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Expert Report on the Shooting Death of Tamir Rice

Summary of Findings

Although the factual record and discovery in this case are not necessarily complete, and although I reserve the right to supplement and adjust my findings in light of newly discovered evidence, I can state to a reasonable degree of professional certainty that, based upon the information currently available, the shooting of Tamir Rice was inconsistent with generally accepted standards and norms in police practices and that it was an unreasonable and unjustified use of deadly force. The killing of this child was completely avoidable and preventable, and should never have occurred.

Materials, Evidence and Information Considered

During the course of my evaluation, I reviewed and considered the following materials:

- Video of the incident
- Ohio State Highway Patrol – Reconstruction Report
- United States Department of Justice Civil Rights Division (“USDOJ”) - Investigation of the Cleveland Division of Police (December 4, 2014)
- October 16, 2015 letter from Emery, Celli, Brinckerhoff & Abady, LLP to Timothy McGinty, Cuyahoga County Prosecutor’s Office
- November 9, 2015 letter from Emery, Celli, Brinckerhoff & Abady, LLP to Timothy McGinty, Cuyahoga County Prosecutor’s Office
- November 16, 2015 letter from Emery, Celli, Brinckerhoff & Abady, LLP to Timothy McGinty, Cuyahoga County Prosecutor’s Office
- Cuyahoga County Sheriff’s Department Investigative Report (portions redacted)
- Judge Adrine Ruling: Probable Cause to Arrest Officer Loehmann and Garmback
- Expert Report of Ken Katsaris

- Expert Report of Kimberly Crawford
- Expert Report of S. Lamar Sims
- Timothy Loehmann Independence Police Department Personnel File
- Second Amended Complaint and Jury Demand by Plaintiffs Winston, Rice and T.R. with Jury Demand
- Defendant City of Cleveland's Answer to Second Amended Complaint
- Separate Answer of Defendants Loehmann and Garmback to the Second Amended Complaint of Plaintiffs Winston, Rice and T.R.

Background and Qualifications

My background and qualifications are set forth in the C.V. attached to this report. I highlight some of that material here that I believe is particularly relevant to my review and evaluation of this case.

My opinions are based in part on my training, professional experience and education. I have more than 40 years of experience in law enforcement: 27 years in various positions in active service and more than two decades in expert consulting. As you will see, my background includes extensive experience in training on the proper use of force practices all across the nation.

I am a twenty seven year veteran of the Los Angeles County Sheriff's Department (LASD). I was hired on December 1, 1965, and I retired from active service on March 31, 1993. My career included six years at the rank of Deputy Sheriff, six years as a Sergeant, and fifteen years as a Lieutenant. I retired holding a California Peace Officer Standards and Training (POST) Advanced Certificate, and I am a graduate of the POST Command College (class #5).

During the course of my service with the department, I had a wide range of duties. Those duties included an 18 month assignment as a staff jail deputy and two years as an Administrator/Lieutenant in the same jail facility (Men's Central Jail). I also served on the department as a patrol officer, field supervisor, jail watch commander and administrator, station watch commander, and commanding officer of investigative units.

I was a field training officer while assigned as a patrol deputy, and I trained new officers in POST and department approved patrol procedures, field investigations, apprehension techniques, use of force policy and practice and emergency procedures.

As a Sergeant and as a Lieutenant, I served on the training staff of the Los Angeles County Sheriff's Department's Patrol School which taught the POST accepted patrol tactics, and investigation and apprehension methods.

As a Watch Commander and as a Lieutenant, I responded to, investigated, and reported on the use of force and officer-involved shootings. I was also assigned by my Department to sit as a member

of Departmental review committees regarding the reasonable or unreasonable use of force and tactics.

During my assignment as the Administrative Lieutenant of the Department's Reserve Forces Bureau, I worked closely with the State of California Peace Officer Standards and Training in revamping our Reserve Academy to bring it into state compliance. This process gave me an expertise in the POST Basic curriculum. I also supervised the training of cadets at our Reserve Training Academy. They were taught proper investigation, interview, and apprehension procedures. Among other topics, I lectured the Reserve Academy on the POST syllabus: "The Legal and Moral Use of Force and Firearms."

