

COMMONWEALTH OF MASSACHUSETTS

Commonwealth

Framingham District Court

v.

Six Man Jury Session

Michael Elbery

00-3006

Defendant's Motion To Compel Prosecution

To

Produce Evidence Requested By Defendant's Omnibus Motion

&

Ordered by the Court

The Court at the 5-17-01 discovery hearing ordered the Prosecution to produce the evidence as requested via the defendant's "Omnibus Discovery Motion", as itemized below the prosecution has failed to Comply with those discovery orders.

Reference is made to numbered requests of the Defendant's Omnibus Discovery Motion already on file with the Court. See Exhibit A.

1. Request #2 - 2 concealed F.P.D. photos

The defendant still demands the 2 pictures of Peter Gear taken by the F.P.D. that shows a "massive bloody head wound" on Gear's right forehead. These pictures were shown to the defendant by Attorney Ken Brekka . The other picture showed a huge 1 foot diameter bruise on Gear's right side.

All pictures the F.P.D. has on this case were ordered preserved by Judge Stoddard on 9-13-00. See Exhibit B.

2. Request #3a-e - Gear's dismissed felony larceny charge

The defendant demands the evidence requested regarding the charge dismissed against Gear in Taunton District Court for felony larceny and outstanding 6 year warrant on that charge.

3. Request #4 - Evidence produced when Gear reported alleged Crime

The defendant requests the Court to order the prosecution to produce the evidence requested in #4a-d of the defendant's "Omnibus Motion". Some of this evidence was requested in #6 & #8 of the defendant's "Omnibus Motion".

This evidence includes the computer printouts the F.P.D. maintains of the two calls Gear made to the F.P.D. - 911 on 7-4-00. Also the tape and 911 computer printout of the 911 call made by Gear on 7-5-01 at 7:21 am.

Also requested was the dispatch reports resulting to the response by the F.P.D. to this defendant's 911 call made at 2:22 am on 7-4-00.

This communication evidence was already ordered preserved by Judge Stoddard on 9-13-00, see Ex. B.

4. Requests #6 & #8 - Telephone & Dispatch Evidence

This evidence in these requests concerning the telephone and dispatch evidence in this case, including the 911 computer print out of Gear's calls to the F.P.D. on 7-4-00 (these computer printouts tell what time the calls were made). Also requested were the dispatch evidence resulting from this defendant calling the F.P.D. -911 on 7-4-00 at 2:22am. And the defendant requested the 911 tape and computer printout of the call Gear made to the F.P.D. on 7-5-00 at 7:21am.

Note, these requests were allowed as a result of the defendant's

first "Motion to Compel Discovery" #6d. see Exhibit C.

All this evidence was ordered Preserved for the defendant by Judge Stoddard on 9-13-00, see Exhibit B.

5. Request #16 - the turret, phone tapes, radio communications

The radio and turret communications are resulting from the F.P.D. response to this defendant's 911 call at 2:22am on 7-4-00.

The phone tape missing is Gear's call on 7-5-00 at 7:21am.

At this date the defendant knows there is a F.P.D. radio tape missing that says " Just another gas evasion". This radio communication was probably by Officer Vizikas at about 3:00am on 7-4-00.

This evidence was ordered preserved by Judge Stoddard for the defendant on 9-13-00, see Exhibit B.

6. Request #19 - the documents the Prosecution does not want to present until trial to cause surprise.

The prosecution claims it will produce additional documents at trial which have not yet been identified. The defendant wants those documents well before trial or now.

WHEREFORE,

the defendant, pro se, motions the Court to Compel the discovery as above including

- a. the F.P.D. pictures of Gear's massive bloody head bruise and wound & 1 foot diameter side bruise
- b. The F.P.D. 911 computerized printout of the 2 calls Gear made to the F.P.D. on 7-4-00 so the jury knows the time he made the calls
- c. The F.P.D. 911 tape and computerized printout of Gear's call to the F.P.D. on 7:21am at 7-5-00
- d. the F.P.D. dispatch report resulting from this defendant's 911 call to the F.P.D. at 2:22 am
- e. the F.P.D. radio/turret tapes of 7-4-00 at approximately 3:00am recording the responding officers to the underlying incident at the Mobil saying "It was only a gas evasion".
- f. All documents the prosecution will present at trial and Gear's felony larceny information.

