

M. Elberry, C57637
SECC Prison A-406
12 Administration Rd.
Bridgewater, Ma. 02324
2-9-01

(My Copy State P.D.
P.C. Motion)

Clerk-Criminal
Framingham Dist. Ct.
600 Concord St.
Framingham, Ma. 01701

RE: Com. v. Elberry
Docket #00 CR 1893 A

Dear Clerk:

Please find for immediate filing & review
& Mark-up at the 3-9-01 scheduled
hearing of the above docketed case.

"Pro Se Defendant's Objection to Court's
Refusal to Docket & Acknowledge
⑥ Discovery Motions of the Defendant's
&
Resubmission of the ⑥ Discovery Motions

for

"Filing & Docketing"

Also Mark-Up for hearing the (6) enclosed and attached discovery motions for 3-8-01 hearing already scheduled.

These (6) discovery motions were, as per certificate of service, already filed by this pro se defendant but the Court did not docket them.

The (6) Discovery Motions to be Marked-up for hearing on 3-8-01 are as enclosed & attached:

1. "Defendant's Motion for Supplemental Discovery & Related Court Orders"
2. "Defendant's Motion for Additional Discovery"
3. "Motion for Evidentiary Hearing of Peter H. Gear (Alleged Victim) & Owners, Residents & Occupants of 58 Clinton St., Framingham, Mass. including Norman & Carole Gear Regarding the witnesses at the Location where Gear drove to & called the F.P.D. on 7-4-00."
4. "Defendant's Motion for Court Order & Related

Subpoenas In Order to Produce Exculpatory Evidence & Have a Fair Trial."

5. "Defendant's Motion for Discovery Post-Breka withdrawal" (certificate of service 2-1-01)

6. "Motion for Discovery" (certificate of service 2-7-01)

Thank you.

Mitchell

Michael Elbey, C57634

SEC A-406

12 Administration Rd.

Bridgewater, Ma. 02329

2-9-01

Commonwealth of Massachusetts

Middlesex ss

Commonwealth

v.

Michael Elberg

Framingham Dist Ct
#00CF01893A

Pro se Defendant's Objection to Court's

Refusal to Docket & Acknowledge

⑥ Discovery Motions of the Defendant's

&

Resubmission of the ⑥ Discovery Motions

for

Filing & Docketing

1. Per the docket entries of the above case at 27-01 there are ⑥ discovery motions that were filed by this defendant, pro se, that were not docketed

2. ④ of these motions for discovery were filed prior to the originally scheduled Pre-

Trial Conference that was continued due to
the defendant's attorney withdrawing.
See Schedule below.

3. This Pro Se defendant demands that the
⑥ discovery motions, as above, and as scheduled
below be Marked-Up for hearing &
reviewed on 3-8-00.
4. This pro se defendant is now resubmitting
and filing all ⑥ motions that have been
previously filed but the Court refused to
docket. This through U.S. certified
mail. See ⑥ motions attached.
5. This Pro Se defendant is filing a Petition
under Mass. G.L. C. 311 s. 3 to a Single
Justice of the Mass. S.J.C. regarding this
injustice which is a planned and deliberate
deprivation of this Pro Se defendant's
rights to the most basic & mandatory dis-
covery from the prosecution.

6. Schedule of Pro Se Defendant's Motions
Filed not Docketed

Discovery Motions Filed Prior to 11/14/00 per
certificate of service

1. "Defendant's Motion for Supplemental
Discovery & Related Court Orders"
2. "Defendant's Motion for Additional Discovery"
3. "Motion for Evidentiary Hearing of Peter
H. Gear (Alleged Victim) & Owners, Residents &
Occupants of 58 Clinton St., Framingham,
Mass. including Norman & LaVale Gear
Regarding the witnesses at the location
where Gear Drove to & called the F.P.D.
on 7-8-00."
4. "Defendant's Motion for Court Order &
Related Subpoenas In Order to Produce
Exculpatory Evidence & Have a fair Trial."

Motions Filed upon receipt of Attorney
Bretts file on the case

5. "Defendant's Motion for Discovery Post-
Bretts withdrawal" (certificate of service
2-1-01)

6. "Motion for Discovery" (certificate of service
2-7-01)

SEE defendant's affidavits in support
of motion - attached.

