

June 28, 1991

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

SUBJECT: JESSE TYREE v. CITY OF SAN DIEGO, ET AL.

The City recently prevailed in litigation brought by Jesse Tyree against police officer Mark Carlson and the City of San Diego in the Superior Court for San Diego County. Plaintiff claimed that the police officer had been negligent, battered him and violated his civil rights when he was shot on August 19, 1988.

FACTS

Officer Mark Carlson, and other Western Division patrol officers, received information from an officer on the Narcotics Street Team that a white male with brown hair, driving a stolen red Corvette, was engaged in narcotics activities in the vicinity of Frontier Lanes on Midway Drive in the City of San Diego. The individual had a significant prior criminal history, was armed and dangerous and it was believed he would probably attempt to avoid arrest by fleeing or shooting.

About two weeks later, on August 19, 1988 at about 2:45 a.m., Officer Carlson observed an unoccupied 1976 red Corvette parked in the lot of Frontier Lanes. Officer Carlson, who was later assisted by Officers Lyall and Redding, determined that the car was probably stolen (plaintiff was later convicted of that offense). Officer Carlson let the air out of the left rear tire to avoid a high-speed chase.

At 3:35 a.m., Jesse R. Tyree and Sammie Scott entered the Corvette, started the engine, turned on the lights, and began to leave the parking lot. Officer Carlson blocked the Corvette with his police car, jumped out, and pointed his handgun at Tyree. Carlson was standing offset at an angle to the passenger side of the Corvette, looking through the tinted passenger window. He told the occupants to put their hands in the air. Tyree looked directly at Carlson and put his hands in the air. However, Tyree looked to the left, then to the right and suddenly put his hands down out of sight, and appeared to reach under the dash. As Tyree's hands began to come back up, Carlson, fearing for his safety, fired a round through the passenger window. The Corvette moved to the left and forward. Carlson continued to fire as the Corvette passed his location. The other officers, Lyall and Redding, pursued the Corvette until it spun out and crashed about seven-tenths of a mile away near Midway and Rosecrans. Officer Carlson apprehended Sammie Scott at the scene of the crash. Tyree ran from the Corvette, but was apprehended in a nearby

school yard.

Tyree had a gunshot wound in his upper back. At the trial he testified that he did not move prior to the gun being shot, but rather he attempted to "dodge the bullet." The hospital records, and Tyree's jacket and shirt that he was wearing at the time clearly show that Tyree could not have been sitting back with his hands raised at the time the gun was fired. Nor could he have had his hands on the steering wheel when he was shot. Further, the records also show he was on methamphetamines at the time of his arrest.

Plaintiff claimed as damages his medical bills, pain and suffering and damages based on the alleged constitutional violation. Plaintiff also sought punitive damages against the officer.

LITIGATION

The case proceeded to trial before the Honorable J. Richard Haden on June 11, 1991, and after a 2-1/2 day trial, the jury, after deliberating for an hour, returned a unanimous verdict in favor of the officer and the City. The jury specifically ruled that the officer had not been negligent, and that he had not violated the plaintiff's civil rights. After the trial, the three jury alternates stated that they would have voted as the jury did. Further, the jury was unanimous in their praise of the police officer and his actions on the night of the shooting. Deputy City Attorney Penny L. Castleman tried the case on behalf of the officer and the City of San Diego.

Respectfully submitted,
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City Attorney

PLC:eh:Lit.
RC-91-34