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Colonel Steve Sellers, Chief
Albemarle County Police Department
1600 5th Street, Suite D
Charlottesville, VA 22902

RE: May 21, 2013 Crozet Shooting

Dear Steve:

I have received and reviewed the information from Detective James Hope regarding the above matter. I appreciate the time and effort made by the Albemarle County Police Department to provide me with the necessary details so that I could timely complete my review. The following is my legal analysis of the matter.

Facts

Just after 10:00 a.m. on May 21, 2013 Albemarle County Police were dispatched to a shooting in the Crozet area of Albemarle County. Officers arrived to find a 10 year-old female lying behind a loveseat in the living room of the residence, the victim of an apparent gunshot wound. Western Albemarle Rescue Squad arrived shortly thereafter and confirmed that the child was dead. The investigation revealed the facts as follows.

On the morning of May 21, the adult members of the household left home to attend to business. It was not unusual for the children of the household to be left at home to wake themselves, attend to their needs, and begin school work on their own. The children ranged in age from 9 to 15 and were homeschooled. Two of the children had talked to their mother after they woke and informed her that everything at home was fine. The children were described as having normal sibling relationships with no indication of a disagreement prior to the incident.

The night before the incident, one of the children, a 13 year-old male, had been cleaning his firearm in the living room prior to going to bed. The firearm, a shotgun, had been given to him by a relative the year before. The firearm was not working properly and, in an attempt to repair it, he had taken it apart, cleaned it, and believed he had fixed the problem. He had left the firearm with the safety on overnight. The morning of the incident, the boy returned to the living

room and to the firearm and was making a modification. In making the modification and again repairing the problem the safety was disengaged. The boy was cycling shells through the firearm to make sure that it was in proper working order. None of the repairs or modifications would have required that his finger be on the trigger of the firearm. The boy had removed two shells from the firearm but had forgotten to remove the shell loaded in the chamber. In cycling the shells to check functioning, the firearm discharged.

At the time of discharge, the firearm was pointed in the direction of the loveseat and down a hallway. The boy's 10 year-old sister was standing behind the loveseat where her younger sibling was seated. The 13 year-old did not recall pulling the trigger but acknowledged that his hand would have been near the trigger at the time. He had raised the firearm to the level of his face in order to examine it prior to its discharge. After the gun discharged, the boy ran to get his older sibling. The two went to a neighbor's house. The neighbor called 911 and the children called their mother. When they returned to their house, the older sibling attempted CPR on the 10 year-old.

The father of the children informed officers that he had never seen the 13 year-old handle the gun in a way that caused him concern. The firearm was a gift to the boy from a relative after completion of a hunters' safety class. A search of the boy's room revealed a Hunter Education Course completion certificate dated August 25, 2012. The boy enjoyed hunting with relatives and friends of the family. While there was no rule about ammunition in the house or near the firearm, the parents were likely unaware that ammunition was in the house. The boy did store the firearm in an unloaded condition and reported that the ammunition was stored separate from the firearm. The father reported that the boy was normally very cautious about handling the firearm and had corrected the father on handling the weapon on occasion. The father stated that he trusted his son with the firearm and that his son was knowledgeable about maintenance and care of the firearm. Finally, there were no conflicts between the siblings in the days prior to the incident and the boy was not known to have a temper. In fact, his father described the boy as 'tender-hearted'.

Investigation

Officers began their investigation immediately. In addition to examining the scene and executing a search warrant, investigators interviewed all family members and witnesses. Child witnesses were interviewed in the presence of a parent.

The physical evidence at the scene, including the location, position and condition of the 10 year-old, the markings on the walls, and the location of the firearm, were consistent with the information provided by witnesses, including the 13 year-old boy. Additionally, the statements of the witnesses, taken outside the presence of each other, were internally consistent and

consistent with each other. Minimal follow up was necessary but was performed with sensitivity to the young age of the primary witnesses. Those follow up interviews clarified any questions officers had after review of the physical evidence at the scene.

