

ALAMOSA CITY COUNCIL
Monday February 1, 2010
Minutes of the Meeting

A Special Meeting of the Alamosa City Council was called to order on the above date by Mayor Kathy Rogers at 6:30 p.m. The Pledge of Allegiance was recited. Present were: Mayor Rogers, Councilors Greg Gillaspie, Rusty Johnson, Josef Lucero, Leland Romero, and Marcia Tuggle. Councilor Griego was excused as the spouse of a liquor license holder. A quorum was declared. Also present: City Attorney Erich Schwiesow, and City Clerk Judy Egbert.

BUSINESS

A. Liquor Violation Show Cause Hearings

1. Trujillo's The Office, LLC d/b/a The Office

Mayor Rogers turned the hearing over to Hearing Officer Erich Schwiesow, who gave an overview of the process.

Prosecutor Gene Farish reviewed events of the compliance check conducted on the evening of December 12, 2009. A total of nine liquor establishments were visited. Britney Sedillo-Scott, age 20, and Mallori Shortridge, age 21, were assigned to visit establishments and attempt to purchase alcohol.

At 11:55 p.m., a compliance check conducted on The Office, 550 Denver Avenue. Britney walked in with Mallori and ordered 2 drinks, cranberry and vodka, from the bartender. Britney bought the drinks and paid with cash. Britney had red Xs on her hands indicating she was under 21. She also had a wristband on her left hand that said "under 21" in pink letters on a white background. Mallori and Britney went to The Office together. They were both carded at the door, where Britney was given the under 21 wristband and Xs. The bartender was described as a young blond woman in a black shirt. Britney asked what kind of drinks that the bartender had just made, and she ordered two of those drinks. Mallori certified that she did not order or pay for the drinks, and that Britney did. The server was later identified as Jenna Burris.

The licensee is represented by Andy Trujillo, who is present, and has asked to hear the evidence in this case. Trujillo did not have an opening statement, asked that Council read the report and watch the video.

Mr. Farish called Detective Kelley, who was sworn by Erich Schwiesow.

In response to questions from Mr. Farish, Detective Kelley made the following statements:

- My name is Detective Charlie Kelley of the Alamosa Police Department, POB 1122, Alamosa, CO.
- I have been a certified police officer since June 2006. Since June 2009, my job duties have included conducting compliance checks.
- On December 12, 2009 we conducted a total of nine compliance checks, utilizing Officer Yvonne Gonzales, Mallori Shortridge, and Britney Scott. Britney was instructed to attempt to purchase alcohol. She is seated in the back row in the

pink shirt. Mallori is seated next to her dressed in a black shirt with diagonal lines.

- Britney was instructed to attempt to purchase alcohol. She and Mallori went into The Office at about 11:55 p.m.
- The Office is located at 550 Denver Ave.
- I was across the street in the south alley of the 400 block of Main Street, where I could listen with an audio monitoring device. The audio was difficult because of the loud music. I could hear the interaction, but couldn't make out anything from the audio recording.
- The pair did not get service for a while and waited at the bar. Then a blond bartender, the only female there, dressed in a black shirt served them. The male bartender made drinks for other customers. Mallori asked the female bartender what kind of drinks they were. The bartender asked the male bartender what they were, came back and told them that they were vodka/cranberry. Britney ordered by saying we'll take two of those. The female bartender served the drinks and took the money, giving one drink to Britney and one to Mallori.
- Britney and Mallori left the drinks there, and returned to me. I specifically asked Mallori if she had ordered, and she said no, that Britney did.
- I don't know what the procedure is for marking underage customers. Both explained that they were both carded, with Britney given a wristband and both of her hands marked with a red X. I took photos of the markings.

Mr. Farish showed two photographs he referred to as Exhibit 1 and Exhibit 2, and asked Det. Kelley to identify them. He identified Exhibit 1 as a picture of Britney's left wrist showing the under 21 wristband. Exhibit 2 was identified as an photo showing both hands marked with large red Xs and the wristband. Mr. Farish requested that these exhibits be admitted. Andy Trujillo viewed the pictures and offered no objection. Mr. Schwiesow admitted the two exhibits as evidence.

