

TOP TEN JURY VERDICTS OF 2006

Police brutality victim rendered quadriplegic by attack in cell

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By Natalie White Contributing writer

AT-A-GLANCE

Verdict: \$44 million total; zero in punitive damages

State: Maryland

Type of case: Police brutality

Trial: 1 1/2 weeks

Deliberations: Information unavailable

Status: The verdict is on appeal.

Case name: *Mosley v. Kershaw*

Date of verdict: July 31, 2006.

Plaintiff's attorneys: William H. Murphy Jr., George C. Doub Jr. and Andrew James Toland III of William H. Murphy Jr. & Associates in Baltimore, Md.

Defense attorneys: James Fields and David Owens of Jones and Associates in Baltimore, Md.

A Maryland jury awarded \$44 million to a 55-year-old man who said a Baltimore police officer paralyzed him when he threw him head-first into the concrete wall of a holding cell.

Albert Mosley, who was handcuffed at the time, was rendered quadriplegic. He now lives in a medical facility where he is confined to a wheelchair and needs round-the-clock-care, according to his attorney, William H. "Billy" Murphy Jr.

The award was the second largest police brutality verdict in state history, topped only by a \$105 million verdict in 2004 against an off-duty Baltimore police officer who shot a man 21 times, believing he was the boyfriend of his estranged wife.

That verdict was later reduced to \$37 million and settled for \$6 million.

After 1 1/2 - week trial filled with disputed versions of the 2003 incident, jurors found in favor of the plaintiff.

The city has filed post-trial motions.

"We respectfully disagree with the verdict," said Karen Stakem Hornig, chief legal counsel for the Baltimore Police Department. <P

Probation violation

City officials argued at trial that Police Officer Bryan Kershaw had done nothing wrong and had used "reasonable force" during the incident with Mosley. Kershaw, who joined the force in 2000, is now a detective in the department's homicide unit. A police investigation after the incident found no wrongdoing.

Mosley had been arrested on a probation violation for an earlier drug conviction. Kershaw, who was in charge of five prisoners that night, said Mosley was drunk and obnoxious at the time of his arrest, yelling obscenities at the officers. He was put in a holding cell with a few other prisoners.

"He was yelling and cursing that he wanted to get out of there. Then he said some sexually awful things to a female police officer and also to a male police officer," Murphy said.

Jurors heard different accounts of what happened next, Murphy said.

According to testimony by Kershaw and his partner, Kershaw went into the cell to get the prisoners ready for transport and Mosley came to the front out of turn. When Kershaw asked him to return to the back of the line, Mosley gathered spit in his mouth and then charged at Kershaw head first. Kershaw testified that he went into a defensive stance, with his arms out front, and pushed Mosley or allowed Mosley to bounce off his arms in a controlled way - and Mosley fell into the wall.

"They came up with this cockamamie story," said Murphy. "They said the officer approached the cell to transport prisoners even though the wagon man had not even come into the building."

Murphy told jurors a starkly different version of events.

He said Kershaw, angry about the insults being hurled by Mosley, approached the cell and told Mosley to "shut up or he would come in there and shut him up."

Mosley "kept cursing so [Kershaw] got enraged," said Murphy. "He said something like, 'Your wife is pregnant and I'm the father.'"

The two men did not know each other before this incident and Kershaw's wife was not pregnant. Murphy argued that that Kershaw should have handled the insults professionally and not gotten angry.

Instead, "he came inside the cell, grabbed Mosley by the back of the neck and the pants and threw him head first into the cell wall, breaking his neck," Murphy said.

He told jurors that he believed the police then coordinated a cover-up of the incident. He said that Kershaw and his partner came up with their version together - their reports were nearly identical. He claimed Kershaw's superiors intentionally didn't interview the other prisoners in the cell during the incident and intentionally didn't keep records of who else was there - all against department policy.

As a result, when Murphy tried to corroborate Mosley's story early in the case, he hit a brick wall.

"There were four men in the cell. They are supposed to interview all eye-witnesses, but they never did," Murphy said. Mosley could not recall the other prisoners and police could not tell him who else had been in the cell.

"I think that was definitely one of the keys for the jury, that there had been a cover-up," Murphy said.

To deal with the problem, his office canvassed the neighborhood where Mosley lived and where he had been arrested, knocking on doors and asking if anyone knew who was in the cell or knew anything about the incident.

The effort paid off.

One man admitted being in the cell, and said he had not come forward earlier because he was embarrassed.

The man's story matched Mosley's, even though he had not talked with Mosley about the event.

Murphy said that despite the fact that the man had a criminal record, his testimony had the ring of truth.

"Yes, he had a couple of criminal convictions," said Murphy. "He cursed a little. He was funny in a deadpan way. He was a hard drinker and a neighborhood guy. But he came across as having the absolute truth in him."

At one point, the defense questioned why the witness once said the officer threw Mosley with his right hand and another time said that he threw him with his left hand.

"He said, 'I don't know if it was his right hand or his left hand but I do know this: He threw that m#\$^&#^\$#@&r right past me,'" Murphy said.

Paralysis

Mosley suffered a compression fracture in his neck when he hit the cement wall. He will never walk again, according to Murphy.

"He has to have two people lift him in and out of bed or his wheelchair. He cannot go to the bathroom by himself. He has to wear a diaper. He cannot tell when he's urinated. He has frequent sores on his body which he gets unless he is turned every half hour," Murphy said. "He'll probably need another surgery."

Jurors found that Kershaw was liable for battery, he had used excessive force in violation of the Maryland constitution and had had intentionally inflicted emotional distress.

The jury's award was for past and future medical and living expenses and for pain and suffering.

Kershaw is indemnified under the city's insurance, so the city of Baltimore is responsible for the award.

Questions or comments can be directed to the features editor at: bill.ibelle@lawyersusaonline.com