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# Judge raps policeman

## Off-duty officer pursued man

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Staff Reporter

**WORCESTER** — An off-duty Westboro police officer injured in a disturbance last year should not have pursued a local man who had left a Shrewsbury Street bar, a judge said yesterday.

Westboro police Detective Thomas W. King testified yesterday at a hearing in the case of Michael G. Elberry of 37 Chilmark St., who was arrested Sept. 29 and charged with assault with intent to maim, assault and battery, assault with a dangerous weapon (beer bottle) and being a disorderly person after an incident near the Winner's Circle, 154 Shrewsbury St.

Judge Milton H. Raphaelson found no probable cause on the three assault charges after the hearing in Central District Court. Raphaelson found probable cause to send the case to a grand jury on the count of being a disorderly person.

King testified he was at the bar off duty around midnight Sept. 28 when his attention was drawn to a heated discussion between Elberry and the bartender, Jeffrey S. Schlener.

### BROKE BEER BOTTLE

King said he stood up and told Elberry to be quiet. About five minutes later, Elberry jumped to his feet and broke open a beer bottle on the bar, injuring two people from the shattered glass, King said.

Elberry held the neck of the bottle in a threatening manner before running out the door on foot, heading east on Shrewsbury Street, King said.

King ran after Elberry and caught up with him about 50 yards from the bar. King said he was unarmed and had no handcuffs in his possession when he confronted Elberry.

"I was going to hold him until Worcester police arrived," King testified.

King said Elberry started to throw punches at him. King said he knocked Elberry to the ground and during the altercation Elberry jammed his finger into King's left eye, temporarily blinding him. After the incident, King sought treatment for the laceration and said the injury has increased his need to wear glasses and his propensity to develop headaches.

Under questioning by defense lawyer Louis P. Aloise, King said he would not have touched Elberry unless he was first assaulted.

Schlener testified he and Elberry had made some disparaging comments to one another before King's involvement.

Schlener testified he told King to sit down, saying he and Elberry could work out their differences without interference.

### ARGUED ACROSS BAR

Another witness, Mitchell DePasquale, said Elberry argued across the bar at King. DePasquale said he left his bar stool at one point, grabbing King around the waist to prevent a physical confrontation in the bar.

A few minutes later, DePasquale said he heard the bottle smash. The broken glass resulted in a cut under the eye of an unidentified female patron, he said.

Aloise portrayed King as the aggressor, recklessly pursuing Elberry instead of waiting for the proper authorities to arrive.

"He was taking the law into his own hands. As a police officer, he should have known better," Aloise said.

Assistant District Attorney Todd Mathieson said Elberry, not King, provoked the argument and initiated a confrontation that seriously injured King's eye.

Raphaelson, in making his ruling after four hours of testimony, said King had no right to chase after the defendant or stop him.