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County asked to investigate man-left-in-cell case

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Article Text:

The case of a man left shackled in a Salinas courthouse holding cell overnight was more serious than Monterey County officials initially portrayed.

When the County Counsel's Office got 21-year-old Elisha McCoy to sign a release and accept a \$1,000 settlement, he was in the **jail** infirmary being treated for **hypothermia**.

According to court records, when McCoy was discovered in the unheated cell his temperature had dropped to 93 degrees.

"It could have had deadly consequences if it had happened on a Friday," and McCoy was left over the weekend in the cell, said Diana Jiminez, president of the North Monterey County League of United Latin American Citizens, who asked the Board of Supervisors to investigate the Sept. 1 incident. Jiminez said she's notified attorneys in the civil rights division of the U.S. Department of Justice about the situation.

Deputy County Counsel Traci Kirkbride, who handled the settlement, said McCoy's temperature had returned to normal when she spoke with him. He was in good spirits and anxious to get out of **jail**. Kirkbride said she, the prosecutor and the deputy public defender met with Superior Court Judge Tom Wills the next day, and she expressed her hopes that McCoy could be released on his own recognizance, which he was.

Later that day, in what he insists was a chance meeting, Sheriff Mike Kanalakis took McCoy to an In-N-Out restaurant for a meal.

More concerns

Beyond the medical concerns, the case may involve constitutional and professional violations. A taped interview by the county's attorney and a sheriff's department internal affairs officer was conducted without the permission or knowledge of McCoy's appointed attorney.

Monterey County Public Defender Jim Egar, who is representing McCoy on the misdemeanor charge that landed him in **jail**, declined comment because the case is ongoing.

Earlier this month, Egar won a continuance of a potential plea hearing in the case after he learned about the circumstances of the authorities' contact with his client. That followed a motion he filed in September, in which he challenged the admissibility of any statements his client made outside his presence.

Wills agreed. The judge said, "There are legitimate 6th Amendment concerns" regarding McCoy's right to counsel and said Egar could raise the issue in a pretrial motion.

Kirkbride said McCoy was offered and declined the presence of an attorney.

Canons clear

Chuck Warner, a veteran Monterey attorney and 2009 winner of the county bar association's top award, said, "The canons of professional conduct are pretty clear."

"You don't talk to somebody else's client, period," he said. "That's pretty much inviolate."

Sheriff's spokesman Cmdr. Mike Richards said the interview violated no professional standards because it was conducted in relation to an internal affairs investigation into what happened to McCoy and did not involve his criminal case.

Not so, said Richard Zitrin, adjunct professor of legal ethics at the University of California Hastings School of Law and founder of the Center for Applied Legal Ethics at the University of San Francisco's law school.

"One might argue that the prisoner didn't have a lawyer as to his civil claim against the county for its failures," he said, "but the matter is sufficiently related to the criminal matter that doing this without contacting his public defender, under these egregious circumstances, is inappropriate."

Zitrin also said it was unethical for the county to seek a waiver when McCoy was in its custody.

"This is taking unfair advantage of someone and getting that person to sign a release under duress," he said. "I believe any judge would set aside this purported settlement."

August arrest

McCoy's troubles started Aug. 29, when Salinas police Officer Edwin Cruz saw him in the driver's seat of a parked car with a friend, allegedly using a straw to snort drugs off a CD case. When Cruz knocked on the window, McCoy allegedly dropped the paraphernalia, and he and his friend both dropped their hands to their sides.

Cruz pulled his firearm and ordered them out of the car. When backup arrived, Cruz searched the men, as well as two other friends who arrived on the scene, and found no contraband. A search of the car turned up the CD case and what turned out to be the cartridge of pen, neither of which contained detectable traces of illicit drugs.

McCoy tested negative for drugs. He was arrested, however, for possession of a pair of brass knuckles

Cruz found on the passenger side of the car.

That was a Saturday. McCoy, a Native American who lives on a reservation in Lake Havasu, Ariz., spent the weekend in Monterey County **Jail**. He was brought to court for arraignment on Sept. 1, a Tuesday. The Public Defender's Office was appointed to represent him and pleaded not guilty on his behalf. The judge denied his request to be released on his own recognizance, and McCoy was returned to the holding cell in the basement of the asbestos-plagued north wing to await transportation back to the **jail**.

At 7:30 the next morning, deputies opened the holding facility and found McCoy still inside. He was rushed to Natividad Medical Center where he was evaluated and then transferred to the **jail** infirmary. Two days later, after his meeting with Kirkbride, he was released on his own recognizance.

No mention

County Counsel Charles McKee and Kanalakis did not mention McCoy's medical condition when first contacted about the incident this month. McKee confirmed that there had been a quick settlement and Kanalakis confirmed he'd taken McCoy to In-N-Out after he found him standing on the corner looking lost after his release from **jail**.

On Friday, Kanalakis said again that he had no idea who McCoy was when he stopped to offer him help and said he was "aghast that people would think that was some sort of set up."

He made clear, however, that he was made aware of an inmate being left at the courthouse the day McCoy was discovered and immediately called in the County Counsel's Office "to make it right with the young man."

"My feeling on it was one of outrage and disbelief myself when I first heard about it," Kanalakis said. "I was very unhappy when I received that news."

Not unusual

Kirkbride said it is not unusual for counties to make on-the-scene settlements, such as when a deputy crashes into a civilian's car. But she said she has never conducted one herself and "can't think of a case in this county."

Kanalakis said he also initiated an internal affairs investigation to determine what went wrong and took measures to ensure it won't happen again.

Sheriff's Cmdr. Richards declined to discuss details of the investigation, or any possible discipline that was meted out, but said inmate-tracking protocols were not followed.

"There were two opportunities to see he was not there," he said. "Checks that should have been done weren't done."

Specifically, Richards said, the department has protocols for counting heads on the inmate transportation bus and rosters for logging inmates in and out when they leave the **jail** for medical appointments or court hearings. Because inmates are sometimes returned from court late in the afternoon, he added, shift changes and dinner service can complicate the log-in process.

"It's a system that typically works," Richards said. "A series of mistakes was made on that particular day. The deputies that transported him missed him and somebody counting in the **jail** missed him."

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