See also Exhibit D, 'Commonwealth's Response to Court Order on Defendant's Omnibus Discovery Motion'


Michael Elbery, pro se

SECC Prison

12 administration Rd.

Bridgewater, Mass. 02324

6-19-01

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth of Massachusetts

Criminal Docket

v.

#0049CR1893#

CR 3006

Michael Elbery

5/17/01
 see notations
 in margins
 which constitute
 court order
 [Signature]

Defendant's Omnibus Discovery Motion

Due to the Court refusing to docket this Pro se defendant's Discovery Motions the Pro se defendant files this discovery motion. The defendant, Pro se, makes the following discovery demands which will yield discovery that is mandatory per M.R.Cr.P.- Rule 14.

1. Regarding the arrest of Peter H. Gear (alleged victim) by the Framingham Police (hereinafter the F.P.D) on 7-4-00 the defendant requests

- Pro se*
Def't's motion
injured photo
allowed
denied
allowed
denied
allowed
- the booking photos of that arrest by the F.P.D.
 - the booking sheet and booking report of that arrest
 - the booking video of that arrest
 - all information the F.P.D. has of that arrest
 - the amount of bail, date of bail and who paid the bail regarding that arrest
 - All statements made by Gear during that arrest

2. Regarding the alleged injuries that the alleged victim, Peter H. Gear,

See the notes 9-13
at Simpson photo
14-15

- demer b.
 demer g.
 demer d.
 demer e.
 demer f.

3.
Cou
on
MC-1-421-11160
info of State
a copy of the
MC-1-421-11160
denied. How-
However
The prob. do
shall provide
Def. with a
copy of Mr.
Bear's rec
4.

4. Where and when did Peter H. Gear (alleged victim) report the alleged crime to the F.P.D. that caused this instant action.

- denied
but any
documents
which
reflect same
shall be
provided

140-1
denied

- denied*
- a. Produce all reports from that therapist regarding Gear's treatme needed because of the incident that caused this action
 - b. Produce all reports from that therapist via reports or otherwis indicating or revealing where Gear went in terms of a physician or hospital treatment regarding his alleged injuries.

9-13
order - Brekka
motion - 392
communication

6. A viewing and listening by the defendant to the F.P.D. recording mach that records the times and phone calls to the F.P.D., the same recording machine Attorney Ken Brekka obtained the information regarding the defen-
dant's 911 call on 7-4-00 to the F.P.D. and their response to that call,
See Ex. B.

Dispatch report

- Denial*
- a. Including all 7 known phone calls involved in this instant case to the F.P.D. - See #8 below for a list of the 7 phone calls
 - b. In particular the 2 phone calls Gear made on 7-4-00 to the F.P.D
 - c. Also the phone call made by F.P.D. Vizikas from the Route 30 Mobile on 7-4-00 upon arrival to the Mobil as a result of the de-
fendant's 911 call from the Mobil.

9-13-1-392
recording machine
post doc
public info
info. state
agency under
investigation

7. Produce all information for the last 6 years of Peter H. Gear with the Mass. Registry of Motor Vehicles regarding his registration of automobiles

- Denial*
Brekka motion
9-13 of order
See #4
8. Regarding the phone calls made to or from/by the F.P.D. concernining 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 original tape recording of each call on the original F.P.D. recording machine
 - c. that he get or receive a transcript of the recording of each call
 - d. a print out of the F.P.D. log of each call

Caller	Time Call Made	Date	Source
1. Elbery	2:22 a m		

3.	Gear	?	7-4-00	F.P.D. 911 tape
4.	Elbery	2:37 a.m.	7-4-00	F.P.D. log
5.	Gear	7:21 a.m.	7-5-00	F.P.D. log
6.	Elbery	3:30 a.m.	7-7-00	Attorney Ken Brek & F.P.D. tape
7.	F.P.D. Sanchez	7:30 a.m,	7-6-00	F.P.D. tape

9. Meaning of the abbreviations, all, on the F.P.D. computer printout . See Ex. C.

10. A copy of the 7-3-00 Mobil video that is in possession of the F.P.D for the the defendant's viewing.

a. or a viewing of that tape by the defendant at the Court.

11. The synagogue or temple Gear was bartmitzvahed at.

12. The Docket Entries of this instant case.

13. 4 applications for criminal complaint.

