



OFFICES OF
JEFFERSON COUNTY ATTORNEY

117 WEST BROADWAY
FAIRFIELD, IOWA 52556-3217
PHONE (641) 472-9201
FAX (641) 472-9202

email address: jeffcoatty@lisco.com

JEFFERSON COUNTY ATTORNEY

TIMOTHY W. DILLE

Direct email address: timd@lisco.com

ASSISTANT JEFFERSON COUNTY ATTORNEY

PATRICK J. McAVAN

Direct email address: patm@lisco.com

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Final Report Regarding the Assault reported During the Early Morning Hours of March 6, 2011

During the weekend of March 5 and 6, 2011 Fairfield resident, Usama Alshaibi, sustained some injury following a night out with a friend. Shortly thereafter he posted a blog online that discussed his ordeal and described it as a hate crime. This report will detail the investigation and its findings. It will also discuss the conclusions reached by this office based on that information.

The Fairfield Police Department, with the help of the Iowa Department of Criminal Investigations, conducted a thorough investigation that began at 12:19 a.m. on March 6, 2011. The investigation involved the interviews and discussions with dozens of people. This office has reviewed over 20 written statements and watched a dozen recorded interviews. We have also reviewed photographs and medical records and have had countless discussions with the primary investigators. Based on all of this we can piece together the following timeline of events:

On Saturday, March 5, 2011, Usama Alshaibi and his friend Manuel Tsingaris went out to a restaurant and bar called Vivo's. They arrived between 8:30 and 9:00 p.m. and sat in the bar area. They consumed some alcoholic beverages and enjoyed themselves. Mr. Alshaibi was quite forthcoming about how much he had to drink and that it definitely had an effect on him. Sometime between 11:00 and 11:30 p.m. a different group of people, including Canaan Rice and Jason Byers, entered the bar and sat down. Shortly thereafter Mr. Byers observed another friend enter the bar and he called out to him. Mr. Alshaibi looked at Mr. Byers and shouted obscenities at him. Although nothing else occurred at the bar the patrons said that Mr. Alshaibi appeared impaired and was acting in a way that could be problematic.

At approximately midnight Mr. Alshaibi and Mr. Tsingaris left Vivo's and began walking home. They walked west on West Broadway on a sidewalk across an abandoned railroad spur to either 8th or 9th Street. They turned north and at either Broadway or Briggs they separated. Mr. Alshaibi lives at 1104 West Briggs so he was only a few blocks from home. Mr. Tsingaris continued walking north towards his home and assumed his friend was walking the remaining few blocks home.

Mr. Alshaibi claims to have heard music as he was walking towards his house. As he approached this music he claims to have met a young woman who told him that the party was upstairs. Although the officers were unable to canvas this area immediately they did check the neighborhood within the hour after the assault report was received. The police were unable to locate any noticeable music in that area. Throughout the investigation the police were unable to verify or identify the young woman. As a result we cannot say with any certainty whether there was any music or whether there was any young woman.

What is clear is that Mr. Alshaibi actually got himself turned around and wound up walking in the opposite direction of his home. Sometime around 12:15 a.m. he entered a home located at 50 South 5th Street. This home is a block and half east of Vivo's and would have required Mr. Alshaibi to backtrack past Vivo's to get there within the timeline. This house is the residence of Joshua Bishop and his teenage son Gabe.

Joshua Bishop was asleep on the couch in the living room while Gabe was upstairs in his room with four other friends. The others were Samantha Fischer, Brian Jennings, Heath Nevins, and Blaze Strickland. Nevins is 20 years old and all the others were under 18. They report that they had just finished watching a movie when they heard footsteps on the stairs. They assumed that they had awakened Joshua and they were going to be in trouble. However, the footsteps stopped just outside of the closed door. The kids reported seeing a shadow under the door and they knew someone was standing outside of the door. Investigators confirmed that the lighting in the hall would allow a shadow to be seen under the door.

The door was opened a crack, either by Gabe or by Mr. Alshaibi. It is clear that there was a brief exchange between Mr. Alshaibi and Gabe where they said hi to each other and Mr. Alshaibi indicated that he had returned to the area from Chicago. The door was opened a little further and Mr. Alshaibi was able to look into the room and the other kids were able to see him. Gabe finally told him goodbye in an attempt to get him to leave. Mr. Alshaibi backed out of the room and Gabe shut the door.

