

My copy

Michael Elbery, C57634
Secc Prison
12 Administration Rd
Bridgewater, Mas. 02324
6-21-01

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

RE: Com v. Elbery 00-3006

Dear Clerk:

Please find for immediate filing and review **3 MOTIONS**,

1. Defendant's Motion to Compel 2 F.P.D. Pictures of Alleged Victim Peter H. Gear "Bloody Head Wound" & "Massive side Bruise"
2. Defendant's Motion To Compel Prosecution To Produce Evidence Requested By Defendant's Omnibus Motion & Ordered by the Court
3. Defendant's Combined Motion for Bill of Particulars Conference Report Testing of Mobil's Video Surveillance System

Certificate of Service

MARK - UP FOR HEARING ALL THE DEFENDANT'S MOTIONS NOT YET HEARD FOR
HEARING ON JULY 10, 2001. JULY 10 WAS THE DATE ALLOWED BY THE
COURT PER THE 5-17-01 ORDER.

THANK YOU,



Extra

Michael Elbery, C57634
SECC Prison
12 Administration Rd.
Bridgewater, Mass. 02324
6-12-01

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

RE: Com. v. Elbery 00-3006

Dear Clerk:

Please find for immediate filing and review,

"Defendant's Motion to Compel 2 F.P.D. Pictures of Alleged Victim
Peter H. Gear "Bloody Head Wound" & "Massive Side Bruise"

Thank you.

A handwritten signature in cursive script, appearing to read "Mike Elbery".

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Michael Elbery

00-3006

Defendant's Motion to Compel 2 F.P.D. Pictures

of

Alleged Victim Peter H. Gear

"Bloody Head Wound " & "Massive Side Bruise"

1. I am the defendant, Michael Elbery.
2. On about 8-29-00 my attorney, Ken Brekka, showed me Several F.P.D. pictures taken of Peter H. Gear allegedly on 7-5-00. Ken Brekka has stated he still has copies of all thoes pictures.
3. Two of those pictures, in #2, the prosecution has failed to produce to me at this late date of the case.
4. One picture showed Gear with a "big head wound" that covered his right forehead.
5. The other picture showed Gear with a massive black and blue bruise on his right side. This bruise was about 1 foot in diameter.

6. The prosecution produced copies of Gear's alleged injuries 10 months after this defendant's arrest, but the pictures described in #'s 4 & 5 have yet to be produced.

7. This is just more of the same concealment and fabrication of evidence that has permeated this case by the prosecution.

signed under the penalties and pains of perjury on this 11th day of June 2001.

WHEREFORE,

The defendant motions the Court to Compel the prosecution to produce the 2 pictures as above in #'4 & 5.

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

Michael Elbery, pro se

SECC Prison

12 Administration RD.

Bridgewater, Mass. 02324

6-11-01

Certificate of Service

I the defendant, Michael Elbery, sent this Motion for 2 Gear Bloody pictures to the Clerk-Criminal, Framingham Disstrict Ct., Framingham, Mass. 01701 and the D.A.'s Office at 100 Concord St., Framingham, Mass. 01701 via U.S. mail certified - return receipt on 6-14-01 from SECC Prison mail.

Mike Elbery

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

- denu b.
 denu g.
 denu d.
 denu e.
 denu f.

3.
Cou
on
M.C. 1-421-11160
info of State
a copy of the
M.C. 1-421-11160
denied. The
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

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.

- Denied*
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.

- Denied*
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.

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

- Allowed (or give Def. a copy)*
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.

- Denied*
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 - 11-00-00-00

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.

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.

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

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

31. Provide an audible copy of the tape of the 10-17-00 evidentiary hearing held at the Framingham District Court on this action.

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.

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 disconnect

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 Motion Picture
X(600) 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 |
|---------|------------------|-----------------|-----------------|

=====

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.)

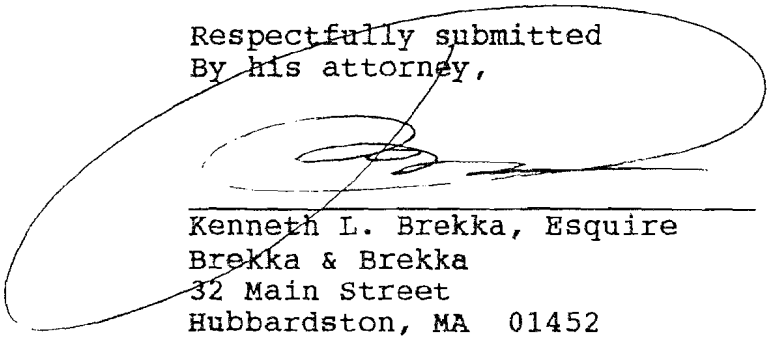
MICHAEL ELBERY)

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
Dan 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.