14. Provide the "Chain of Custody" of the Mobil video of 7-2-00 through 7-3-00 that the F.P.D. possess and the Court ordered impounded during this instant action/case.

Denied

Allowed

Denied

allowed

Denied

Denied

- Denied*
- b. State the date and time the officer in (a), above, picked-up that video tape or any video tape from the Route 30 Mobil
 - c. State the name of the F.P.D. officer who brought back that same video tape or any video tape to the Route 30 Mobil
 - d. State the time and day and date that the officer in (c), above, brought back that Mobil video tape to the Mobil and which Mobil employees did you give the tape to.
 - e. Describe all activrty of the F.P.D regarding the Mobil video, above, after it was initially picked-up until Sanchez put it in evidence at the F.P.D. on 7-7-00
 - i. Include the names of all F.P.D.employees and prosecuti team members who participated in any and all of the requested "chain of custody" and activities
 - ii. The date, day and time of all requested activity of the video "chain of custody"
 - iii. State the name of any and all Mobil employees contacte regarding any and all Mobil video tapes

Allowed

15. State the meaning of the number S56078321 per the F.PD. tape 911 re-cording of Peter H. Gear on 7-4-00.

Brady's Motion 4-13

16. Produce all recordings of the F.P.D. regarding the above docketed case, including all phone tapes and radio communications of the underlying incident.

- Denied*
- a. Include all turret tapes.
 - b. Include the recording of F.P.D. Dones and Vizikas' radio communi-cation from the Chinese Restaurant after leaving the Mobil on 7-4-00 after the incident that caused this action.

Allowed

Produce all transcripts made by the prosecution of any and all tapes and recordings involving this instant action.

- Allowed*
- a. Produce all transcripts the prosecution intends on using during the trial of this instant case.

18. The criminal con-

Allowed

19. Produce all documentary evidence the prosecution will use at trial
a. including all documents signed by the defendant

Allowed only if D.A. has same in its possession

20. Provide an "out-of-state" and Federal rap sheet or criminal convictions of the alleged victim, Peter H. Gear, for the other 49 state and Federal jurisdiction.

21. Provide for inspection by the defendant the prosecutor's file regarding this instant case.

Denied - note other records previously allowed and Brady applies.

22. Prosecutor to search and turn over to the defendant all records of Peter H. Gear's involvement with drugs.

23. Produce a list of all F.P.D. officers on duty the 11-7 shift during the month of May and June of 2000.

24. State the relationship between the Special A.D.A. handling this case, Hurley, and Lt. James Hurley of the Shrewsbury Police Dept.

25. Provide a viewing by the defendant, pro se, of the video tape taken from the Route 30 Mobil, 696 Cochituate Road, Framingham now being held by the F.P.D.

26. State the ancestry of the alleged victim, Peter H. Gear.
a. Religion of Gear
b. state whether Gear is a Jew

See next page

27. State the name of the person who is the owner of the vehicle.

Any statements reduced to writing by police or a narrative by a witness reduced to writing by a D.A. are allowed other requests denied 7 of 9

witnesses interviewed by the Commonwealth, the F.P.D., D.A.'s Office and prosecution team regarding the above docketed case.

- a. describe the content of the subject matter of each of these interviews of each person.
- b. state day, time, and date of each such interview.

allowed
28. Produce all notes taken by the responding F.P.D. officers on 7-4-00

at the Mobil gas station, 696 Cochituate Road, Framingham, where the incident took place that caused this above docketed action.

Denied
29. List of all F.P.D. members that spoke to the following employees at the Route 30 Mobil, 696 Cochituate Road, Framingham, regarding the alleged criminal episode and anything related to that alleged criminal episode

- a. Mgr. Dolly Olecki
- b. Ast. Mgr. James "J" Regal
- c. Bill Fairbanks
- d. Mary fleyd
- e. Richard Gedsoe
- f. State the date and substance or content of each conversation

Denied
30. Provide a record of all mail this defendant, Michael Elbery, sent out of Concord State Prison from 7-7-00 through 10-10-00

- a. Include the name and address of all destinations of that mail
- b. include the date sent for each piece of that outgoing mail

Denied - Def. may seek same on his own by filling out a request
31. Provide an audible copy of the tape of the 10-17-00 evidentiary hearing held at the Framingham District Court on this action.

