

Investigative materials released

LAWSUIT CLAIMS COUNTY ACTED IMPROPERLY

by Jan Anderson, editor

Claims by an illegal immigrant from Mexico that he was raped by other inmates in the Jefferson County jail in 2013 while awaiting deportation were never prosecuted. Investigations by the county and by federal Homeland Security both found no evidence to support the claims.

The local investigation “and a second investigation conducted by Homeland Security conclude that there was no cover up, videos were not deleted nor blocked out, and a crime was not committed against” the immigrant, said Jefferson County Attorney Mathew Johnson in closing the investigation in July.

Nevertheless, the case lingers, and will likely continue to be an issue at least until September 2017. That is when a civil suit

filed against the county is scheduled for trial in federal court.

CLAIMS OF AN IMPROPER INVESTIGATION

The attorney for immigrant Audemio Orozco-Ramirez maintains that the county failed to protect his client and then failed to conduct a proper investigation.

Calling the questioning of other inmates “very cursory,” attorney Shahid Haque-Hausrath said rather than what the investigative materials show, what they do not show is important.

A motion by Haque-Hausrath for the release of all of the investigative materials was granted by the court, but the attorney says the materials did not include interviews with all nine of the inmates in the pod with his client.

Video used in the investigation

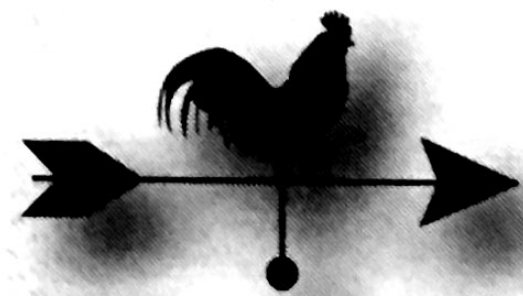
from the jail cell where his client was held does not show the alleged rape. Investigators say it is because the camera equipment is triggered by motion sensors and all ten of the inmates in the pod were unmoving and asleep at the time Orozco-Ramirez claims the rape occurred. Haque-Hausrath says the jail ought to be able to provide footage during that period that shows a time stamp with a black screen.

Asked in a *Monitor* interview whether he was alleging collusion or conspiracy of some sort by the investigators, Haque-Hausrath said, “I just don’t know.”

He added that because the investigations were conducted by parties with responsibility for the safety of his client “there was no incentive for them to find that a rape happened.”

He called what he described as a built-in bias “troubling.”

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Weather Statistics

Date	H	L	Precip
Tues	51	39	.00
Wed	52	32	.02
Thurs	35	20	.09
Fri	36	13	.00
Sat	38	17	.00
Sun	39	30	.02
Mon	30	18	.38

Weather statistics reported here are not the official National Weather Service records.

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Those comments echoed published statements by Haque-Hausrath within a month of the alleged rape. In an interview with the Great Falls Tribune he reportedly questioned the propriety of allowing the investigation to be carried out by the county and Homeland Security.

GETTING DOWN TO THE SOURCE

After Johnson announced the closure of the investigation, the *Boulder Monitor* requested the investigative materials.

"Orozco-Ramirez has filed a civil suit against the county that could potentially result in costs for Jefferson County taxpayers. In addition, in published interviews he has alleged misconduct by Jefferson County officials. The public has a right to know and to ensure its elected officials are held accountable for their actions," said the *Monitor* in a letter to Johnson seeking release of the materials.

Johnson said the materials remained confidential criminal justice information and any release would have to come from a district court ruling. He petitioned Judge Loren Tucker to review the requested materials and decide what could be released.

As he had when attorney Haque-Hausrath requested the same materials, the judge ordered the release with the provision that the names of other inmates not be published. They had not been proven to have committed any crime, he noted.

Included in the released materials were videotapes from the jail pod where Orozco-Ramirez was held, recorded interviews with cellmates, a recorded interview with Orozco-Ramirez, medical reports from examinations of Orozco-Ramirez, lab reports from both the state crime lab and a private lab about examinations of clothing and bedding used by him during his stay at the jail, a document and information request from Homeland Security, information on an inspection of the jail by Homeland Security, a report by a corrections expert hired by Homeland Security to review the county investigation, jail incident reports, evidence-tracking materials, summaries of interviews by county officers, shift notes by detention officers on duty during his stay, reports from other agencies who interviewed inmates regarding the case, reports from the Department of Homeland Security office of Civil Rights and Civil Liberties, and the contract with an outside company hired to check the operation of jail security cameras along with video of camera tests.