During the 1984 Olympics held in Los Angeles, I was assigned and served as the Department's Intelligence Officer at the Los Angeles Olympics Emergency Operations Center.

During the last five and one half years of my career, I commanded a specialized unit known as the North Regional Surveillance and Apprehension Team (N.O.R.S.A.T.), which was created to investigate, locate, observe and arrest major (career) criminals. I held this position until my retirement from the Department on March 31, 1993.

Criminals investigated and arrested by N.O.R.S.A.T. included suspects involved with homicide, robbery, kidnaping, extortion, burglary, major narcotics violations and police corruption. The majority of our cases were homicide cases, including the murder of police officers. Arrests frequently occurred in dynamic circumstances including crimes in progress.

Approximately 80% of cases assigned to N.O.R.S.A.T. were active Homicide investigations. In that regard, the unit processed, under my command and supervision, various aspects (depending on the complexity of the cases involved) of approximately 1,000 Homicides ranging from deaths of police officers to serial homicide suspects.

Additionally, the majority of the 1400 cases for which I have been retained as a consultant (since 1993) have involved injuries or deaths connected with some aspect of force during either apprehension or while in police custody.

During the first three months of my command of N.O.R.S.A.T., the unit had three justifiable shooting incidents. From that time, and over the next five years of my command, N.O.R.S.A.T. established a remarkable record of more than two thousand arrests of career criminals without a single shot fired – either by my officers or by the suspects whom we arrested.

Many of these suspects were armed and considered to be very dangerous. Some were apprehended during the course of their crimes and were very prone to use firearms to escape apprehension. This record of excellence was accomplished through the use of proper tactics, management and supervision of personnel, training in correct apprehension methods, and adherence to the moral and ethical standards endorsed by California POST and my Department. These methods and principles are also embraced by every state training commission of which I am

aware, as well as the national standards established by the U.S. Department of Justice.

As a result of my position and record as the commanding officer of N.O.R.S.A.T., I was assigned to author Field Operations Directive 89-3, "Tactical Operations Involving Detective Personnel." This order remained in force 20 years (until September 30, 2009) and included the basic standards and considerations with which investigative officers must comply in the event of a tactical deployment such as the dynamic entry into a building for the purpose of an arrest and/or seizure of evidence.

Since my retirement, I have testified as an expert on use of force, jail procedures and jail administration, investigations, police procedures, police tactics, investigative procedures, shooting scene reconstruction, and police administration in Arizona State Courts, California State Courts, Washington State Courts and Federal Courts in Arizona, California, Colorado, Florida, Illinois, Indiana, Louisiana, Missouri, Nevada, Ohio, Oregon, Pennsylvania, Texas, Utah, Washington, New Mexico, and New York. I have testified before the Los Angeles Police Department Board of Rights and the Los Angeles County Civil Service Commission. I have testified before the Harris County (Texas) Grand Jury. I have also submitted written opinions in matters before Alaska, Idaho, Montana, North Carolina, Oregon, Kentucky and Wyoming Federal and State Courts. I was selected (January 20, 2007) to present on the topic of: "Police Experts" at the National Police Accountability Project held at Loyola Law School, Los Angeles, California. I was selected (September 23, 2010) to present on the topic of: "Using POST Modules to Establish Police Officer' Standard of Care" at the National Police Accountability Project, National Lawyers Guild Convention, in New Orleans, Louisiana. I was selected (March 30, 2012) to present to the Kern County Public Defenders in Bakersfield, California, on the topics of "Ethics, Police Investigations, the California POST Curriculum, and the M26 and X26 Taser weapons." On August 7, 2013 I was invited and presented to the Texas Civil Rights Project (TCRP) 2013 Annual Legal Summit in Austin, Texas on the topic: "Ethically Working with Experts from the Prospective of a Police Expert." On October 15, 2015 I was the invited presenter at a Community Forum in Victorville, California on the topics of Police Procedures, Community Policing, Use of Force, and features of the M26, X26 and X2 Taser weapons.

