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In December 2018, the New Bedford Police Department referred an investigation to the District Attorney's Office involving missing pine beams donated to the Schooner Ernestina that had been stored on City of New Bedford property in Freetown. Questions had been raised regarding what happened to the pine beams, and if anyone, including city employees, had committed a crime.

During its investigation, the District Attorney's Office reviewed dozens of emails produced by the City of New Bedford; reviewed numerous witness statements; reviewed the Investigative Report prepared by the City of New Bedford's Director of Human Resources; interviewed several key witnesses; reviewed investigative reports prepared by the New Bedford Police Department; and obtained and reviewed bank records.

Our investigation revealed the following:

In 2009, during the demolition of Fairhaven Mills in New Bedford, the private developer of the property donated several dozen 24-foot "southern yellow pine" beams to a non-profit organization dedicated to the restoration of the historic Schooner Ernestina. The City of New Bedford agreed to store the salvaged beams on city property.

In July 2011, the salvaged beams were stored at the New Bedford water treatment facility in Freetown (Quittacas Facility) when members of the Schooner Ernestina group examined the wood.

In August 2013, the Schooner Ernestina group inquired with the new administration about the salvaged beams. The City of New Bedford informed the group that the wood still was stored at the Quittacas Facility.

In August 2015, a 26 year old resident of Freetown named Shawn Davis (Davis) asked the City of New Bedford if he could acquire some of the pine beams stored at the Quittacas Facility. Davis made several inquiries about the wood. This included an expressed willingness to engage in a public bidding process for the wood. Davis had become aware of the beams when he was walking his dog on a nature trail adjacent to the Quittacas Facility. The beams were stored

outside and were exposed to the elements. On November 19, 2015, Ron Labelle, who then was Director of the New Bedford Department of Public Infrastructure, told Davis that the wood was not available to the public.

In December 2015, the Schooner Ernestina group again inquired with city leaders about the salvaged beams to be used in the ship restoration. Members of the group traveled to the Quittacas Facility, examined the wood, and took photographs of the wood. At that point, the group informed the city that it was happy with the beams and that the wood would be used to replace the aft deck of the Ernestina. In April 2016, individuals from the Schooner Ernestina group again examined the beams at the Quittacas Facility and told staff at the plant that they still wanted the wood for the Ernestina deck.

In August 2016, Davis again expressed an interest in purchasing the beams stored at the Quittacas Facility. Davis called two separate administrative employees at the Department of Public Infrastructure. At that time, Ron Labelle had retired and Zeb Arruda was Director of the Department of Public Infrastructure. Arruda directed Davis's inquiries to Charles Kennedy, a city employee at Quittacas.

On September 8, 2016, Kennedy examined the pine beams with Davis. At that point, Davis proposed to remove the wood from city property at his own expense. He told Kennedy he wanted the wood to build a house. Kennedy relayed Davis's proposal to Arruda. In an email to Arruda, Kennedy stated that the Schooner Ernestina group lost interest in the beams because of excessive nails and bolts in the wood. Arruda then told Kennedy to "make it happen." Kennedy, with the approval of Arruda, gave the pine beams to Davis at no cost. The city's decision to give the wood to Davis was in conflict with the Schooner Ernestina group's communications to the city that it intended to use the beams. The city did not pay for the wood's removal and received no compensation for the beams.

In the weeks that followed, Davis kept Kennedy apprised of his efforts to remove the wood from the Quittacas Facility. Eventually, and without informing Kennedy, Davis sold most of the pine beams to a wood salvager from the south named Lee Cloninger for \$13,000.00. Cloninger removed the beams from the Quittacas Facility on or about November 14, 2016, and he transported the beams to Mississippi. On or about November 17, 2016, Davis sold the remaining pine timbers to the Cataumet Sawmill in Falmouth for \$5,500.00. The sawmill took the remaining wood off city property at that time.

In January 2017, the Schooner Ernestina group called the city to make arrangements to pick up the pine beams from the Quittacas Facility because the shipyard was ready to use the beams. Plant personnel told the group that the wood was gone and was taken by someone to build a house. The Schooner Ernestina group was upset that the beams were not available for their restoration project. However, according to a representative from the Massachusetts Department of Conservation and Recreation, the shipyard was not relying on the salvaged beams as essential material for the project. The project has moved forward without the salvaged beams.

Davis was questioned as to why he sold the beams after he had told Kennedy he wanted the wood for a home building project. Davis stated that his house deal had fallen through. He was

looking at property in Lakeville, which eventually was sold to another party on March 10, 2017. This was confirmed by assessor records from the Town of Lakeville. Davis gave the \$18,500.00 he received from the sale of the beams to his father, Bruce Davis. No city employee received any money in return for giving the wood to Davis.

Our investigation focused on whether a city employee or Davis stole the pine beams that had been pledged for use in the Schooner Ernestina restoration project. However, the crime of larceny involves the taking of property belonging to or possessed by another, with an intent to steal the property. In this matter, we discovered no evidence that there was an intent to steal by any city employee or by Shawn Davis. There is no evidence that Kennedy, Arruda, or any city employee had any connection or relationship to Davis prior to Davis expressing an interest in the beams in 2015. Similarly, there is no evidence that Kennedy, Arruda, or any city employee received money or any financial gain related to Davis's sale of the beams. The release of the Ernestina wood to Davis's control in late 2016 appears to be the product of a lack of communication or understanding of the history of these beams and the Schooner Ernestina group's continued interest in the beams.

It is reasonable to conclude that the city employees were trying to dispose of wood, at no cost to the city, that had been on city property for more than six years. We are aware of no evidence to the contrary. Davis originally indicated a willingness to buy some of the beams. However, his persistence resulted in him obtaining the beams only at the cost of their removal. Although it is concerning that Davis took advantage of the situation and profited from the sale of the beams, he was going to benefit from his acquisition of the beams whether he built the house or disposed of them in another manner. However, his conduct does not constitute a crime.

While it would have been preferable for city employees to communicate effectively with one another to know the exact status of the beams and the Ernestina group's continued interest in using them, there is no evidence of criminal wrongdoing by anyone.



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