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M E M O R A N D U M

To: District Attorney Rod Underhill
From: Senior Deputy District Attorney Brian Davidson
cc: First Assistant to the District Attorney Jeff Howes; Chief Deputy District Attorney Chuck Sparks; Chief Deputy District Attorney Don Rees
Date: November 10, 2014
Subject: Reynolds High School shooting investigation related to potential charges as they relate to access to firearms and possession of marijuana

The purpose of this memo is to review certain relevant facts associated with the June 10th, 2014 shooting at Reynolds High School, which resulted in the tragic death of Emilio Hoffman and the wounding of Todd Rispler, to determine if any criminal prosecution is possible/appropriate. As detailed below, and as previously discussed with you, no criminal charges will be filed against Michael or Lucas Padgett as a result of the school shooting perpetrated by Jared Padgett. Although Jared Padgett had armed himself with firearms owned by Michael and Lucas Padgett, the facts are insufficient and/or an affirmative defense is present, both of which result in a determination that the state cannot or should not proceed with criminal prosecution. Further, Lucas Padgett was found in possession of marijuana but for reasons discussed below that possession will not be criminally prosecuted.

SUMMARY OF RELEVANT INVESTIGATIVE FACTS

On the morning of June 10th, 2014, 15 year-old freshman Jared Michael Padgett entered the gymnasium building of Reynolds High School armed with an AR-15 rifle and a .25 caliber semi-automatic pistol. Once inside, Jared Padgett shot fellow Reynolds student Emilio Hoffman and PE teacher Todd Rispler with the rifle. Hoffman died of his injuries and Rispler suffered a grazing wound to his hip. Jared Padgett then used the rifle to take his own life.

Once the scene was secured and Jared Padgett's identity was determined investigators focused on concern of the possibility that there might be additional victims or accomplices at Jared Padgett's home. Officers were dispatched to start observing the Gresham home where Jared Padgett lived with his father Michael Padgett and his older brother Lucas Padgett. The officers observed a male and a female run from the residence carrying backpacks. The two got into into a white BMW sedan and drove away. Gresham Police Department Officer Matthew Hardy conducted a stop of the vehicle after observing the driver commit a traffic infraction. Officer Hardy identified the driver as 23 year-old Lucas Padgett and the passenger as his girlfriend

Phoenix Irons. Portland Police Detective Brett Hawkinson arrived shortly thereafter and contacted Lucas Padgett and Phoenix Irons at the car.

Detective Hawkinson gave the two some limited information on what had occurred at the school and asked if he could search the car. Lucas Padgett responded, "Not without a warrant." Detective Hawkinson replied that he was only interested in searching for items that might relate to the shooting and was not interested in searching for marijuana or anything of that sort. Lucas Padgett subsequently gave Detective Hawkinson his verbal and written consent to search the car. The search of the car revealed a black backpack that contained a clear plastic container with approximately 5 ounces of marijuana.

Through further interviewing of Lucas Padgett, investigators were able to learn that he and Jared Padgett shared a bedroom. Further, Lucas Padgett was the owner of an AR-15 style rifle that he kept in a "Pelican" brand hard gun case. According to Lucas Padgett the case was always kept locked with one or more padlocks with the gun inside and was stored in the bedroom he shared with Jared Padgett. Lucas Padgett further told officers that Jared Padgett did not have a key to the case. A search warrant for the Gresham residence was executed later that evening. During the search, investigators discovered the gun case still under lock. When they cut the lock away the case was empty. It was determined by investigators that the rifle used by Jared Padgett in the shooting was the AR-15 owned by Lucas Padgett.

During the afternoon of June 10th Multnomah County Sheriff's Office Detective Jay Penthany was able to locate and interview Jared Padgett's father, Michael Padgett. When Detective Penthany asked Michael Padgett about Jared Padgett, Michael Padgett described his son at length. Among other things Michael Padgett described that Jared Padgett liked the military and was a member of Junior Reserve Officer Training Corps or JROTC. Michael Padgett went on to tell Detective Penthany that his son liked guns and that he would take him out to Estacada to go shooting. This occurred as recently as a couple weeks previously. When asked what guns Michael Padgett had at the house he replied that he had several rifles and a couple of handguns, including a .25 caliber pistol, all of which were typically stored in his bedroom closet. When asked how they were secured he responded, "I lock my door, my bedroom door...." When later shown a photo of the .25 caliber pistol recovered from Jared Padgett's body, Michael Padgett stated that he believed it to be his gun. Michael Padgett also reported that Jared Padgett had recently received a .22 caliber rifle for his birthday.