Denied
32. Provide the results of the eyesight tests done on this defendant between 7-7-00 and 10-10-00 at Concord State Prison's H.S.U. unit

33. Reserve a VCR and TV for trial date in order to show video evidence

34. State who on the F.P.D. and prosecution team or any other state actor viewed any of the Mobil videos taken from the Mobil gas station, 696 Cochituate Road, Framingham

- a. state date each state actor viewed any of the videos taken from that same Mobil
- b. state the time of each viewing by each state actor

35. Provide an expert witness, independent of the prosecution and approved by the defendant, to test the

- a. the 6 F.P.D. pictures and related negatives of the alleged victim Peter H. Gear
- b. various F.P.D 911 tapes in this , as in #8 above
- c. pictures and documents depicting injuries in this case by a physician

38. State the address of the prosecution's star witness, Peter H. Gear, from 7-4-00 to present.

39. Produce all statements held by F.P.D. internal affairs of percipient witnesses regarding this case

- a. in particular involving any investigation of the missing Mobil video tape of 7-4-00

40. State the time F.P.D. Dones and Vizikas left the Mobil after responding

Denied
41. See also Defendant's Bill of Particulars, Motion for Expert Testing on the F.P.D. phone tapes and recording machine and negatives of the pictures/photos (6) the F.P.D. has of the alleged victim's alleged injuries, Motion for a Medical witness to testify regarding the injuries sustained by Peter H. Gear and the defendant as per medical records and photos.

Denied - atty Brekka has ethical obligations outside the motion
42. See also defendant's Motion to compel Attorney Brekka to disclose exculpatory evidence he gained during his investigation of this case to the defendant so the defendant can be prepared for trial.

N/A
43. See defendant's Motion for Evidentiary Hearing of Peter H. Gear so the defendant can gain exculpatory evidence.

Brady still applies

?
44. See also defendant's Motions for hospital and medical records to the Deaconess-Glover Hospital and the M.C.I. Concord H.S.U. and to Mobil Oil Corp. for documents.

Mike Elbery
Michael Elbery, Pro se
SECC Prison A 406, C57634
12 Administration Rd.
Bridgewater, Mass. 02324
2-14-01

Certificate of Service

I the defendant prose, Michael Elbery, sent this Omnibus Motion to the Clerk-Criminal-Framingham District Court, 600 Concord St., Framingham, Mass. and to the Framingham D.A.'s Office, 100 Concord St., Framingham, Mass. all via U.S. certified mail-prepaid on 2- -01 from SECC Prison Mail.

Mike

Ex. A
to
Omnibus
Motion

PDF ADULT RECORD INFORMATION AS OF 09/19/2000

PAGE 1 OF 1

PRIM NAME: GEAR, PETER H

DOB: 03/15/1958 PDF#: 20032446

SEX: M SS #: 034-39-1958 MOTHER: CAROLE KIRBY
FATHER: NORMAN

HOME ADDR : 58 CLINTON ST FRAMINGHAM MA
ZIP CODE : 01702-

MASSACHUSETTS
COURT ACTIVITY
RECORD INFORMATION

ETHNICITY: WHITE

HGT: 507 WGT: 170 HAIR: BROWN

EYES: GREEN

DT: 07/20/2000 RAY CRT: TOWNTON DISTRICT (31)

OFFENSE: LARCENY BY CHECK (LAP CR)

DATE: 9431CR45896

DISPOSITION: PTD 3/2/02 REST PD DISM

STATUS: CLOSED

DT: 10/10/1993 CRT: NEWTON DISTRICT (12)

OFFENSE: OPER UND INFL OF LIQ (1110)

DATE: 9312CR12461

DISPOSITION: C 11/8/92 S PROB 11/7/94 VWF PD VOP/WD PROB VOP

STATUS: CLOSED

PROB 8/14/95 FINE 9/1/94 R/R PROB 3/2/95 PROB TERM

Ex B
to
omnibus Motion
Ex 1

Box 7/2/00 15:30

End Time 7/3/00 16:15

24 hour
TAPE

View Whole TAPE NO ECL Brg

911

2:24:27 #1 Line

INITIAL CALL -

HANG ON I got to get his license plate -

2:26:33 Phone disconnects

2:28:12 - Cop not there yet

2:28:19 - Police ARRIVE

2:29:13 - ASSAULT TOOK PLACE -

2:30 - Chichay (Gien)