I have been recognized, and my expert report was quoted by, the United States Court of Appeals for the Ninth Circuit as an expert in Police Administration and Use of Force. *Blankenhorn v. City of Orange, et al.*, 485 F.3d 463, 485 (9th Cir. 2007). The Ninth Circuit also drew from my expert report in a second published case involving Police Detective Investigations. *Torres, et al. v. City of Los Angeles, et al.*, 540 F.3d 1031, 1042-43 (9th Cir. 2008). The Torres case was appealed to the U.S. Supreme Court and returned for trial. The Ninth Circuit also drew from my expert reports regarding credible threats justifying the use of force, *Hayes v. County of San Diego*, 658 F.3d 867 (9th Cir. 2011), and *Young v. County of Los Angeles*, 655 F.3d 1156 (9th Cir. 2011). The Ninth Circuit also drew from my expert reports regarding Jail Administration and Administrative Responsibilities, *Starr v. Baca*, 652 F.3d 1202 (9th Cir. 2011). The Ninth Circuit also drew from my expert reports regarding an officer's violation of the 14th Amendment if an officer kills a suspect when acting with the purpose to harm, unrelated to a legitimate law enforcement objective, in *AD v. California Highway Patrol*, 712 F. 3d 446 (9th Cir. 2013). The Fifth Circuit drew from my expert report regarding search and seizure, investigations and no-knock

requirements in *Bishop et al. v. Arcuri et al.*, 674 F.3d 456 (5th Cir. 2012). The Ninth Circuit also drew from my expert report regarding the use of impact weapons (PepperBall) on civilians in *Nelson v. City of Davis*, 685 F.3d 867 (9th Cir. 2012). I was the expert in the Ninth Circuit opinion regarding the allegations proffered by police officers and their use/display of firearms against civilians in *Green v. City and County of San Francisco*, 751 F. 3d 1039 (9th Cir. 2014). Most recently, I was the expert in an important Ninth Circuit opinion regarding the allegations proffered by police officers and their use of lethal force against unarmed persons in *Jennifer Cruz, et al., v. City of Anaheim, et al.*, 765 F.3d 1076 (9th Cir. 2014).

In short, I have been found competent by both Federal and State Courts to render expert opinions as to the issues at play in this case.

Evaluation of Shooting Death of Tamir Rice: Systemic Conditions and Background

An assessment of an individual police practice should be evaluated in as complete a context as possible. In this case, as background, it is noteworthy that the Cleveland Division of Police Department (CPD) has a long, documented history of systemic excessive use of force generally and unjustified shootings particularly. This fact was recently confirmed in detail by the United States Department of Justice (USDOJ) in their study published on December 4, 2014. This documented history is germane because it is widely accepted and understood that incidents of excessive and lethal force occur in police departments in proportion to their organizational attitudes, values and beliefs (i.e., the police culture within a particular department). A department with a problematic use of force history and/or one having chronic problems in this regard is more likely to produce incidents of misconduct and error. Here, the federal government, through the U.S. Department of Justice, made the following findings, which again, I believe should be considered in any objective and impartial review of this case:

- a. On December 4, 2014, the USDOJ found that there was reasonable cause to believe that the CPD engages in a pattern or practice of using unreasonable and unnecessary force in violation of the Fourth Amendment of the United States Constitution. (DOJ Report at 1.)
- b. The USDOJ found a custom and/or policy and pattern or practice of the use of unnecessary and excessive deadly force, including shootings and head strikes with impact weapons. (DOJ Report at 3.)
- c. The USDOJ further found that CPD officers fired guns at people who did not pose an immediate threat of death or serious bodily injury to officers or others, and that officers used guns in a careless and dangerous manner. (DOJ Report at 4.)
- d. Specifically, the USDOJ found that the CPD failed to institute proper systems and policies to provide the supervision necessary for sufficient oversight of officers' use of force; failed to provide consistent and clear policies and/or

enforce existing policies on when and how to use and report force; failed to implement systems to ensure that use of force is consistently reported and investigated thoroughly and fairly to determine whether the department needs policy, training, tactical, or other changes for officer and civilian safety; failed to address emerging problems through the use of aggregate data to determine patterns and trends and institute corrective measures for unlawful and dangerous behavior that places citizens at risk; and failed to ensure that officers receive proper use-of-force training, all of which contributed to an environment of systemic deprivation of citizens' constitutional rights. (DOJ Report at 28.)

