

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court  
Six Man Jury Session  
Criminal Docket  
#00-3006

Commonwealth of Mass.

v.

Michael Elbery

Defendant's Ex-Parte Motion/Application

For

Court to Serve Witness Summons

1. The pro se defendant, Michael Elbery, motions/applies to the Court Ex-Parte to serve his 12 witnesses, some eye witnesses to the alleged crime, summons.
2. The defendant is presently incarcerated at SECC Prison and is unable to serve the witnesses from prison and the defendant does not have the funds for witness fees and service.
3. The defendant has already asked the Court to serve his witness summons due to incarceration. See Ex. A.
4. The defendant needs the presence of the named witnesses, as per Ex. B, in order to have an adequate defense and Due Process of Law as guaranteed by the 6th and 14th Amendments of the U.S. Constitution.
5. Compounding the problem of issuing witness summons for trial is that the defendant was not notified until May 3, 2001 that the trial would be held on May 17, 2001. The defendant was alerted to this May 17 trial date by a transport cop in the Framingham District Court holding tank and was never notified by the Court or officers.

LAW

Per Mass. Criminal Practice, Volume I p. 348, "indigent summons must be issued at any time upon the written ex-parte application of a defendant which shows that the presence of a named witness is necessary to an adequate defense and that the defendant is unable to pay the fees of that witness.

See supporting Affidavits

Wherefore,

the defendant, pro se, applies and ;motions the Court to serve his summons as above and as provided by M.R.C.P. - Rule 17b.

Michael Elbery, pro se  
SECC Prison  
12 Administration RD.  
Bridgewater, :Mass. 02324  
5-4-01

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Commonwealth

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# 00-3006

Michael Elbery

Affidavits

In Support of Defendant's Ex-Part

Application for Court to Serve Witness Summons

1. I am the defendant, Michael Elbery, I am currently incarcerated at SECC Prison, Bridgewater, Mass.
2. I am unable to serve the 12 defense witnesses I need for trial with summons.
3. I do not have enough money at SECC Prison to pay the various witness fees and sheriff's service fees.
4. I need the witnesses listed on EX. B, attached, in order to present a defense against the charges of the above docketed case.
5. Due to the procedures of this prison regarding outgoing money payments (witness and sheriff's fees) it is impossible to get summons served.
6. I was notified by a transport cop in the lock-up of the Framingham District Court on 5-~~2~~-01 that trial would be on 5-17-01.
7. As in #6, above, 15 days is not enough time to process and serve summons from inside this prison let alone prepare for trial.

Signed under the pains and penalties of perjury on this 6th day  
of May 2001.

Michael Elbery, Pro se

12 Administration Rd.

Bridgewater, Mass. 02324

5-6-01