

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ESTATE OF ROBERT JOSEPH MILLER, by and
through IAN MILLER, personal representative of the
Estate,

Plaintiff,

v.

SEAN ROYCROFT and SPENCER JACKSON,
in their individual capacities, and the TOWN OF
BARNSTABLE, MASSACHUSETTS,

Defendants.

C.A. No. 21-10738

COMPLAINT

INTRODUCTION

1. This is a civil rights and wrongful death action along with a state law negligence claim under the Massachusetts Tort Claims Act. On April 16, 2019, Barnstable Police responded to Robert Miller’s home for a “mental health emergency.” Mr. Miller was having “a psychotic break.” He needed medical care. The 911 dispatcher sent police officers to Mr. Miller’s home.

2. Barnstable Police Officer Sean Roycroft arrived first. Instead of contacting a psychiatric assessment team or seeking an emergency psychiatric evaluation for Mr. Miller, Officer Roycroft antagonized Mr. Miller. Mr. Miller told Officer Roycroft he did not wish to continue speaking to him and went into his home. Officer Roycroft followed Mr. Miller into his home and initiated physical contact by grabbing Mr. Miller’s arm. Officer Roycroft then

grabbed him from behind, applying a “seat belt” takedown. Mr. Miller ended up chest down on the floor of his home with his arms under him. Officer Roycroft applied pressure on Mr. Miller’s back. Mr. Miller could not breath. As Mr. Miller struggled to breath, Officer Roycroft applied more pressure on him. When Officer Jackson arrived, instead of helping Mr. Miller, Officer Jackson struck him several times supposedly to assist in handcuffing him. By the time the officers handcuffed Mr. Miller, his pupils were fixed and dilated. He had no pulse. Mr. Miller died in his home due to cardiac dysrhythmia as a result of the actions of Officers Roycroft and Jackson.

3. Mr. Miller never threatened Officer Roycroft or Officer Jackson. He never held a weapon. Officers Roycroft and Jackson violated Mr. Miller’s civil rights by their use of unreasonable force causing his death. The officers also negligently failed to follow proper police procedures for responding to a person who is having a psychotic episode. The Town of Barnstable is legally responsible for this negligence, which caused Mr. Miller’s death.

JURISDICTION

4. This action is brought by Ian Miller on behalf of the Estate of Robert Miller, pursuant to 42 U.S.C. § 1983 and § 1988 and the First, Fourth, and Fourteenth Amendments to the United States Constitution. Title 28 U.S.C. § 1331 and § 1343 provide federal question jurisdiction over all federal claims, and 28 U.S.C. § 1367 provides supplemental jurisdiction over state law claims.

PARTIES

5. Robert Miller's son Ian Miller was appointed personal representative of the Estate of Robert Miller on March 10, 2021. Ian Miller brings this case in his capacity as personal representative of the Estate. At the time of his death, Robert Miller was sixty-three years old and a resident of Hyannis, Massachusetts. For simplicity, when "Mr. Miller" is used in this complaint, it refers to the decedent, Robert Miller.

6. Defendants Sean Roycroft and Spencer Jackson were at all times relevant to this complaint duly appointed police officers in the Barnstable Police Department. Their actions alleged in this complaint were taken under color of the laws of the Commonwealth of Massachusetts and the Town of Barnstable. They are sued in their individual capacities.

7. Defendant Town of Barnstable is a duly organized town under the laws of the Commonwealth of Massachusetts. The Barnstable Police Department is a department within the Town of Barnstable.

FACTS

8. On April 16, 2019, shortly after 7:00 p.m., 911 dispatchers received a call for assistance with a medical emergency. Mr. Miller's longtime girlfriend called 911 because Mr. Miller was "having a psychotic break." The call was listed in the dispatch log as a "mental health emergency."

9. Mr. Miller's girlfriend did not tell the dispatcher or the police officers that she felt threatened by Mr. Miller.

10. At no time did anyone claim that Mr. Miller had committed a crime.

11. The Town sent police officers to Mr. Miller's home. The dispatcher did not request an ambulance, medical personnel, or a psychiatric assessment team.