Ms. Fischer has a graduated driver's license which prohibits her from driving after 12:30 a.m. As a result she needed to leave and drive home. The kids heard footsteps back downstairs but did not hear the door so they went downstairs to see what was going on. Everyone admits it was dark downstairs as the front door opens into the living room where Joshua Bishop was sleeping. The kids found Mr. Alshaibi just standing in the living room. He began speaking with Ms. Fischer and asked her what she was doing later that night. The kids, especially the two girls, reported that this type of question was creepy and made them uncomfortable. The kids also reported that Mr. Alshaibi never took his right hand out of his coat pocket which made them a little nervous. This office also believes that the content of the movie the kids had just completed added to their concern about this person in the house. They had just watched *The Strangers* which is a horror/suspense movie about a young couple who are terrorized by three home invaders. When Mr. Alshaibi still did not leave Mr. Jennings grabbed Mr. Alshaibi by the lapel and pinned him against the door frame as Jennings tried to open the door. Once the door was open Jennings spun Alshaibi around and forcefully shoved him out the door. It appears that Jennings used his hands and a foot to force Alshaibi out the door.

The kids report that when Mr. Alshaibi was thrown out he fell and landed face first. As he tried to regain his feet he fell again, this time down the stairs landing on a concrete landing. They then shut the door and watched him through the door and windows. The kids also report that he fell at least one more time as he was walking away to the north when he stepped in a pothole in the alley next to the house.

The kids also report that after he was outside they began asking him questions about why he was there and what his name was. When he responded that his name was Usama the kids responded to that comment. Although they report they thought he was joking. This office believes it is likely that Mr. Alshaibi heard some words and phrases that could be considered racial slurs. This conclusion is based upon the statements of the witnesses, items located on social networking sites, and some of the behaviors observed prior to and during the interviews.

Mr. Alshaibi reported that he told the partygoers his name inside the house on the second floor. As soon as he told them his name he was hit and beaten by four young men. His glasses were knocked off his face and it was hard for him to see. He reported attempting to protect his face with his arms. He reports he continued to be struck as he was trying to get out of the residence.

The investigation reveals that the only physical contact inside the house was when Mr. Jennings threw Mr. Alshaibi out of the house. This is corroborated by the fact that Joshua Bishop did not wake up when Mr. Alshaibi was inside the house even though the front door accessed the room he was sleeping in. In addition, no blood was found inside the residence. It was not possible for Mr. Alshaibi to have been beaten by four young men as there were only three present at the time. All of the kids report that Mr. Alshaibi had his glasses on when he was thrown out of the house. Finally, Mr. Alshaibi did not have any injuries on his arms. Those types of injuries would be expected if he were protecting his face and head with his arms and are commonly called defensive wounds.

The investigation further revealed a high likelihood that the kids followed Mr. Alshaibi outside after he was thrown out. It is unlikely they could have seen him fall multiple times from inside. Plus, Joshua Bishop reported that he woke up when the kids came back into the house. As stated earlier it is likely that Mr. Alshaibi heard some very harsh language at that time. It is unknown when he lost his glasses. Ms. Strickland remembers hearing him ask where his glasses were after he fell outside near the stairs. However, Mr. Alshaibi's glasses were not located until Thursday, March 10. They were found lying on the ground next to the sidewalk in the 500 block of West Broadway. This is about half a block north and around the corner from the Bishop house. They were in the grass next to a green sweater. During his interview with police Mr. Alshaibi reported losing a green sweater he was carrying in his pocket sometime during or after the altercation. The loss of this sweater was not publicly disclosed. When asked by police the occupants of both houses nearest to where the sweater and glasses were found said that they had seen it there for several days, but less than a week. They assumed that whoever lost it would walk by again and pick it up. It is unknown how the glasses and sweater each ended up in that location.

Mr. Alshaibi eventually walked to the parking lot of Family Video located approximately ½ block south and 4 blocks west of the Bishop residence. Once there he called Mr. Tsingaris on his cell phone and Mr. Tsingaris walked to this location. As the two of them were in the parking lot the manager of the video store placed a 911 call at 12:19 a.m. and reported that there was one male and one female in the parking lot crying and screaming. The manager assumed this to be a domestic dispute. Officers arrived in 1 minute and located Mr. Alshaibi and Mr. Tsingaris in the parking lot. It is clear from the investigation that the manager simply misidentified one of the men as a female in his initial call and that these are the only two people who were in the parking lot.

We are charged with examining these facts and determining if a crime has been committed. It is our opinion that no charges should be filed in this situation as the facts do not demonstrate criminal behavior beyond a reasonable doubt.

To prove assault we must show that a person did an act intending to cause pain or injury to another and that that act was done without justification. In this case the only person who we can prove made contact with Mr. Alshaibi was Mr. Jennings. Mr. Jennings did not do anything intending to hurt or injure Mr. Alshaibi. On the contrary Mr. Jennings was just trying to get Mr. Alshaibi out of the house. It is also difficult to know how Mr. Alshaibi received his injuries. It would clearly be assault if the injuries were a result of a beating. Here it is just as likely that the injuries were caused by the multiple falls outside of the home. If the evidence is not clear, we cannot prove a crime took place.

