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Verdict Complicated But Not Inconsistent

LAW AND ORDER



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The jurors in Central Islip deliberated for more than two days and asked the judge on the case to answer several legal questions. The panel of four men and six women even requested a legal dictionary — it didn't get one — and wanted to know the difference between negligence and gross negligence.

At one point, U.S. District Judge Arthur Spatt commented, "They're giving me a workout."

In the end, the jury sitting last week on Greenport resident John Mims' civil lawsuit against the Southold police came in with a very precise verdict — one that laypeople, at first, might not understand. Jurors said Southold police officers did not violate Mims' civil rights by either using excessive force or using racial slurs when they arrested him twice in December 1998 for charges that were later dropped.

But the jury did find that one of the officers, Steven Zuhoski, committed battery against Mims while he was arresting him for allegedly driving a stolen car. Mims suffered a concussion during that

Mims, according to the judge's instructions given to jurors before deliberations began.

If the jury decided Zuhoski used force and caused the injuries but — in his mind at the time — only used as much as he thought he needed in that situation, it should have cleared him.

Paul Millus, a federal litigator from Manhattan who is often in federal court defending police officers in these types of claims, makes the distinction this way: "It may seem, at first blush, that the verdict is inconsistent, but it's entirely possible to prove a state battery and not prove the federal claim.

"An unlawful battery may start out lawful and appropriate but then you go too far, but it's not going to rise to the level of a sadistic, malicious and planned use of excessive force."

It also may seem strange that a jury should be considering a state battery claim in federal court. But the law allows for attorneys to bring in state claims and fold them into federal lawsuits. "The other alternative would be to make the plaintiff go to two separate forums . . . this way, you have one proceeding, one judge and one jury," said Joel Weiss of Melville, another federal litigator.

This type of mixed verdict also seemed to give something to everyone. On Mims' side, he received more than a quarter of a million dollars, although, success on the federal claims would have

