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Michael Elbery
168 Fairfield Street
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Dear Michael:

I received your letter of 1/18/96 and read some of the cases you cited. I was wrong. Apparently, a private citizen may not justify an arrest on the grounds that he had probable cause based on his own observations to believe a felony was committed. You could apparently sue for false arrest and win if the citizen could not prove you in fact committed a felony.

I also think you make a good point that given the law, Aloise should have requested an instruction that King lacked the authority to arrest unless a felony had in fact been committed in the bar. I will add this failure to the motion for new trial.

In order to argue that Alosie should have put in your full medical record, I need to see what was put in and what was left out. Do you have copies of these records?

Very truly yours,



Robert L. Sheketoff

Atty. Robert Sheketoff

M. E. Berry
1-18-76

Bob,

I believe we are in further disagreement. I believe, as Judge Raphaelson did at the probable cause hearing, that no felony was committed in the bar and that King had no right to go after me. As a matter of law there was no citizen's arrest. King pursuing me down the street was actually an assault. The jury should have been informed of this via instruction, at a minimum.

I reviewed the following cases:

Com. v. Grise	Com. v. Kerr
Com. v. Dice	Com. v. Grotlicky
Com. v. Andrews	Com. v. Colitz
Com. v. Harris	

As a result I come to the following conclusion, in Mass. a private citizen may lawfully arrest someone who has in fact committed a felony.

In fact I committed no felony in the bar.

You used the probable cause standard to justify King's action. This probable cause standard is used for pretrial suppression motions since as a practical matter the in fact standard can't be used until after trial.

with the exception of *Con. v. Grise* all these cases have common elements, the arrest is made by an on duty cop from a neighboring jurisdiction, and the defendant is found guilty of a felony. In *Grise* the Ludlow cops are in the ~~car~~^{air} cop car, on duty, in Springfield, make an arrest for a misdemeanor and the defendant's case is dropped because a citizen can't arrest for a misdemeanor.

King initially claimed he made a citizen's arrest because of the assault with a dangerous weapon then he Ball & Toomey did every thing they could to justify King's "arrest" as a result of the girl being injured. No wonder at trial Ball was so concerned about the girl's injury not being a felony. Ball said that the girl's injuries was not a felony, he was right.

R. E. Wray
1-18-96

Toomey wanted to call the girl's injuries a felony as "a natural consequence of my action". Toomey would have lost on that felony count.

No felony was committed in bar as result the law says King had no right, as a citizen, to arrest me. King loses on the in fact felony test. In fact, per trial, no felony was committed in the bar.

Per Mass. law King is civilly liable.

The jury should have been apprised of the law, that King had no right to pursue me.

The conspirators King & Ball per transcript were very worried about this issue and my friend Louie doing absolutely nothing.