- e. The USDOJ found a custom and policy and/or pattern and practice that supervisors tolerated, and sometimes promoted and participated in. This included the use of excessive force, conducting improper and biased investigations into the use of excessive force, failing to implement constitutional policies regarding excessive force and/or failing to uphold policies already in existence, failing to maintain the proper data regarding individual officers' and departmental uses of force, and failing to take corrective measures when identifying excessive use of force by individuals. (DOJ Report at 31.)

- f. The USDOJ found that officers draw and point firearms at citizens too often, and do not appear to know how to safely handle firearms and lack confidence in their ability to control situations, resulting in accidentally discharging weapons or shooting the wrong individual. Officers do not know how to effectively de-escalate situations before resorting to use of force, and officers informed investigators that they do not receive enough training, especially scenario-based training, and training on how to control subjects. Officers too often escalate incidents instead of using accepted tactics to de-escalate tension, and CPD officers commit tactical errors that endanger the Cleveland community and themselves. The employment of poor and dangerous tactics place officers in dangerous situations or create dangerous situations, where use of force becomes inevitable, placing officers and civilians at unnecessary risk. The tactical errors may result in the use of additional force and cause constitutional violations, such as firing weapons in a manner that places bystanders in danger, sometimes accidentally firing and hitting nothing, or shooting people and seriously injuring them. For example, officers respond to scenes unsupervised and group together with little or no cover. As a result of these improper tactics, officers place themselves in harm's way and increase the likelihood that they will need to fire shots. (DOJ Report at 4.)

The Perpetrating/Shooting Officer's Unfitness for Duty

The record in this case also demonstrates that Timothy Loehmann, the officer who shot and

killed Tamir Rice on November 22, 2014, was unfit for duty as a police officer and should have never been hired. Hiring and retaining plainly unfit police officers is a recipe for disaster. In this case, the obvious delinquencies in this regard lead to a tragic and avoidable fatality.

Prior to his hire with the CPD, Loehmann was an officer with the City of Independence (IPD). In my opinion, any competent background review of his personnel file with the IPD by a CPD pre-hire investigator would have precluded Officer Loehmann's appointment as a CPD police officer. This did not occur. In my opinion, this is yet another indicator of the broken organizational culture within the CPD. Officer Loehmann's IPD personnel file documents an employment history of immaturity, poor judgment, mental instability, emotional breakdown while in possession of his gun (on the range), lying to his supervisors and insubordination as follows:

- a. On November 28, 2012, during his gun-range examination for the State of Ohio gun qualifications, Officer Loehmann began crying, was distracted, and was not following instructions. The supervising officer was forced to remove Officer Loehmann's gun and secure it in a safe location. Loehmann's personnel file documented that he "could not follow simple directions, could not communicate clear thoughts nor recollections, and his handgun performance was dismal." (IND000055, p. 56 of PDF).
- b. When the supervising officer attempted to discuss the situation with Officer Loehmann, he (Loehmann) told his supervisor, "what I want is for you to just shut up." (IND000060 p. 61).
- c. Independence Deputy Chief Jim Polak wrote in Officer Loehmann's file that there were three other incidents involving Loehmann which, "taken together show a pattern of a lack of maturity, indiscretion and not following instructions." The past incidents involving Loehmann included two incidents of lying to his supervisors, including one occasion in which he lied about failing to secure his gun overnight. (IND000056 p. 57).
- d. Deputy Chief of Police for the City of Independence Jim Polak found: "I do not believe time, nor training, will be able to change or correct these deficiencies," and began the disciplinary process of separation, including informing Loehmann of his intention to terminate his employment. At this point, Loehmann resigned. (IND000058 p. 59).

