATE OF APPLICATION | DATE OF OFFENSE | PLACE OF OFFENSE | | | |
| 07-06-00 | 07-04-00 | 696 Cochituate Rd | | | |
| NAME OF COMPLAINANT | | | NO. | OFFENSE | G.L. Ch. and Sec. |
| Hector M. Sanchez | | | 1. | Assault/Bat ^{dw} shod foot | 265-15F |
| ADDRESS AND ZIP CODE OF COMPLAINANT | | | 2. | | |
| 1 William H. Welch Way | | | 3. | | |
| Framingham, MA. 01702 | | | 4. | | |
| NAME, ADDRESS AND ZIP CODE OF DEFENDANT | | | | | |
| Michael Elberry | | | | | |
| 168 Fair Field st. | | | | | |
| Needham, MA. | | | | | |
| COURT USE ONLY → | A hearing upon this complaint application will be held at the above court address on | | DATE OF HEARING | TIME OF HEARING | COURT USE ← ONLY |
| | | | AT | | |
| CASE PARTICULARS — BE SPECIFIC | | | | | |
| NO. | NAME OF VICTIM Owner of property, person assaulted, etc. | DESCRIPTION OF PROPERTY Goods stolen, what destroyed, etc. | VALUE OR PROPERTY Over or under \$250. | TYPE OF CONTROLLED SUBSTANCE OR WEAPON Marijuana, gun, etc. | |
| 1 | Peter H. Gear | | | Shod foot | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| OTHER REMARKS: ON 07-04-00 Michael Elberry DOB. 02-08-52 did assault Peter H. Gear by grabbing, pushing to ground, while on ground Michael Elberry did kick Peter H. Gear. | | | | | |
| x <i>Hector M. Sanchez</i> SIGNATURE OF COMPLAINANT | | | | | |
| DEFENDANT IDENTIFICATION INFORMATION — Complete data below if known. | | | | | |
| DATE OF BIRTH | PLACE OF BIRTH | SOCIAL SECURITY NUMBER | SEX | RACE | HEIGHT |
| 02-08-52 | Worcester, MA | 01642 4787 | M | W | |
| OCCUPATION | EMPLOYER/SCHOOL | MOTHER'S NAME (MAIDEN) | FATHER'S NAME | | |
| Gas atten | Mobil Gas station | June Ramsey | Norman | | |
| | 696 Cochituate Rd. | | | | |
| ↓ COURT USE ONLY ↓ | | | | | |
| DATE | DISPOSITION | | | | AUTHORIZED BY |
| | NO PROCESS TO ISSUE <input type="checkbox"/> At request of complainant <input type="checkbox"/> Complainant failed to prosecute <input type="checkbox"/> Insufficient evidence having been presented | | | | |
| | PROCESS TO ISSUE | | TYPE OF PROCESS | | |
| | <input type="checkbox"/> Sufficient evidence presented <input type="checkbox"/> Defendant failed to appear | | <input type="checkbox"/> Warrant <input type="checkbox"/> Summons returnable _____ | | |
| | <input type="checkbox"/> Continued to _____ | | | | |
| COMMENTS | | | | | |

ADA COPY

FRAMINGHAM POLICE STANDARD OFFENSE REPORT

| | | | |
|--|---|---------------------------------------|--------------------------|
| 1 DISPATCHED 2 CITIZEN 3 ON VIEW <u>2</u> | DATE/TIME REPORTED <u>07-05-00 0130^{Am}</u> | DATE/TIME OCCURRED <u>07-04-00</u> | CASE # <u>0004248</u> |
| LOCATION OF OFFENSE <u>696 Cochituate Rd</u> | | TYPE OF PREMISE | |
| INCIDENT/OFFENSE (list most serious first) A. <u>A/B</u> D. B. E. C. F. | | 1 STREET | |
| | | 2 SINGLE RESIDENCE | |
| | | 3 MULTIPLE RESIDENCE | |
| | | 4 COMMERCIAL | |
| | | 5 GAS STATION | |
| | | 6 STORE | |
| | | 7 PHARMACY/DOCTOR OFFICE | |
| | | 8 PUBLIC COMMUNITY BLDG/SCHOOL | |
| | | 9 RESTAURANT | |
| | | 10 WARE HOUSE | |
| | | 11 TAVERN BAR | |
| | | 12 VEHICLE | |
| | | 13 BANK | |
| | | 14 OPEN AREA (PARK, FIELD, E | |
| | | 15 OTHER | |
| | | (INSERT NUMBER) <u>5</u> | |