Det. Kelley continued his testimony with the following statements:

- After Britney and Mallori came back, I verified by portable breath testing that Britney did not consume any alcohol. This test was also administered prior to her entering the bar. Both tests were negative for alcohol.
- Britney and Mallori were asked to write statements. The video was reviewed and downloaded to a laptop. Britney identified the female bartender to ensure that the correct person was issued the citation.

Mr. Farish presented proposed Exhibit 3 as the statement made by Britney and Exhibit 4 as the statement from Mallori. Det. Kelley confirmed that the statements were the ones made that night. Mr. Trujillo offered no objection, and Mr. Schwiesow entered the two exhibits into evidence.

Det. Kelley continued his testimony with the following statements:

- The hidden camera is not a low light camera, and its purpose is to correctly identify the server. The video shows the person serving, not those being served.
- The group conducted one more compliance check that night, then went back to The Office and served a summons to Jenna Burris.
- Vodka/cranberry is an alcoholic beverage under the Liquor Code.

- This occurred within the City of Alamosa, County of Alamosa, and State of Colorado.

Mr. Farish called Mallori Shortridge, who was sworn by Mr. Schwiesow.

In response to questions from Mr. Farish, Ms. Shortridge made the following statements:

- I live at 5319 State Hwy. 17, and I am a full time student.
- I am 21 years old, and was so on December 12.
- We went to The Office, waited at the door, where our IDs were checked. We went into the bar, which was very busy. We waited our turn for service for quite a while. A male bartender was making drinks next to us. We caught the attention of the blond bartender and asked what he is making. She asked him, then returned and said that it was a vodka/cranberry. Britney asked for 2 of them, and handed her cash. We took the drinks and set them on the table behind us and walked out.
- Britney's hands were marked with an X on each one, and also had a wristband. It was obvious that the bartender served one drink to each of us. The bartender did not ask for any ID, or ask if we were over 21.
- We were in the bar quite a while, 15 or 20 minutes before being served. When the drinks were served, they were placed on the bar, one in front of each of us.
- There is no question that we were being served an alcoholic beverage. I had a sip of mine. It tasted very strong. Then I set it down on a table and walked away.
- We left the bar and met with Det. Kelley and wrote our statements.

In response to questions from Mr. Trujillo, Ms. Shortridge made the following statements:

- I have been involved in one prior compliance check when I was underage.
- Both of us were briefed at the Police Department prior to the check about what we could and couldn't do.
- I was told not to order, and to look like we were there for a reason.
- I was there as a friend, not as an attempt to purchase.

Mr. Trujillo requested that Ms. Shortridge read her written statement, and she did so.

In response to questions from Council, Ms. Shortridge made the following statements:

- I did not taste the drink when we were served, but we were both aware that we were being served an alcoholic beverage.
- The drinks were left on a vacant table as we exited the bar.
- Both of us were standing side by side facing the bar. Britney was not behind me. The drinks were clearly placed one in front of each of us.
- The lighting in the bar was dim, although the bar area was lit more than the dance floor. Britney's hands were clearly visible when she handed the bartender the cash.
- I took one drink and Britney took the other.
- I did not wear any audio equipment, but Britney did.

Mr. Farish called Britney Scott, who was sworn by Mr. Schwiesow.

In response to questions from Mr. Farish, Ms. Scott made the following statements:

- My address is POB Adams 1199, Alamosa, CO 81102. I am a full time student. My date of birth is 5/17/89, making me 20 years old. I was also 20 years old on December 12, 2009.
- We went to The Office sometime between 11:30 and midnight. I was wearing two audio wires, taped to my chest and shoulder. I also carried a hidden camera on my keychain.
- There was a line at the door. There was no way to get in or out without the doorman knowing. I was ID'd, and given a wristband and a red X on both hands.
- The pictures in Exhibits 1 and 2 are verified as pictures of my hands.
- The doorman was the one that put the red X on my hands. He saw that I was underage.
- The wristband said "under 21" in bright pink with a martini glass with a cross through it.
- We went to the shorter side of the bar and waited quite a while for service.
- The male bartender was making a red drink in see-through Dixie cups. Mallori asked what he was making. The female bartender asked him and returned and told us they were vodka/cranberry. I said we'd take two of them. She set them down with one cup in each hand, one on my left side and one on Mallori's right side.
- There was no question that one cup was placed in front of each of us.
- I took money from my pocket, gave her the money with my right hand, took the drinks, and stepped away from the bar.
- We found a table with 2 abandoned drinks and left the drinks there.
- I found out her name when I got a subpoena and called to see what it was about.
- There is no way that the female bartender could have been mistaken with the dark-haired man that was working with her.
- After we were served, we stepped back from the bar, left the drinks on the table, left, and contacted Det. Kelley. We went to the neutral location, discussed the events, then did one more compliance check.
- The two drinks were exactly the same.
- The statement depicted as Exhibit 3 is my statement.

In response to questions from Mr. Trujillo, Ms. Scott made the following statements:

- We were briefed for 45 minutes to 1 hour prior to beginning the compliance checks, and told what we could and could not do.
- I was wearing long sleeves. My hands were up on the bar, and I don't know if the X was visible or not.
- I was not coached in making the statement.

Ms. Scott read her written statement at the request of Mr. Trujillo. She continued with the following statements in response to further questions from Mr. Trujillo:

- Officer Yvonne Gonzales wrote the written question on the statement, and I replied in writing.

In response to questions from Council, Ms Scott made the following statements:

- I did not intentionally hide the Xs on my hands, although I was wearing long sleeves.

- I remember that during the compliance check at Othello's I hadn't taken off my jacket and the server asked me to raise my hands.
- I paid for the drink with my right hand, and the wristband was on the left. (displayed how hands were on the bar)

Mr. Farish noted that the record should reflect that her hands were resting with the palms down and the backs of the hands up.

Ms. Scott continued to respond to questions from Council:

- I don't think the bartender ever looked at my hands. She just didn't notice. She wasn't very attentive at all. She served everyone else at the bar before us and wasn't paying attention in the slightest.
- In response to Councilor Lucero's request to describe his hands: He has an imprint of a hand on the right, a wedding band on the left, a watch on the left. Councilor Lucero later said that he had an x on each hand that she couldn't see. She responded by saying that they were 20 feet apart, while she and the bartender were two or three feet apart, with the bartender's view from a higher vantage point.
- The lighting at the bar was dim, but more visible at the bar itself.
- I am certain that the Xs were visible.

In response to questions from Mr. Trujillo, Ms. Scott made the following statements:

- I did attend the other compliance checks, along with Mallori. We walked into a liquor store, set the alcohol on the counter. When asked for ID I either showed them my correct ID or said that I forgot it.
- At Weekends they did mark the hands of underage persons, with either an M or a W. These marks were washed off prior to arriving at The Office.
- I have had a sip of champagne, at some time other than during these compliance checks, but don't remember where.

Mr. Farish recalled Det. Kelley, and referred to the disk containing the video as Exhibit 5. The 20+ minute video contained the transaction on the last few minutes of the clip. The video was played from the point the transaction began.

There was much informal discussion in an attempt to put the video into perspective with the events as described by witnesses, and was played multiple times from different starting points.

Ms. Scott was recalled and asked to narrate the events as shown on the video.

Mr. Trujillo said that he had a different video that showed the events more clearly and the audio quality was better. He stated that on his video it is Mallori who orders the drinks.

Ms. Scott clarified that she ordered and paid for the drinks. She picked up the drink in her right hand, shifted it to her left, and paid with the right.

Mr. Farish objected to Mr. Trujillo's statements, saying he had not been sworn as a witness and is not speaking from first-hand knowledge, and is referring to a video that is not here.

Mr. Schwiesow upheld the objection. Mr. Trujillo asked for a recess to allow him to procure his video.

Council called at recess at 7:53 p.m. Regular session was resumed at 8:06 p.m.

