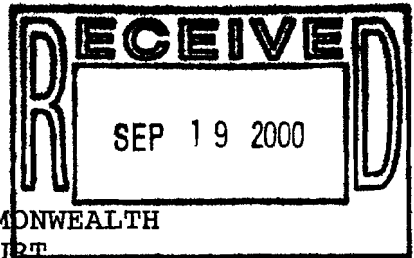


COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH  
FRAMINGHAM DISTRICT COURT



DOCKET # 0049 CR 1893

COMMONWEALTH OF MASSACHUSETTS )

VS. )

MICHAEL ELBERY )

MOTION FOR CRIMINAL  
RECORDS

9/13/00  
Allred  
Jury

Now comes the defendant in the above entitled matter and moves this honorable court to order the Department of Probation in Boston and/or the Probation Department at the Framingham District Court to supply the defendant with the complete criminal record of the following witness:

PETER H. GEAR  
65 Strathmore Road, Apt. 3  
Brighton, MA  
d/o/b 2/15/62

✓ MT  
9-19-00

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.

CERTIFICATE:

I, Kenneth L. Brekka, hereby certify that on this 5th day of September, 2000 I mailed, via first class mail, a copy of this motion to the District Attorney's Office, 100 Concord Street, Framingham, MA 01701.

A True Copy Attest

*[Signature]*  
Assistant Clerk

*[Signature]*  
Kenneth L. Brekka, Esq.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH  
FRAMINGHAM DISTRICT COURT

DOCKET # 0049 CR 1893

COMMONWEALTH OF MASSACHUSETTS )

VS. )

MICHAEL ELBERY )

MOTION FOR DISCLOSURE  
OF EXCULPATORY EVIDENCE/  
REQUEST FOR  
HEARING

Now comes the Defendant, MICHAEL ELBERY, in the above entitled matter and respectfully moves this Honorable Court to direct the Commonwealth to provide to the Defendant the following exculpatory evidence and/or to order a discovery hearing on the subject as set forth below.

1. NAMES AND ADDRESSES OF WITNESSES:

The Defendant has personal knowledge of the existence of witnesses who were present during the alleged incident referred to in the complaint and that some of those witnesses were present during the initial police investigation at the scene on July 4, 2000 between 2:00 A.M. and 3:30 A.M. The names of those witnesses are not listed in the police report. The Defendant demands that this court order the Commonwealth to provide the names of these individuals or, in the alternative, order a discovery hearing in order for the Defendant to obtain the names of these witnesses. The Defendant has information that an employee of the Framingham Mobil Station, 896 Cochituate Road, Framingham, MA, by the name of

↓ Any future hearings/motions deferred  
until this phase is complete

9/13/00  
Allimed  
D.A. has  
affirmative  
obligation  
to pursue  
Brady info  
which will  
be provided  
within 7  
days. D.A.  
to provide  
Brady  
response  
within 21  
days  
thereafter

DS

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Ct.

Commonwealth

Docket #0049CR1893A  
(Amended 3006)

v.

Michael Elbery

*5/17/01*  
*The parties*  
*will complete*  
*a pre-trial*  
*conf. memo*  
*today*  
*Dary Stoddard*  
*Other requests*  
*Denied*  
*Dary Stoddard*

Defendant's Objection to Case Proceedings

No Pre-Trial Conference

No Pre-Trial Conference Report

Limitation of Defendant's Participation at Pre Trial Hearing

&

Defendant's Motion to Compel Mandatory Exculpatory Discovery

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

No Pre-Trial Conference

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

Pre-Trial Conference Report

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

*See*  
*#1000*

PreTrial Hearing

4. This defendant was not allowed to participate at the alleged PreTrial Hearing of 3-8-01 of this case.
5. The judge, Paul Healy, found this defendant in contempt during the scheduled 3-8-01 PreTrial Hearing after this defendnat violated the judge's orders as follows:
  - a. The defendant was not allowed to object on the record.
  - b. The defendant was prohibited from arguing constitutional grounds.
  - c. The defendant's participation at the PreTrial Hearing was limited to responding to the judge's questions.
  - d. The defendant was only allowed to answer yes or no to the leading questions of the judge.
6. The defendant was warned that he would be found in contempt if he did not obey the above orders in #5.
7. The defendant questioned the judge's, Paul Healy's, independence regarding the case and the defendant was found in contempt of Court.
8. The defendant's further participation at that 3-08-01 Pre-Trial Hearing, and avoidance of imprisonment via contempt, was conditioned on the defendant agreeing to the above orders and only speaking when allowed by the judge.
9. The defendant, pro se, was never allowed, as a result of the above unconstitutional conditions, to argue the various discovery motions he submitted on this case, as also documented by this defendant's Mass. G.L. C. 211 s.3 Petition to the S.J.C. regarding this case.
10. The defendant's numerous discovery motions to the Court were never considered by the Court at the 3-8-01 PreTrial Hearing.
11. This defendant has submitted over  $\frac{1}{2}$  dozen discovery motions