CODES (INSERT LETTER) V=VICTIM B=BUSINESS W=WITNESS P=PARENT DC=DISCOVERED CRIME RP=REPORTING PARTY

| | | | | | | | | | | | |
|--|----------|------------|------------|-----|-----|-----------------|---|--|------------------------|--|--|
| 1 NAME- LAST, FIRST, MIDDLE <u>Sanchez, Hector M.</u> | | | | | | | 1 CODE <u>RP</u> | RESIDENCE ADDRESS-PHONE <u>1 William H. Welch Way</u> | | | |
| SEX | RACE | HAIR | EYES | HT. | WT. | DOB | AGE | OCCUPATION | BUSINESS ADDRESS-PHONE | | |
| | | | | | | <u>0</u> | | | | | |
| 2 NAME- LAST, FIRST, MIDDLE <u>Gear, Peter H.</u> | | | | | | | 2 CODE | RESIDENCE ADDRESS-PHONE <u>58 Clinton St.</u> | | | |
| SEX | RACE | HAIR | EYES | HT. | WT. | DOB | AGE | OCCUPATION | BUSINESS ADDRESS-PHONE | | |
| <u>M</u> | <u>W</u> | <u>Brn</u> | <u>Brn</u> | | | <u>02-15-62</u> | | | <u>617-480-1551</u> | | |
| 3 NAME- LAST, FIRST, MIDDLE | | | | | | | 3 CODE | RESIDENCE ADDRESS-PHONE | | | |
| SEX | RACE | HAIR | EYES | HT. | WT. | DOB | AGE | OCCUPATION | BUSINESS ADDRESS-PHONE | | |
| | | | | | | | | | | | |
| DID VICTIMS RECEIVE MEDICAL ATTENTION? WHERE? | | | | | | | ADDITIONAL INFORMATION (LOCAL USE ONLY) | | | | |
| VIC #1 _____ VIC #2 _____ VIC #3 _____ | | | | | | | | | | | |

PROPERTY STATUS: (INSERT LETTER) S-STOLEN RE-RECOVERED-SAFEKEEPING SUPPLEMENT STATUS
F-FOUND HE-HOLD FOR EVIDENCE ANALYSIS "A" DESTROY "D"

| STATUS | QTY. | DESCRIPTION OF PROPERTY | CODE | MODEL-SERIAL-OWNER APPLIED NO. | VALUE |
|--------|-----------|-------------------------|------------------------------------|--------------------------------|----------|
| 1 | <u>HE</u> | <u>6</u> | <u>Photos of Victim's injuries</u> | <u>-</u> | <u>-</u> |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |

PROPERTY CODES

A: CURRENCY/MAIL/CHECKS/STAMPS
B: JEWELRY/PRECIOUS METALS
C: CLOTHING
D: LOCALLY STOLEN MOTOR VEHICLES
E: OFFICE EQUIPMENT
F: TV/RADIOS/STEREOS/ELECTRONIC EQUIP

A
(INSERT LETTER)

G: FIREARMS/WEAPONS
H: HOUSEHOLD GOODS
I: CONSUMABLE GOODS/DRUGS
J: LIVESTOCK/PETS
K: BUILDING & CONSTRUCTION EQUIP/MATERIAL
LAWN EQUIP./MIS.

| | | | |
|---|---------------------------------------|---|--|
| CASE STATUS <u>ACTIVE</u> INACTIVE _____ CLEARED _____ | FURTHER ACTION <u>YES</u> NO _____ | CASE DISPOSITION ARREST _____ ADULT _____ JUVENILE _____ | UNFOUNDED _____ EXCEPTIONAL CLEAR _____ |
|---|---------------------------------------|---|--|