2:33 - Phone call

Exc to omnibus
Notion
X(000) 200-0000 TK003 00:33:29 | TO 00:33:29 | RLS 00:33:29 | DUR 00:00:01
2000/07/04 HIT CALL

Current time: 00:45 (2000/07/04)
System message: APU # 002 RMT SEND BY 0000 07/04 00:47:26

X(508) 877-0916 TK001 00:47:05 | RI 00:47:07 | CO002 00:47:11 | TT013 00:47:21
| DI002 00:47:41 | RLS 00:47:43 | 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)

X(508) 875-1424 TK002 02:22:09 | RI 02:22:11 | CO001 02:22:16 | DI001 02:24:11
| RLS 02:24:14 | 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
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=====

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

X(508) 879-6978 TK003 03:55:10 | RI 03:55:12 | CO002 03:55:18 | CO004 03:55:30
| A0152 03:55:30 | TT013 03:55:31 | DI004 03:55:31
| CO004 03:55:31 | A0152 03:55:31 | DI004 03:55:32
| CO004 03:55:32 | A0152 03:55:32 | DI002 03:55:56
| DI004 03:55:58 | RLS 03:55:59 | DUR 00:00:49

2000/07/04
203 BUSN 03:55 07/04 (508) 879-6978 PATHWAYS RESIDENTS 70 PEARL FRAMINGHAM ESN=2
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)

Ex: D
to

00002/0002

Omnibus Motion

- 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 postpone his final revocation hearing.KR/jd

Ex. B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
FRAMINGHAM DISTRICT COURT

DOCKET # 0049 CR 1893

COMMONWEALTH OF MASSACHUSETTS)

VS.)

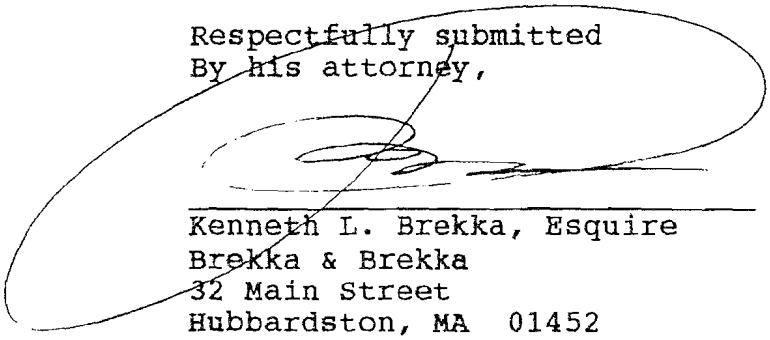
MICHAEL ELBERY)

MOTION TO PRESERVE
EVIDENCE

9/13/00
Allard
Dry
Shutler

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. C

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Criminal Docket
#0049CR1893A (3006)

v.

Elbery

5/17/01
See Margin
notations
which
constitute
order of
court
Dmy G. Stoddy

Defendant's Motion to Compel Prosecutor
to

Produce Discovery Evidence

as

Requested by Defendant's Discovery Motions

N/A
1. The defendant-pro se, Michael Elbery, Motions the Court to Compel the proesection to produce the exculpatory, relevant and material evidence asked for in the defendant's 12 discovery motions filed in this instant case.

See other
at order
5/17/01
2. There has been no Pretrial Conference or Pretrial Report regarding this instant case.

Danied
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.

Danied-
Disc.
handed
today
5/17/01
4. At this late date the Court has yet to discuss the defendant's discovery requests made via his motions to the prosecution.

N/A 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.

See Omnibus Motion 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"

allowed 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".

allowed 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".

denied 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".

allowed 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.

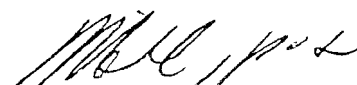
These same hospital records were requested in 3 of the defendant's Discovery Motions already filed with the Court in this case as follows:

- 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

See
Omnibus
motion

all
any
new records
to be provided
ch. 233
79(6)
at least
10 days
before
trial

Ex. D

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

FRAMINGHAM DISTRICT COURT
DOCKET NO. 00-3006

COMMONWEALTH

v.

