

Wrongful death?

Written by By Molly Ann Howell Sun Correspondent
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Thirty-nine-year-old Robert Carroll reportedly spent the last moments of his life crawling on his stomach away from McKinley County Sheriff's Deputy Dwayne Holder.

Holder allegedly tased him 18 times and there's video evidence to prove it.

Now, his family is taking legal action against the McKinley County Sheriff's Office, the McKinley County Board of Commissioners, and Holder.

According to a complaint filed in the State of New Mexico McKinley County Eleventh Judicial District Court by the family's attorney Eric Dixon, Carroll was passing through McKinley County on his way to Phoenix, Ariz. to visit friends on May 18 when he became confused and disoriented while parked at a pull out near the port of entry of westbound Interstate 40.

According to the complaint, a concerned semi-truck driver called MCSO around 9 pm and said that a man was "acting strange" and that he kept getting in and out of his car and mumbling to himself.

Holder was the deputy who initially arrived at the scene, and the first thing he reportedly saw was Carroll walking around the pull out area. Carroll was wearing a white tank top, red sweatpants and was reportedly unarmed.

When Holder approached him from a distance, Carroll said he was "trying to go." Holder asked

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where he was trying to go, and Carroll responded somewhere he could “mind his f***** business.”

According to the attorney’s complaint, Carroll had not been drinking.

Holder asked Carroll to approach him, and asked him not to stand in the road. The complaint states that Carroll was not standing in the roadway. While the confrontation started on the I-40 shoulder, Carroll eventually gravitated to the median.

Carroll repeatedly told Holder that he just wanted to leave, and Holder kept asking him to walk toward him.

He kept trying to get away from Holder, and according to the complaint, Carroll was still not under arrest at the time, nor had he done anything illegal. He held up his hands as he kept walking away.

Carroll repeatedly asked the deputy what was going on, but Holder kept telling him to show him his hands, walk toward him, and eventually, to get down on the ground.

Instead, Carroll began to jog away from the deputy. The complaint said that at this point Carroll still had not done anything “that merited Defendant Holder stopping him, attempting to seize him, or pursue him.”

The county’s attorney Brandon Huss said Holder was simply trying to get Carroll out of the road, although the family’s attorney’s complaint claims he was never in the road.

“... This was a tough situation where you have an individual running in and out of traffic. There was risk to the motorized public who is traveling at a high rate of speed. There’s risk to the decedent, there’s risk to the officers involved out there in the median of I-40, there’s traffic going by on both directions. It’s a tough scenario all around,” Huss said. “These officers have to make

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quick decisions in the field, and I think they did what they could to try and protect everybody involved from the risk to and from the traffic passing by. It's unfortunate the way that it ended, but I think the case is defensible; I think the officer's use of force here was justified."

Carroll continued to try to walk away from Holder while his pants were falling down.

In Holder's bodycam video Carroll can be seen eventually stopping while Holder screams at him to get down on his knees.

The video reportedly showed Holder continuing to yell, and Carroll began to crawl away. That was when Holder started threatening Carroll by telling him that he was going to tase him.

Holder repeatedly yelled at Carroll to roll over onto his stomach. At one point Carroll got up and tried to get away from the deputy, saying "I'm good," but he fell down while trying to walk away.

Holder then tased Carroll repeatedly.

Another deputy came in to assist Holder, and told him to tase Carroll again. Multiple deputies eventually placed Carroll in handcuffs while the man was on his stomach.

The deputies soon realized that Carroll had stopped breathing, and proceeded to administer CPR. However, they were unsuccessful and Carroll was later pronounced dead at the scene. Dixon noted that Carroll had heart disease.

Carroll's family is suing for the wrongful death of their family member. The court documents state that the family is suing on charges of unlawful arrest and excessive use of force. The lawsuit also claims that the MCSO needs to train their deputies on the proper use of force. The family is asking for compensation for the funeral and burial expenses as well as for the emotional loss.

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UNDER THE INFLUENCE?

The lawsuit claims that Holder was under the influence of alcohol. Dixon explained why he believes this to be true.

“I had understood from his statement that he had drunk alcohol at about 12:30 pm [on May 18], gone back to bed, and he went to work at 4 pm,” Dixon said.

Sheriff James Maiorano III did confirm that Holder had consumed alcohol prior to the start of his shift, but he said the plaintiff’s timeline is off.

“During [an] interview Deputy Holder thought he had violated the policy. That’s probably where that came from,” Maiorano explained.

Maiorano explained the timeline of when Holder began drinking before his shift. His shift for the night of May 18 was scheduled to begin at 6 pm and end at 6 am on May 19. He consumed alcohol in the morning, and went to sleep around 12:30 pm on May 18. He then woke up in time for his shift at 6 pm.

With this timeline in mind, Maiorano said Holder didn’t violate the MCSO policies on alcohol.

“Our guys have some strange sleep schedules when they work,” Maiorano said as a way of explaining the timeline.

The MCSO policy on alcohol states that every employee covered by the policy is “prohibited from the consumption of alcoholic beverages within four hours of the employee’s scheduled time to report to work or within eight hours following an accident or until the employee takes a post accident alcohol and/or drug test, whichever occurs first.”

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Maiorano said part of the confusion came from when Holder was interviewed by the New Mexico State Police. He said Holder incorrectly believed he was in violation of the policy. Maiorano believes that fact led media sources to publish the false information that he was under the influence during his shift.

“The attorney probably read a portion of the report in the interview where Holder said he thought he had violated the policy. But when we had it investigated and we got the timeline of when alcohol was consumed and when he went on shift, he in fact had not violated the policy,” Maiorano said.

Dixon said that the intricacies of the timeline doesn’t matter, his main concern is that Holder was drinking before his shift.

“We had understood that drinking alcohol within eight hours of going on duty is a violation of their policies. But even assuming for the purpose of argument that it doesn’t, he was still under the influence of alcohol under the laws of New Mexico,” Dixon said. “He had drank at least one and a half shots of bourbon before going on duty, so that’s a real issue.”

The MCSO conducted an internal affairs investigation regarding the claims about the consumption of alcohol and the use of excessive force. Maiorano said the internal affairs investigators looked at the videos, reports, and statements to determine the level of force used, why force was used, and whether the force was fair given the situation that was unfolding.

Ultimately both claims were found to be unsubstantiated by the investigators.

Holder was placed on administrative leave during the investigation. He is now back at work.

“From what we’ve reviewed, it does not appear that Deputy Holder did anything outside of policy,” Maiorano said. He also said the county’s attorney believes the case against the MCSO, the McKinley County Commissioners, and Holder is defensible.

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A mandatory case settlement regarding the lawsuit is scheduled for July 26.

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