On September 11th, 2014 Troutdale Police Department Detective Greg Vining contacted Michael Padgett by phone and conducted a follow-up interview. Michael Padgett told Detective Vining that Jared Padgett did not have permission to access the guns in Michael Padgett's bedroom. Detective Vining asked for details about Michael Padgett's practice of locking his bedroom door to secure his guns. Michael Padgett stated that when leaving, he would lock his bedroom door from the inside and close it. He referred to the lock on his bedroom door as an "interior rotational lock" that required a key to open it from the outside. He further stated that Jared Padgett did not have the key.

On September 30th, 2014, Detective Vining contacted Michael Padgett again. Michael Padgett told Detective Vining that he had no idea how Jared Padgett got into his bedroom and that his

son had never shown any previous interest in getting into Michael Padgett's room or at his guns before. Detective Vining requested Michael Padgett's consent to enter his residence for the purpose of examining and taking additional photographs of his bedroom door lock. Michael Padgett declined to give consent at that time. On October 1st, 2014 Multnomah County District Attorney's Office Investigator Steve Ober contacted Michael Padgett and repeated the request to enter his residence in order to examine and photograph his bedroom door locks. Michael Padgett again declined. On November 3rd, 2014 Michael Padgett, accompanied by his lawyer, allowed Investigator Ober into his home to examine and photograph his bedroom door. Investigator Ober observed that the bedroom door did in fact have a basic lock on it that could be unlocked from the outside with the use of a rudimentary key. Investigator Ober determined that the locking mechanism functioned correctly and was effective in securing the door when engaged.

POTENTIAL APPLICABILITY OF THE CRIMINAL CODE

Firearm Related Crimes Analysis

The shooting at Reynolds High potentially implicates two criminal code provisions in regards to Michael and Lucas Padgett. The first is Multnomah County Code Section 15.066 - Endangering a Child by Allowing Access to a Firearm. The second is Oregon Revised Statute 163.195 - Recklessly Endangering Another Person.

Multnomah County Code Section 15.066 reads as follows:

- (A) A person commits the offense of endangering a child if a person fails to prevent access to a loaded or unloaded firearm by a minor without the permission of the person, a parent or guardian, when the person knew or reasonably should have known that a minor could gain access to the firearm.
- (B) Subsection (A) of this section does not apply when:
 - (1) The minor obtains the firearm as a result of an illegal entry into any premises under the person's custody or control.
 - (2) The firearm is kept in a locked container or in a location that a reasonable person would believe to be secure from entry by the minor.
 - (3) The firearm is locked with a device that has rendered the firearm inoperable and is designed to prevent minors and unauthorized users from firing the firearm. The device may be installed on the firearm, be incorporated into the design of the firearm, or prevent access to the firearm.
- (C) Penalty: Violation of subsection (A) of this section is punishable by incarceration for not more than 10 days and a fine of not more than \$500.

While the validity of Multnomah County Code Section 15.066 has been challenged in court and its legality as applied to some municipalities, including Gresham, in Multnomah County is still somewhat of an open question it is not necessary to decide that issue, at this time, since the matter is resolved on the facts without the need of a constitutional analysis relative to the applicability/availability of the County Code.

Based on the evidence, Lucas Padgett could not be prosecuted for a violation of section 15.066. While Lucas Padgett did fail to prevent his minor brother, Jared Padgett, from accessing his firearm without permission, subsection (B) provides Lucas Padgett with an affirmative defense. Because the uncontroverted evidence is that Lucas Padgett kept his rifle in a "locked container," he cannot then be prosecuted for a violation of this code provision.

