

8-4-01

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

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

RE: Com. v. Michael Elbery #0049CR1893 *M*  
*3066*

Dear Clerk:

Please find for immediate filing and review and Mark Up for the 3-08-01 Hearing of this instant case.

"Defendant's Motion for Bill of Particulars"

"Defendant's Omnibus Discovery Motion"  
Please note that all this pro se filings will be by U.S. certified mail to insure Due Process of Law.

Thank you.

*Michael Elbery, pro se*

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham Dist. Court

Commonwealth of Mass.

Criminal Docket

#0049CR1893A

CR3006

v.

Michael Elbery

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*  
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SECC A 406 C57634  
12 Administration Rd.  
Bridgewater, Mass. 02324  
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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 7081 6630  
\* Sent D.A. - U.S. cert. mail return receipt - 7089 3400 0010 7081 6623

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth of Massachusetts

Criminal Docket

#0049CR1893A

CR 3006

v.

Michael Elbery

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,

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.

- 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's 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 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 automobiles

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

	<u>Caller</u>	<u>Time Call Made</u>	<u>Date</u>	<u>Source</u>
1.	Elbery	2:22 a.m.	7-4-00	F.P.D, Computer
2.	Gear	?	7-4-00	F.P.D. 911 tape

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 Brekk & 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.

a. State the name of the officer who picked up that video tape from the Mobil

- 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 prosecutio: 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 contacted regarding any and all Mobil video tapes
15. State the meaning of the number S56078321 per the F.PD. tape 911 recording of Peter H. Gear on 7-4-00.
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.
17. 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.
18. The criminal CORI records of the defendant.



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

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

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

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.

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.

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

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

31. Provide an audible copy of the tape of the 10-17-00 evidentiary hearing held at the Framingham District Court on this action.

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

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.

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.

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

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, 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.



ExA

PRIM NAME: GEAR, PETER H

DOB: 02/15/1962 PDF#: 2092448

SEX: M SS #: 034-39-1958 MOTHER: CAROLE KIRBY  
FATHER: NORMANHOME ADDR : 58 CLINTON ST FRAMINGHAM MA  
ZIP CODE : 01702-MASSACHUSETTS  
COURT ACTIVITY  
RECORD INFORMATION

ETHNICITY: WHITE

HGT: 507 WGT: 170 HAIR: BROWN

EYES: GREEN

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

DKT#: 9431CR45690

OFFENSE: LARCENY BY CHECK (LAR CK)

DISPOSITION: PTP 9/2/02 PEST PD DISM

STATUS: CLOSED

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

DKT#: 9312CR12460

OFFENSE: OPER UND INFL OF LIQ (1110)

DISPOSITION: C 11/8/93 G PROB 11/7/94 VWF PD VOP/MD PROB VOP STATUS: CLOSED

PROB 9/14/95 FINE 9/1/94 R/R PROB 3/2/95 PROB TERM

Bos 7/2/00 15:30

Ex B

End Time 7/3/00 16:15

24 hour  
TAPE

View Whole TAPE NO EL Brg

911

2:24:27 #1 Line

INITIAL call -

HANG ON I got to 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 - Chichay (Gier)

2:33 - Phone call  
From ~~Exp~~ VISAKIS

ExC  
(000) 200-0000 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  
04 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)

Ex. D

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