MICHAEL ELBERRY

**COMMONWEALTH'S RESPONSE TO COURT ORDER
ON DEFENDANT'S OMNIBUS DISCOVERY MOTION**

Now comes the Commonwealth in the above-entitled matter and in response to this Court Order (Stoddart, J., May 17, 2001) on Defendant's Omnibus Discovery Motion as follows:¹

Request Number 1

- (a) the booking photos were provided to defendant prior to this Court's Order;
- (b) a copy of the booking sheet is attached hereto;
- (c) there is no such video in the possession, custody or control of the District Attorney's Office;
- (d) see response to 1(a) and 1(b);
- (f) see response to 1(b).

Request Number 2

- (a) a copy of the set of photographs were provided to defendant prior to this Court's Order and the originals of the same have, are and will be available for inspection.

Request Number 3

Not applicable to District Attorney's Office.

Request Number 4

- (a) – (d) see the Framingham Standard Offense Report (Case Number 0004248), a copy of which was previously provided to defendant.

¹ Only those requests which were allowed are responded to herein.

Request Number 10

A copy of the video is enclosed.

Request Number 12

An original certified copy of the docket is enclosed.

Request Number 15

According to Framingham Police Department, the number used is simply an identification number for Mr. Gear, having no independent significance to the Department.

Request Number 17

A copy of a portion of the Framingham Police Department Police Log is enclosed herewith. There are no other such transcripts in the possession, custody or control of the District Attorney's Office, nor does it intend to use any transcripts at the trial in this action.

Request Number 18

See copy of defendant's record enclosed herewith.

Request Number 19

See copies of defendant's criminal convictions, the receipt for Mr. Gear's purchase of gasoline, and Mr. Gear's medical records which have been certified pursuant to G.L. c. 233, sec. 79G, copies all of which are enclosed herewith. The Commonwealth also reserves the right to use additional documents at trial, which have not yet been identified, including, but not limited to any and all motions and papers sent to the Court by defendant.

Request Number 20

There are no such documents in the possession, custody or control of the District Attorney's Office.

Request Number 25

See response to Request Number 10.

Request Number 27

See the Framingham Standard Offense Report (Case Number 0004248), a copy of which was previously provided to defendant.

Request Number 28

See the Framingham Standard Offense Report (Case Number 0004248), a copy of which was previously provided to defendant. According to the Framingham Police Department, no other notes exist.

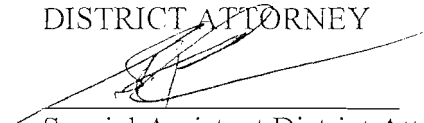
Request Number 33

Not applicable to District Attorney's Office.

The Commonwealth reserves the right to amend or supplement this response at any reasonable time prior to or at trial.

Respectfully Submitted,
For the Commonwealth

MARTHA COAKLEY
DISTRICT ATTORNEY

A handwritten signature in dark ink, appearing to be 'M. Coakley', is written over a horizontal line.

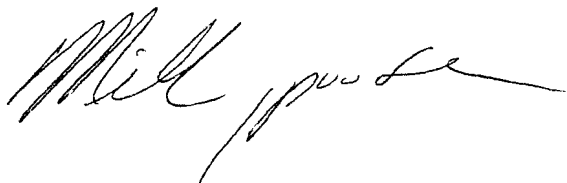
Special Assistant District Attorney
100 Concord Place
Framingham, MA 01701
(508) 875-4141

Dated: June 12, 2001

CERTIFICATE OF SERVICE

I the defendant, Michael Elbery, sent these 3 Motions,
Compel 2 Gear pictures -Bloody wound / Massive Bruise
Compet Omnibus ordered discovery
Compel Bill of Particulars, Conference Report, Testing of Video
Surveillance System at the Mobil
to the clerk-criminal, Framingham District Court, 600 Concord St.,
Framingham, Mass. and to the Framingham District Attorneys Office
at 100 Concord St., Framingham, Mass. all via certified mail-
U.S. -prepaid on 6-23-01 from SECC Prison mail.

The above is true and correct - signed under the pains and penalties
of perjury on this day of June 21, 2001.

A handwritten signature in cursive script, appearing to read "Michael Elbery", written in dark ink.