The *Monitor* received the materials Thanksgiving week and has been reviewing the materials and associated materials since.

JAIL VIDEO

WHAT THE JAIL VIDEO SHOWS

Videos of the jail activities include a time and date stamp. For the day when Orozco-Ramirez

says he was raped, the ten-bed pod was full. All ten beds are visible on the video. Orozco-Ramirez can be seen going to bed in a lower bunk when several inmates were still up, playing cards. Eventually all of the inmates go to bed and there is no video for a couple of hours that include the time Orozco-Ramirez says he believes the rape occurred.

The next morning Orozco-Ramirez joins other inmates in retrieving breakfast, setting out cups of coffee for others and then taking his meal to his bed. Throughout the day, most of the video shows Orozco-Ramirez on his bed except for meals. That night, while other inmates are still milling about and playing cards or games, Orozco-Ramirez goes to bed. He can be seen lying down there.

The remaining video for Orozco-Ramirez's stay shows him spending most of his time on his bed except to retrieve meals. On the final night, he moves to a vacated top bunk.

The video also shows Orozco-Ramirez using the telephone a few times.

WHAT THE JAIL VIDEO DOES NOT SHOW

There are gaps periodically when there is apparently no motion in the pod, mostly during the night. When an inmate gets out of bed to use the bathroom, the video is triggered after a delay and begins when the inmate is already out of bed and part way to the bathroom.

There is no evidence on the video of the alleged rape or of anyone trying to block the camera, as Orozco-Ramirez claims happened during the rape. There is also no evidence of inmates gathered around his bunk, as he claims happened during the rape.

In addition there is no clear evidence of any change in Orozco-Ramirez's behavior after the alleged rape, and no evidence of him trying to report the rape to detention officers who enter the pod.

Phone calls made by Orozco-Ramirez were recorded, and translators found no evidence he tried to call anyone to report the rape. They also found no evidence he said anything to his wife in repeated phone calls during his stay.

WHAT HIS ATTORNEY SAYS

The absence of security camera footage for the relevant time is troubling, says Haque-Hausrath. The jail should be able to provide raw footage that shows no recording during that time, he says.

His client told investigators to look at the videos. "He insisted footage would show it," says the attorney.

It is a mistake to make any judgments based on Orozco-Ramirez's behavior on the video, says the attorney. Rape victims do not all act the same and do not always act as one might expect, he says.

"These are things that law enforcement often gets wrong and the average person misunderstands," says Haque-Hausrath.

The fact that Orozco-Ramirez never told his wife of the rape

Homeland Security finds claims 'unsubstantiated' but says some changes needed at jail

by Jan Anderson, editor

According to Jefferson County Sheriff Craig Doolittle, all of the changes at the jail recommended by a corrections expert hired by the federal Homeland Security agency to investigate the Orozco-Ramirez claims have been adopted.

The 18-page report concluded the allegations of being drugged and sexually assaulted were "not substantiated."

The reviewer also wrote, "Based on my reviewed [sic] of the JCSO's Investigation report of the alleged sexual assault, it is my opinion that the JCSO conducted a thorough investigation."

Other practices at the jail needed improvement, though, according to the reviewer.

Among the recommended changes:

1. Standardize the uniforms of jailers and require officers to wear name identification badges. While officers already wore uniforms with the sheriff's office emblem affixed, officers were allowed to choose the color of their shirts, which the reviewer said might have confused the detainee. Name badges were not previously required.

2. Revise intake screening to evaluate whether the detainee is developmentally disabled, gay, lesbian, bisexual or other category with risk of

sexual victimization.

3. Revise the jail classification system to separate inmates based on safety concerns.

4. Issue the inmate handbook in Spanish to Spanish speaking inmates and provide training to staff on identifying detainees with limited English proficiency.

5. Provide better access to a Department of Homeland Security list of free legal services providers and others.

Some of the recommended changes bring the jail into compliance with standards that are usually applied only to detention centers who house immigration detainees for 72 hours or more, standards that do not necessarily strictly apply to the Jefferson County jail, noted the reviewer.

