

Michael Elbery  
SECC Prison  
12 Administration Rd.  
Bridgewater, Mass. 02324  
4-19-01

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

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

Dear Clerk:

Please find for immediate filing and review,

"Defendant's Motion for Clarification Regarding Discovery etc.,  
and Memorial to the Court's 3-08-01 Discovery Order"

Thank you.

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham Distric Ct.

Commonwealth

Criminal Docket  
#0049CR1893 (Amended 3006)

v.

Michael Elbery

Defendant's Motion For Clarification

Regarding Discovery

&

Related Court Orders of Case

&

Memorial of 3-08-01 Discovery Court Order

1. This defendant has filed approximately 12 discovery motions on this case from July '00 through April '01.
2. Per Exhibit A the Court Ordered, on 9-13-00, "the Commonwealth to preserve all evidence held by the F.P.D. including all communications, photos and police notes related to the alleged underlying criminal incident."
3. The Court Order in #2, above, would include many of this defendant's discovery requests that the prosecutor and police refuse to produce to this defendant 10 months after the charges were filed causing this criminal case. The following requests in this defendant's "Omnibus Discovery Motion" are specifically included as catagories of evidence to be preserved by the 9-13-00 Court Order:
  - a. Request #1 - the 7-4-00 F.P.D. (Framingham Police Dept.) Booking Photos of Peter H. Gear and related booking information.

b. Request #2 - the 6 F.P.D./Sanchez photos taken of Gear on 7-5-00 alleging his injuries. In particular, the picture of Gear with the "big red bloody wound on his right forehead".

c. Requests #'s 6 & 8 - phone call information/evidence including certified copies of all turret tapes and phone call tapes, 911 computer print-outs, and related log and dispatch reports.

d. Request #14 - "Chain of Custody" of Mobil video tape.

e. Request #16 - All radio communications tapes and turret tapes.

f. Requests #27, 28, 29 - Police note evidence.

4. In addition, see Exhibits B and C which the F.P.D. and Middlesex District Attorney's Office confirm that they have 6 photos of the alleged victim in the case, Peter H. Gear. These are the same photos that both the defendant's investigating attorney and defendant have viewed. Significant is the picture of Gear with a "big red bloody head wound" on his right forehead.

Memorial to the 3-08-01 Court Order

Produce "Brady " Discovery

5. On 3-08-01 the Court, Judge Paul Healy, ordered the prosecution to produce the alleged victim's, Peter H. Gear's, medical/hospital records relating to his alleged injuries as claimed per the 6 "Sanchez photos", as above. Healy also ordered the prosecution to produce the F.P.D. booking photo and report made as a result of Gear's 7-4-00 arrest by the F.P.D.

6. This defendant was never given a written copy of that 3-08-01 order, as in #5.

7. There was compliance hearing scheduled for 4-4-01 to insure this defendant receives the Court ordered discovery in #5 and that hearing was cancelled without this defendant being notified.

Wherefore,

Please clarify by producing to this defendant the discovery he is required to receive via his discovery motions, motions to compel, and 3-08-01 Court Order.

Michael Elbery,  
12 Administration RD.  
Bridgewater, Mass. 02324  
4-20-01

Certificate of Service

I the defendant, Michael Elbery, sent this "Motion for Clarification" to the Clerk - F.D.C., 600 Concord St., Framingham, Mass. and to the D.A.'s Office, 100 Concord St., Framingham, Mass. via U.S. Xcertified mail-prepaid on 4- -01.

X # 7099 3400 0015 1038 5885

DA-7099 3400 0015 1038 5878

Ex. A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH  
FRAMINGHAM DISTRICT COURT

DOCKET # 0049 CR 1893

COMMONWEALTH OF MASSACHUSETTS )

VS. )

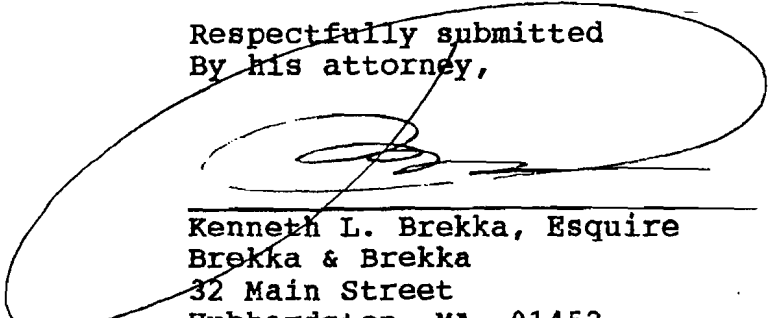
MICHAEL ELBERY )

MOTION TO PRESERVE  
EVIDENCE

9/13/00  
Allowed  
Dwy  
Shuttle

Now comes the Defendant, MICHAEL ELBERY, in the above entitled matter and respectfully moves this Honorable Court to direct the Commonwealth to preserve all evidence in its custody or under its control, including but not limited to: all police notes; video tape evidence taken from the Framingham Mobil Station, located at 896 Cochituate Road, Framingham, Massachusetts; all communications related to this incident recorded at the Framingham Police Station; and photographs.

