

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss

Framingham District Court

Commonwealth

Six Man Jury Session

v.

Michael Elbery

00-3006

Defendant's Motion for Continuance
of
Trial

The defendant, Michael Elbery, motions the Court for a Continuance of the scheduled 7-18-01 trial of the above docketed case, as the defendant's most important witnesses are not present.

Without these witnesses the defendant cannot present a complete defense resulting in a violation of this defendant's rights under the 6th and 14th Amendments of the U.S. Constitution and a "Miscarriage of Justice" (Due Process and Compulsory Process)

Law

Per Mass. Practice, Vol. 30 p. 619 s. 1107, the discretion of a judge in granting a continuance is subject to the Constitutional Right to Due Process of Law.

Limits on judge's discretion to grant continuance are imposed by the defendant's Constitutional Right to the testimony of witnesses in his behalf. Ungar v. Sarafite, 376 U.S. 575, 84 S.Ct. 841, 11 L Ed,2d 921, ('64), U.S. v. Correia, 531 F2d 1095 (1st Cir. '76).

These witnesses are

David Corriea
17 Centennial St.
Foxboro, Mass. 0235

Scott Schissel M.D.
75 Francis St.
Boston , Mass.02115

Brian Warren
361 Union st
Ashland,Mass. 01721

James "J" Regal
7 Broobie Rd.
Bedford, Mass. 01730

see accompanying affidavit of each witnesses' expected testimony
and grounds for the defendant's belief this testimony will be
given. Mass. Practice Vol. 30 s. 1124 p. 632

See also accompanying Defendant's Affidavits of Service of Witness
Summons Under M.R.C.P. 17b1, 17c, 17d-1

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

Michael Elbery, pro se
SECC Prison
12 Administration Rd.
Bridgewater, Mass. 02324

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Defendant's Affidavit

In Support of Defendant's

Motion for Continuance of Trial

In support of this defendant's Motion for a Continuance of Trial of the scheduled 7-18-01 trial date this defendant, Michael Elbery, submits this affidavit to present to the Court the testimony and grounds this defendant expects that testimony of the following defense witnesses as per the Motion for Continuance.

1. My attorney for hire Ken Brekka interviewed David Correia, 17 Centennial St., Foxboro, Mass. 02035 and told Brekka the following: (Note Brekka withdrew as he is a witness for the defense)

Dave Correia stated he was with Brain Warren and Carmen Grandinetti when a "car full of kids" drove up and stated that the clerk at the Mobil was "getting the shit kicked out of him". Carmen and Dave ran over to the Mobil while Dave drove in his car. Mike had just come outside the Mobil from being locked in. Mike (the defendant and Mobil cashier) said he got robbed. He said

this immediately as we arrived.

Mike (the cashier and defendant) said a guy stole gasoline. Mike said he went out to copy the guy's Auto. registration number when the guy got out of his car and attacked Mike. The same guy according to Mike hit Mike with a traffic cone and split it over Mike's head as he tried to escape from the guy because he did not want any trouble just the license plate #.

Dave observed injuries on the Mobil cashier as a result of this attack.

Dave stated that he also saw water running down the windows of the Mobil. The windows were soaked according to Dave and there were broken plastic bottles on the Mobil parking lot from being smashed against the windows.

Mike stated that the guy who fled when we arrived and stole the gas broke the 4 jugs against the Mobil windows. Mike stated that the windows are unbreakable.

David stated that the water from the jugs was a little higher than the door and all over the windows.

Dave stated the responding female cop was very nasty. Nasty tone of voice. Treated the caselike it was no big deal . The cops gave no respect to Mike . The cops did not ask Dave anything. Mike seemed mad that the Framingham Police did not do anything.

After about an hour we went back to Dunkin Donuts where we had been when alerted that Mike the cashier at the Mobil needed help. Everything Mike told us was immediately as we arrived running over from Dunkin Donuts.

We just could not understand why Mike let that guy get away with all that illegal conduct at the Mobil. We told Mike that if we had got to that thief before he fled he would have been sorry.