The Available, Objective Evidence Demonstrates The Shooting of Tamir Rice Was Unreasonable and Unjustified

This case is unique in that there is video footage which captures many of the critical events in an observable medium. The video of the shooting documents that:

- a. When Officers Loehmann and Garmback arrived, Tamir was not sitting in or at the swings as reported by (the yet to be identified) informant. Tamir was sitting by himself at a table in the gazebo some distance away from the swings. He was not wearing distinctive or unusual clothing but was dressed in clothing common to many young black men or boys. The location was, after all, a public park. In my opinion there was nothing in the dispatch information that would positively identify Tamir as the certain target of the call to the responding officers. The dispatcher did not instruct the informant to remain by the dispatcher in order to contact Officers Loehmann and Garmback and provide accurate information and/or point out the target.
- b. The video clearly documents that Tamir had nothing in his hands when Officers Loehmann and Garmback observed him. And the record is uncontested that Tamir was not acting aggressively nor was he threatening or endangering anyone at that time. Most importantly, Tamir was not holding the toy gun (or any other object) in his hands when Officers Loehmann and Garmback arrived. It is absolutely critical to emphasize that no weapon was visible to either Officer Loehmann or Officer Garmback upon their arrival on the scene.
- c. Analysis of the video recordings document that Officer Garmback, who was the driver of the patrol unit, hurriedly pulled the car right up next to Tamir so that the passenger side of the car was only a few feet away from him (Tamir) - rather than approach and position the unit in a tactically correct way. The passenger side of the car was only a few feet away from Tamir when it came to a stop.
- d. Officer Loehmann jumped out of the car with his gun in his hand before the car had even come to a complete stop. Thus, it appears that Officer Loehmann must have upholstered his gun while en route to the call.
- e. Officer Loehmann fired two shots within 1.7 seconds of arriving at the scene - even before Officer Garmback even had time to get out of the car.
- f. There was no time in those 1.7 seconds for Officers Loehmann or Garmback to have issued any intelligible commands to Tamir, much less for Tamir to respond to any commands.
- g. After seeing this video, Judge Ronald B. Adrine of the Cleveland Municipal Court found probable cause to charge Officers Timothy Loehmann and Frank Garmback, writing: "The video in question is notorious and hard to watch. After viewing it several times, this court is still thunderstruck by how quickly this event turned deadly." I agree with Judge Adrine's opinion. In my view, this conclusion is the only one consistent with an objective, impartial view of the footage.
- h. After Officer Loehmann shot Tamir, Officers Garmback and Loehmann just stood

around - they did not provide any medical care, comfort, or assistance to Tamir.

- i. When Tamir's 14-year-old sister ran towards her wounded brother crying, Loehmann and Garmback tackled her to the ground, handcuffed her, and put her in their police car - right next to where her brother lay fatally injured.

Additionally, the Highway Patrol reconstruction report shows that:

- a. During their approach to the scene, Officers Loehmann and Garmback had to drive past the swings (which were vacant) where the 911 caller had first reported seeing someone with a gun, then continue on to the gazebo. The officers had a clear range of sight to the gazebo and should have seen Tamir in the gazebo.
- b. Officer Garmback began braking and decelerating 40 to 75 feet away from where the car ultimately came to a stop in front of Tamir.
- c. Officer Garmback was driving at an estimated speed of 19 miles per hour when he began decelerating.

Significant Departure From Basic Principles Of Proper Police Tactics and Practices

Although more information may become available later, the record in this case is already replete with multiple serious deviations from accepted and reasonable police practices. A police officer's decision to create a dangerous situation is highly relevant in determining whether or not his use of force was excessive. "Where a police officer unreasonably places himself in harm's way, his use of deadly force may be deemed excessive." *Kirby v. Duva*, 530 F.3d 475, 482 (6th Cir. 2008).

- a. Officers are trained that many 911 calls are outright false and/or contain incorrect/inaccurate information. It is an unfortunate fact taught to dispatchers that irresponsible persons will call 911 and report false emergencies simply to create chaos and watch the response for their sick entertainment. As a former supervisor (Sergeant) at the Los Angeles County Sheriff's Department communications center, I am well aware of the required methods to guard against false alarms, obtain reliable information and dispatch the information with precision to field units. It is apparent here that grossly incomplete information was dispatched. At a minimum, a method and means for the informant to make contact with the dispatched units is required in this case. I see nothing in the record that the 911 operator (Ms. Constance Hollinger) vetted the information given to her to any degree of competence. I have noted Ms. Hollinger's refusal to provide a statement to investigators and consider the record of her actions to justify significant discipline or discharge.

