



## **Police officers face new trial on allegation of excessive force**

Monday, May 10, 2004

**STEPHEN BEAVEN**

A federal magistrate has ruled that six Portland police officers used excessive force in 1999 when they fired beanbag-type rounds and pepper spray at an unarmed man who died after he jumped through a second-story window.

The ruling Friday by U.S. Magistrate Janice Stewart throws out a federal civil jury's 2003 verdict in her courtroom that had exonerated the officers in the death of 29-year-old Damon Lowery.

Stewart ruled the officers used excessive force early in their encounter with Lowery and, as a result, said his family may be entitled to damages.

Stewart also said she had given the jury improper instructions before they reached their verdict and ordered a new trial on several grounds, including: Was excessive force used later in the encounter, after Lowery charged at one of the officers, and were the officers properly trained to handle the call?

Through a spokeswoman, Portland Police Chief Derrick Foxworth declined to comment Sunday.

"The chief has not had the opportunity to read and review the judge's ruling," said Sgt. Cheryl Robinson. "Until he does, it would be inappropriate for him to comment on it."

Lowery's father, Ralph Lowery of Snohomish, Wash., said Sunday that he thinks his son was disabled by the officers and posed no threat.

Stewart's ruling is another blow to a department that has been sharply criticized in the past two years in high-profile use-of-force cases, two of which involved unarmed African American civilians who were shot to death by officers. Lowery was white.

And it raises new questions about how the department trains its officers in the use of force.

The police officers in the Lowery case were exonerated in 2000 by a Multnomah County grand jury that found no evidence of wrongdoing in his death.

Then Lowery's parents filed a federal civil rights suit against seven officers and the city of Portland. But last fall, the federal jury ruled that the officers did not use excessive force.

According to police accounts and testimony in the civil suit, officers were called about 5:30 a.m. on Dec. 5, 1999, to a disturbance at a home in the 6900 block of Southwest 15th Avenue.

Lowery was under the influence of several drugs, including the hallucinogen psilocybin, when he got into a fight with a friend inside the house. After officers arrived, he jumped or fell through a window and landed on a concrete pad about 12 or 15 feet below.

Lowery suffered a cut to his neck; there has been some dispute about whether he slashed

himself with a shard of glass or was cut as he jumped through the window.

Officers tried to restrain him but testified that Lowery became combative. Police say he tried to tackle one of the officers, Jon Dalberg. Lowery then jumped over a fence into a neighboring yard, according to police.

Overall, officers fired 10 beanbag-type rounds at Lowery, hit him numerous times with their batons and sprayed him in the face with six full cans of pepper spray. Eventually, Lowery was hog-tied and one officer stood on his upper body and head.

They carried him to the front yard; he died before an ambulance could take him to a hospital. His death was ruled accidental or self-inflicted as a result of sharp-force injuries to the neck. His family thinks he suffocated.

In their suit, Lowery's parents claimed the officers were improperly trained to deal with emotionally disturbed people. But the city argued that the officers used reasonable force to subdue Lowery so he could receive medical attention.

In her ruling Friday, Stewart said all the officers named in the suit except one used excessive force when they fired four or five beanbag shots and three cans of pepper at Lowery before he charged Dalberg. At the time, she said, Lowery was unarmed, injured and had not attacked or verbally threatened the officers.

But when Lowery charged Dalberg, he may have posed a greater risk to the officers, according to Stewart. She ordered the new trial to determine whether the force used after that was excessive. The suit named seven officers. Stewart's ruling dropped one of them, but he will be included in the new trial.

The jury may be asked to determine the damages on Friday's ruling on excessive use of force and whether the officers were responsible for Lowery's death, according to Erik Heipt, a Lowery family attorney.

Researcher Gail Hulden and staff writer Peter Farrell contributed to this report. Stephen Beaven: 503-294-7663; [stevebeaven@news.oregonian.com](mailto:stevebeaven@news.oregonian.com)