12. Cape Cod Hospital had a Psychiatric Assessment Team available 24 hours a day, 7 days a week for emergency responses to mental health crises in Barnstable. Neither the dispatcher nor any officers called for the Psychiatric Assessment Team.

13. Officer Sean Roycroft was the first person to respond to the call. He went to the backyard where he saw Mr. Miller on his deck.

14. Officer Roycroft spoke to Mr. Miller. At first Mr. Miller responded to Officer Roycroft. He appeared to be having a psychiatric issue. Then Mr. Miller told Officer Roycroft he did not want to speak to him further and asked the officer to get away from him. Mr. Miller walked inside his home.

15. Mr. Miller had a right to be in his home. He had not committed a crime, nor had he threatened to harm himself or others. He needed medical assistance.

16. Officer Roycroft did not call for medical or psychiatric personnel to assist Mr. Miller.

17. Officer Roycroft ignored Mr. Miller's request to get away from him. He followed Mr. Miller into the house.

18. After entering Mr. Miller's home, Officer Roycroft grabbed Mr. Miller by the arm.

19. Mr. Miller instinctively pulled away from Officer Roycroft's grip. As he pulled away, Officer Roycroft was standing behind Mr. Miller.

20. Mr. Miller never threatened Officer Roycroft.

21. Mr. Miller never held a weapon or any other object in his hands.

22. Mr. Miller was looking for something on a table in his home.

23. Mr. Miller did not strike or attempt to strike Officer Roycroft. Mr. Miller did nothing to cause Officer Roycroft to need to grab him.

24. Officer Roycroft approached Mr. Miller from behind and placed his arms around him in a police maneuver known as a “seatbelt” takedown.

25. To perform the “seatbelt” takedown, Officer Roycroft put his right arm over Mr. Miller’s right shoulder and his left arm under Mr. Miller’s left arm pit and his right leg between Mr. Miller’s legs. This is a police technique that, when performed properly, can safely bring a person to the ground. When an officer properly uses a “seatbelt” takedown, the officer ends up with the other person in front of him.

26. Officer Roycroft and Mr. Miller fell into an office area in the home. Mr. Miller was face down with both arms under his body and Officer Roycroft on top of him, still holding him in a seatbelt position.

27. Mr. Miller struggled to breathe. He tried to lift himself up.

28. Officer Roycroft’s report acknowledges he applied pressure to Mr. Miller’s back “to keep him from getting up.”

29. Officer Jackson then arrived and struck Mr. Miller twice on his right side.

30. Mr. Miller cried out for help.

31. Officer Jackson eventually took Mr. Miller's arms, cuffed them behind his back, and double locked them.

32. After handcuffing Mr. Miller, Officers Roycroft and Jackson noticed that he was not breathing. His pupils were fixed. He had no pulse.

33. Mr. Miller's heart stopped beating while he lay on the floor in his home.

34. A seatbelt takedown is the same maneuver the police officers in the Eric Garner case in New York City claimed they used in 2014. In 2015, After Mr. Garner's death due to police use of force, the New York City Police Academy stopped teaching this maneuver.

35. Officer Roycroft had no legitimate police reason to use force on Mr. Miller. Mr. Miller had not committed a crime, nor did he have a weapon. Use of any force in this situation was unreasonable.

36. Before April 2019, the law was clearly established that even when there is probable cause to make an arrest applying significant, continued force on a person's back while that person is face-down prone after being incapacitated is unreasonable, excessive force under the Fourth Amendment.

37. Mr. Miller died from a cardiac dysrhythmia due to the actions of Barnstable Police Officers Roycroft and Jackson.

38. Mr. Miller endured conscious pain and suffering for at least one minute while he was lying face down in his home with Officer Roycroft on his back pushing him down

and Officer Jackson striking him while Mr. Miller struggled trying to release the pressure so that he could breathe.

39. Mr. Miller's heirs are his three adult children Erin Ortandl, Michael Miller and Ian Miller. They lost their father and were deprived of his care, comfort, society, and companionship forever. Mr. Miller was always there for each of his children.

40. Mr. Miller's father lived to be 91 years old, and his mother lived to be 83 years old. Mr. Miller was 63 when the officers killed him. His children expected he would live another twenty or more years.