In addition, it appears that Mr. Jennings was justified in his behavior. Iowa law recognizes the "castle doctrine" which states that a person has no duty to retreat from his residence. Rather, a person has the right to protect themselves inside their own house. The only requirement is that the act be reasonable. Mr. Jennings did not use a weapon or anything excessive. He simply pushed Mr. Alshaibi out of the Bishop home after hearing Gabe say he was not welcome and should leave.

There has been much public discussion of this incident as a possible hate crime. A hate crime is not a separate offense. It is an additional series of elements that must be proven to enhance a crime. Since we don't have an assault or any other crime, we can't have a hate crime. Even if we had the evidence to file some charge, we would not file a hate crime enhancement under these facts. A primary element of a hate crime is that the crime was committed because of the victim's race, national origin, ancestry, or other listed characteristics. In this case the only physical contact was motivated by the desire to get an uninvited guest out of the house. It is our belief that this physical contact would have happened to any person regardless of national origin or race.

We have also been asked to review the facts for possible trespass or public intoxication charges against Mr. Alshaibi. These charges are also not appropriate. To prove a trespass we must show that Mr. Alshaibi entered the house without permission with the intent to commit an offense. Mr. Alshaibi has consistently stated that he met a woman who told him where the party was and that he took her comments as an invitation. Although that young woman cannot be identified or even verified it is clear that Mr. Alshaibi believed himself to be invited. He did not have any intent to commit any offense inside the home. He was not looking through drawers or attempting to take or damage anything.

He could also be charged with trespassing if he remained on the property after being told to leave. It is clear that he was told to leave. It is also clear that he walked downstairs following that statement where he was found just standing in the living room. By all accounts it was dark and a very little time passed before he was thrown out. Mr. Alshaibi was not given the time to demonstrate he was simply ignoring the request to leave. He just as likely was unable to find the door in the dark and only was able to get out when he was shoved out.

As for public intoxication Mr. Alshaibi was never tested to determine his level of intoxication. We believe it would have been inappropriate to have done so. When officers encountered him in the Family Video parking lot he was clearly bleeding from the head and had sustained some injury. He was complaining of an assault and was obviously of age to legally consume alcohol. He was treated as a victim as he should have been.

Although not an element of any crime we also consider the motivation for the requested charges. No one at the Bishop house called the police to report an intruder. In fact, the kids indicated that it was creepy and weird but also over pretty quickly. They felt like they handled it. Once it was clear that the police were trying to find the location where this incident occurred the police still were not contacted by anyone who had been at the Bishop residence. Only after the police found them and invited them to be interviewed was there a suggestion that Mr. Alshaibi should be charged with something.

There are also problems with the information that would be fatal if we pursued prosecution. Mr. Alshaibi has been very cooperative and understanding throughout this investigation. However his version of the events is full of gaps potentially caused by his injuries, his alcohol consumption, and the trauma he feels from that night. These gaps leave room for other reasonable explanations and make prosecution impossible.

There has been public speculation that this was some publicity stunt orchestrated by Mr. Alshaibi. There is zero evidence of that. He presents as very sincere and it is our belief that he is simply hoping to fill in some of the gaps for himself so he can have a better understanding of what happened.

Another problem is the amount of publicity in this matter. The internet had both a positive and negative impact on this investigation. Officers were able to determine the location of this incident as a result of postings on social networking sites. That helped officers focus on the correct neighborhood and interview the right people. On the negative side the kids had read the claims made by Mr. Alshaibi and discussed them before they were ever interviewed. That creates the possibility of the kids trying to get their story straight before meeting with the police. There are some obvious inconsistencies in all the stories that cannot be reconciled with the known facts. The publicity also caused the kids to want to rebut what they had read rather than simply giving a

statement. These are all factors that were considered in reviewing the evidence and considering how any information may be presented and attacked in a trial.

With the release of this report this office considers this matter closed unless further, undiscovered evidence is found. It is our hope that Mr. Alshaibi will not be vilified for suffering injuries and posting his immediate perceptions in a blog. It is also our hope that the diverse citizens of Fairfield and Jefferson County continue to respectfully live, work, and play together as has been our tradition.

We would like to thank the people who came forward with the information that helped us to determine the location of this incident and in helping to get the investigation on track. It says a great deal about our community when people are willing to step forward and do the right thing.

We would also like to thank the Fairfield Police Department Officers who worked on this matter for all their hard work, dedication, and professionalism while handling a delicate situation. We would also like to thank Iowa Division of Criminal Investigation Special Agent Rick John for his assistance and work on this matter. He was a true asset to a thorough investigation of all matters.

We would also like to thank the press for their patience while this matter was thoroughly investigated to determine the appropriate handling of this matter.

Please contact the Jefferson County Attorney's Office as set out above with any questions.