Mr. Farish asked that the video disk be entered into evidence as Exhibit 5. There was no objection, and the exhibit was admitted. Mr. Schwiesow recapped all five exhibits admitted.

Mr. Trujillo displayed the video he produced, and explained that it was the same video file, but was clearer from his laptop. More conversation ensued as this video was viewed. Mr. Trujillo believed that Ms. Scott paid with her right hand and her sweater concealed the X.

Mr. Trujillo called Will Olivas, who was sworn by Mr. Schwiesow. Mr. Olivas made the following statements in response to questions from Mr. Trujillo:

- The bar was very busy and full, with people stacked up at the bar waiting for drinks.
- When he was asked what he was making, he responded that it was a vodka/cranberry and walked away to wait on other customers.
- Jenna went over and served two shots to different customers, then tended to the girls. Jenna asked what drinks I had just made, and I told her. She asked for two of them and I gave them to her.

In response to questions from Council, Mr. Olivas made the following statements:

- One of the girls asked me what the drinks were first, but I had other things to do. She asked Jenna the same question, Jenna asked me, and I made the drinks.
- I don't know for sure who asked.
- Jenna directed the drinks to be made. Jenna described the customers as the girls at the end of the bar. I didn't see who she delivered the drinks to.
- I became aware of the compliance check a couple of hours later. When we learned of it, we went back through to try to remember what happened.

In response to questions from Mr. Farish, Mr. Olivas made the following statements:

- The bar was very full, probably over 100 people. There were two bartenders on duty.
- The procedures involve checking IDs at the door. The doorman puts an X on each hand of an underage person, plus a wristband.
- Underage persons shouldn't be at the bar. Bartenders watch for the Xs and wristbands as drinks are served.
- If a customer were to be wearing gloves, the bartender would ask them to remove the gloves.
- We know the people that come into our bar, and just don't serve those that are underage. Obviously we did not know Ms. Scott.

In response to questions from Council, Mr. Trujillo made the following statements:

- The marker used to make the X is a permanent marker. It will not wash off easily. Some customers have used Chap Stick to remove it and attempted to remove the wristbands. About 70 – 80 underage persons have been caught attempting to do that at The Pig.
- Often a minor will ask a person over 21 to purchase alcohol for them. They are removed from the bar when that happens.
- The underage persons aren't supposed to approach the bar.
- Generally underage persons aren't allowed in, but I allowed it that night as a favor to some basketball players who wanted to have a graduation party there.
- Allowing minors in the bar is preferable to a graduation party at a house where there is no control.
- There have been no violations at The Office in 15 years of business.

Mr. Farish recalled Britney Scott, who made the following statements in response to his questions:

- The video didn't clearly show who was being served. I ordered the drinks from the female bartender.
- When she brought the drinks, she set the two drinks down on the bar, one in front of each of us.
- She never asked to see my hands, nor asked my age or ID.
- I paid for the drinks.

Mr. Farish made a closing statement. This case is not about intent to violate the law. Speeding isn't about intent, you just get a ticket for going a certain speed. So this is not an argument about whether or not there was intent to violate anything. It is about whether or not the procedure worked. There were two bartenders serving over 100 people. Whether the bartender saw the marks on her hands or not isn't the issue. The law says it is unlawful to sell to a person under 21 years of age. That's it. No intent. You don't have to have intent to have to have your system fail. The bartenders were trying to get folks served, they were moving fast. They've got to with a crowd like that. They don't have a system in place that keeps this type of thing from happening.

This evidence doesn't have to be proven beyond reasonable doubt, but rather preponderance of the evidence. The real evidence comes from the two people who were in there. Britney says she was served the drinks and paid for them. There was no inquiry asking to see her hands. The whole focus was on getting people served. The other part of the system tries not to let them in the door.