Jefferson County Sheriff Doolittle said the jail made all of the recommended changes and reported those to the immigration service.

In addition, based on recommendations and with the cooperation of the video security camera providers, the cameras were reset so that recordings include images for a few seconds before motion triggers the cameras. Previously, the cameras began recording after the motion was detected.

during phone calls is also not proof the rape never occurred, he says. "Victims of sexual assault don't always go immediately and tell their spouse," he says.

WHAT INVESTIGATORS SAY

Following the alleged incident, the county hired an expert to come in and evaluate the security camera system. County records show a factory technician was paid \$5065 to travel to the jail and test the system. That test included video that demonstrates that attempts to cover the camera would have triggered the system. The inspection concluded that the system was working as it was supposed to, triggered by appropriately sensitive motion detectors, said investigators.

INMATE INTERVIEWS

WHAT OTHER INMATES SAID

By the time Orozco-Ramirez reported the alleged rape, some of the inmates who shared space with him in Boulder had moved on to other jurisdictions. Investigative materials included recorded interviews conducted at jails in Billings, Missoula and Toole County in addition to Boulder.

Interviews with six inmates were provided to the *Monitor*. All interviewees described Orozco-Ramirez as quiet, respectful, someone who spent almost all of his time on his bed, and someone who spoke very little English. Some said he spoke enough English to communicate that he was being deported, had been working in the oil fields in Eastern Montana and had a family in Sidney. In addition most said they did not believe Orozco-Ramirez showed at all during his time at the jail. They also said the pod was

close quarters and they believed they would have been aware if a rape had occurred.

One inmate acknowledged he already knew what the interview was going to be about; he had heard that "the Mexican" had claimed he was raped, he said. Matching a description of a skinny guy with missing teeth given by Orozco-Ramirez as an inmate involved in the rape, the inmate denied the incident happened and told the interviewing detective to "follow my steps" in the jail video.

Another inmate said he did not believe anything happened, saying it would have to have been "very subtle" if anything went on. He acknowledged that it might have been possible for something to have happened when Orozco-Ramirez was showering or changing, and Orozco-Ramirez might have been targeted because inmates knew he was going to be deported, but he added skeptically, "There wasn't a whole lot of hiding room."

WHAT HAQUE-HAUSRATH SAYS

Orozco-Ramirez's attorney noted that the released interview tapes did not include all of the inmates in the pod. While nine others were in the pod with Orozco-Ramirez, the released information only included six.

He questioned the procedure used to keep the inmates from coordinating their stories, pointing to the comments by one inmate about "the Mexican."

He called the questioning in the inmate interviews "very cursory" and said a detective with the Jefferson County jail seemed to have the attitude that nothing happened. When questioning the "skinny guy," the detective downplayed the report by Orozco-

Ramirez, said Haque-Hausrath. "They almost chuckle about it," he said.

Haque-Hausrath also faulted the interviewer in Billings for not pressing further on the acknowledgement that if an incident did occur it might have been because inmates knew of the pending deportation.

"I would have liked to have probed further," he said. "There were more questions I would have asked."

WHAT INVESTIGATORS SAY

The correctional expert hired by Homeland Security found, "It is very unlikely that an assault as described by [Orozco-Ramirez] would have occurred without an inmate seeing or hearing something. It is important to note that the nine inmates housed in the unit were serving different types of sentences and lengths of time and would have no motivation for covering up for another inmate."

Investigators point to the consistency in the reports by the inmates, even though some had been moved to other jails and were interviewed by other agencies.

MEDICAL AND LAB EVIDENCE

Orozco-Ramirez did not report the alleged rape at all while in Montana. As soon as the rape allegation was first lodged by Orozco-Ramirez, after he had been transported to an Idaho detention facility, he underwent a sexual assault examination. A nurse said he reported abdominal tenderness and soreness from the rape. She noted, "He does recall several people standing around his bed, blocking the camera." She also noted he reported he slept sitting

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up against the wall on the night after the alleged rape and "felt groggy that whole day and feels he was drugged." The nurse noted some redness "consistent with rectal penetration" but also said the findings did "not confirm or negate sexual assault." Drug screening results were negative.