✓ PATROL

NARCOTICS

Sanchez 233

DATE

* (INSERT NUMBER) WHERE APPLICABLE

| WEAPON | METHOD OF ENTRY | POINT OF ENTRY | INSTRUMENT USED FOR ENTRY INTO BUILDING | COMPLETE THEFTS ONLY | RELATIONSHIP OFFENDER TO VICTIM |
|---|---|--|--|---|--|
| 0 NO WEAPON 1 HANDGUN 2 SHOTGUN 3 RIFLE 4 KNIFE 5 HANDS ETC. 6 OTHER WEAPON | 1 FORCIBLE 2 UNLAWFUL NO FORCE 3 ATTEMPTED FORCIBLE SAFE ENTERED 1 YES 2 ATTEMPTED 3 NO | 1 FRONT 2 REAR 3 SIDE 1 DOOR 2 WINDOW 3 PATIO DR. 4 DUCT-VENT 5 ROOF 6 WALL 7 ADJ. BLDG. 8 OTHER | 1 KEY 2 PRY TOOL 3 SAW-DRILL 4 HAMMER 5 BOLT CUTTER 6 CHOPPING TOOL 7 CHAN LOCKS VISE GRIPS 8 PHYSICAL FORCE 9 THROWN OBJECT 10 OTHER | 1 COIN-OPERATED MACHINES 2 FROM BLDGS 3 MV PARTS & ACCESSORIES 4 SHOPLIFTING 5 POCKET-PICK 6 PURSE-SNATCH 7 EMBEZZLEMENT 8 POSS STOLEN PROPERTY 9 ALL OTHER | 1 HUSBAND 2 WIFE 3 FATHER 4 MOTHER 5 SON 6 DAUGHTER 7 BROTHER 8 SISTER 9 STEPFATHER 10 STEPMOTHER 11 STEPSON 12 STEPODAUGHTER 13 STEPBROTHER 14 STEPSISTER 15 GRANDPARENT 16 GRANDCHILD 17 IN-LAW 18 EX-HUSBAND 19 EX-WIFE 20 CL HUSBAND 21 CL WIFE 22 OTHER FAMILY 23 GUARDIAN 24 BOYFRIEND 25 GIRLFRIEND 26 EX-BOYFRIEND 27 EX-GIRLFRIEND 28 ACQUAINTANCE 29 FRIEND 30 EMPLOYER EMPLOYEE 31 STRANGER 00 UNKNOWN V1 V2 V3 |

PHYSICAL EVIDENCE — FINGERPRINTS — TOOLMARKS — STAINS, BLOOD, SEMEN, ETC. — MUD-SOIL — CLOTHING — DOCUMENTS
 — GLOVEPRINTS — TOOLS/INST — PAINT SAMPLES — CIG. BUTTS — FIBERS — RAPE KIT
 — SHOEPRINTS — WEAPON — HAIR — PHOTOGRAPHS — VEHICLE — OTHER
 — TIRE MARKS — SHELLS/BULLETS — FRAGMENTS — INSULATION DUST — DRUGS PARA

| SUSPECT NO. 1-NAME(LAST, FIRST, MIDDLE) | | | | | ADDRESS | | | | |
|---|------|------|------|-----|---------|----------|-----|---------------|--|
| SEX | RACE | HAIR | EYES | HT. | WT. | DOB | AGE | DATE ARRESTED | |
| M | W | | | | | 02/08/52 | 48 | | |
| SUSPECT NO. 2-NAME(LAST, FIRST, MIDDLE) | | | | | ADDRESS | | | | |
| SEX | RACE | HAIR | EYES | HT. | WT. | DOB | AGE | DATE ARRESTED | |
| | | | | | | | | | |
| SUSPECT NO. 3-NAME(LAST, FIRST, MIDDLE) | | | | | ADDRESS | | | | |
| SEX | RACE | HAIR | EYES | HT. | WT. | DOB | AGE | DATE ARRESTED | |
| | | | | | | | | | |