Analysis

Death of 10 Year-Old

No evidence suggests that the death of the 10 year-old child was intentional or the result of recklessness so significant as to rise to the level of callous disregard for human life. The analysis, then, is whether the death of the child can be considered involuntary manslaughter. In Virginia, as pertains to these facts, involuntary manslaughter is a death that occurs in the course of an unlawful, non-felonious act or the improper performance of a lawful act. The facts do not suggest probable cause to support either form of involuntary manslaughter.

The discharge of the firearm in this matter was accidental. Although aware that the firearm was loaded at one point, the boy had forgotten to remove the live round from the chamber when cycling the shells through the firearm to make sure that it was functioning properly. Although he did not need to touch the trigger, the boy admits that he must have done so. That error, along with failing to remove the live round from the chamber, resulted in the death of the 10 year-old. This neglect, however, was not so gross, wanton, and culpable as to show a reckless disregard for human life; there was no intentional action taken by the boy, the foreseeable result of which would be physical harm to another. See, Bailey v. Commonwealth, 5 Va. App 331 (1987).

Neither did the death occur in the course of an unlawful yet non-felonious act. For the same reasons set forth above, the boy's handling of the firearm did not rise to the level of recklessness that would endanger life or limb as required by Virginia Code Section 18.2-56.1.

For the foregoing reasons, I find that there is insufficient evidence to support a charge for manslaughter concerning the death of the 10 year-old child and I decline to authorize such a charge.

Abuse or Neglect of Children

The final consideration is whether there is probable cause to charge the parents with an offense concerning the abuse or neglect of the children involved in violation of Virginia Code Section 18.2-371.1 or endangering a child endanger in violation of Virginia Code Section 18.2-56.2.

In the case at hand, the parents were aware that the boy had the firearm in the residence. The child, age 13, had been schooled in the responsible use and care of the firearm and had demonstrated his knowledge of and adherence to the requirements of responsible gun ownership. Although the parents were likely unaware that ammunition was in the residence, the firearm was stored unloaded and the ammunition was stored separate from the firearm. There is no evidence that the boy had behavioral problems, that he had ever attempted to harm his siblings, or that there had been any significant disagreements between the siblings on or before the morning of the incident. In fact, the evidence is precisely to the contrary.

This case is similar to the case of Mangano v. Commonwealth, 44 Va. App. 210 (2004), a case in which a 14 year-old shot his 11 year-old friend. The father of the 14 year-old was aware that his child had retrieved the child's loaded rifle after hearing a noise outside their home. The father told his son to put the rifle away and then left the room. Thinking the firearm was unloaded, the child worked the bolt a couple of times, at one time pointing it at the other child. At some point the gun discharged. Like this case, the 14 year-old had completed a gun safety course and always adhered to safety rules. The Court of Appeals found that the evidence failed to establish the father's "knowledge and consciousness" that danger would likely result from the circumstances as he knew them to exist. In this case, there is no evidence to suggest that the parents were aware of conduct or circumstances that would likely result in injury to the children. The parents did not knowingly or intentionally act or fail to act in such a way as to consciously disregard potential of danger to the children.

Neither do I find that there is evidence to support a charge of recklessly leaving a loaded firearm unsecured in a manner to endanger a child under fourteen in violation of Virginia Code 18.2-56.2. As mentioned previously, the parents were unaware that the firearm was loaded or even that ammunition was in the house.

For the foregoing reasons, I find that there is insufficient evidence to support a charge for neglect or abuse of children or recklessly leaving a firearm unsecured and I decline to authorize such charges.

Conclusion

As a result of the foregoing analysis, it is my determination that no charges be brought against either the 13 year-old boy or the parents as a result of this tragic accident on May 21, 2013. My office will not attempt to obtain indictments.

Detectives Jim Hope and Mike Arcoraci were very helpful and responsive in their investigation and in providing me with information and assistance and were also very alert to the

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members of the family involved. Once again, I appreciate the diligence and sensitivity of the members of the Albemarle County Police Department in dealing with a difficult situation.

Please feel free to contact me if you have any questions or need any additional information.

Sincerely and respectfully,



Denise Y. Lunsford
Albemarle County Commonwealth Attorney