SEE No ⑥, as above, Pro Se defendant's
Discovery Motions attached - for filing &
docketing & Mark-up

wherefore,

the defendant Pro Se, Michael Elbagy
demands as the law requires that the Court
obey the U.S. Constitution's 5th & 8th &

14th Amendment and docket the same

⑥ discovery motions and order the prosecution to produce the discovery motioned for.

Milk, pro se

Michael Elberg, c57634

SECC A-406

12 Administration Rd.

Bridgewater, Ma. 02324

2-9-01

Certificate of Service

I the defendant, Michael Elberg sent to the Clerk - Criminal - Framingham Dist. Ct., 600

Concord St., Framingham, Mass via U.S.

1st class ~~expain~~ U.S. certified mail ~~return~~ receipt, both prepaid, to the D.A.'s Office,
100 Concord St., Framingham, Mass via ~~return~~
~~class mail~~ ^{return} ~~receipt~~ on 2-13-01 this "objection
& Demand regarding Discovery Motions"
herein.

* 7099 3400 0010 7081 6838

Milk, pro se

(*) 7099 3400 0010 7041 6708

Commonwealth of Massachusetts

Middlesex sv

Commonwealth

v.

Michael E. Elbey

Framingham Dist. Ct.

00 CR 01893A

Affidavit in Support of

Pro Se Defendant's Objection to Court's
Refusal to Docket & Acknowledge

⑥ Discovery Motions of the Defendant
Resubmission of the ⑥ Discovery Motions for
Filing & Docketing

1. I am the Pro se defendant, Michael E. Elbey.
I am incarcerated at SEC C Prison, Bridgewater.

2. I filed ⑥ discovery motions with Framingham
District Court & Framingham DA's Office
regarding the above docketed action which do
not appear on the docket sheet of that
same case.

3. (4) of these discovery motions were filed prior to 11-14-00 which was the date of the originally scheduled Pre Trial Conference. These (4) discovery motions are as follows, their mailing date is included in each motion's certificate of service:

a. "Defendant's Motion for Supplemental Discovery & Related Court Orders"

b. "Defendant's Motion for Additional Discovery"

c. "Motion for Evidentiary Hearing of Peter A. Gear (Alleged Victim) & Jones, Residents & Occupants of 58 Clinton St, Framingham, Mass including Norman & Carole Gear Regarding the witnesses at the location where Gear Drove to & Called the F.P.D. on 7-4-00.

d. "Defendant's Motion for Court Order & Related Subpoenas In Order to Produce Exculpatory Evidence & Have a Fair Trial."

4. I also sent (3) other discovery motions regarding the above dockets that do not

appear on the docket sheet, they are as follows

a. "Defendant's Motion for Discovery Post-Breka withdrawal" (certificate of service 2-7-01)

b. "Motion for Discovery" (certificate of service 2-7-01)

I declare under the penalties and pains of perjury the foregoing is true & correct on this 9th day of February, 01.

Michael Elbey
Michael Elbey

(M. Elberg)

Michael Elberg
C57634
S.E.C.C.
12 Administration Rd.
Bridgewater, Ma. 02324
11-3-00

Clerk-Framingham Dist. Ct.
100 Concord St.
Framingham, Ma. 02324

RE: Com. v. Elberg #0049CR1893

Dear Clerk:

Please find for immediate filing & review,

Defendant's Motion for Supplemental
Discovery &
Related Court Orders

Please "Mark-UP" for Hearing on
the already scheduled 11-14-00 hearing
regarding this case.

Thank you.

Mike Clappaske

1047

Commonwealth of Massachusetts

Middlesex ss.

Commonwealth

v.

Michael Elbery

Criminal Docket
#0049CR1893

Defendant's Motion for Supplemental

Discovery & Related Court Orders

The defendant above captioned motions for discovery as follows:

1. Docket entries of all activity regarding the above docketed case.
2. Review (listening) by this defendant of the ⑤ F.P.D. (Framingham Police Dept.) phone tapes that are evidence of this case. ③ recording conversations with Michael Elbery. ② recording conversations with Peter Gear.
 - a. The defendant needs a transcript of each of these ⑤ police phone tapes so that he can compare the transcripts to the tapes.

