

07/19/11
Michael Elbery
C57634
SECC Prison
12 Administration RD.
Bridgewater, Mass.
3-13-01

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

RE: Com. v. Michael Elbery #0049CR1893 (Amended 3006)

Dear Clerk:

Please find for immediate filing and review,

Defendant's Motion to Compel Prosecutor to Produce Discovery
Evidence as Requested by Defendant's Discovery Motions.



Thank you.

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket
#0049CR1893A (3006)

v.

Elbery

~~Refer~~
~~Refer~~
Defendant's Motion to Compel Prosecutor
to
Produce Discovery Evidence

as

Requested by Defendant's Discovery Motions

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.
2. There has been no Pretrial Conference or Pretrial Report regarding this instant case.
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.
4. At this late date the Court has yet to discuss the defendant's discovery requests made via his motions to the prosecution.

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.

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"

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".

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".

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".

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

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

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#0049CR1893A (3006)

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Affidavits in Support
of
Defendant's Motion to Compel Prosecutor
to
Produce Discovery Evidence

1. I am the defendant-pro se, Michael Elbery, I am illegally incarcerated at SECC Prison, Bridgewater, Mass.
2. While Attorney Ken Brekka represented me on this case he interviewed several Framingham Police regarding police phone calls of this instant case.
3. Brekka told me that every phone call that comes into the Framingham Police Dept. is recorded.
4. All 911 calls have an associated computerized information that keeps track of each call including time, source, duration of each call. Per the Framingham Police to Brekka that information is obtainable regarding each call as involved in this case, especially the Calls made by Gear on 7-4-00 regarding this instant case.

5. I have recieved from Attorney Brekka computer print outs of my call to the Framingham Police Dept. regarding this case.

6. Per Brekka interview notes on this case from a named Framingham police official the Gear calls that I seek computer print outs for where made after 5:00am.

7. Based on the above facts and information I believe the Prosecution have controll of computer information and related print outs of the calls Gear made to the Framingham Police on 7-4-00 regarding the underlying incident that caused this case.

Signed under the pains and penalties of perjury this 13th day of March 2001.

A handwritten signature in black ink, appearing to read 'Michael Elbery', with a stylized flourish at the end.

Michael Elbery, prose
SECC Prison
12 Administration Rd.
Bridgewater, Mass. 02324
3-13-01

Certificate of Service

I the defendant pro se, Michael Elbery, sent this Motion to Compel Discovery to the Clerk- Framingham district Court at 600 Concord ST., Framingham, Mass. and the D.A. 's Office at 100 Concord St., Framingham, Mass. all via U.S. certified mail^{*} - return receipt prepaid on 3-15-01 from SECC prison mail.

Mike Elbery

* Clerk # 7099 3400 0010 7041 6111
D.A. # 7099 3400 0010 7041 6104