

My Copy

Mike Elberry
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S.E. C.C. - O.U. A
12 Administration Rd.
Bridgewater, Ma.
02304

Clerk - Framingham Dist. Ct.
600 Concord St.
Framingham, Mass. 01701

RE: Com. v. Elberry
Criminal #0049 CR 1893

Dear Clerk:

Please find enclosed for immediate
filing review,

"Defendant's - Motion for Evidentiary
Hearing of Peter H. Gear etc., . . .

Thank you.

Mike

Commonwealth of Massachusetts

Framingham Dist. Ct.
Middlesex Co.

Commonwealth
v.
Michael Elbery

Criminal Docket
#00 49CR1893

Motion For Evidentiary Hearing
of
Peter H. Gear (Alleged Victim)

Owners, Residents & Occupants of 58 Clinton St.,
Framingham, Mass, including Norman Harlan Gear
Regarding

the witness(es) at the location where Gear
Drove to & Called the F.P.D. on 7-4-00

1. The defendant, above docketed, Michael Elbery, motions the Court for an Evidentiary Hearing in order to obtain from the alleged victim, Peter H. Gear, information as to the witness(es) who were present in the location where Gear called the F.P.D. on 7-4-00 regarding the underlying incident that caused this action, above docketed.
2. On 7-4-00 between 5:00am & 2:30am Peter H. Gear robbed this defendant, Michael Elbery, while stealing a tank full of gas from the Mobil Gas Station on Route 30,

Framingham where this defendant was working.

- 3 Amongst other illegal activity, Gear kicked & bludgeoned this defendant while this defendant was retreating to the Station's front door after recording the robber's auto registration number.
4. The defendant, after retreating, was waiting locked inside the Mobil convenience Store as the alleged victim & drunk-robbbery, Peter H. Gear, slammed the Mobil's bullet-proof glass with various Mobil inventory. The defendant was waiting to be rescued, as per the F.P.D. 911 tape, the defendant called the police before going out to record Gear's registration number & before Gear attacked the defendant, whereby Gear committed armed robbery.
5. Hours later, on 7-4-00, after absconding from the police & good samaritans at the Mobil Station at the end of the above instant incident, as above items #2-4, Gear called the F.P.D. from 58 Clinton St., Framingham, Mass.
6. Gear was recorded, via 911 F.P.D. tape, as in #5 above, as he fabricated a big story that he was given a severe beating for absolutely no reason at the Mobil after refusing, per Gear, to pay for his gasoline.
- *#7 During that 911 police conversation, as in #5 & #6 above, there were other voices recorded

while Gear & the police were talking. That is, you can hear witness talking in the background on that tape.

8. Per M.R.C.P. this defendant has a right to the names & addresses of all witnesses who saw Gear after he left the Mobil & while he made that call to the F.P.D. on 7-4-00 many hours after fleeing due to his criminal conduct & episode.

9. I, the defendant, gave written order on 10-5-00 to my Attorney, Ken Brekha, to subpoena Peter H. Gear & the residents of 58 Clinton St., Framingham for the evidentiary hearing that was held on 10-17-00 regarding this case.

Brekha refused to follow that order, and more exculpatory evidence for the defendant is vaporizing.

Wherefore,

the defendant asks the Court to Order Peter H. Gear, Norman & Carolyn Gear, & the residents, owner, occupants of 58 Clinton ST, Framingham to be present for the hearing on 11-14-00 regarding the above docketed case in order that the defendant can obtain the crucial evidence, (names & addresses) of the people that saw the victim (alleged), Peter H. Gear, that 7-4-00 after he consciously fled the Mobil in guilt.

Michael Elbey, pro se
Michael Elbey, pro se
S.E.C.C. Prison
12 Administration Rd.
Bridgewater, Mass. 02324
10-24-00

Certificate of Service

I the defendant, Michael Elbey, sent
this Motion for Gears' Evidentiary
Hearing to the Clerk-Framingham Dist.
Ct., 600 Concord St., Framingham, Mass.
01701 & to the Framingham Division of
the District Attorney's Office, 100 Concord
St., Framingham, Mass. 01701 via U.S.
1st class mail - prepaid from S.E.C.C.-
Prison on 10-24-00.

M.E., pro se