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

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

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

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

WHEREFORE,

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

*D.A. has continuing obligation to provide Brady info*  
*DS*  
*Mike, pro se*

Michael Elbery, prose  
SECC Prison  
12 Administration Rd.  
Bridgewater, Mass..02324  
3-12-01

#### Certificate of Service

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

*Mike, pro se*

\* DA 7099 3800 0010 7041 6128  
111  
0010

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

v.

Elbery

Criminal Docket  
#0049CR1893 (Amended 3006)

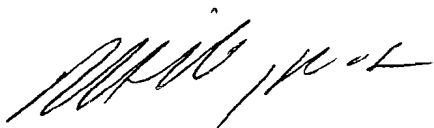
5/17/01  
Allowed  
Dwyer

Defendant's Motion For Docket Entries

1. The defendant-pro se, above docketed, motions the Court to order the Clerk to send the defendant docket entries of this case.
2. As the Court is aware many of this defendant's most crucial motions for discovery, and other issues, have not been docketed in this case causing this defendant to Petition the S.J.C. about this problem and others.

Wherefore,

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

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

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

Phil, Nov 6

Clerk # 2099 3400 0015 1038 6530

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*  
*Dan Stoddy*

Defer  
Defer

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.

*Dan Stoddy*  
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.

*Dan Stoddy - Disc. heard 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

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

## COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth of Massachusetts

Criminal Docket

v.

#0049CR1893#

CR3006

Michael Elbery

5/17/01  
 see notations  
 in margins  
 which constitute  
 court order  
 [Signature]

## 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

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

Pro se  
 Book to motion 5-17  
 missing photo  
 allowed  
 allowed  
 denied  
 allowed  
 Denied  
 allowed

Rec'd photo 9-13  
14-5

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

3. Re Court on 7-4  
a  
b  
c  
d  
e  
4. WH  
Crime

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

- series  
but any  
documents  
which  
reflect same  
shall be  
provided

14-1  
denied

*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.

*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 Mobil 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. Elbery

*St. order - Brekka  
motion - Improper  
communication  
7-12  
denied*

*7-12-1-392  
information - 11  
out of 11  
Public records  
denied*

*Brekka motion  
9-13 11 order  
denied  
see #4*

*Info. State  
agency under  
investigation*

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.

- Denial*
- 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.

- Brooklyn Motion 9-13*  
*Denial*
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.

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

- 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 W. B. ...

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

*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*

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham Dist. Cour

Commonwealth of Mass.

Criminal Docket

#0049CR1893A

CR 3006

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.  
Dany Stodolay

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 defend 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

MIDDLESEX, ss

FRAMINGHAM DISTRICT COURT

No. \_\_\_\_\_

COMM

✓

ELBERY

FINDINGS ON DISCOVERY

There is nothing in the record that a Court has ruled on the omnibus motion by Defendant so this Court will rule (see orders in margins of motion)

For other motions argued this date see caption headings or margins for Court Order

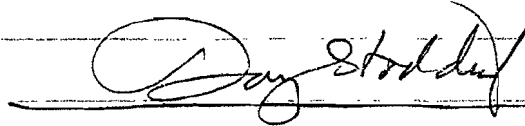
Any discovery request ordered by this Court shall be responded to in writing by the same numerical sequence as requested by the ~~MA's~~ Defendant's Office (e.g. if this Court orders discovery on paragraphs A, C, G, K, M, the D.A. shall respond in kind in writing)

No further discovery may be filed by either side.

All discovery ~~the~~ responses by the D.A.'s office are due in writing

by June 15, 2001. All motions to  
compel discovery allegedly not provided  
must be filed by the Defendant  
by June 27, 2001 and argued no  
later than July 10, 2001.

Dated 5/17/01



JUSTICE - DISTRICT COURT

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.

*Mail, please*

*6/11/01  
Denied. The  
D.A. has until  
6/15/01 to  
comply  
Dwyer  
Stoddard*



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

6/28/01  
Denise Stoddard

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.