Dan Stoddy
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.

Dan Stoddy
Disc.
hearing
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.

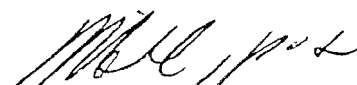
These same hospital records were requested in 3 of the defendant's Discovery Motions already filed with the Court in this case as follows:

- 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.

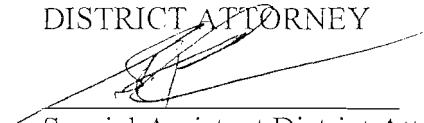
Request Number 33

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.

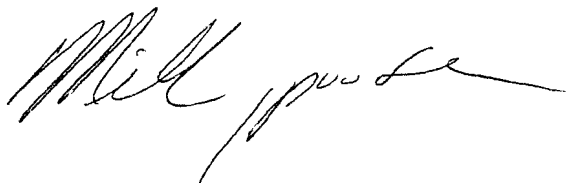
Special Assistant District Attorney
100 Concord Place
Framingham, MA 01701
(508) 875-4141

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.

Michael Elbery, C57634
SECC Prison
12 Administration RD.
Bridgewater, Mass. 02324
6-27-01

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

RE: Com. v. Elbery #00-3006

Dear Clerk:

Please find enclosed for immediate filing and review,

A corrected "Defendant's Combined Motion To Compel

Bill of Particulars, Pre-Trial Conference Report,
and Testing of Mobil's Video Surveillance System"

AS ALREADY REQUESTED BY THIS DEFENDANT MARK-UP THIS MOTION TO
COMPEL FOR HEARING ON 7-10-01.

Thank you.

A handwritten signature in cursive script, appearing to read "Mike Muse". The signature is written in dark ink and is positioned below the typed text "Thank you."

Certificate of Service

I the defendant pro se, Michael Elbery, sent this corrected "Combined Motion to Compel Bill of Particulars, Pre-Trial Conference Report, and Testing of Mobil's Video Surveillance System" to the Clerk-Criminal, Framingham District Court, 600 Concord St., Framingham, Mass. 01701 certified U.S. mail - prepaid and to the D.A.'s Office 100 Concord St., Framingham, Mass. , same, all on 6-27-01 from SECC Prison mail.

The above is true and correct under the pains and penalties of perjury on this day of June 27, 01 in compliance with 28 U.S.C. s. 1746.

Michael Elbery

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Michael Elbery

00-3006

Defendant's Combined Motion

To Compel

Bill of Particulars

Conference Report

Testing of Mobil's Video surveillance System

Defendant's Motion for Bill of Particulars - Time, Manner, means
of alleged crimes.

1. The defendant motions the Court to Compel the prosecution to provide the defendant, in an informative manner, with enough detail of the alleged overt acts that constitute the alleged crimes that the defendnat can prepare an adequate defense against the charges. Com. v. Conceicao, 409 N.E.2d 816, 817 ('80).

The Court ordered the prosecution to detail the time, manner, and means that the alleged assault crimes occurred, as per EX. B (the Commonwealth's Bill of Particulars) the prosecution has provided less information than is included in the already vague criminal complaint.

The defendant asks that the prosecution answer the questions asked per the defendant's "Motion for Bill of Particulars", Ex. A.

This in order to avoid surprise at trial and alleviate the existing numerous ambiguous claims the defendant has received about Gear's claim of being kicked and beaten. Com. v. Whitehead, 400 NE 2 821 829.

Pre-Trial Conference Report

The defendant Motions the Court to Compel a Pre-Trial Conference Report. The defendant has filed a proposed and signed Pre-Trial Conference Report with the D.A.'s Office and Court, as required by M.R.C.P. -Rule 14a. At this late date, a month after the case was originally scheduled for trial, this defendant has not received the prosecution's signed Pre-Trial Conference Report and related/required evidentiary discovery.

Noteworthy, and of particular alarm is that District Attorney Martha Coackley's Office does not want to respond, via the standard Mass. Pre-Trial Report, to the defendant's request to the immunity/ deal the prosecution's only witness to the underlying incident received for his cooperation in testifying and changing his story in order to convict this defendant.

Little doubt, when the news of Gear's circumstances gets out, Coakley , who has been personally contacted by this defendant about this case, will not run for election again. See the Boston Globe, 9-27-00 front page. Proper spelling is Coakley.

Testing of the Mobil Surveillance System

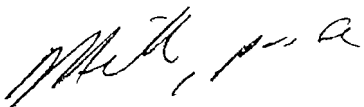
The Court, Robert Greco, allowed this defendant's motion to Preserve the Mobil's (696 Cochituate Rd.) Video surveillance system so this defendant could make necessary evidentiary tests and gain exculpatory evidence that will expose that the F.P.D.

erased the Mobil video that recorded the entire underlying alleged criminal incident. See Ex. C. The defendant motioned to enter the Mobil premises in order to test video system and gain evidence but that motion has been ignored as is usual in this case., see Ex.D.

