

# Judge: Police liable for excessive force

*Jury's verdict overturned in death of Lynnwood man visiting Portland*

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PORTLAND — A federal judge overturned a jury verdict and ruled that six Portland police officers are liable for using excessive force to apprehend a Snohomish County man who crashed through a glass window after taking hallucinogenic mushrooms.

U.S. Magistrate Janice Stewart declared the jury's 2003 verdict to be a "miscarriage of justice." She ordered a new trial in which a different jury will determine the damages awarded to the family of the victim, Damon Lowery, who died during the encounter.

The jury also will decide whether the officers should face further liability and whether the city bears some responsibility because of its training policies.

"We felt this was a travesty of justice and

this jury, for whatever reason, got it wrong," said Erik Heipt, the family's Seattle-based attorney who asked for the review.

A Portland police spokeswoman said yesterday that Chief Derrick Foxworth had not read the decision and would not comment. The city's attorney in the case, Mary Danford, did not return a phone message seeking comment.

Lowery, 29, of Lynnwood, was in Portland with a friend in December 1999. Lowery took the drugs and then scuffled with the friend at a woman's house. The woman called 911. The friend met police outside and told them Lowery was on drugs but unarmed.

As police entered the house, Lowery jumped or fell through a second-story window and landed on a concrete patio.

Lowery then cut himself with a piece of glass and did not comply with commands to stay on the ground, police said. An officer shot him four or five times with a shotgun that fires lead-filled sacks; three other officers sprayed cans of pepper spray into his face, according to court papers.

Stewart ruled this to be excessive force. A new jury still could award only token damages of as little as \$1.

Stewart, in her 55-page ruling, said the shots were fired "despite the fact that Lowery had committed no serious crime, offered no resistance and posed no tangible threat to anyone, save perhaps himself." She also said nothing justified emptying entire cans of pepper spray.

Lowery later struggled to his feet and ran at an officer. The police hit him numerous

times with metal batons and more pepper spray. The officers then hog-tied Lowery, who died after being placed on a stretcher.

Medical examiner's evidence showed that Lowery died of a self-inflicted neck wound, and asphyxiation was ruled out.

While the judge has already decided that police used too much force in the beginning of the encounter, the new jury will be asked to determine if police acted properly once Lowery charged the officer. The judge wrote she should have instructed jurors that they could find the use of force was excessive at any point during the incident.

The victim's mother, Carol Marsall of Lynnwood, praised the ruling.

"I understand the case is not over, but I'm glad justice was served on Friday," Marsall said. "I hope this decision opens the eyes of the Portland Police Department and other departments across the county."