- b. However, in regards to Officer Loehmann's use of lethal force, the fact that he (Loehmann) and Officer Garmback were not told that the 911 caller (who was no longer at the scene) reported the person with the gun was "probably a juvenile" and the gun was "probably fake" is irrelevant as to Officer Loehmann. *Based upon what he observed and knew at the time, it was unreasonable for him (Loehmann) to jump out with his gun drawn and immediately open fire within 1.7 seconds at a person he could not be sure was the subject of the dispatch.*
- c. Officers are trained to approach similar situations carefully, assess it, and try to de-escalate it. Here, Officers Loehmann and Garmback did the opposite. Officer Garmback jumped the curb, drove through the park at a reckless speed, stopped right beside Tamir, and Officer Loehmann jumped out shooting.
- d. It is clear that they saw, or should have seen, Tamir from the moment they reached the swings (or even earlier), so they had plenty of time to stop their car sooner and assess the situation from a position of cover and safety.
- e. Accordingly, the officers created the alleged danger here. Tamir was by himself in the gazebo, no one was calling for help, he was not pointing a gun at anyone, nor was anyone nearby or otherwise in danger. They had time to assess the situation, to give commands, to try to de-escalate.
- f. Officers are trained to wait for back-up. At least one other unit was assigned as a back-up unit. But here, Officers Loehmann and Garmback drove in without waiting for other assigned units to respond.
- g. Officers are trained that they can only use deadly force when there is imminent danger of death or serious bodily injury. Tamir was by himself in the gazebo, had nothing in his hands and did not pose an imminent danger of death or serious bodily injury to anyone. Under these circumstances, the inescapable conclusion based on the available evidence is that the shooting of this child in the park was unreasonable and unjustified.
- h. Officers are trained and must be certified to provide basic first aid, but here Officers and Loehmann did not provide any first aid or any other care to Tamir.

The Reports Proffered By Other Experts Are Incomplete, Inaccurate and/or Fatally Flawed

I do not agree with the conclusions as stated in the reports proffered by retained experts W. Ken Katsaris, Kimberly A. Crawford and S. Lamar Sims, Esq. that the shooting death of Tamir Rice by

Officer Loehmann was reasonable and justified. My conclusion and strong disagreement in this regard is based, among other things, on the following:

- a. Their reports ignore and/or distort the objective evidence, as set forth above.
- b. Their reports also appear to contradict one another. For example, Kimberly Crawford claims a number of times that the video shows Tamir “reaches toward his right side waist and lifts his jacket.” But Lamar Sims admits that “the video is grainy and it is unclear - from the video - whether Rice reaches for his gun.” Ken Katsaris appears to initially admit that the video is not “clear” as to whether Tamir is reaching for his waist, then later claimed that the video “shows Rice’s movement toward the waist.” In fact, the video is extremely unclear and, if Officers Loehmann and Garmback had followed proper police practices and were at a safe distance, with cover, and communicating with Tamir, then they would have been able to assess whether or not he was actually reaching for a gun and that he was actually a 12 year old boy with a toy gun.
- c. Remarkably, all three reports assume without basis that Officers Loehmann and Garmback issued warnings to Tamir before Officer Loehmann fired. In fact, the video makes clear there was no time for that. This assumption is particularly troubling for at least two principal reasons: i) it is flatly refuted by the objective video footage which indicates that it would be virtually physically impossible for there to be a meaningful exchange between the officer and child within the space of 1.7 seconds; and ii) neither officer has provided any sworn or direct statement suggesting this ever occurred. Relying on even an imputed statement from Loehmann on this subject would be irresponsible given his documented prior act of lying to a supervisor on another occasion. For all these reasons, this assumption, which surfaces in all three expert reports referenced above, raises the disturbing question of whether those opinions are infected by impartiality and bias.
- d. All three reports appear to blame Tamir by emphasizing how real the toy gun looked without its orange tip - but since Tamir wasn’t holding the gun when the officers pulled up and when Officer Loehmann shot him, how realistic the gun may have looked is irrelevant because Officers Loehmann and Garmback did not assess the gun’s appearance at all before Officer Loehmann fired.
- e. All three experts appear to speculate about what the officers *might* have seen or thought, when neither Officer Garmback nor Officer Loehmann has given a statement or testified. (Emphasis added.)
- f. Crawford and Sims rely on multiple levels of hearsay, which is inherently unreliable and legally unsound - in particular when opining

about the shooting death of a juvenile by police officers.

