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Family wins new trial on claim of brutality

Damon Lowery died in police custody in 1999 in Portland, Ore.

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A federal appeals court has given another victory to the family of a Snohomish County man who died in a 1999 struggle with police in Portland, Ore.

The 9th U.S. Circuit Court of Appeals on Tuesday declined to overturn an Oregon federal judge's ruling that Damon Lowery, 29, was the victim of excessive force.

That means Lowery's family will get a second chance to convince a jury that his death was the result of poor police tactics and training, Seattle attorney Erik Heipt said Friday. He and his partner Ed Budge are the Lowery family's attorneys.

"Presumably the next step is going to be a new trial before a new jury," he said.

U.S. District Court Judge Janice Stewart in May took the unusual step of ruling that a jury erred in fall 2003 when it sided with police in ruling that Lowery had not been the victim of excessive force.

Stewart, who presided over the trial and heard all the evidence, wrote that she has "the definite and firm conviction that the jury committed a mistake" in ruling that Lowery's civil rights weren't violated.

Lowery died after a violent arrest during which Portland officers doused him with six cans of pepper spray, struck him with metal clubs and hit him with repeated blasts from a shotgun firing bags of metal pellets. The young man was then trussed up in hobbles while a police officer stood on his head and neck.

The judge in May ordered a new trial to determine the dollar amount of damages owed Lowery's family, and also to re-examine whether his death was a result of police actions.

The city of Portland appealed, arguing Lowery's death was a tragic byproduct of his own actions. The federal appeals court denied Portland's petition, sending the matter back to Stewart's courtroom for additional action.

Lowery had ingested hallucinogenic mushrooms and was not rational when officers were called to the Portland home he was visiting. He had fought with a friend. When officers called inside the home, Lowery went through a second-story glass window and wound up bleeding in the back yard.

Police shot Lowery with bags of metal pellets fired from a 12-gauge shotgun, a weapon designed to stun, not kill. They also sprayed pepper spray into his face.

Stewart ruled that force was unjustified because Lowery had done nothing except fail to respond to police commands.

Police later may have been justified in using force after the young man rose to his feet and either charged or stumbled into one of the officers, the judge found. That would be one of the issues explored in the new trial.

Lowery is the son of Carol Marsall of Lynnwood and Ralph Lowery of Snohomish.

The controversy surrounding Damon Lowery's death, and the place that tragedy occupies in Ralph Lowery's life, were chronicled in an eight-part series that appeared in The Herald in February.

Heipt and his partner, Ed Budge, learned of the appeals court ruling Friday.

"I'm happy. The family is happy," Heipt said.

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