The rape kit was examined at the Montana state crime lab and no semen or blood was detected. Tests of bedding and clothing worn by Orozco-Ramirez did not lead to any findings but a stain in the front of his underwear required further investigation.

At a private lab, the stain was tested and found to contain DNA from Orozco-Ramirez and one other person. Further testing led to the conclusion that the second sample matched an inmate from the same pod, but investigators said it was determined to be a remnant from a previous use that had not fully washed out in the laundry.

Haque-Hausrath said he is "interested in hearing more about that" because it is not clearly in the lab report. He also said it will be something he will be exploring as discovery in the civil suit continues.

THE MOTIVES

The correctional expert's report asks, "If the alleged assault did not occur, what could have been the motivation for [Orozco-Ramirez] reporting the alleged assault?"

The expert notes Orozco-Ramirez knew he was facing immediate removal from the country with a 20 year restriction on returning. That would have meant separation from his wife and seven children, aged 15 years to 5 months.

"This situation could provide extreme motivation for [Orozco-Ramirez] to find a way to stay in the United States and significantly contribute to him being emotionally distraught."

As a result of filing the claim, Orozco-Ramirez was able to obtain a "u-visa" that has allowed him to stay in the U.S. as the case unfolds, investigators noted.

Investigators also question why Orozco-Ramirez made no attempt to report the alleged rape to his wife, to jail personnel, or to a bilingual guard while being transported to Idaho.

HIS ATTORNEY'S RESPONSE

Haque-Hausrath said there might be plenty of explanations. Maybe Orozco-Ramirez did not know the guard was bilingual. Maybe there were other prisoners in the van and he wanted to avoid embarrassment. Maybe he was scared of retribution by other inmates at the jail. Maybe he was under extreme stress.

"It's almost victim blaming," Haque-Hausrath said of the investigative conclusions.

If a woman were grabbed on the street and raped but failed to report it for several days and evidence was hard to find, it "would not lead you to say that the person's flat out lying," he said.

As for the incentive of getting a u-visa, Haque-Hausrath said Orozco-Ramirez had no knowledge such a thing existed when he made his claims. "I know that because I was the one that told him about the u-visa," said the attorney.

The attorney said his client cooperated with authorities by interviewing and insisted that his story would be confirmed by the security camera footage.

That interview, also part of the materials released to the Monitor, was done through an interpreter. In it Orozco-Ramirez said he did not report the rape immediately because he was scared. He said he was on guard all night, armed with a plastic spoon that he sharpened with his teeth. He said he trashed the spoon when he left.

Twice during the interview Orozco-Ramirez asked his interpreter whether he should have an attorney. He also signed a release form for his medical records from Idaho without having it read or translated, even though that was offered.

The fact that his client was handcuffed during the interview and was not afforded an attorney is more evidence that the investigation was improper, says Haque-Hausrath.

CONCLUSIONS

Haque-Hausrath says investigators failed to do a thorough job and concluded that his client was lying without properly investigating.

When Johnson announced the closure of the investigation, his letter said, "My review of the case concludes that there is not sufficient evidence to support the allegations of AR. My review coincides with the assessment of an expert hired by Homeland Security which conducted their own investigation. The reports and investigation are thorough."

Haque-Hausrath says it was inappropriate for Johnson to include in that announcement that "a crime was not committed against AR." Just because the rape cannot be proven does not mean his client lied, he says.

He added that Johnson was mischaracterizing the Homeland Security findings, which called the allegation Orozco-Ramirez was drugged and raped "not substantiated." The expert defined that as something where "investigation produced insufficient evidence to make a final determination as to whether or not the event occurred."

Elsewhere in the report, however, the expert wrote that the investigation by the county appeared to be thorough and that she concurred with the "preliminary finding that the alleged rape did not occur."

Johnson defends the county investigation and his decision not to prosecute. With evidence failing to provide proof of the alleged rape, and with much of the evidence indicating it is unfounded, Johnson says there is no way he could prevail at a trial of any one accused of the rape.

Haque-Hausrath says he intends to continue to pursue the matter.

Whether or not a trial in federal court ever occurs, the matter is now out of the hands of county officials. The county's defense and any decisions about how to pursue the case lie in the hands of the county's insurance provider.