2. + 7

- b. In addition the defendant needs an expert to test the tapes he is recorded on due to the fact that parts of the conversations are missing, or there are words missing on those tapes
3. The defendant needs a medical expert who can review the defendant's & Peter Gear's injuries. This expert will testify at trial. The defendant asks the Court to insure that a medical expert is provided for trial.
4. Court Order - Ordering the Mobil Corp or Station Operator's Inc. to produce the payroll records of the Route 30 Mobil, 696 Cochituate Rd. Framingham for the month of July '00.
5. Court Order - Ordering Mobil Corp. & Station Operators Inc. to produce all written communications & the substance of all verbal communications between the Mobil Mgr., Dolly Stoeckl, (at Route 30 Mobil-Framingham) and any & all personnel, supervisors & executives at at Mobil Corp. & Station Operators Inc. regarding the above docketed action and the underlying incident on 7-4-00.
6. Court Order - Ordering the Management at

The Route 30 Mobil, 698 Cochituate Rd, Framingham
 have to produce to the defendant the
 local address headquarter in Massachusetts
 and New England of Mobil Corp headquarter
 and Station Operations Inc. headquarters in
 order that the defendant can subpoena
 witness regarding evidentiary issues
 on this case.

2. Court Order - reserve for the defendant
 and provide for at the trial of this case
 a VCR & monitor for evidentiary demonstra-
 tion regarding this case.
3. Court Order - ordering this defendant's
medical records from the Mass D.O.C. (Dept. of
 Corrections) and Glover-Deaconess Hospital in
 Needham, Mass regarding treatment for
 injuries sustained by this defendant during
 the underlying incident that caused this
 action. Included in this discovery should
 be tests done on this defendant's eyesight
 be R.H. Rose Berry at Concord State
Prison in July '80. The hospital at Concord
 is operated by CMS Inc, Bridge St, Dedham, Mass.
4. Court Order - ordering Mobil Corp to produce
 a person with knowledge of the glass
 used at the Route 30 Mobil, 698 Cochituate
 Rd, Framingham. The witness should be

- able to testify why the glass at that station is unbreakable or what type of glass is used and what its resistance strength is.
10. Court Order - Ordering Mobil Corp or Station Operators Inc. to produce to the defendant Mobil's manual for video security (or a manual that includes video surveillance security) that is provided to each by its gas station managers.
 11. Court Order - Ordering Dolly Stecki, the manager at the Route 30 Mobil, 696 Cochituate Rd., to produce the Mobil employee training manuals. These would be the same manuals that the defendant was required to study & be tested on in order to work at that same gas station.
 - a. Start with the Manual on the "wayne-Dressler" cash register & the manual or book on Mobil's "friendly service".
 12. Court Order - Ordering Dolly Stecki, as above, and her supervisors and Mobil Corp & Station Operators Inc. to produce to the defendant for trial evidence the ② back-up or detail tapes that recorded the sale or transaction by the alleged victim Peter A. Gear on 7-4-00.

at about 2:10. It is known by the defendant that all Sales or transactions through the registers at the Rt. 30 Mobil are recorded by ⑦ back-up tapes.

13. Court Order - ordering the F.P.D. to produce to the defendant for recording & review the phone call the defendant made to the F.P.D. between 10:00 pm on 7-6-00 and 3:00 am on 7-7-00. This same phone call was made by the defendant. It left a message to a Sgt. Sanchez as to the source of the identities of the witnesses who observed the underlying incident that caused the above action.
 a. The defendant also needs a transcript of this taped phone call.

14. Court Order - ordering At. Ken Brekka and the management at the Route 30 Mobil, 696 Cochitiak Rd. to produce all communication (written) and/or letters sent by At. Brekka to that Mobil.
15. All information regarding the return of a video tape to the Route 30 Mobil, 696 Cochitiak Rd. including,
 a. Names of officers on the F.P.D. that returned the video tape.

6087

- b. the date the video tape was returned
 - c. who the video tape was returned to
 - d. who viewed the video tape prior to the F.P.D. returning it,
 - e. All conversations made after members of the F.P.D. returned the video tape
 - i. including F.P.D. personnel
 - ii. including Mobil personnel
16. Court Order - ordering A.H. Ken Breffha to give the defendant his Secretary's full name. Her first name is Maureen. She will be a defense witness.

Wherefore,

the defendant requests the above evidence, witnesses & information & Court Orders to obtain the same in order that he can have a fair trial and so the defendant can be informed of his case so that he can intelligently make the proper decisions & tactics regarding his case & so he can, as is law, instruct his attorney about decisions to be made regarding the injustice against him. This is as guaranteed by the 6th Amendment of the U.S. Constitution.