| HAIR LENGTH | HAIR STYLE | FACIAL HAIR | GLASSES | SCARS-MARKS | TATTOO | TEETH | EYES |
|--|---|--|---|---|--|--|--|
| 1 LONG 2 MEDIUM 3 SHORT 4 BALD/BALDING 5 OTHER 0 UNK. | 1 AFRO 2 WAVY 3 SHAG 4 STRAIGHT 5 BRAIDED 6 WIG 7 OTHER 8 UNK. | 1 FULL BEARD 2 GOATEE 3 MUSTACHE 4 SIDEBURNS (UNUSUAL) 5 OTHER 0 NONE | 1 SUNGLASSES 2 EYE GLASSES FRAMES 3 PLASTIC 4 WIRE RIMMED 5 OTHER 0 NONE | 1 HEAD-FACE 2 NECK 3 HAND 4 ARM 5 BODY 6 OTHER 0 UNK. | 1 EXTREMITY 2 BODY 3 FACE 4 PICTURES 5 NAME/INITIAL 6 OTHER 0 UNK. | 1 GOLD SILVER 2 GOLD DESIGN 3 MISSING GAPS 4 PROTRUDING 5 DECAYED DIRTY 6 BROKEN 7 VERY WHITE 8 OTHER 0 UNK. | 1 MISSING 2 CROSSED 3 BULGING 4 SQUINT 5 BLINK 6 AFFLICTED EYE 7 OTHER 0 UNK. |
| S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | S1 S2 S3 |

| COMPLEXION | BUILD | SPEECH | GENERAL APPEARANCE | SUSPECT WORE | AT TIME OF OFFENSE SUSPECT UNDER INFLUENCE OF | OTHER IDENT MARKS |
|---|---|---|---|--|---|-------------------|
| 1 LIGHT 2 MEDIUM 3 DARK 4 ACNE 5 FRECKLED 6 RUDDY 7 OTHER 0 UNK. | 1 SMALL 2 MEDIUM 3 HEAVY 4 MUSCULAR 0 UNK. R-L HANDED 1 RIGHT 2 LEFT 0 UNK. | 1 PROFANE ABUSIVE 2 SOFT POLITE 3 APOLOGETIC 4 ACCENT 5 STUTTER 6 DEEP RASPY 7 HIGH 8 EFFEMINATE 9 LISP 0 UNK. | 1 NEAT WELL DRESSED 2 DIRTY RAGGED 3 UNIFORMED 4 MOD UNUSUAL 5 UNUSUAL JEWELRY 6 OTHER 0 UNK. | 1 SKI MASK 2 STOCKING MASK 3 CAP HAT 4 COAT/JACKET 5 SPORTSWEAR 6 GLOVES 7 OTHER 0 UNK. | 1 ALCOHOL 2 DRUGS 3 BOTH 4 UNKNOWN | |
| S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | S1 S2 S3 | |

VEHICLE INFORMATION

| VEHICLE INFORMATION | | REG. NO | STATE | YEAR | MAKE | MODEL | BODY TYPE |
|------------------------------------|---------------------------------|---------|-------|------|------|-------|-----------|
| <input type="checkbox"/> STOLEN | <input type="checkbox"/> WANTED | | | | | | |
| <input type="checkbox"/> RECOVERED | <input type="checkbox"/> TOWED | | | | | | |
| COLOR(S) | | VIN | | | | | |

NARRATIVE

• (DESCRIBE FACT OR CONDITIONS NOT COVERED EARLIER)

1 OF 4

On 07-05-00 while on patrol I was called to the station, to take a report of an assault that happen at the Mobil Gas station on Rte. 30 on 07-04-00.

When I arrived at the station, I spoke to Peter H. Bear DOB 02-15-62 Mr. Bear stated that he was getting Gas at the Mobil station on Rte. 30. Went to pay for the Gas, at the counter I was going thru my wallet for a Credit Card.

Mr. Bear stated, that the attendant said to him, hurry up move it, Lets go, there are people behind you waiting. Mr. Bear said, Excuse me, why are you talking to me that way. Would you mind if you can take care of the man behind, while I pick out a credit Card to pay for the gas.

The attendant said no, you cant you are in the Register. He was raising his voice, was getting very angry. Mr. Bear stated that at this time the man behind him put his money on the counter and left the station. Mr. Bear said I am leaving, started to leave. The guy said I am taking your plate. Mr. Bear said

Sanchez 233

OFFICERS SIGNATURE

DATE

REVIEWED BY

DATE

NARRATIVE

• (DESCRIBE FACT OR CONDITIONS NOT COVERED EARLIER)

2 OF 4

I am not dealing with this "mishgas". Mr. Bear said that the attendant, said "you mother fucking Jews" you are all the same.

While walking out the door the attendant grabs me and puts me in a bear hug, fell to ground, Rolling around with the attendant on me. Mr. Bear said he tried to get away. Mr. Bear stated that the attendant got up first, while Mr. Bear was on ground he was kick.

Mr. Bear stated that he reached for a traffic cone to defend himself.