For similar reasons, Michael Padgett could not be prosecuted pursuant to Multnomah County Code Section 15.066. Michael Padgett reported that he kept his guns in his room and that he secured the room by locking his bedroom door when he left. Michael Padgett reported that the door could only be unlocked with a key, to which he did not allow Jared Padgett access. Investigator Ober was able to confirm that there was in fact a lock on the door with a rudimentary key to unlock it. It is believed that pursuant to the available facts the locked room would be found to be a "location that a reasonable person would believe to be secure from entry by the minor" per subsection (B). This provides Michael Padgett with a complete affirmative defense under the law.

The second criminal code provision potentially implicated by the shooting is Oregon Revised Statute 163.195 – Recklessly Endangering Another Person. That statute reads:

- (1) A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.
- (2) Recklessly endangering another person is a Class A misdemeanor.

ORS 161.085(9) defines the term "recklessly" as follows:

"Recklessly," when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

In order to successfully prosecute either Michael or Lucas Padgett for Recklessly Endangering Another Person, the State would be required to prove beyond a reasonable doubt that they were aware of and consciously disregarded a substantial and unjustifiable risk that amounts to a gross deviation from the standard of care a reasonable person would observe in the situation. The relevant risk would be that Jared Padgett would develop the intent to commit murder, subsequently defeat the measures Michael and Lucas Padgett had taken to secure their guns, and then shoot people at his school. There was nothing gleaned during the investigation that would have indicated to anyone prior to the day of the shooting that Jared Padgett was a danger in that regard. Michael Padgett stated that his son had a general interest in firearms but had never previously shown any special interest in his father's guns. His general interest in guns, by itself, would not suggest to a reasonable person that he was a substantial risk to commit the acts he engaged in on June 10th. As a result, the State would not be able to prove beyond a reasonable

doubt that either Michael or Lucas Padgett were aware of and consciously disregarded a substantial and unjustifiable risk of serious physical injury to another person.

Marijuana Related Crime

Lucas Padgett's possession of marijuana potentially implicates ORS 475.864 - Unlawful Possession of Marijuana or Marijuana Product. The statute reads in relevant part:

- (2) It is unlawful for any person knowingly or intentionally to possess marijuana or marijuana product.
- (3)(a) Unlawful possession of four avoirdupois ounces or more of marijuana is a Class C felony.

Marijuana was discovered in Lucas Padgett's car during a search conducted by Detective Brett Hawkinson. A search of this type typically requires consent or a search warrant signed by a judge. The search warrant process requires the officer to draft a search warrant affidavit and then present the warrant to a judge for approval. This can be time consuming and typically takes about one to several hours. As mentioned, this type of search can also be lawfully conducted pursuant to valid consent from the owner of the car. Because investigators were primarily concerned with rapidly identifying potential accomplices or other victims in the shooting, Detective Hawkinson chose to seek consent to search from Lucas Padgett immediately at the scene of the stop rather than wait a relatively significant period of time to pursue the search warrant. Because Lucas Padgett seemed initially resistant, or unwilling, to giving consent Detective Hawkinson sought to reassure him that law enforcement was only interested in evidence that related to the shooting and specifically mentioned marijuana as something law enforcement was not concerned with given the circumstances. With this assurance in mind, Lucas Padgett gave his consent to search and the marijuana mentioned above was located. The Court of Appeals of Oregon recently ruled in State v. Marshall, 254 Ore App 419 (2013), that when a law enforcement officer makes an offer of immunity in order to secure consent to search, that offer essentially forecloses the possibility of using that evidence against the party who gave the consent. In the instant matter, Detective Hawkinson effectively promised Lucas Padgett immunity for any marijuana that might be found if Lucas Padgett would give consent to search the car for evidence that related to the shooting. Relying on that promise, Lucas Padgett gave consent. The Marshall decision would require suppression of the marijuana as evidence. It goes without saying that without the discovery of the marijuana, there could be no successful prosecution of Lucas Padgett for Unlawful Possession of Marijuana.

CONCLUSION

For the above stated reasons, the facts do not support a criminal prosecution against Michael or Lucas Padgett for their conduct associated with the events of June 10th, 2014.