That thief turned out to be Peter Gear as a result of the police tracing his auto reg # which both Brian and Carmen copied when Gear fled the Mobil from us and the police.

Mike did say the robber who fled was drunk.

2. My attorney Ken Brekka also interviewed Brian Warren, 361 Union St., Ashland, Mass. on 9-19-01 and gave Brekka the statement as follows:

I was at Dunkin Donuts next to the Mobil when a "car full of kids" pulled up and said the cashier at the Mobil was "getting his ass Kicked". The message was the Mobil clerk was in trouble.

I ran over on foot. I saw a light Monte Carlo speed away out onto Route 30 toward the Mass. Pike.

I got the license plate number off that fleeing car.

The cops pulled in 4 seconds after the Monte Carlo fled the Mobil. I gave the plate to the first cop that arrived at the Mobil and told the cop the guy just fled west on route 30. Cop did nothing.

The Mobil clerk (defendant) was inside the store when I got there from Dunkin Donuts.

There was water all over the front windows of the Mobil up to the top of the window.

The clerk/cashier told us, instantly, that the guy in the fleeing Monte Carlo smashed the jugs against the windows.

I saw the guy in the Monte Carlo throw the last jug and run to his car as we were approaching yelling at him.

The clerk instantly said he went out to copy the registration number of the Monte Carlo because the driver stole a tank of gas and the guy in the Monte Carlo got out of his car and attacked the clerk hit him over the head with the traffic cone.

The clerk instantly said he retreated back inside the store and locked in because he did not want any trouble just the number plate. We just could not understand why the clerk let that thief get away with all that.

The cops did not want to do anything . The cops seemed like they did not want to help the Mobil cashier.

The cops spoke to me but did not write anything down.

Dave Correia was in uniform of a security guard.

All the cops saw the water all over the windows.

I saw a cut on the clerk's head near the top of his hair line. The clerk also had some scratches on his arms from the attack. The cops did not take anybody's name.

The license plate number I copied off the fleeing Monte Carlo was traced to a Peter Gear by the police that responded to the Mobil clerk's call.

We never saw the Mobil clerk make a phone call, the cops got there just 4 seconds after us while the Monte Carlo was fleeing at top speed.

3. My attorney's secretary, Maureen Ferguson, spoke to witness James J Regal, 7 Broobie Rd., Bedford, Mass.. Regal gave the following statement.

I was working at the Mobil 696 Cochituate Rd. when on 7-13-00 the Framingham Police brought back the video tape of 7-4-00 that recorded the Mobil incident involving Peter H. Gear. We put it in the safe for Brekka to review when he got back from his vacation.

Regal said the following to my attorney Brekka on 11-4-00, I saw Peter Gear on 7-4-00 at about noon time and he had a few minor marks on his hands he claimed happened at the Mobil. Gear claimed he got those marks as a result of rolling with Mike the cashier (defendnat) on the water jugs. Gear also claimed that Mike went out and dragged him out of his car and beat the shit out of him in the Mobil parking lot.

Regal stated the VCR at the Mobil is Auto Rewind and is always recording.

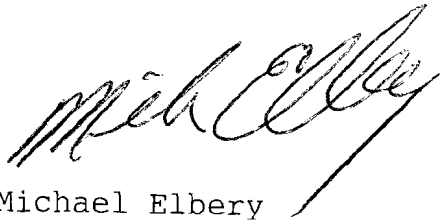
4. Scott Schissel M.D. - 75 Francis St., Boston, Mass.

See Schissel's reports on treatment to Peter Gear for evidence that Gear was not the recipient of serious bodily harm on 7-4-00 only some minor scrapes described as mild. This is also evidence that the prosecution's alleged victim did not get kicked, or hit with a dangerous weapon.

Schissel testimony will, as per his report, show the jury that Peter Gear's claim of permanent disability of his right foot is fraud.

*See Dr. Schissel's reports on treatment to
Gear attached, total 16 pgs.*

The foregoing is true and correct signed under the pains and penalties of perjury this 16th day of July 2001.

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

Michael Elbery