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.

Ex. B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

FRAMINGHAM DISTRICT COURT  
DOCKET NO. CR 00-1893

COMMONWEALTH

v.

MICHAEL ELBERRY

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COMMONWEALTH'S NOTICE OF DISCOVERY

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Now comes the Commonwealth in the above-entitled matter and states the following:

1. The written or recorded statements of the defendant, if any, currently in the possession of the Commonwealth are contained in the following reports, both of which are enclosed herewith:
  - a. six page police report dated July 6, 2000 by Officer Hector M. Sanchez of the Framingham Police Department; and
  - b. one page report by Officer J. Dones (#234) of the Framingham Police Department dated July 7, 2000.
  - c. all attached booking, rights and evidence sheets, if any.
2. Cognizant of its ongoing duty to disclose, the Commonwealth is not presently aware of any facts of an exculpatory nature relating to the above-captioned matter, other than anything mentioned in the reports and attachments listed in paragraph one.
3. Please contact my office to arrange a mutually convenient time to inspect and copy the physical evidence in the Commonwealth's possession, including but not limited to the following:
  - a. Six photos of the alleged victim, Peter H. Gear.
4. The statements of potential Commonwealth witnesses, if any, that are currently in the possession of this assistant district attorney and that are written or reduced to writing

Ex. C

# DEFENSE COPY

## FRAMINGHAM POLICE STANDARD OFFENSE REPORT

1 DISPATCHED 2 CITIZEN 3 ON VIEW	DATE/TIME REPORTED 07-05-00 0130 <sup>Am</sup>	DATE/TIME OCCURRED 07-04-00	CASE # 0004248
LOCATION OF OFFENSE 696 Cochituate Rd		TYPE OF PREMISE	
INCIDENT/OFFENSE (list most serious first) A. A/B		1 STREET 2 SINGLE RESIDENCE 3 MULTIPLE RESIDENCE 4 COMMERCIAL 5 GAS STATION 6 STORE 7 PHARMACY/DOCTOR OFFICE 8 PUBLIC COMMUNITY BLDG/SCHOOL (INSERT NUMBER) 5	
B.		9 RESTAURANT 10 WARE HOUSE 11 TAVERN BAR 12 VEHICLE 13 BANK 14 OPEN AREA (PARK, FIELD, E 15 OTHER	
C.			

CODES (INSERT LETTER) V=VICTIM B=BUSINESS W=WITNESS P=PARENT DC=DISCOVERED CRIME RP=REPORTING PARTY

1 NAME LAST, FIRST, MIDDLE Sanchez, Hector M.							1 CODE RP	RESIDENCE ADDRESS-PHONE 1 William H. Welch Way			
SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	OCCUPATION	BUSINESS ADDRESS-PHONE		
						0					
2 NAME LAST, FIRST, MIDDLE Gear, Peter H.							2 CODE	RESIDENCE ADDRESS-PHONE 58 Clinton St.			
SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	OCCUPATION	BUSINESS ADDRESS-PHONE		
M	W	Brn	Brn			02-15-62			617-480-1551		
3 NAME LAST, FIRST, MIDDLE							3 CODE	RESIDENCE ADDRESS-PHONE			
SEX	RACE	HAIR	EYES	HT.	WT.	DOB	AGE	OCCUPATION	BUSINESS ADDRESS-PHONE		
DID VICTIMS RECEIVE MEDICAL ATTENTION? WHERE?							ADDITIONAL INFORMATION (LOCAL USE ONLY)				
VIC #1							VIC #2				
VIC #3											

PROPERTY STATUS: (INSERT LETTER) S-STOLEN RE-RECOVERED-SAFEKEEPING SUPPLEMENT STATUS  
F-FOUND HE-HOLD FOR EVIDENCE ANALYSIS "A" DESTROY "D"

STATUS	QTY.	DESCRIPTION-OF-PROPERTY	CODE	MODEL-SERIAL-OWNER APPLIED NO.	VALUE
1	H2 6	Photos of Victims injuries			
2					
3					
4					
5					
6					
7					
8					

PROPERTY CODES  
A: CURRENCY/MAIL/CHECKS/STAMPS  
B: JEWELRY/PRECIOUS METALS  
C: CLOTHING  
D: LOCALLY STOLEN MOTOR VEHICLES  
E: OFFICE EQUIPMENT  
F: TV/RADIOS/STEREOS/ELECTRONIC EQUIP  
G: FIREARMS/WEAPONS  
H: HOUSEHOLD GOODS  
I: CONSUMABLE GOODS/DRUGS  
J: LIVESTOCK/PETS  
K: BUILDING & CONSTRUCTION EQUIP/MATERIAL  
LAWN EQUIP/MIS.

CASE STATUS ACTIVE INACTIVE CLEARED	FURTHER ACTION YES NO	CASE DISPOSITION ARREST ADULT JUVENILE UNFOUNDED EXCEPTIONAL CLEAR
Signature 222		