

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Criminal Docket

Michael Elbery

#00-3006

Defendant's Motion to Suppress Defendant's Prior Convictions

1. The defendant motions the Court to Suppress his only prior conviction as evidence, or otherwise, in the trial of the above docketed action.

2. That conviction the defendant has is for assault with intent to maim, M.G.L. C. 265 s. 15, which was tried in June of '93 in Worcester Superior Court. This defendant filed a Motion for New Trial on that conviction 2 years ago and the Court has made no decision on it.

3. There will be a reversal of that conviction as a matter of law, as this defendant exposed a conspiracy to maliciously prosecute in his Motion for New Trial. It would be total injustice to allow the prosecutor to impeach my credibility with this illegal conviction only to have it reversed in the next several months. Then the D.A. would use a conviction obtained in this case with the use of the illegal conviction to impeach me at a New Trial of that attempted mayhem case.

The major piece of evidence in both cases would be prior convictions that never should have existed in the first place.

As further Grounds for suppression the defendant states,

3. The introduction of that conviction in '93 of "attempted mayhem" will be likely taken by the jury as propensity evidence rather than credibility evidence due to the similarity of that crime with the current charges. This is not the intent of statute, M.G.L. C. 233 s. 21, which intent is credibility. Com. v. McGuire, 467 N.E. 2d 112, 115 ('84).

4. The current charges are assaults which are exactly the same type of crime as the Prior Conviction for "attempted mayhem". This causes a classic case of prejudice to the defendant which outweighs any probative value. Com. v. DiMarzo 364 Mass. 669, 680-82 (74)(danger of prejudice of admission of prior convictions when prior conviction is similar to new charge). Hence, the prior conviction should not be admitted.

5. The prior conviction, "assault with intent to maim" does not reflect untruthfulness. The law accepts a diminishing scale of probative value on the issue of credibility from perjury to impulse assault. The crime of "assault with intent to maim" is a crime of impulse and is not probative of credibility; as above. Com. v. Roucoulet, 22 Mass. App. Ct. 603, 608 ('86): Com. v. Ruiz, 22 Mass. App. Ct. 297, 303 ('86): Com. v. McGuire, 392 Mass. 466, 469 ('84)

6. The current case is a classic dual of credibility between the alleged victim and the defendant. The defendant's testimony is required to provide any defense in this case. Mass. Criminal Practice, Blumenson, Vol. 2, p. 131.

7. As a result, allowing evidence for credibility of the defendant's single similar, if not identical, conviction for "assault with intent to main" would cause prejudice to the defendant that would outweigh any probative value. This prejudice is so compelling that it will prevent the defendant from obtaining a Fair Trial. Com. v. McGuire, 392 Mass. 466, 467-70, 467 N.E. 2d 112 ('84).

Wherefore ,

the defendant motions the Court to exclude from evidence at the trial of the above docketed action the defedant's Prior and only conviction for "Attempted Mayhem" which will soon be reversed.

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

Michael Elbery

SECC Prisoner

5-13-01