Michael E. Flanagan
Michael E. Flanagan 157634

7-17

S.E.C.C. Prison
12 Administration Rd.
Bridgewater, Mass. 02324
11-3-00

Certificate of Service

I the defendant, Michael Elberry, sent this Discovery Motion & Court Orders to the Clerk-Framingham Dist. Ct., 600 Concord St., Framingham Ma. & Framingham Dist. Att. Office at 600 Concord St., Framingham, Mass. all via U.S. mail-1st class-prepaid on 11-3-00 from S.E.C.C. prison mail.

Mike Elberry

Mike Elbey
Copy

Mike Elbey
C57634
S.E.C. - O.V.A
12 Administration Rd.
Bridgewater, MA 02324

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

RE: Com. v. Elbey
Criminal # 0049 CP 1893

Dear Clerk:

Please find for immediate filing review,

"Defendant's Motion for Additional
Discovery"

Thank you.

Mike Elbey

Commonwealth of Massachusetts

Framingham Dist. Ct.
Middlesex ss

Criminal Docket
#0049CB18.93

Commonwealth

v.
Michael Elbery

Defendant's Motion for Additional Discovery

1. The defendant requests additional discovery, he submits this motion prior to the scheduled discovery hearing of 11/14/00 regarding this case. The defendant asks as follows:
 - a. List of all F.P.D. (Framingham Police Dept.) officers on duty the 147 Shift during the month of May, '00. Please indicate officer, day worked, & shift via official F.P.D. documentation.
 - b. The relationship between the A.D.A. handling this case, Horley, and Lt. James Horley of the Shrewsbury Police Dept.
 - c. Viewing by the defendant (personally) of the 7-3-00 Mobil video which is currently being held by the F.P.D.
 - d. The ancestry of the alleged victim?
Is there a Tew?

- e. The tape, #11, recorded by the F.P.D. of the defendant, Michael Elberg, calling the Framingham Police between 10pm-July 6 and 3:00am July 7 '00. In this tape Elberg leaves a message for a Sgt. Sanchez telling him that he can find the ③ men who witnessed the alleged criminal episode by contacting Mary Floyd who works at the same Mobil Station.
- f. The police log containing the second call Gear made on 7-4-00 (as to the F.P.D.)
- g. Copy of all pictures the prosecution will use at trial
- h. Names of all prosecution witnesses.
- i. All Hospital Records of Peter H. Gear, the alleged victim, resulting from the incident at the Mobil on 7-4-00.
- j. All written statements of all defense & prosecution witnesses held by or taken by the prosecution team.
- k. The defendant's inculpatory & exculpatory statements both written & verbal.
- l. The Mobil Video of 7-4-00.
- m. The names & addresses & identification of all witnesses interviewed by the Com-

Commonwealth, police, D.A.'s Office & team.
Include when, how many times, where, what
was said regarding the interviews of these
witnesses.

The list of witnesses should include
Dolly Steckj, James Regal & anyone
all Mobil employees.

n. All notes taken by the responding F.P.D.
& officers on 7-4-00 at the Mobil Station,
696 Cochituate Rd, Framingham where the
alleged criminal episode took place that
caused this action.

o. Bill of Particulars

The cause of each injury as depicted
in each of the F.P.D. photos taken of
the alleged victim, (Year). The date the
pictures were taken.

p. List of all police & members of the prosecution team
that spoke to Mobil Managers, Dolly Steckj, & James "J."
Regal.

Wherefore,

The defendant motions for the above
discovery, as the law allows & requests.

Michael Elbry

Certificate of Service

I the defendant, Michael Elbry, sent this "Motion
for Additional Discovery" to the Clerk-Framingham
Dist. Ct, 600 Concord St., Framingham Ma. 01701 &
to the D.A.'s Office po Concord St., Framingham
01701 via U.S. mail-1st class-prepaid from JELL Prison.
Michael Elbry
all on 10-28-00.

My Copy

Mike Elbery
CS7634
S.E. CC - O.U. A
12 Administration Rd.
Bridgewater, Ma.
02304

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

RE: Com. v. Elbery
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 Elbery

Commonwealth of Massachusetts

Framingham Dist. Ct.
Middlesex Co.

