

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth of Massachusetts

Criminal Docket

v.

#0049CR1893A
CR3006

Michael Elbery

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

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

- a. the booking photos of that arrest by the F.P.D.
- b. the booking sheet and booking report of that arrest
- c. the booking video of that arrest
- d. all information the F.P.D. has of that arrest
- e. the amount of bail, date of bail and who paid the bail regarding that arrest
- f. All statements made by Gear during that arrest

*Pro se
Back to motion
inquired photo
all allowed
all allowed
denied
all allowed
denied
all allowed*

2. Regarding the alleged injuries that the alleged victim

See office notes 9-13
at airport photo
the - trade

- denied b.
 denied c.
 denied d.
 denied e.
 denied f.

Mr. T-1 - w/1 m. l. b.
info. of state
agency under
warrant of prob.
denied. He
However,
the pros. d.f.
shall provide
Def. with a
copy of Mr.
Seas's rec
4.

- denied. However,
the prob. do it
shall provide
Def. with a
copy of Mr.
Seais record
4. Wh
Crime

denied
but any
documents
which
reflect same
shall be
provided

- denied

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.

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.

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.

- 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.

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

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

Caller

Time Call Made

Date _____

Source

1. Elberv

— — — — —

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 Bre & 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 activity 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 prosecuti 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 contact regarding any and all Mobil video tapes

Allowed

15. State the meaning of the number S56078321 per the F.P.D. tape 911 recording 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 communication 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.

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

Allowed

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.

Denied

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

Denied - note other records previously allowed and Brady applies.

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

Denied

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.

Denied

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

Allowed (or give Def. a copy)

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.

Denied

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

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 7 of 9

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 ...

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 act 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

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 the 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