

Orlando murders raise questions about guns and estate protection

Dear Mr. Premack: I am 71 and have been target shooting since age 12. I was a federal employee for 25 years. I live in a nice neighborhood but was accused of pointing a gun at my neighbor as he stood in the street in front of my driveway and would not move. I only pointed my finger at him. He called the police and when they came to my door one thought the bulge in my pocket was a gun. I showed them it was my charm bracelet. With everyone on high alert after the Orlando murders, I am afraid they might come back and arrest me. What happens to my estate and assets if they put me in jail? MH

The detestable murders in Orlando do have law enforcement on edge. Violence, including religiously motivated violence, has no place in any culture. These victims were part of the LGBTQ community in Orlando. The gunman used an AR-15 rifle, which in its standard form is NOT regulated under the National Firearms Act.

Texas is a gun-friendly state. Gun advocates say people are safer when more weapons are in the community. They posit that someone who is also armed could stop this type of mass murder. While there are no reports on whether any patrons at the club were armed, Florida – like Texas – allows concealed carry of firearms. In this case, at least, concealed carry did not stop the shootings.

You were not involved in a concealed carry situation. You were accused of making a threat with a firearm. However, in Texas it is legal to possess a firearm in your residence or on real property under your control. So let's look for criminal offenses you might fear. It is a Texas crime to:

- Display a firearm in a public place “in a manner calculated to alarm”. You were not in a public place, and you did not display a firearm.
- Engage in conduct that places another in imminent danger of serious bodily injury, including pointing a firearm in the direction of another, even if you think it is unloaded. Again, you did not have a firearm.
- Commit an assault using or exhibiting a deadly weapon, like a firearm. You did not cause or threaten to cause imminent bodily injury, did not have a firearm, and cannot do much bodily injury with your finger from across your driveway.
- Threaten violence against a person or property with intent place that person in fear of imminent serious bodily injury. Again, you had no gun and could not have intended to cause bodily injury across your own driveway by pointing your finger.

Since you were not arrested at the time of the incident, it is highly unlikely that you will be arrested now. If you were arrested, you would be arraigned and bail would be set pending trial. You will need a well-trained criminal defense attorney to have the charges dropped.

Your estate would be impacted, but mostly by the time and expenses you would incur in defending yourself. If convicted, you may be ordered by the Court to pay restitution to the victim (if the victim can document his losses). You might also be required to pay into the Crime Victims' Compensation Program (\$50 in misdemeanor and \$100 in felony cases). Further, if convicted of a felony you lose the right to act as Executor in someone else's estate.

Paul Premack is a Certified Elder Law Attorney with offices in San Antonio and Seattle, handling Wills and Trusts, Probate, and Business Entity issues. View past legal columns or submit free questions on legal issues via www.TexasEstateandProbate.com or www.Premack.com.