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**DEPARTMENT OF JUSTICE**  
CRIMINAL JUSTICE DIVISION

May 24, 2016

Honorable John Hummel  
Deschutes County District Attorney  
Deschutes County District Attorney's Office  
1164 NW Bond St.  
Bend, Oregon 97701

Re: Oregon Department of Justice Investigation of the Death of Edwin Mays

Dear Mr. Hummel,

On March 23, 2015, you asked the Criminal Justice Division of the Oregon Department of Justice to assume the responsibility of investigating the death of Edwin Mays and to prosecute the case if criminal charges were warranted. In response to your request, we reviewed the investigation previously conducted by the Deschutes County Sheriff's Office (with the assistance of the Bend Police Department), interviewed eighteen witnesses,<sup>1</sup> observed Mr. Mays' behavior and the conduct and comments of corrections deputies on video surveillance tapes taken at the Deschutes County Adult Jail, visited the jail, reviewed all relevant policies of the sheriff's office, and consulted with medical and drug treatment experts.<sup>2</sup> Based on our review, we have concluded that there is insufficient evidence to prove beyond a reasonable doubt that any member of the Deschutes County Sheriff's Office engaged in criminal conduct related to Mr. Mays' death.

**FACTUAL SUMMARY**

On December 14, 2014, Edwin Mays was arrested by the Bend Police Department relating to his conduct during a traffic stop. His half-brother, Adam Davenport, was the driver of the car and was also arrested. Mr. Mays appeared to be under the influence of a central nervous system stimulant such as methamphetamine, but he denied taking any drugs. He was able to walk, was responsive to the officers, and did not appear to need any medical attention.

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<sup>1</sup> We interviewed corrections deputies who were on duty at the relevant time, other jail employees, several inmates who observed Mr. Mays while he was in the jail, the medical examiner who performed the autopsy, and other medical professionals. We attempted to interview Sgt. Brian Bishop and Deputy Amanda Parks, but they declined our request.

<sup>2</sup> We also consulted with plaintiff's counsel in *Mays, et al. v. Deschutes County, et al.*, U.S. District Court Case No. 6:15-cv-00898-AA to ensure that we had reviewed all relevant materials.

Mr. Mays was booked into the jail shortly after 5:00 PM. He remained in the holding cell area over the next several hours, where he was kept under observation by the corrections deputies on duty.<sup>3</sup> His behavior was consistent with a person under the influence of methamphetamine, although he denied using the drug or needing medical attention. He was described by observers as extremely high; one corrections deputy described him as one of the most high persons he had ever seen. Mr. Davenport, who was housed in the same cell for a period of time, told corrections deputies that he thought Mr. Mays should go to the hospital, but did not answer when asked why he had that concern. Mr. Mays himself told the corrections officers that he did not need to go to the hospital. During that time, Mr. Mays remained responsive to questions, ate food, and drank water. His condition seemed to be following the typical course of methamphetamine intoxication and withdrawal that the corrections deputies had observed in hundreds of other inmates who did not need medical attention.

At different points in the evening, one of the corrections deputies discussed Mr. Mays' condition with his supervisors to decide the appropriate course of action.<sup>4</sup> Based on their training and experience, as well as their own observations of Mr. Mays, the supervisors believed that Mr. Mays would detoxify safely from the methamphetamine and that the corrections deputies should continue to regularly monitor Mr. Mays' behavior.

Mr. Mays' activity eventually changed from hyperactivity to sitting down, then ultimately lying on the floor. That behavior is consistent with the normal progression of a person detoxifying from methamphetamine (which typically includes a transition from hyperactivity to sleep). Corrections deputies continued to regularly check on Mr. Mays.<sup>5</sup> When deputies checked on Mr. Mays at 8:54 PM, he was unresponsive and had fluid coming from his mouth. The corrections deputies immediately called Bend Fire and Rescue and began giving emergency medical attention, including providing CPR and using a portable defibrillator. Medics responded and administered care, but Mr. Mays died in the cell. At autopsy, the cause of death was determined to be "Methamphetamine Toxicity."

We consulted with several medical professionals regarding the incident. They included the doctor who performed the autopsy as well as emergency room and drug treatment specialists. We confirmed that Mr. Mays' behavior was consistent with a person who is under the influence of methamphetamine. We also learned that individuals are unlikely to suffer a fatal overdose

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<sup>3</sup> The Intoxicated Inmate Policy MD-6 provides that the holding cells can be used for "observation purposes" while the jail staff determines whether to house or release the person. This policy provides that during the first four hours of observation, the staff is to wake up the inmate every hour. If the staff is unable to wake the inmate, EMTs are to be called.