Commonwealth
v.
Michael Elbery

Criminal Docket
#0049CF/1893

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

Owners, Residents & Occupants of 58 Clinton St.,
Framingham, Mass, including Norman Corrige Gear
Regarding
the witnesses 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 witnesses 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 Rock 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 robber, 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.

Michael Elbey, pro se

M. Elbey, C57634
S.E.C.C. - Q.O.
1a Administration Rd.
Bridgewater, Ma. 02324
10-26-00

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

R.F.: Com. v. Elbey
0049 CR 1893

Dear Sir:

Please find enclosed for immediate filing
& review,

"Defendant's" Motion for Court Order
&
Related Subpoena"

Thank you-

Mark Elbey, pro se

Commonwealth of Massachusetts

Framingham Dist Ct
Middlesex 55

Commonwealth
v.
Michael Elbery

Criminal Docket
#0049CR1893

Defendant's Motion for Court Order
&
Related Subpoenas

In Order
To Produce Exculpatory Evidence & Have a
Fair Trial

1. The defendant, above docketed, motions the Court for Court Orders, in order to obtain exculpatory evidence, & related Subpoenas for trial, so that the defendant can get a fair trial. This as required by the 6th & 14th Amendment of the U.S. Constitution. The defendant requests as follows:

- a. Record of all mail this defendant, Michael Elbery, sent out of Concord State Prison from 7-7-00 through 10-11-00. Include the names, addresses & the destination of all outgoing mail sent by Elbery from Concord Prison and the date each piece of mail was sent.

There will be a need to Subpoena a
Prison official for trial who is custodian
or has knowledge of the operation of that
mail system at Concord Prison.

b. Court order to the management at the
Mobil Station at 696 Cockshutt Rd, Fram-
ingham, Ma. & Station Operators Inc of
Dallas, Texas & Exxon-Mobil Corp demand-
ing they furnish the names and addresses
of executives with "final decision making
authority" regarding the video surveillance
system used at the Route 30 (696 Cockshutt
Rd.), Framingham, Ma. - Mobil Station, made
7-8-00, where the underlying incident
occurred that gave rise to this instant
action, above detailed.

c. As well, the same parties in b, above,
should be ordered by the Court to produce
the Mobil Manual on video security
as used by its Gas Station Managers.

To date my attorney, Ken Brekka, has been
"put-off" on these important evidentiary
issues in b&c, above, due to the fact
that he has been requesting that evidence
from the Mgr., Dolly Sleek, at the
Mobil Gas Station. Sleek is a pivotal
person regarding the conspiracy to malicious-
ly prosecute the defendant & related
cover-up. The Court orders, ^{for} this discovery
in b&c, should go to Sleek's superiors
at

Mobil Corp.

Station Operator Inc. 46 Pittsfield St. Homewood
P.O. Box 1140 300 Essex St.
Dallas, TX 75201-0140 Lawrence, Mass. 01840
(Att. Brekka has a Westboro
address for Mobil, also.)

- d. Court Order requiring the same parties in b & c above, to disclose what kind of glass is used or in place in the plate windows at the Mobil gas station at 686 Cochituate Rd, Framingham where the underlying incident occurred.
- e. Court Order to the Mobil Gas Station at 686 Cochituate Rd, Framingham and its management, Dolly Skehi & James T. Regal to turn over the video tape of 7-400 that recorded the underlying incident that caused the above disclosed action. The same video tape that James T "Regal", the Asst. Mgr. of that gas station, told Att. Ken Brekka's Office was refused and was Seized in the safe. As well, this same Court Order should go to Station Operators Inc. & Exxon-Mobil Corp, addresser in g. above.
- f. Written communication to the alleged victim, Peter H. Gear, telling him that he can not sue Exxon-Mobil if the defendant is unjustly convicted via Gear's lies. Tell Gear the law - If an employee commits a crime he is out

of the "scope of employment" and the
employer can not be held liable. Per
the 911 tape of Geary, this is one of
his motives to falsely prosecute to
make a fortune off the richest
company in the world via suit against
Exxon-Mobil Corp.

Wherefore,

the defendant asks the Court to issue
the above Court Orders in order to secure
the above related evidence. There will also
be a need for the Court to issue Subpoena
for witnesses described, above, and in parti-
cular, Mobil Corp. & Station Operators Inc.
Executives & Janes "J" legal.