Mr. Bear stated that the attendant ran back inside gas station he threw the cone away, got in his VEH and left, when he reached his home called police.

Mr. Bear stated that in the morning he went back to the gas station to pay for gas. he also talked to Manager, to report what had happen to him, that he was assaulted by an employee. The employee's name is Michael Elberg.

Samchey 233

OFFICER'S SIGNATURE

DATE

REVIEWED BY

DATE

NARRATIVE

* (DESCRIBE FACT OR CONDITIONS NOT COVERED EARLIER)

3 OF 4

On the morning of 07-04-00, Michael Elberry DOB 02-08-52, who is the Gas attendant at the Mobil Gas station 696 Cochituate Rd. called the police to Report a Gas evaition. Officers Dones and Vizakis responded when they arrived, Mr. Elberry stated to them that he had an altercation with a customer who did not pay for gas. Mr. Elberry stated that the Customer later I.D as Peter Bear DOB 02-15-62 assaulted him when he tried to him from leaving. When the officers asked Mr. Elberry for his I.D and information he refused to give it to the officers. The officers advised Mr. Elber, if he wanted Mr. Bears info to Call the police in the morning. Mr. Elberry never called back.

On 07-04-00 this officer Called Mr. Elberry at his home to get his side of story on what had happen on 07-04-00, Mr. Elberry was uncooperative, he said he had 3 witnesses that saw what happen on the night of 07-04-00. I asked him if he would give me the names, he said he would not

Samchy 233

07-06-00

OFFICERS SIGNATURE

DATE

REVIEWED BY

DATE

NARRATIVE

* (DESCRIBE FACT OR CONDITIONS NOT COVERED EARLIER)

4 OF 4

I told him, he was accused of an assault and it was to his benefit if I talked to the witnesses, he again refused to give the names.

I told him since he was on parole I was going to notify his parole officer.

This officer is going to take out a warrant for ^{ARSON} ~~ASSAULT~~ against Mr. Michael Elberry Dob 02-08-52

There are 4 photos of Peter H. Bear injuries taken at Police station also there is a tape, placed into evidence.

Sanchez 233

OFFICERS SIGNATURE

07-04-00

DATE

REVIEWED BY

DATE

07/07/00 Case# 0004248

On July 04, 2000 at approximately 0230 hours this Officer and Officer Vizakis were dispatched to the Speen St Mobil located at 696 Cochituate Rd in Framingham for a 911 call.


Upon our arrival we spoke with the cashier, later identified as Michael Elberry from 168 Fairfield St. in Needham. Mr. Elberry stated a man pumped some gas into his motor vehicle (totaling 24.60). The customer then walked into the gas station to pay for the gas. Mr. Elberry stated the man had about 15 credit cards and some cash. He stated the customer appeared to be drunk or on drugs. He said the customer was taking too long and could not decide what credit card to use. Mr. Elberry stated there was another client waiting in line. The male subject then got into an argument with the other customer. Mr. Elberry told the male subject to hurry up. This is when the male subject left the gas station and was not going to pay for the gas.

At this time, Mr. Elberry decided to get the male subject's plate. I had dispatch run the plate, which came back to a Peter H. Gear, DOB 02/15/62 from 65 Strathmore Rd. apt 3 in Brighton. Mr. Elberry stated when he went to get the plate the male subject attacked him. Mr. Elberry did have scratches on his forearms. The male subject threw two gallons of water against the glass door. He then took a traffic cone and hit Mr. Elberry over the head with the cone. Mr. Elberry stated he ran inside the gas station and dialed 911 for help.

I asked Mr. Elberry for an I.D. to get some information for a report I was going to file. He said he did not have an I.D. I then asked him for his name. He said oh no I don't want to give you that. I explained to Mr. Elberry that I needed his information to file the report. He stated why. I stated if he wanted charges taken out on this male subject I would need his information to file the report and that he would have to go to court and testify. I explained to him we would charge the male subject with assault and battery and larceny. Mr. Elberry said oh no I don't want to go to court. I then asked him what he would like us to do. He then said nothing. I don't want to give you my information and I don't want to go to court. Mr. Elberry did not want to take out charges against the male subject.

I told Mr. Elberry if his manager needed the male subject's information to give me a call at the police station.

Respectfully submitted,


J. Dones #234