*Mike Elbery*

35

508-279-8880

# Framingham District Court



600 Concord Street, P.O. Box 1969

Framingham, MA 01702

Phone 1-508-875-7461 Fax 1-508-626-2503

Anthony M. Colonna, Clerk Magistrate

## Fax

To: Michael Elbury, C57634

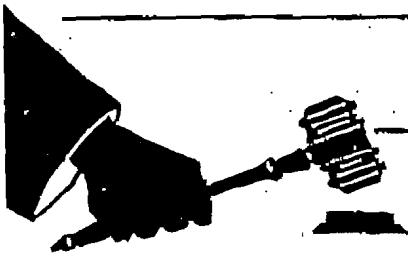
From: Fram. Court - Jury

Docket Number: # 20-3006

Re: Motion

Number of Pages 2 including cover sheet

Message: \_\_\_\_\_



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.

*Will you*

Def's request for  
a hearing on his  
motion is denied  
as he prevails in b),  
a) is denied on its face  
and c) violates a prior court order  
(DS)

*7/5/01*  
a) Bill of Particulars  
Motion Denied

b) The Comm. shall  
provide a signed  
pretrial Conference Report  
w/in 7 days if not already  
provided. Further, the Comm.  
shall inform Def. of any  
promises, agreements or  
Peter Bear in exchange  
for his testimony w/in  
7 days

c) Motion to test  
and inspect  
surveillance  
system denied.  
Def's investigator  
may review tape  
at any time  
convenient to the  
parties.  
Dory Stoddard



*Framingham District Court*

600 Concord Street, P.O. Box 1969

*Framingham, MA 01702*

*Phone 1-508-875-7461      Fax 1-508-626-2503*

*Anthony M. Colonna, Clerk Magistrate*

*Fax*

To: MICHAEL ELBERRY C57634

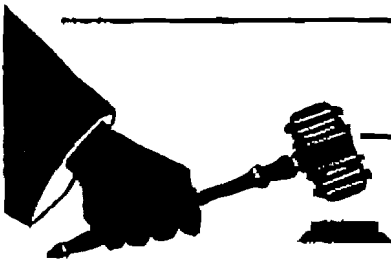
*From:* Framingham District Court

*Docket Number:* 00493006

Re: Juoz's findings - motions

*Number of Pages* 4 *including cover sheet*

*Message:* \_\_\_\_\_



## COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Commonwealth

v.

Michael Elbery

Framingham District Court

Six Man Jury Session

00-3006

Defendant's Motion to Compel 2 F.P.D. Pictures

of

Alleged Victim Peter H. Gear

"Bloody Head Wound " &amp; "Massive Side Bruise"

1. I am the defendant, Michael Elbery.
2. On about 8-29-00 my attorney, Ken Brekka, showed me Several F.P.D. pictures taken of Peter H. Gear allegedly on 7-5-00. Ken Brekka has stated he still has copies of all thoes pictures.
3. Two of those pictures, in #2, the prosecution has failed to produce to me at this late date of the case.
4. One picture showed Gear with a "big head wound" that covered his right forehead.
5. The other picture showed Gear with a massive black and blue bruise on his right side. This bruise was about 1 foot in diameter.

7/11/01  
If The Commonwealth  
has these photos to  
which Def. refers,  
same shall be  
produced in  
7 days  
Dmy Stoddard

500-3006  
7/11/01  
11:11 AM  
11/11/01

Commonwealth

v.

Michael Elbery

COMMONWEALTH OF MASSACHUSETTS

Framingham District Court

Sixth Judicial Session

00-3006

Defendant's Motion To Compel Prosecution

To

Produce Evidence Requested By Defendant's Omnibus Motion

&amp;

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.

7/11/01 Request #2 - if such shall photos exist D.A. shall provide same in 7 days

#3 - denied - never ordered

#4 - D.A. shall comply w/ 5/17/01 order

#6 &amp; 6 - but not new request - never ordered

#16 - denied - never ordered

#19 - The Comm. is precluded from offering any documentary evidence by this date

D.A. shall comply w/ 5/17/01 order

D.A. shall comply w/ 5/17/01 order

D.A. shall comply w/ 5/17/01 order

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D.A. shall comply w/ 5/17/01 order

## COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Michael Elbery

Defendant's Combined Motion

For

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.

7/11/01  
 Bill of Particulars  
 Denied, D.A.'s  
 response sufficient  
 2) Pre-trial Rpt  
 D.A. Shall file  
 same in 7  
 days  
 3) Testimony - 8006  
 Denied.  
 Exceeds prior  
 Court order  
 Dwyer

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