Michael Elley

10-26-00
SE.C.C., 12 Administrative Rd.,
Bridgewater, MA 02324

Certificate of Service

I, the defendant, Michael Elley, sent this
Motion for Court Orders & Subpoena, to the Clerk-
Framingham Dist. Ct., 600 Concord St., Framingham,
Mass., 01701 & Framingham D.A.'s Office at 100
Concord St., Framingham via U.S. mail - 1st class - pre-
paid on 10-22-00 from SE.C.C. Prison wks.

Mike Elley

*My orig
Copy*

M. Elbey, C57634
SEC I A-406
1st Administration Rd.
Bridgewater, Ma. 02324
2-1-01

Clerk-Criminal
Framingham Dist. Ct.
600 Concord St.
Framingham, Ma. 01752

RE: Com v. Elbey #0049CR1893

Dear Clerk,

Please find for immediate filing review,

"Defendant's Motion for Discovery
Post-Breukha withdrawal"

Thank you.

MMR, psd

Commonwealth of Massachusetts

(169)

Middlesex ss
Framingham District

Criminal Docket
0049 CR 1893

Commonwealth

v.
Michael Elberg

Defendant's Motion for Discovery

Post-Brethka Withdrawal

The defendant's attorney, Ken Brethka, withdrew from the above docketed case and this defendant, as a result of reviewing Brethka's case file, makes discovery demands as follows:

1. Regarding the arrest of Peter H. Gear (alleged victim) by the F.P.D. on 7-4-0 the defendant

- a. the booking photos of that arrest
 - b. the booking sheet & booking report of that arrest
 - c. The booking video of that arrest
 - d. all information the F.P.D. has of that arrest
 - e. Amount of bail - date bailed - who paid
 - f. All statements made.
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 type of camera the F.P.D. used to take the ⑥ photos in (a), above.
 - c. where & when were the ⑥ pictures 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 Town for 1st St. (Docket #19431 (R 45894))

- 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 larcen-
ies, 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 & what is it's significance - See
Ex. A.

4. Where was & 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 it reported
 - b. Where was it reported, (address or
location)
 - c. Copy of the tape recording, log & com-
puter printout of any phone call that
preceded or caused the F.P.D. to
take Gear's complaint

d. what time did Gear report the alleged crime to the F.P.D.

4

5. Name of the therapist address that, as per Mass. Region #9 Parole officer - Karen Roske-Gatty, Gear went to for therapy or treatment. - See Ex. D

- a. All reports from that therapist regarding Gear's treatment
- b. All information from that therapist via reports or otherwise indicated or revealing where Gear went in terms of a physician's or hospital treatment regarding his alleged injuries.

6. Viewing & listening by the defendant to the F.P.D. recording machine that records the times ~~of~~^{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., see Ex. B

- a. Including all ② known phone calls involved in this instant case to the F.P.D.
- b. In particular the ② phone calls Gear made on 7-4-00 to the F.P.D.

- c. the phone call made by Vizikas at the Route 30 Mobil on 7-4-00 upon arrival after being called to the Mobil by the defendant.

- 7. Mass. Registration information for the last ⑥ years of Peter H. Gear with the Registry of Motor Vehicles,

- 8. Regarding these 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 tape recording of each call on the original F.P.D. recording machine
 - c. that he get 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</u>	<u>Day</u>
1.	Elberry	9:22	7-4-00
2.	Gear	?	7-4-00 (per Attorney Brezka)
3.	Gear	?	7-4-00 (per Atti Brezka)

4. Elberg	2:37	7-4-00 (per F.P.D. log)
5. Gear	7:31 am	7-5-00
6. Elberg	3:30 am	7-7-00
7. Sanchez (F.P.D.)	7:30 am	7-6-00

9. Meaning of the abbreviations (all) on the F.P.D. computer print-out. See Ex C.
10. A Copy of the 7-3-00 Mobil video that is in possession of the F.P.D. for the defendant's viewing,
11. The Synagogue or temple Gear was bar mitzvahed at.
12. The Docket Entries of this instant case.
13. ④ applications for criminal complaint.
14. "Chain of Custody" of the Mobil video of 7-2-00 thru 7-3-00 that the F.P.D. possesses and Court ordered impounded during this instant case.

a. Name of the officer who picked up the tape?

