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Federal judge questions jury's verdict favoring Kent cop in shooting

By Mike Carter
Seattle Times staff reporter

A federal jury today has ruled a Kent police officer did not violate the civil rights of a man he shot and wounded while he was riding in a stolen car nearly six years ago.

The nine-woman, three-man jury had been deliberating since Tuesday before dismissing the civil rights claim filed by Nicomedes Tubar against police officer Jason Clift and the City of Kent.

However, U.S. District Court Judge John Coughenour said after the verdict that he had serious reservations about the jury's decision. After excusing the jury, Coughenour said he cannot understand how the jury could not conclude that the gunshot that struck Tubar did not violate his civil rights.

He asked attorneys for both sides to brief him on his options in possibly imposing a finding of liability against the officer.

After the verdict was read, Tubar said he was "extremely" surprised by the jury's verdict.

Clift declined to comment.

Tubar, 31, testified that he did not know he was riding in a stolen vehicle on the night of June 25, 2003. He was struck by a bullet fired by Clift as he tried to stop the car.

Tubar's attorneys alleged that Clift violated Tubar's Fourth Amendment protection against unlawful seizure when he was shot. They were seeking up to \$1 million in compensatory damages, as well as punitive damages against Clift.

Tubar's attorney, Tim Ford, argued to the jury that the City of Kent failed to enforce its policies dictating how incidents involving force are handled. Clift was exonerated by his department for the Tubar shooting — and two others, in 2000 and 2002 — before outside investigations were completed. The few questions that were raised about his actions were brushed aside, Ford said.

Ford said Clift learned that he could "shoot first and somebody will take care of it later."

Steven Thorsrud, one of Clift's lawyers, said the officer believed the driver of the car, Heather Morehouse, was trying to run him down and he fired in self-defense.

While Clift was setting up surveillance of the car in the parking lot, Morehouse had had invited Tubar, her neighbor, to go to the store for cigarettes in her "new car." The car had been reported stolen earlier.

They got into the vehicle and backed out of the parking space — Morehouse didn't know that her tire had blown out — and then began making a U-turn toward the exit. Clift, with his flashlight in one hand and his service weapon in the other, said he moved toward the vehicle yelling, "Stop, Police!"

Both Morehouse and Tubar saw someone shining a flashlight into the car, however, neither of them heard the commands and did not know Clift was a police officer, according to their testimony.

Tubar said the shots began as soon as the car moved forward. The final round — the one that hit Tubar — was fired from a right-angle through the driver's window, after the car had passed the officer and was no longer a threat, Ford argued.

Steven Thorsrud, one of Clift's attorneys, said all three shots were fired in about one second and that Clift could not have stopped firing any sooner.

Thorsrud told the jurors that they have to measure the evidence against what a reasonable officer would do in the same circumstances. Clift, he said, knew only that he had a stolen car and two suspects trying to leave the scene.

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