



COUNTY ASKS JUDGE TO OVERTURN \$3M VERDICT COUNTY FILES MOTION TO CHANGE VERDICT IN JAIL DEATH

Contends it was not to blame for asthma attack brought on by heroin withdrawal at Vista jail

By [Kristina Davis \(/staff/kristina-davis/\)](#) 5:07 a.m. Jan. 4, 2015

SAN DIEGO — It's rare for a judge to disregard a jury's verdict, but that's what lawyers for San Diego County are asking a judge to do.

A month after a jury returned a \$3 million judgment against the county in a wrongful-death lawsuit over a jail inmate's death, the county filed a motion that claims jurors got it wrong.

The Dec. 11 motion gives the county a seldom-used avenue to appeal the jury's verdict. The more traditional route leads directly to the 9th U.S. Circuit Court of Appeals.

The jury of nine determined in November that the county and, specifically, two nurses were deliberately indifferent to Daniel Sisson's health problems — heroin withdrawal and asthma — resulting in his death in his cell on June 25, 2011. A forensic pathologist testified that Sisson, 21, died from an asthma attack brought on by symptoms of heroin withdrawal.

The jury also found the Sheriff's Department, which runs the Vista jail, had violated Sisson's civil rights in how it handles heroin detoxification and cell checks.

The lawyer for Sisson's estate argued in trial that the regular cell checks were minimal and not designed to evaluate an inmate's well-being. He also said Sisson should have been monitored more closely for the risk of a withdrawal-related asthma attack.

The county is arguing the jury's findings were unreasonable in light of the evidence presented in the trial, and is asking U.S. District Judge Cynthia Bashant to overturn the verdict and instead declare her own.

Such a ruling is called a "judgment as a matter of law" in federal court. It can be granted in cases in which "there is such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture," or when there is such an overwhelming amount of evidence in favor of the petitioner that reasonable and fair-minded jurors could not arrive at a verdict against them, according to federal case law.

County attorneys argue this is one such case.

In their motion, they argue that since no one had ever died in San Diego County jails from a withdrawal-related asthma attack, "there was no notice to the county that it needed to develop special policies or training relating to care of inmates with chronic asthma who were withdrawing from heroin."

And, they argued, because the nurses and deputies only knew limited information about Sisson's condition in the days leading up to his death, there is no way they can be accused of being deliberately indifferent.

One of the nurses testified that she had been told only that Sisson had vomited once, and he didn't show other symptoms of worsening withdrawals, such as diarrhea and tremors. Sisson had, in fact, been throwing up frequently, according to his cellmate, who didn't report the illness to jail staff.

Sisson had also refused a doctor's appointment, saying he was "good," and neither did he report his worsening condition to officials, according to testimony. Jail staff had given him an inhaler for his asthma in case he needed it.

The county has also filed a motion for a new trial, arguing that the jury's verdict was inconsistent, that jurors were improperly instructed and that the \$3 million award was excessive.

Attorneys for the county did not respond to requests to interviews.

Sisson's mother, Shaunda Brummett, said Friday that the family is trying to remain patient.

“I felt like we’ve been battling it for so long, and we felt like going to the jury and having the verdict, we felt like we were going to have some closure,” Brummett said. “... You feel like, what are our rights? If the jurors spoke, then why aren’t they abiding by their end of the deal?”

She added that she hopes that despite the delays, the Sheriff’s Department will change the way it evaluates and monitors other inmates who come in with similar health problems.

Attorney Christopher Morris, who is representing Sisson’s estate, said the county appears to be using this case as a test in preparation for other potential legal challenges to in-custody deaths. One lawsuit was filed in November over a 15-year-old girl’s suicide in Juvenile Hall.

“It is clear that the county is using every means possible to try to escape the consequences of the jury’s verdict,” Morris said in an interview. “We are confident that this verdict will stand.”

Ken Klein, a professor at California Western School of Law, said the county is entitled to try to resolve any disputes in front of the trial judge before going to appeal, but it is very rare for a judge to then grant such a reversal.

“A judge does not want to be in the business of reversing a jury unless they feel they have no choice,” said Klein. “... A jury verdict is very hard to change on appeal.”

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