Wherefore,

the defendant motions the Court as above, to Compel

1. A Bill of Particulars in compliance with Court order and state law and the defendant's motion.
2. A Pre-Trial Conference Report signed by a representative of D.A. Martha Coakley's Office, including an answer as to immunity given to star prosecution witness, Peter H. Gear.
3. Testing and inspection of the Mobil surveillance system to facilitate proof that the entire underlying incident was videoed and Sgt. Sanchez and the F.P.D. erased it.



Michael Elbery, pro se
SECC Prison
12 Administration Rd.
Bridgewater, Mass. 02324
6-19-01

Ex. A

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham Dist. Cou

Commonwealth of Mass.

Criminal Docket

#0049CR1893A

CR3006

v.

Michael Elbery

5/17/01
Allowed
in part.
D.A. must
comply
with
Crim.
Pro. Rules
(date, time,
manner,
means)
and supply
same in
writing.
Dmy Spalding

DEFENDANT'S MOTION FOR BILL OF PARTICULARS

The Pro se defendant Motions for a Bill of Particulars regarding the crime alleged in the above docketed action. The prosecution's discovery provided to this defendant does not adequately detail the alleged crime so that the defendant, pro se, can be prepared for trial and defend his case regarding the charges against him.

The Pro se defendant demands as the law requires

1. State how each alleged injury occurred as depicted via the 6 F.P.D. pictures of the alleged victim, Peter H. Gear.
2. State the number of times the alleged victim was battered causing his each of his alleged injuries.
3. State any weapons the prosecutor alleges were used to inflict each injury as depicted by the 6 F.P.D. photos.

victim's injuries.

5. State where each weapon contacted the alleged victim.

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

I the pro se defendant, Michael Elbery, sent this "Bill of Particulars" to the Clerk-Criminal-Framingham District Court, 600 Concord St., Framingham, Mass. via U.S. certified mail^{*}-prepaid and the Framingham D.A.'s Office, 100 Concord St., Framingham the same all on 2- -01 from SECC Prison.

Michael Elbery, pro se

* Sent Clerk - U.S. cert. mail return receipt - 7089 3400 0010 7081 6630
* Sent D.A. - U.S. cert. mail return receipt - 7089 3400 0010 7081 6623

Ex. A-1

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham Dist. Court

Commonwealth of Mass.

Criminal Docket

#0049CR1893A

CR 3006

v.

Michael Elbery

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2. State the number of times the alleged victim was battered causing his each of his alleged injuries.
3. State any weapons the prosecutor alleges were used to inflict each injury as depicted by the 6 F.P.D. photos.
4. State how many times each alleged weapon was used causing the alleged

victim's injuries.

5. State where each weapon contacted the alleged victim.

Michael Elbery, pro se

Michael Elbery, Pro se

SECC A 406 C57634

12 Administration Rd.

Bridgewater, Mass. 02324

2-14-01

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Michael Elbery, pro se

* Sent Clerk - U.S. cert. mail return receipt - 7099 3400 0010 7041 6630
* Sent D.A. - U.S. cert. mail return receipt - 7099 3400 0010 7041 6623

Ex. B

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

FRAMINGHAM DISTRICT COURT
DOCKET NO. 00-3006

COMMONWEALTH

v.

MICHAEL ELBERRY

COMMONWEALTH'S BILL OF PARTICULARS

Now comes the Commonwealth in the above-entitled matter and in response to defendant's request for a bill of particular states as follows:

Date: On or about July 4, 2000.

Place: The assault and battery and the assault and battery with a dangerous weapon took place at the Speen Street Mobil Gas station/market at 696 Cochituate Road/Route 30 in Framingham, Massachusetts.

Manner and means: On the above dates, the defendant intended to and did in fact did touch Peter Gear without having any right or excuse for doing so, and such touching was done without Mr. Gear's consent and was intended to and did in fact cause bodily harm to Mr. Gear. The dangerous weapon used by defendant was his shod foot.

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

Respectfully Submitted,
For the Commonwealth

MARTHA COAKLEY
DISTRICT ATTORNEY



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

Dated: June 12, 2001

Ex. C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

TRIAL COURT OF THE COMMONWEALTH
FRAMINGHAM DISTRICT COURT

DOCKET # 0049 CR 3006

COMMONWEALTH OF MASSACHUSETTS)

VS.)

