

Jury says Bellaire officer 'not guilty' of recklessness in shooting of resident

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For the first time in seven days in court, Bellaire Police Sgt. Jeff Cotton allowed himself the luxury of a smile. A jury in the 232nd District Court found Cotton not guilty of charges of Aggravated Assault by a Public Servant, after five hours of deliberation Tuesday.

"I'm glad it's over with," said Cotton, arm in arm with his wife, Marlo. "I just want to go back to work."

Cotton's trial ended 16 months of nationwide attention, following the shooting incident on Dec. 31, 2008 at the home of Robbie Tolan. Tolan and his cousin, Anthony Cooper, were detained by officer John Edwards on the mistaken suspicion the two were involved in a car theft. Cotton's defense team contended the shooting — which resulted in

serious injury to Tolan — was in self-defense.

"We believe we presented a good case," said defense attorney Paul Aman. "We always thought he was never guilty of those charges."

Added Cotton: "I'm relieved."

Members of the Tolan family declined comment, though as the family was ushered into an empty room after the verdict, a male member slammed a wall and screamed "(expletive) kidding me!"

Assistant District Attorney Clint Greenwood did not speak to reporters after the verdict, though spokesperson Donna Hawkins said: "We respect the decision of the jury."

Saying that "the city has always felt it appropriate to await a jury verdict on the criminal charge about speaking about what we have known since the incident occurred," the city of Bellaire wasted no time — only about 45 minutes — to issue a written statement.

It praised the jury, went into greater detail than ever before about the city's version of events the night Cotton shot Tolan, and placed the blame for the shooting squarely on the victim and his family.

Bellaire officials announced a news conference just an hour after the verdict, but counsel to the city merely read the statement. Mayor Cindy Siegel was on hand but took no questions and did not comment.

There is still civil litigation pending.

The statement concluded the city and the two officers "will turn their attention to the Tolans' civil lawsuit."

"We anticipate being in a position to demonstrate the propriety of dismissal of the civil lawsuit within the next few months," it concluded.

But the Tolan family called the criminal trial "only the first step in seeing that some measure of justice is done in Bellaire" and charged "the city has not changed its policy of racial profiling."

The Tolans issued their statement through a public relations firm, expressing their disappointment in the verdict but thanking the jury and praising the District Attorney's Office for its handling of the case.

"The fight now moves to federal court," the statement read. "There the defendants and charges are different, and the standard is not the same. We remain hopeful that our family may still find justice."

(Readers may find the full text of both statements online at bellaireexaminer.com.)

Reviewing the case

For a case that had been in the public eye for nearly a year-and-a-half, the court proceedings moved swiftly, especially in light of multiple scheduling delays that moved the trial date, twice, from January to last week.

As expected, the principals involved in the case — the white desk sergeant Cotton and black Bellaire resident Tolan offered conflicting testimony.

Tolan, a onetime Bellaire High baseball player who had aspired to a pro career, is the son of former Major Leaguer Bobby Tolan. The family has lived in Bellaire for 15 years.

Cotton contended he shot Tolan in self-defense, saying Tolan — who, with his cousin Anthony Cooper, was detained by Officer John Edwards and lying prone on the ground as a result of the mistaken belief the two were involved in a

car theft — appeared to act as if he was about to brandish a weapon toward Cotton.

Tolan, who contends he never rose above his knees when addressing Cotton shortly before 2 a.m. during the incident, suffered serious injuries from the ensuing shooting and still has a bullet lodged near his liver.

“I thought he was pulling a gun to shoot me,” Cotton said Friday. “The only option I had was to pull my weapon and fight back. If you wait to see the weapon, you’ve already been shot.”

In prior testimony Thursday, both Tolan and his mother, Marian, said that Robbie never rose above his knees before being shot. Cotton disputed this.

“He jumped up,” said Cotton, who later described the aftermath of the shooting. “I start checking him for weapons. When I can’t find the gun, I asked him what he was reaching for. He was groaning.

“I said a prayer for him,” continued Cotton. “I was happy he was going to live.”

Cotton was asked Friday how he felt once he learned that Edwards incorrectly entered the wrong license plate on his mobile computer, leading to the mistaken suspicion. Tolan was driving a Nissan Xterra registered to the Bellaire address; the vehicle Edwards pulled up was a Nissan Altima.

“My heart dropped,” said Cotton.

One day prior to Cotton’s testimony, Tolan, 24, was asked to recreate the events surrounding the incident, when Edwards detained Tolan and Cooper at gunpoint. Moments later Tolan’s parents, Bobby and Marian, came outside from the house and became part of the crime scene.

“I wasn’t a stranger,” Tolan said. “I heard, ‘Get on the ground’ and asked why.”

Moments later, Tolan said, his father was told to put his hands on the family Suburban in the driveway, while his mother was allegedly shoved by Cotton into the garage door.

“I pushed myself up to my knees and said, ‘Get your (expletive) hands off my mother’.”

“What happened next?” asked Greenwood.

Tolan: “He shot me.”

At the heart of the state’s case — with a burden of proof involved — is the assertion that Cotton acted recklessly during the shooting. The D.A.’s investigator established that a mere 32 seconds elapsed from the time Cotton arrived at the scene and exited his vehicle until he fired the first of three shots. But a defense witness claimed circumstances dictated the officer’s response.

“He had no other option but to use deadly force at that point,” said retired Houston Police Department officer J.W. Conley, now a consultant on officer safety and a paid, expert witness for the defense. “There was no recklessness at all.”

The D.A. responded with questioning that pointed out Cotton had fired two more apparently wild shots that constituted recklessness.

Tolan’s testimony was punctuated with the proclamation: “There was no reason for any of this. We’re not strangers.”

Cotton has been on paid leave since the shooting. He is a 10-year Bellaire police veteran, for years the department’s community relations liaison.

Outside the courtroom Monday, as testimony neared conclusion, the Rev. Kirbyjon Caldwell of Windsor Village

United Methodist Church and a friend of the Tolan family, offered the reopening of discussion on potential racial profiling in Bellaire, which was a rabid topic in the wake of the shooting.

“We need people sensitivity,” said Caldwell. “Rumor has it Bellaire doesn’t do as good a job.”

Listening intently to Caldwell’s remarks was Bellaire Councilman Will Hickman, who had attended every day of court proceedings. Hickman declined to react to Caldwell’s comment.