<sup>4</sup> We learned during our investigation that in situations where there are non-emergency health concerns, corrections deputies are expected to provide information to their supervisor for the supervisor to determine how to proceed.

<sup>5</sup> The jail video reveals that over the course of the evening, deputies made mocking and disparaging remarks about, and imitations of, Mr. Mays in his intoxicated state. They were also observed watching a football game at various times. That conduct was considered as part of the overall analysis of the circumstances in the case, but ultimately did not change the conclusions reached.

from the ingestion of methamphetamine because the body metabolizes the methamphetamine over time and the person in effect “sleeps it off.”<sup>6</sup> Additionally, the fact that a person had overdosed on methamphetamine would not be obvious to an observer because the lethal effects of the stimulant come about suddenly. The drug treatment and medical experts opined that the deputies’ decision to continually observe Mr. Mays was medically appropriate under the circumstances. The consensus opinion of all of the experts was that there is no way to know whether earlier medical intervention would have made any difference in the outcome to Mr. Mays.

## LEGAL ANALYSIS

In reviewing whether any member of the Deschutes County Sheriff’s Office engaged in criminal conduct related to Mr. Mays’ death, we evaluated whether sufficient evidence exists to prove beyond a reasonable doubt that an employee committed any of the following crimes: criminally negligent homicide (ORS 163.145),<sup>7</sup> criminal mistreatment in the second degree (ORS 163.200),<sup>8</sup> official misconduct in the first degree (ORS 162.415), and official misconduct in the second degree (ORS 162.405). As described below, our investigation did not reveal evidence that would support a criminal prosecution.

### A. Criminally Negligent Homicide

To prove the crime of criminally negligent homicide in this case, the state must show that a deputy, with criminal negligence, caused Mr. Mays’ death.<sup>9</sup> “Criminal negligence” means that

a person fails to be aware of 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 the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

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<sup>6</sup> No methamphetamine overdose deaths had ever occurred at the Deschutes County Adult Jail.

<sup>7</sup> We do not specifically address the crimes of manslaughter in the first or second degree in this letter, each of which requires proof that a person recklessly caused the death of another, because we concluded that we could not prove criminally negligent homicide, which requires that a person act with the lower culpable mental state of criminal negligence in causing the death of another. *See State v. Skelton*, 153 Or App 580, 584 n 2, 957 P2d 585, *rev den*, 327 Or 448, 964 P2d 1030 (1998) (noting that criminally negligent homicide is a lesser included offense of manslaughter in the first and second degree when committed recklessly).

<sup>8</sup> We do not specifically address the crime of first-degree criminal mistreatment in this letter, which requires proof of a knowing or intentional mental state, because we concluded that we could not prove second-degree criminal mistreatment, which requires the lower culpable mental state of criminal negligence. *See State v. Baker-Krofft*, 348 Or 655, 239 P3d 226 (2010) (noting that, as relevant here, the elevated culpable mental state distinguishes first-degree criminal mistreatment from second-degree criminal mistreatment).

<sup>9</sup> ORS 163.145 provides, in relevant part:

“(1) A person commits the crime of criminally negligent homicide when, with criminal negligence, the person causes the death of another person.”

ORS 161.085(10). In turn, “cause” means “1: to serve as a cause or occasion of: bring into existence: MAKE (careless driving~s accidents) \* \* \* 2: to effect by command, authority or force.”<sup>10</sup> Thus framed, the questions for purposes of criminally negligent homicide are whether the deputies failed to be aware of a substantial and unjustifiable risk that Mr. Mays would die from a lethal ingestion of methamphetamine and whether the failure to be aware of such a risk brought about his death.

As to the first question, given all of the facts in the case, the deputies’ failure to recognize that Mr. Mays had ingested a lethal amount of methamphetamine was not criminally negligent. The deputies involved had seen many other people experience methamphetamine withdrawal safely after exhibiting behavior similar to that of Mr. Mays. In fact, there have been no methamphetamine overdose deaths at the Deschutes County Jail. Moreover, medical and drug treatment experts indicated that death from the acute ingestion of methamphetamine is rare given the manner in which the body metabolizes the drug.<sup>11</sup>

Similarly, the state could not prove beyond a reasonable doubt that the actions of any deputy caused Mr. Mays’ death. In this case, the autopsy revealed that Mr. Mays’ ingestion of a lethal amount of methamphetamine caused his death. According to the medical experts with whom we spoke, there is no way to determine if earlier medical intervention would have prevented his death given the amount of methamphetamine he had ingested. Accordingly, our investigation did not reveal sufficient evidence to warrant a charge of criminally negligent homicide.