MICHAEL ELBERY)

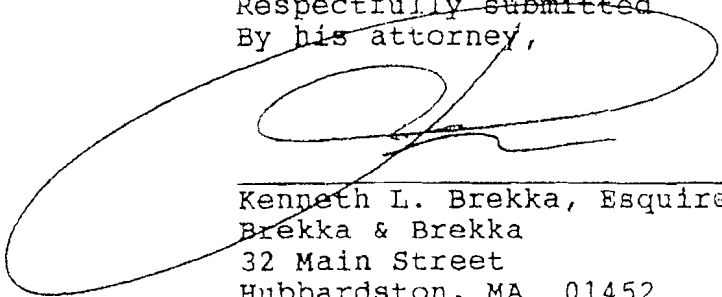
) MOTION TO PRESERVE
) VIDEO SURVEILLANCE
) EQUIPMENT

*Ordered. The
owner and manager
of Mobil Gas
Station so
ordered.*

*R. Brekka
11/14/00*

Now comes the Defendant, MICHAEL ELBERY, in the above entitled matter and respectfully moves this Honorable Court to direct the Commonwealth and the owner and manager of the Mobil Gas Station located on Route 30 in Framingham with a mailing address of 696 Cochituate Road, Framingham, Massachusetts to preserve the video surveillance equipment used at the Route 30 Mobil Station on July 4, 2000 in order to allow the defendant to inspect and examine said evidence.

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 November 14, 2000 at 9:00 A.M.

priv
copy

Ex-D
Michael Elbery, CS763
S. E. C. C. - O.U. A-52
12 Administration Rd.
Bridgewater, Ma, 02334
10-22-00

Clerk - Framingham Dist. Ct.
600 Concord St. P.O. Box 1969
Framingham, Mass. 01701

RE: Com. v. Michael Elbery
Criminal Docket # 00 49 CR 1893

Dear Clerk:

Please find enclosed for immediate filing
& review,

"Defendant's Motion for Court Order to
Gain Entrance to the Mobil Promises where
Alleged Crime Occurred
In order to Test Video System & Gain
Evidence as Directed by Defendant"

Michael Elbery, pro se

Commonwealth of Massachusetts

Framingham Dist. Ct.
Middlesex SS

Criminal Action
Docket #0049CR188

Commonwealth

v.

Michael Elbery

Motion for Court Order to Gain Entrance
to the Mobil Premises where Alleged
Crime Occurred

In Order to Test Video Surveillance System
& Gain Evidence as Directed by Defendant

1. The defendant, above docketed, motions the
Court to issue a Court Order allowing
my attorney, who is also my investigator,
to enter the Mobil Gas Station premises
at 696 Cochituate Rd, Framingham, Mass.
in order to test the video surveillance
system & gain evidence as directed by this
defendant. The attorney is Ken Brekha.

2. There is overwhelming evidence the defendant

that caused this alleged criminal action was filmed by the same video surveillance system. The resulting video tape of the underlying incident and related evidence is being covered-up via conspiracy by several State actors and co-conspirators.

3. The Mobil Gas Station, in #1 above, is the location of the incident that caused the above doctored action or criminal charges.

4. I ordered my attorney for pay, Ken Brekka, to do as I am asking in this motion, (Get Court Order to enter premises at Mobil to test & gain evidence), prior to the 10-12-00 hearing regarding this case.

5. As in item #4 I had a written list of instructions for Brekka to do at the Mobil including tests on the video/CCTV surveillance system at that Mobil & taking pictures of the Mobil. I told Brekka to get a Court Order to do this from the judge at the 10-12-00 hearing.

6. Brekka has stated that Mobil intends

to junk the video system at that location and buy an all new system in the very near future.

7. By not following my written & verbal orders to test the video surveillance system at the Mobil, via Court Order, Brebka has allowed the police, prosecution & Mobil to have time to eliminate more evidence that is crucial to this defendant.

Wherefore,
I ask the Court to issue an Order that allows Brebka to test the VCR-video surveillance system & gain evidence as directed by this defendant at the above indicated Mobil Station so that crucial evidence for the defense can be gained.

Michael Elbery
Michael Elbery, CS7634
S.E. C.C.

12 Administration Rd.
Bridgewater, Ma. 02324
10-23-00

Certificate of Service

I the defendant, Michael Elbery, sent this Motion for Access to Mobil for testing & evidence to the Framingham Dist. Court 600 Concord St., Framingham, Mass. and to the District Attorney's office Framingham at 100 Concord St., Framingham, Mass, ⁰¹⁷⁰¹ via U.S. 1st-class mail-prepaid from S.E.C.C. Prison all on 10-24-00.

Michael Elbery

CERTIFICATE OF SERVICE

I the defendant, Michael Elbery, sent these 3 Motions,
Compel 2 Gear pictures -Bloody wound / Massive Bruise
Compel 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.