

# The Seattle Times

Thursday, July 16, 2009 - Page updated at 06:46 PM

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## Kent will pay \$400K to settle police shooting case

By Mike Carter  
Seattle Times staff reporter

The city of Kent has agreed to pay \$400,000 to settle a lawsuit brought by a man who was shot by a police officer in 2003, ending a controversial federal civil-rights case that saw allegations of a biased jury and a judge who appeared poised to order a new trial or overturn an earlier verdict in favor of the officer.

Nicomedes Tubar was struck by a bullet fired by Officer Jason Clift, who was trying to stop a stolen car from leaving a darkened parking lot. Tubar was a passenger in the vehicle and did not know it was stolen. The bullet entered his left side and passed through his body, lodging in his right back.

Tubar sued, and a two-week trial before U.S. District Judge John Coughenour showed that Clift was a troubled officer who had been in two prior shootings. The night he shot Tubar, he had just returned from forced leave for emotional problems.

Clift insisted that the driver of the car, Heather Morehouse, was trying to run him down. He fired three shots at the car — the first two struck the front of the vehicle, according to testimony. The third shot — fired after a pause, according to another officer arriving at the scene — went through the driver's side window at almost a 90-degree angle, after the car had gone by the officer and was no longer a threat.

Clift and his lawyers argued that the officer, alone and on foot in a darkened parking lot, was reacting so fast he didn't have time to think, and that he ceased firing as soon as he could. A 12-member jury sided with Clift and the city following a day's deliberation.

But the verdict was immediately called into question by Coughenour, who said the facts were "incontrovertible" that Clift fired the third shot after any danger had passed. His concerns were only magnified after a juror came forward and said that another member of the panel, the wife of a cop, had improperly discussed her husband's experiences during deliberation.

At a hearing earlier this week, Coughenour continued to question the validity of the verdict and the officer's actions, saying he was poised — for the first time in 29 years on the bench — to set aside a jury's findings in a civil case.

Coughenour said he was "chilled to the bone" that Clift had argued that he didn't have time to think while using deadly force.

"Surely we can expect our law-enforcement officers to stop and think before they shoot into the driver's-side window of a vehicle ... with the possible outcome of killing someone," the judge said.

It was at that point that Coughenour suggested both sides try to settle the case before he ruled on Tubar's motion for a verdict in his favor or, at the least, for a new trial.

In a statement issued today, Kent Police Chief Steven Strachan said the city has "great faith" in the jury's initial verdict, but that the judge "indicated his intent to overturn the jury's verdict or order a new trial," which would have been too costly for the city.

Despite the judge's reservations about Clift's actions, Strachan said the officer "acted properly in a quickly evolving situation brought on by the criminal actions of a driver of a stolen car."

Clift was cleared by a department internal investigation.

The city's news release said that Clift's defense was not allowed to present to the jury evidence that Morehouse, the driver, "had previously pled guilty" to felony assault on an officer stemming from the incident.

However, court documents indicate that Morehouse entered an Alford plea to the charge, not a guilty plea. An Alford plea is a legal mechanism that allows someone to assert their innocence while at the same time acknowledging they would likely be convicted by the evidence. It carries the same weight as a guilty plea when it comes to sentencing.

At the plea, Morehouse said she did not believe she was guilty of the crime. In the Tubar trial, she testified that she did not know the man waving a flashlight at her in the parking lot that night was a police officer, and has insisted she was not trying to run him down.

It was Morehouse who asked Tubar, a neighbor and casual friend, if he wanted to go with her on a cigarette run that night. She had stolen the car from a party the night before. Tubar, she said, didn't know it.

Clift confronted them as they pulled out of a parking spot.

Court files show that, in exchange for her Alford plea, the county dropped a more serious stolen-car charge and agreed that Morehouse would serve no additional jail time. In a declaration filed in the Tubar case, her attorney, Todd Maybrown, said he believes the Alford plea to the less-serious assault charge plea was pushed to bolster Clift's story.

"I believe the State of Washington sought this form of resolution at least in part to protect Officer Clift and the City of Kent, to the extent possible, from civil liability," Maybrown wrote in a sworn declaration.

Tubar's attorney, Tim Ford, said the settlement amount "gives Mr. Tubar a chance to get some compensation for his injuries and put this incident behind him."

He said he was "disappointed," in light of all the evidence and the judge's concerns, that the Kent Police Department continues to insist Clift did nothing wrong.

"At the least, we should expect that our officers think before they shoot, rather than after," Ford said. "They seem to be saying that thinking after is good enough."

*Mike Carter: 206-464-3706 or [mcarter@seattletimes.com](mailto:mcarter@seattletimes.com)*

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