41. Ian frequently texted with his father, even a few days before his death. They shared updates about their daily lives, home renovation projects, photos of Mr. Miller's grandson Liam, and music recommendations.

42. Erin knew she could count on her father, no matter what. When Erin was in college, Mr. Miller would drive 2.5 hours to help her with an essay.

43. Mike felt that his father was always his best friend. A master plumber turned product developer, Mr. Miller and Mike were working on several projects together and would speak almost every day before Mr. Miller's premature death.

44. Officers Roycroft and Jackson were sent on a call to help Mr. Miller because he was having a mental health crisis. They negligently failed to:

- a. follow proper police procedures for handling a person who was undergoing a psychotic break;
- b. contact a crisis intervention team;
- c. send an ambulance to the scene;
- d. deescalate the situation to keep Mr. Miller calm or to show him they were there to help him;

- e. gain voluntary cooperation from Mr. Miller;
- f. realize Mr. Miller was in need of medical assistance;
- g. release pressure on Mr. Miller to allow him to breath; and
- h. intervene when another officer was preventing Mr. Miller from breathing.

45. As a direct and proximate result of Defendants' actions, Mr. Miller and his next of kin suffered the damages described above.

COUNT I 42 U.S.C. § 1983 Claim Against Defendants Roycroft and Jackson

46. The above paragraphs are incorporated by reference.

47. Defendants, acting in concert, used unreasonable and excessive force against Mr. Miller.

48. Defendants failed to provide Mr. Miller with needed medical care.

49. The use of force by Defendants Roycroft and Jackson caused Mr. Miller's untimely death.

50. Defendants deprived Mr. Miller of a well-established right to freedom from the use of unreasonable force under the Fourth and Fourteenth Amendments.

51. Their actions were taken with reckless disregard for Mr. Miller's constitutional rights.

52. As a direct and proximate result of Defendants' actions, Mr. Miller and his next of kin suffered the damages described above.

COUNT II Wrongful Death, M.G.L. ch. 229 § 2, Against Defendants Roycroft and Jackson

53. The above paragraphs are incorporated by reference.

54. Defendants caused Mr. Miller's death by willful, wanton, or reckless acts.

55. Mr. Miller's next of kin are entitled to compensation for the loss of services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice of their father.

56. Mr. Miller's estate is entitled to damages for his conscious pain and suffering before his death.

COUNT III M.G.L. c. 258 Negligence Claim Against the Town of Barnstable

57. The above paragraphs are incorporated by reference.

58. In addition to the negligence of the police officers described above, employees of the Town of Barnstable were negligent in failing to send medical personnel or a psychiatric assessment team to this 911 call for a known mental health emergency.

59. Had Mr. Miller been provided with medical and psychiatric treatment instead of being treated like a criminal, he would have lived.

60. Mr. Miller's estate and his heirs suffered damages because of this conduct, as described above.

61. A demand letter under M.G.L. c.258 §4 was sent to the Town Attorney and Town Clerk on August 26, 2020 by certified mail. The letters were delivered on August 31, 2020.

62. Plaintiff properly performed all conditions precedent to filing an action under M.G.L. c.258.

63. The Town has not responded to the 258 demand letter.

WHEREFORE, Plaintiff requests that this Court:

1. Award compensatory damages;
2. Award the costs of this action, including reasonable attorney's fees; and
3. Award such other further relief as this Court may deem necessary and appropriate.

JURY DEMAND

A trial by jury is hereby demanded.

RESPECTFULLY SUBMITTED,
For the Plaintiff,
By his attorneys,

/s/ Howard Friedman
Howard Friedman, BBO #180080
Law Offices of Howard Friedman PC
1309 Beacon St. Suite 300
Brookline, MA 02446
(617) 742-4100
hfriedman@civil-rights-law.com

/s/ Jeffrey Wiesner
Jeffrey Wiesner, BBO No. 655814
Jennifer McKinnon, BBO No. 657758
Wiesner McKinnon LLP
90 Canal Street
Boston, MA 02114
Tel.: (617) 303-3940
Fax: (617) 507-7976
Email: jwiesner@jwjmlaw.com
Email: jmckinnon@jwjmlaw.com

Dated: May 5, 2021