

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".

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

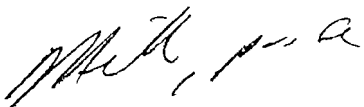
The Court, Robert Greco, allowed this defendant's motion to Preserve the Mobil's (696 Cochituate Rd.) Video surveillance system so this defendant could make necessary evidentiary tests and gain exculpatory evidence that will expose that the F.P.D.

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 0016 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

DEFENDANT'S MOTION FOR BILL OF PARTICULARS

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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

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 - 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)

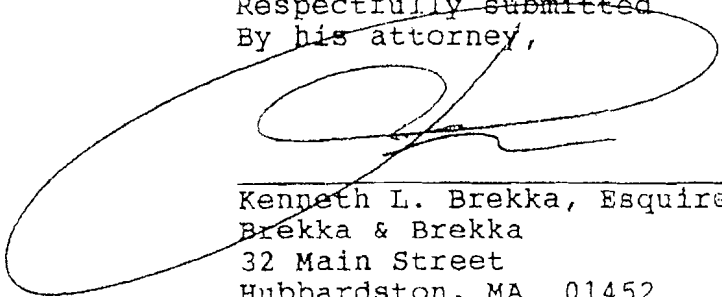
) MOTION TO PRESERVE
) VIDEO SURVEILLANCE
) EQUIPMENT

*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.