Mr. Trujillo made a closing statement. I could have pleaded guilty and taken the suspension, but everybody does that. But they cross over. Eighteen and twenty-one, how do we know that she didn't order them. I'm not knocking them for doing their job. The economy is not at the greatest, and we are just trying to generate something. Trying to bring them out, supervise them, take care of them. This night was a graduation party. A couple of Army Marine guys were in St. Ives and asked if they could go over. They said they were going to Afghanistan. I say they are 18 and can die for their country, why can't they go to bar? That is the sad part of it. In 15 years I have never had any trouble. There are very few minors in there, usually with parents. It's sad to do a sting in December. It's not wrong to do it, but boundaries need to be stopped.

Livelihoods are involved, and jobs hard to come by. I see it as trying to get these kids into a secure building so that they are not getting into trouble. This is better than college house parties. I'm not here to break laws, just to be a businessman.

Thank you for taking the time and letting me present. I need to do this for myself and for other license holders in Alamosa. Videos are good, videos are bad. Sting operations are good, sting operations are bad.

Mr. Schwiesow turned the hearing back to Council for deliberation and decision. If Council determines that the violation occurred, then a penalty may be imposed. If it is determined that the violation did not occur, then Council should dismiss the charge.

Councilor Romero stated that he didn't see any money transacted or see where the beverages were delivered.

Councilor Lucero believed that a violation did obviously occur. He questioned the safeguards in place to prevent this. Ms. Scott says that she did not purposely conceal the marks. Both she and Mr. Trujillo are trustworthy individuals. Liquor licensees are held to a higher standard. We can't change this because the economy is tough.

Councilor Gillaspie agreed that there was a disconnect between the front door and bartenders. The bartender's perception was to take care of business. This is clearly a violation.

Mayor Rogers added that she saw no intent behind the violation, but Council's job is to determine whether or not the violation occurred, and the evidence points to that.

Councilor Tuggle said that she did not see a disconnect, and felt that they had a good system. The video is not clear as to who initiated the order. Ms. Scott may have unintentionally covered up the marks on her hands. We don't know who ordered the drinks, and the video appears to show the drinks being given to the 21 year old. It is common for one person to order more than one drink. She did not believe it was intentional, but the decision is whether or not there was a violation.

Councilor Johnson said that it seemed clear that Mallori ordered the drinks, but appears that Britney paid. Whether her hand was covered or not, it is the responsibility of bartender to ensure that underage persons are not served.

Councilor Tuggle added that she respects that they do have a system in place when entering. Clearly there was an effort made to be careful.

Mayor Rogers added that the video makes it more confusing.

Councilor Lucero stated that he could see that they were busy, and questioned what could be gained from the video. We don't know the intent, and don't know who ordered. The only thing to go by is the sworn testimony. He said that he thinks Britney looks 16, and would have asked for her ID. But he didn't think Mr. Trujillo should suffer too.

Councilor Tuggle added that this will not be the first or last bar to have a busy night. Most bars do allow 18-year-olds in. The issue won't go away.

Mr. Farish reviewed the penalty guidelines. A first offense within a year is a written warning up to a 15 day suspension. In the past Council has imposed three days served with twelve in abeyance.

It was moved by Councilor Lucero and seconded by Councilor Gillaspie to determine that there is evidence to support that a violation occurred. On discussion, it was clarified that this decision is based on a preponderance of the evidence. On the roll call the vote was ayes six, nays none. The motion carried.

It was moved by Councilor Romero that a written warning be given with 15 days suspension held in abeyance for one year. The motion died for lack of a second.

It was moved by Councilor Gillaspie to impose a 10 day suspension with 5 days served and 5 held in abeyance for one year. The motion died for lack of a second.

It was moved by Councilor Lucero to impose a 15 day suspension with 3 days served and 12 held in abeyance for one year. The motion died for lack of a second.

It was moved by Councilor Johnson and seconded by Councilor Tuggle to impose 10 days suspension, with 2 days served concurrently within the next 30 days and 8 days held in abeyance for one year. On the roll call the vote was ayes four (Johnson, Lucero, Tuggle, Rogers), nays two (Gillaspie, Romero). The motion carried.

ADJOURNMENT. The meeting adjourned at 8:54 p.m.

Judy A. Egbert, City Clerk

Kathleen J. Rogers, Mayor