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Corrected version

Kent officer on trial in shooting

By Mike Carter
Seattle Times staff reporter

Nicomedes Tubar set out to keep his neighbor company for a cigarette run in her new car the night of June 25, 2003 — and got shot by police.

Now, nearly six years later, a federal jury will determine whether Kent police Officer Jason Clift violated Tubar's civil rights by shooting him in the parking lot of his Kent apartment complex. Clift claims he fired in self-defense when the driver of the car tried to run him down.

But the trial will focus not only on the shooting, but on Clift's history as a police officer: The shooting was Clift's third, and he'd been back to work just eight days after a forced leave for psychological problems.

In 2000, according to court documents, Clift shot and killed a woman who was armed with what turned out to be a BB gun. A colleague said Clift had been troubled by that shooting and suffered from nightmares, according to court documents. In 2002, Clift and other officers opened fire on a car during a high-speed chase. Both people inside were shot but survived.

Clift and the city's lawyers have unsuccessfully fought to keep evidence of Clift's past from being heard by a jury during the civil-rights trial. Documents filed in the lawsuit also show that Clift's estranged wife, a Renton police officer, had sought a protective order against Clift three weeks before Tubar was shot. In her petition, she said Clift was struggling under crushing debt, having an affair, and that his "behavior has become so out of control that he has been placed on administrative leave by his superiors at the police department."

But Clift's lawyers say all of this is a red herring, because, they say, the officer fired in self-defense at a stolen car that was trying to run him down in a dark parking lot.

"What's a poor police officer to do?" asked Mary Ann McConaughy, Clift's attorney.

McConaughy acknowledges that some errors may have been made, but insists that the evidence will show that the six-year veteran officer was justified when he aimed his 9 mm service weapon and fired three rounds at the moving car containing Tubar and a female friend.

It is undisputed, she said, that his first shot punched straight through in the car's windshield and lodged in the back seat, consistent with the officer's claim that the car was coming straight for him. Likewise, the second shot struck the front of the vehicle.

Third round

But Tubar's claim centers on the third round — the one that tore through his left shoulder, traversed his torso and lodged in the other side of his body.

That shot was fired through the driver's-side window from a right angle, which his lawyer, Tim Ford, contends was after the car — and the threat to Cliff's life — had passed. Another officer arriving at the scene reported a brief pause between the second and third shots.

Experts for both sides

McConaughy said researchers and experts in the field of police-involved shootings will testify that all three shots were fired in roughly one second, and that it may have taken Cliff a split-second to recognize that the threat had passed and to stop firing.

"Even if he made a reasonable mistake, he was still in danger," she said.

However, Ford has lined up his own experts, including a former Bellevue police chief and an engineering professor, who will testify that the shooting was unjustified and that the bullet impacts and marks on the pavement show the car was traveling in a slow, steady turn consistent with driving toward the parking lot's exit when Cliff opened fire.

According to voluminous court records, Cliff had set up surveillance on the car earlier in the evening after discovering it was reported stolen and parked in a lot next to Tubar's apartment building. He placed a device under one of its tires that would rapidly flatten it if the car was moved, and then hid himself in a nearby clump of trees.

Meanwhile, Tubar's neighbor, Heather Morehouse, had asked him over for a drink. While in the apartment, she suggested they take her "new car" to the store to buy some cigarettes. Tubar, who has no criminal history, did not know the car was stolen, according to court records.

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. Cliff, with his flashlight in one hand and his service weapon in the other, said he moved toward the vehicle yelling: "Stop, police!"

Tubar, now 31 with a degree in political science and employed by the Social Security Administration, said in an interview earlier this week that he didn't hear anything. The windows of the car were rolled up and he saw someone with a flashlight — he assumed it was a security guard behind the car as it backed up. When it began to move forward, he said, the world exploded.

"I heard a loud bang," he said, and glass was flying everywhere.

"After there were shots fired, the car stopped," he said. "I started feeling funny, as if the world was slowing down. I could barely breathe. There was a numbness all over and I smelled something burning."

He remembered asking an officer: "I'm a paralegal student. Why did you shoot me?"

The shooting was investigated internally and by an outside agency, the neighboring Auburn Police Department, and Cliff was cleared of any wrongdoing.

Tubar's expert police witness, former Bellevue Police Chief Donald Van Blaricom, is critical of both investigations, and the lawsuit alleges former Kent Police Chief Ed Crawford and the city were complicit in violating Tubar's rights by not properly supervising the officer.

Evidence shows Clift was not required to provide a statement on the shooting for 12 days, and was not interviewed about it for two weeks. When he was, Van Blaricom said, both Kent and Auburn detectives failed to ask, or follow up on, "the hard questions."

Moreover, he said the evidence — including some of Clift's own statements — indicates he was actually shooting to stop the car and its occupants, not to protect himself. The courts have ruled that deadly force cannot be used to stop someone who is fleeing a property crime.

If Tubar prevails on the civil-rights claim, he will be able to seek punitive damages from Clift in addition to compensatory damages.

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