

Urbana man wins civil suit against the city

By **STEVE BAUER**
News-Gazette Staff Writer

URBANA — A federal jury awarded an Urbana man \$373,000 in a civil rights suit against Urbana police, finding that an officer violated the man's civil rights when he broke the man's neck during an arrest in 2000.

"I feel good that justice was served," Robert Earl Smith, now 33, said after the verdict by a jury of five men and seven women was announced in U.S. District Judge Harold Baker's court in Urbana Friday. "I just hope it don't happen to nobody (else)."

The jury found the city of Urbana and Officer Brian Willfong liable for violations of Smith's Fourth and Fourteenth Amendment rights by use of excessive force and denial of due process. The

jury also found against Smith and for another Urbana police officer, ruling that Matthew Bain was not liable for any damages.

Urbana Police Chief Eddie Adair said later Friday afternoon that the city will consider whether to appeal the case. "I am very disappointed," Adair said of the verdict.

In addition to the \$373,000 in compensatory damages, Willfong and Urbana also will be required to pay court costs and reasonable attorney fees. Judge Baker advised Des Plaines attorney William Kernik, representing Urbana and the officers, and Smith's lawyers from the Chicago law firm of Loevy and Loevy that there are strict deadlines for filing claims and appeals.

The lawsuit, filed Aug. 22,
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2001, also named Champaign County as a defendant for failure to provide medical treatment for Smith once he was injured, but the county agreed to pay Smith a settlement of \$25,000 just before the trial began Monday, according to Jon Loevy, lead attorney for Smith. Champaign County Auditor Michael Frerichs confirmed Friday that a requisition was filed with his office Tuesday for a check for \$25,000 to be paid to Smith and his attorneys.

The suit stems from an incident on Oct. 2, 2000, when Urbana police officers were dispatched to investigate a possible domestic battery case on Eads Street.

Loevy said in final arguments that evidence in the trial indicated Smith displayed no evidence of any neck injury when he ran from police and tried to climb a fence. But after he was caught and ordered down from

the fence, Smith was tackled by Willfong, the attorney said.

Smith became angry and swore at the officers, but even then, there was no evidence of injury, Loevy said. It was only when Smith was lying on his stomach on the ground, with his hands cuffed behind him and when Willfong put his knee on Smith's back and pulled back Smith's head that Smith's neck was broken, Loevy argued.

"After they got him down and had him under their power, they pulled his head back," Loevy told the jury. "That was excessive force."

Loevy also argued that after Smith's neck was broken, he lay quietly and motionless, that he needed help walking to the squad car, and that for 12 hours in the jail, he lay on the floor of a cell complaining of pain.

After he was released from the jail, Smith first went home but then was taken to Carle Foundation Hospital, where Dr. Richard Rak diagnosed Smith's

neck fracture, calling it a "hangman's fracture," Loevy said.

Smith had \$41,000 in medical bills, Loevy told the jury.

The city had a use of force policy that permitted officers to use such a technique, Loevy said. Before the trial, Adair had testified in a deposition that such a practice was permitted when a subject being arrested was combative or assaultive. But the police chief changed his testimony at trial, saying the city didn't have such a policy, Loevy said.

For the defense, Kernik argued that police may use reasonable force when a person is acting like Smith was, saying that the Urbana man was intoxicated and irrational that night.

Kernik denied that Willfong or any officer snapped Smith's neck back and denied that the Urbana police policies allow an officer to do so.

You can reach Steve Bauer at (217) 351-5318 or via e-mail at sbauer@news-gazette.com.