## **B. Criminal Mistreatment in the Second Degree**

To prove the crime of criminal mistreatment in the second degree in this case, the state must show that (1) the corrections deputies had a legal duty to provide care for Mr. Mays and (2) the deputies acted with criminal negligence in withholding necessary and adequate physical care or medical attention from Mr. Mays.<sup>12</sup> For the reasons that follow, we have concluded that the evidence, when viewed in the context of our burden of proof, is not sufficient to prove the crime of second-degree criminal mistreatment.

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<sup>10</sup> *State v. Murray*, 343 Or 48, 52, 162 P3d 255 (2007), citing *Third New Int’l Dictionary* 356 (unabridged ed. 2002).

<sup>11</sup> Methamphetamine users typically die from the long-term effects of chronic use.

<sup>12</sup> ORS 163.200 provides, in relevant part:

“(1) A person commits the crime of criminal mistreatment in the second degree if, with criminal negligence and:

“(a) In violation of a legal duty to provide care for another person, the person withholds necessary and adequate food, physical care or medical attention from that person[.]”

Although the deputies clearly had a legal duty to provide all inmates, and therefore Mr. Mays, with medical care,<sup>13</sup> the evidence does not demonstrate that the deputies acted with criminal negligence in withholding necessary medical care or attention from Mr. Mays. First, the deputies correctly identified Mr. Mays' behavior as consistent with a person who is under the influence of methamphetamine. Second, the deputies followed their policies in choosing to closely observe Mr. Mays complete the detoxification process for methamphetamine. Third, monitoring a person who is detoxifying from methamphetamine through repeated visual observations is the appropriate medical standard of care. Fourth, Mr. Mays' behavior was not inconsistent with someone who was undergoing the normal detoxification process, which progresses from hyperactivity to sleep. Fifth, there is a low risk of overdose from the ingestion of methamphetamine. Sixth, the deputies were not aware of another instance in which an inmate suffered an adverse medical outcome while detoxifying from methamphetamine. Lastly, the deputies appropriately sought medical attention for Mr. Mays when his condition clearly indicated a medical emergency. Given these circumstances, we do not believe that the state could prove beyond a reasonable doubt the crime of criminal mistreatment in the second degree.

### **C. Official Misconduct in the First Degree**

Official misconduct in the first degree requires proof that a public servant, with the intent to obtain a benefit or to harm another, knowingly failed to perform a duty imposed on the person by law or one clearly inherent in the office.<sup>14</sup> As a threshold matter, we have determined that the deputies are public servants. *See* ORS 162.005(2)(a) (defining a public servant as a public official) and ORS 244.020 (defining a public official as, among others, any person who is serving a political subdivision of the state or public body as an employee or agent). Moreover, as we noted earlier, the deputies have a legal duty to provide emergency medical care. However, for the reasons discussed above, our investigation did not reveal sufficient evidence that the deputies knowingly failed to perform their duty to provide medical care to Mr. Mays; that is, they did not realize that Mr. Mays had taken a lethal dose of methamphetamine and did not know that he needed medical care. The deputies did seek medical care when they realized Mr. Mays was unresponsive. Additionally, there is no evidence that the deputies acted with a motive to benefit themselves or to harm Mr. Mays. As a result, we have concluded that we could not prove the crime of first-degree official misconduct beyond a reasonable doubt.

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<sup>13</sup> *See, e.g.*, ORS 169.076 (requiring local correctional facilities to provide for emergency medical care).

<sup>14</sup> ORS 162.415 provides in relevant part:

(1) A public servant commits the crime of official misconduct in the first degree if with intent to obtain a benefit or to harm another:

(a) The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office[.]”

**D. Official Misconduct in the Second Degree**

The crime of official misconduct in the second degree is committed when a public servant knowingly violates a statute relating to the public servant's office.<sup>15</sup> As discussed previously, there is insufficient evidence that the deputies knowingly violated any statute by failing to provide emergency medical care for Mr. Mays.

**CONCLUSION**

In conclusion, our investigation has not revealed evidence of conduct by the deputies that would justify criminal prosecution. Our review was limited to an application of Oregon criminal law. We express no opinion whether any civil or administrative process might provide sanctions or remedies in connection with Mr. Mays' death.

Thank you for giving us the opportunity to review this case. If you have any questions regarding our review, please feel free to contact me.

Sincerely,



Victoria Roe  
Sr. Assistant Attorney General  
Oregon Department of Justice  
Criminal Justice Division

Cc: Darryl Nakahira

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<sup>15</sup> ORS 162.405 provides, in relevant part:

(1) A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.