

*Key Copy*

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

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

RE: Comm. v. Michael Elbey #00-3006

Dear Clerk:

Please find enclosed for immediate filing and review,

"Defendant's Motion to Recosider Defendant's "Omnibus Discovery  
Motion" Reqquests"

Supporting Affidavits  
Certificate of Service

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 Reconsider

Defendant's "Omnibus Discovery Motion" Requests

The Court denied many of this defendant's "omnibus Motion" evidentiary discovery requests on 5-17-01. The defendant asks the Court to reconsider the decisions to deny the defendant's requests for evidence via the defendant's "Omnibus Motion", as below:

1. Per "Omnibus" request 1c - "The F.P.D. Booking Video" of Peter H. Gear's arrest on 7-4-00. This booking video is direct evidence that will show the jury, just as the 2 mug shots of Gear of that same arrest, that Gear was just fine only 10 hours after the underlying incident that Gear and the prosecution claim Gear suffered numerous injuries after an alleged "beating" at the hands of this defendant. Gear's injuries are the prosecution's "case in chief" per F.P.D. - SGT. Hector Sanchez during his 7-6-00 call to this defendant on 7-6-00.

This booking video is exculpatory, relevant, material evidence under Federal "Brady" laws and Rule 14a of the Mass. Rules of Criminal Procedure.

2. Omnibus request #1e - Amount of bail, date of bail and who paid Gear's bail regarding his arrest on 7-4-00 by the F.P.D. - This evidence will impeach the police investigation and decision to arrest this defendant. As well, it will show the jury Gear made a "deal" with the prosecutor to testify against this defendant and to show evidence of bias.

3. Omnibus request #2 (the 6 Gear photos and related evidence) - These "Omnibus Requests" have already been allowed via the defendant's Motion to Preserve Evidence on 9-13-00 by Judge Stoddard.

4. "Omnibus Requests" - #4, 5, 6, 8 - See defendant's "Motion for Gear's Therapist records" & defendant's "Motion for Clarification of Telephone & Dispatch Evidence".

5. "Omnibus Request #7 - the Mass. Registry records of the past 6 years per Mass. Criminal Practice, Vol. 1, p. 390 & Vol. 1 p. 421 n. 168 these government documents are under control of the prosecution and are public records.

6. "Omnibus Request" #14 - "Chain of Custody" of the Mobil video as controlled by the F.P.D. - This evidence is necessary and undisputably exists, to show the F.P.D. and Sgt. Sanchez stole the video that recorded the entire incident with Gear at the Mobil that caused this action. This is basic "Brady" and Rule 14 a required evidence.

7. "Omnibus Request" #9 - the F.P.D. computer printout Abbreviations - How can the defendant be prepared for trial if the police and prosecution know what all the abbreviations mean on the F.P.D. computer printouts of the 911 calls in this case.

8. "Omnibus " #16 - The F.P.D. turret tapes and radio communications . This is basic "Brady Evidence" and Rule 14a evidence that has already been allowed/ordered via the defendant's 9-13-00 'Motion to Preserve Evidence" by Judge Stoddat!

How is this evidence now denied by Judge Stoddat?

IN particular, the defendant does not have the radio recording by Dones and Vizikas saying, "It's just another gas evasion".

See affidavit #1.

9. "Omnibus" #22 - Prosecution's search for Gear's involvement with drugs - Per "Brady" the prosecutor must search for and turn over to the defendant all records of Gear's involvement with (history of) drugs, see Mass. Criminal Practice, Vol. 1 p. 421.

10. "Omnibus" requests #27, 29 - Interviews of witnesses and Mobil employees by the prosecution team.

11. "Omnibus" request #34 - Names of prosecution team and others who viewed any of the videos taken from the Mobil, 696 Cochituate Rd. Since, the police stole and destroyed the Mobil video of the incident that caused this action this is relevant and exculpatory to the defense. This is a central issue of the case, hence, required evidence under "Brady" and Mass. Rule 14a.

12. "Omnibus" request #35 - Expert test the F.P.D. 911 tapes in this case - The tapes of 911 phone conversations and other conversations of this case have been tampered with or erased. See Affidavit #2.

WHEREFORE,

The defendant asks the Court to reconsider and allow the above "Omnibus" Requests as state and Federal discovery laws require under the 6th and 14th Amendments of the U.S. Constitution.

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Michael Elbery

SECC Prison

12 Administration Rd.

Bridgewater, Mass. 02324

6-7-01

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

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Michael Elbery

00-3006

Affidavits In Support  
of

Defendant's Motion to Reconsider  
Defendant's "Omnibus Discovery Motion" Requests

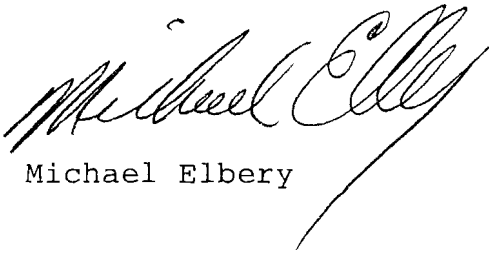
I am the defendant, Michael Elbery, I am currently at SECC Prison

1. I initially listened to the radio (turret tapes) calls taped regarding this case in August of '00. At that time one of the radio calls made by Vizikas and Dones said the underlying incident at the Mobil on 7-4-00 that gave rise to the above docketed action "was just another gas evasion".

I do not have a copy of that recording. I need a copy of that recording for trail.

2. I have reviewed the F.P.D. tapes of the above action that have been given to me and found that they all have numerous gaps caused by tampering.

Signed on this 7th day of June '00 under the penalties and pains  
of perjury.

A handwritten signature in cursive script, appearing to read "Michael Elbery". The signature is written in dark ink and is positioned above the printed name.

Michael Elbery

Certificate of service

I the defendant, Michael Elbery, sent this "Motion to Reconsider Defendant's Omnibus Motion Requests" to the Clerk -Criminal, Framingham District Court, 600 Concord St., Framingham, Mass. 01701 and to the D.A.'s Office, 100 Concord St., Framingham, Mass. 01701,

via U.S. Certified mail -return receipt prepaid all on 6-12-01 from SECC Prison mail

A handwritten signature in cursive script, appearing to read "Michael Elbery". The signature is written in dark ink and is located in the lower-left portion of the document.