From the Mobil & date & time the officer picked-up that tape

b. Name of F.P.D. officer who brought back the tape to Mobil. Date & time & Day of this event.

c. Describe all activity of the F.P.D. regarding the Mobil video, above, after it was initially picked-up until Sanderz put it in evidence at F.P.D. on 7-7-00.

i. Include names of F.P.D. employees who engaged in all & any requested activities.

j. The time & day & date of all requested activity

15. What is the meaning of the number 556078321 per the F.P.D. tape 911 recording of Peter H. Gear on 7-7-00.

16. The defendant requests all recordings of the F.P.D. regarding the above docketed case, including all phone tapes radio communications of the underlying incident.
a. All forfeit papers,

b. including the recording from the Chinese Rest,
(#16 cont.) by Ernest Vizikas after they left the Mobil

8

17. All transcripts made by the prosecution
of any of the tapes or recordings in the
instant action.
 - a. All transcripts the prosecution intends
on using during the trial of this
instant case.
18. The criminal record of the defendant.
19. All documentary evidence the prosecution
will use at trial
 - a. including all documents signed by the
defendant Michael Elberg,
20. Out-of-State & Federal "rap sheet"
or record of criminal convictions of the
alleged victim Peter Gear.
21. Inspection by the defendant of the prosecutor's
file regarding this instant case.
22. Prosecutor to search & turn over to the defendant
all records of Peter Gear's involvement
with drugs.

(9089)

Mike J. Prose
Michael Elberg, c57634
SECC Prison A-806
12 Administration Rd.
Bridgewater, Mass. 02324
01-31-01

Certificate of Service

I the defendant, Michael Elberg, sent this Post-Bellum Discovery Motion to the Clerk-Clerical Framingham Dist. Ct., 600 Concord St., Framingham, Mass & the Framingham Dist. Att. Office at 100 Concord St., Framingham, Mass. all via 1st class-U.S. mail prepaid on 2-1-01 from SECC Prison

Mike Prose

PRIM NAME: GEAR, PETER H

DOB: 08/15/1962 PCF#: 2092446

SEX: M SS #: 034-38-1958 MOTHER: CAROLE KIRBY
FATHER: NORMAN
HOME ADDR : 58 CLINTON ST FRAMINGHAM MA
ZIP CODE : 01702-

**MASSACHUSETTS
COURT ACTIVITY
RECORD INFORMATION**

ETHNICITY: WHITE HGT: 507 WT: 170 HAIR: BROWN EYES: GREEN

DT: 07/05/2000 RAY CRT: TAUNTON DISTRICT (21) DKT# 9431CR45590
OFFENSE: LARCENY BY CHECK (LAR CH)
DISPOSITION: PTP 9/2/00 REST TO DISM STATUS: CLOSED

DT: 10/18/1993 CPT: NEWTON DISTRICT (12) DKT# 9312CP12464
OFFENSE: OPER UND INFL OF LIO (1110)
DISPOSITION: C 11/8/93 G PROB 11/22/94 VHI PD VUL/MD PROB VDP STATUS: CLOSED
PROB 8/14/95 FINE 9/1/94 R/R PROB 3/2/95 PROG TERM

Bes 7/2/00 15:30

Ex B

~~24 hour
Tape~~

End Tim 7/3/00 16:15

View Whole Tape NO ECR Brdg

911

2:24:27 #1. hui
INITIAL 911-

HANG ON I GOT TO GET HIS LICENSE PLATE -

2:26:33 Phone disconnect

2:28:12 - Cops not there yet

2:28:19 - Police ARRIVE

2:29:13 - ASSAULT TOOK PLACE -

2:30 - Chicks (61er)

2:33 - Phone call
from ~~ESP~~ VISAKIS

(000) 000-0000 TK003 00:33:29 I TO 00:33:29 I RLS 00:33:29 I DUR 00:00:01
2000/07/04 HIT CALL

Ex C

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 I RI 00:47:07 I C0002 00:47:11 I TT013 00:47:21
I DI002 00:47:41 I RLS 00:47:43 I 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 I RI 02:22:11 I C0001 02:22:16 I DI001 02:24:11
I RLS 02:24:14 I 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 I RI 03:55:12 I C0002 03:55:18 I C0004 03:55:30
I A0152 03:55:30 I TT013 03:55:31 I DI004 03:55:31
I C0004 03:55:31 I A0152 03:55:31 I DI004 03:55:32
I C0004 03:55:32 I A0152 03:55:32 I DI002 03:55:56
I DI004 03:55:58 I RLS 03:55:59 I DUR 00:00:49

