

The Seattle Times

Monday, July 13, 2009 - Page updated at 11:19 PM

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Lawyers for Kent cop agree to settlement talks over disputed shooting verdict

By Mike Carter
Seattle Times staff reporter

The lawyers for a Kent police officer who was exonerated by a jury in a 2003 shooting have agreed to try to settle the lawsuit filed by the wounded man after a federal judge Monday continued to question the validity of the verdict and the actions of the officer.

The attorneys for Officer Jason Clift and the man he shot, Nicomedes Tubar, agreed to a settlement conference after an hourlong hearing before U.S. District John Coughenour in Seattle. Coughenour said he is considering overturning a civil verdict for the first time in 29 years on the federal bench.

"But the law is clear, when the court concludes a verdict is not justified by the evidence," he said. "The court has a responsibility to take a second look at the case."

The jury early last month ruled that Clift did not violate Tubar's civil rights when he shot Tubar in June 2003 while investigating a stolen car. Tubar was asking for at least \$1 million in compensatory and punitive damages.

Coughenour on Monday also inquired about claims that one of the jurors, a police officer's wife, swayed the panel by talking about her husband's experiences.

But the judge focused most of his inquiry on whether Clift was justified in firing the third and final shot into the stolen car in a darkened Kent parking lot. Clift said he fired because the car's driver was trying to run him down.

The first two rounds he fired struck the front of the vehicle. However, a third shot was fired through the driver's-side window, hitting Tubar, who was a passenger in the car and did not know it had been stolen.

Coughenour said the evidence is "incontrovertible" that the car was no longer a threat to Clift when he fired the third shot.

Clift's lawyers argued at trial — and again this morning — that the officer stopped firing as soon as he perceived the threat had passed and that all three shots were fired "in a very short period of time" — maybe one second.

"Aren't we splitting hairs, your honor?" asked Steven Thorsrud, one of Clift's lawyers. Things happened too fast, he said, and Clift "didn't know he had fired into the side window until afterward."

Coughenour said the jury's burden wasn't to look at the shooting from the viewpoint of Clift, but in the context of what a reasonable police officer would do in similar circumstances.

"He was looking down the barrel of his gun, wasn't he?" asked Coughenour, who said he found it "chilling to the bone" that an officer would argue that he didn't have time to think when 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."

At that point, Coughenour told the attorneys that U.S. District Judge Ricardo Martinez would be willing to meet with the parties later this week for settlement talks if they were willing. After a long pause, Cliff's attorneys agreed.

Martinez is a highly respected jurist on the Seattle federal bench who has mediated difficult cases before at the request of other judges. Coughenour said he would rule on the motions for a new trial or directed verdict sometime after the meeting with Martinez.

The court spent less time on the issue of alleged juror misconduct. Coughenour noted that some jurors reported that the woman said that her husband "would have done the same thing."

The juror was admonished by the foreman at least once, according to juror statements taken by the attorneys, and some jurors said there were other instances where she may have referred to her husband's training or job.

Regardless, Thorsrud argued that interviews with the jurors turned up "no evidence that whatever was said had any impact on the outcome" of the case.

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