- g. All three reports appear to ignore basic principles of police training and tactics (as discussed above) and that according to the video Officers Garmback and Officer Loehmann created the danger here, sweep all tactics aside as irrelevant, and focused solely on the 1.7 seconds when Loehmann leaped out of the car with his gun drawn and Tamir's hands *may* have been near his waist. (Emphasis added.)
- h. They appear to ignore the law (as taught to officers) in the Sixth Circuit (which governs in Ohio) and as stated above: "Where a police officer unreasonably places himself in harm's way, his use of deadly force may be deemed excessive." *Kirby v. Duva*, 530 F.3d 475, 482 (6th Cir. 2008).

Material Omissions

Finally, I note that there are disturbing omissions in the record provided thus far which only fortify deficient and delinquent practices in this case. For example, as stated, there are no statements from either Officer Loehmann (who shot and killed Tamir); nor any statement from the driver of the patrol unit, Officer Frank Garmback. Although the officers have a Fifth Amendment right against self-incrimination, no reviewer should make assumptions about what their testimony would be. Likewise, there is no record of any blood tests taken of either Officer Loehmann nor Officer Garmback for chemical impairments; there is no explanation of the apparent grossly inaccurate dispatch to patrol units; there is no commentary regarding Officer Loehmann's emotional or physical fitness as a police officer at the time of this shooting; and most significantly, there is no explanation of the obvious gross departure from the fundamental and required tactics by both officers for the police response for this type of call - including how it was reasonable for them to assume that Tamir was the target of the call and worthy of lethal force. These are glaring omissions in the record thus far.

Basic Tenets That Should Govern the Lethal Use of Force

Peace Officers are trained that by accepting their badges and guns they must act at all times in consideration of the extreme value our society places on all human life. Firing a firearm at a human being is different from all other police uses of force and requires a specific set of facts before lethal force is reasonable or justified. While there are other police tactics and tools that can qualify as deadly force, none carry the same high probability of death as the use of the officer's firearm. Accordingly, peace officers are trained that they can only use firearms under the most extreme circumstances. These situations are very rare. In fact, studies indicate that only a very few police officers in the United States have ever fired their weapons in the field during their career.

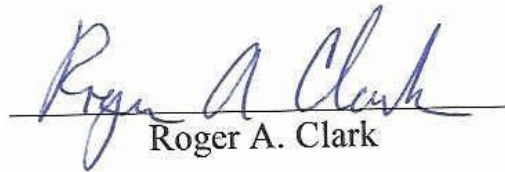
Reverence for life is the foundation on which the use of deadly force rests. Deadly force should always be the last resort used and only in the direst of circumstances. The authority to use deadly

force is an awesome responsibility given to peace officers by the people who expect them to exercise that authority judiciously.

Officers are also taught that deadly force is justified as a “last resort only” to be used in the direst of circumstances when all other reasonable measures are unavailable or have been exhausted. A warning must be given when possible before deadly force is used. An officer is also responsible for each shot. Thus, the use of deadly force is the most serious decision a peace officer may ever have to make. Such a decision should be guided by the reverence for human life and, used only when other means of control are unreasonable or have been exhausted. (Emphasis added.)

Conclusion

For all the above stated reasons, and based on the available record, it is my opinion to a reasonable degree of professional certainty that the shooting of Tamir Rice on November 22, 2014 was unreasonable, unjustified and entirely preventable. Also, as stated, please be advised that I reserve the right to amend, update and/or refine my opinions as additional material (as expected) is provided for my review.



Roger A. Clark