2000/07/04

203 BUSN 03:55 07/04 (508) 879-6978 PATHWAYS RESIDENTS 70 PEARL FRAMINGHAM ESN=204 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 postponed his final revocation hearing.KR/jd

M. Elbey, CS7654
SECC A-406
12 Administration Rd
Bridgewater, Ma. 02324
2-4-01

AM
CPL

Clerk-Criminal
Framingham Dist. Ct.
600 Concord St.
Framingham, Ma. 01704

RE: Com. v. Elbey #0049CR1893

Dear Clerk:

Please find for immediate filing & review "Defendant's Motion for Discovery." This was originally written by my attorney for pay who withdrew and a Continuance given by the Court on the Conference Report and Pre-Trial Conference date on this case.

Thank you.

~~MLW~~, prob

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

TRIAL COURT OF THE COMMONWEALTH
DISTRICT COURT DEPARTMENT
FRAMINGHAM DIVISION
DOCKET NO. 0049 CR 1893

COMMONWEALTH OF MASSACHUSETTS)

VS.)

MICHAEL ELBERY)

) MOTION FOR DISCOVERY

*Not filed
Client to
make decis
on MOTION*

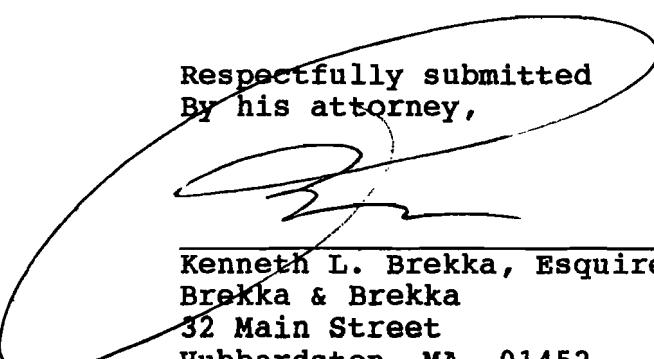
Now comes the Defendant, MICHAEL ELBERY, and moves this Honorable Court pursuant to Rule 14 of the Massachusetts Rules of Criminal Procedure to order the Commonwealth to provide the following information to the Defendant in addition to the discovery information contained in the pretrial conference memorandum:

1. The date and time that all video tapes were received by the police in this case.
2. The full name of the officer who received any video tape in this case.
3. The full name and address of the person who provided the police with the video tape in this case.
4. The complete chain of custody of all video tapes collected by the police in this case.
5. All facts observed by the police officer who received the video tape in this case, including, but not limited to the location of the video tape prior to receiving the tape.
6. All statements by any individual related to the video tapes in this case.
7. The time and date that the police viewed all video tapes in this case.
8. All information related to any attempts to obtain additional video tapes in this case.
9. All information related to the whereabouts of the correct video tape in this case.
10. All hand written notes of all police officers related to this matter.
11. All medical records of the complaining witness, Peter

Gear, related to this incident.

12. The name and address of any medical facility, including but not limited to any hospital, clinic, emergency room or doctor's office, that the complaining witness, Peter Gear, sought medical attention as a result of this incident.
13. Copy of all police log entries of all telephone calls related to this incident.
14. All photographs related to this incident.
15. The address and phone number of the location from which the complaining witness, Peter Gear, called the police on two occasions on July 4, 2000 and the name and address of all persons present at that location on that day who saw or spoke to Peter Gear.
16. All Framingham police documents related to Peter Gear's arrest on July 4, 2000, including but not limited to, booking sheets, police reports, photographs, computer images, statements by Gear, etc.

Respectfully submitted
By his attorney,


Kenneth L. Brekka, Esquire
Brekka & Brekka
32 Main Street
Hubbardston, MA 01452
(508) 928-5000

Pro Se Defendant - Approved
Michael Ellory

CERTIFICATE:

Certificate of Service - Pro Se Defendant
I, the defendant, Michael Ellory, sent this motion
to the Clerk-Clerk of the Framingham First (via U.S. 1st class pre-paid
mail) to the D.A. 100 Concord St, Framingham, MA 01702
on 27-01-
M. Ellory, pro se