

Statement from County Prosecutor Timothy J. McGinty on the decision of the Grand Jury in the Tamir Rice case

12/28/2015

Four years ago, I retired as a judge to run for County Prosecutor to make our Criminal Justice System more transparent, professional and accountable.

I believed that greater openness would reduce the errors that had cost lives.

One promise I made was to fundamentally change how cases are handled when a police officer kills a civilian – to end the traditional system where the prosecutor privately reviewed police reports, then decided if an officer should be charged.

That secrecy — which appeared arbitrary without a public investigative report — undermined community confidence.

It was clear we needed a more rigorous, independent investigation of police use of deadly force cases.

Although not required by Ohio law, I now have all evidence reviewed not just by the prosecutor or this office, but by the citizens of the Grand Jury sitting as an investigative panel.

They hear all the evidence and make the final call.

Our office also shares with the public completed independent investigative reports so that there will be no mystery or rumors about what occurred in a citizen's death.

This transparency gives our community an opportunity to correct errors in policy, training, tactics, hiring or equipment far more quickly — instead of waiting, sometimes for years, until the opportunity and enthusiasm for reform are lost.

We want lessons learned and applied.

That is what we have done and will do in all 20 use of deadly force cases that have come to this office in the past three years.

Today, a Cuyahoga County Grand Jury completed its thorough investigation into the fatal shooting of 12-year-old Tamir Rice on November 22, 2014 at the Cudell Recreation Center.

Based on the evidence they heard and on the law as it applies to police use of deadly force, the Grand Jury declined to bring criminal charges against Cleveland Police Officers Timothy Loehmann and Frank Garmback.

That was also my recommendation and that of our office after reviewing the investigation and the law.

A short time ago, we informed Tamir's mother of the Grand Jury's decision.

It was a tough conversation.

We again expressed the condolences of our office, the Sheriff's detectives and everyone else who has worked so diligently on this case — and our sincere wish that the events of that traumatic day at Cudell Rec Center had unfolded differently.

We explained to her that this was a difficult decision, but that to charge police, even in a situation as undeniably tragic as the death of her son, the State must be able to show that the officers acted outside the constitutional boundaries set forth by the Supreme Court of the United States.

Simply put, given this perfect storm of human error, mistakes and miscommunication by all involved that day, the evidence did not indicate criminal conduct by police.

On close examination— especially of what is perhaps the most critical piece of evidence, a very recent enhancement of the surveillance video by an expert laboratory often relied on by the FBI — it is now indisputable that Tamir was drawing his gun from his waist as the police car slid toward him and Officer Loehmann exited the vehicle.

At the point where they suddenly came together, both Tamir and the rookie officer were no doubt frightened.

If we put ourselves in the victim's shoes, as prosecutors and detectives try to do, it is likely that Tamir — whose size made him look much older and who had been warned that his pellet gun might get him into trouble that day — either intended to hand it to the officers or to show them it wasn't a real gun.

But there was no way for the officers to know that because they saw the events rapidly unfolding in front of them from a very different perspective.

Minutes before, they had been assigned to respond to a Code One report of a "guy" pointing a gun at "people" outside the rec center — that "guy," they had been told, was dressed exactly as Tamir was.

As they raced the mile toward the rec center, the police were prepared to face a possible active shooter in a neighborhood with history of violence.

There are in fact memorials to two slain Cleveland Police officers in that very park. And both had been shot to death nearby in the line of duty.

Police are trained that it takes only a third of a second to draw and fire a weapon at them — and therefore they must react quickly to any threat.

Officer Loehmann had just seen Tamir put an object into his waist as he stood up in the gazebo and started walking away.

A moment later, as the car slid toward him, Tamir drew the replica gun from his waist and the officer fired.

Believing he was about to be shot was a mistaken — yet reasonable— belief given the high-stress circumstances and his police training.

He had reason to fear for his life.

This outcome will not cheer anyone, nor should it.

Every time I think about this case, I cannot help but feel that the victim here could have been my own son or grandson.

Everyone who investigated this case feels the same way.

All of our children go to parks and rec centers.

No parent follows their 12-year-old around all day to make sure they don't get into mischief.

That is why this case taps such profound emotions in us all.

The Rice family has suffered a grievous loss.

Nothing will replace Tamir in their lives.

The police officers and the police department must live with the awful knowledge that their mistakes – however unintentional – led to the death of a 12-year-old boy.

So will the police radio personnel whose errors were a substantial contributing factor to the tragic outcome.

They passed along detailed information about the “guy” outside the rec center’s clothing, including the colors of his coat and his camouflage hat, but not the all-important facts that the 9-1-1 caller said the gunman was “probably a juvenile” and the gun might not be real.

Had the officers been aware of those qualifiers, the training officer who was driving might have approached the scene with less urgency.

Lives may not have been put at stake.

The fact that the Code One, high-priority call about a possible active shooter next to a rec center was based on inaccurate information is very significant legally, but will do little to ease the emotional burdens that the family and all involved now must carry.

Our entire community has suffered through gut-wrenching self-examination and recriminations.

When an innocent civilian – let alone a child – is killed by a police officer, it touches nerves that lie at close to the surface of all of us in our society.

That is especially true since events in places such as Ferguson and Chicago have exposed the gulf of distrust and resentment that too often divides police from the very communities they serve.

And when the public is kept in the dark about the facts of an investigation into these incidents, that distrust grows.

All those emotions are compounded when a 12-year-old boy is killed on video.

But the original grainy video that has been shown repeatedly on TV is only a small part of the story here.

That is why this case demanded a professional and dispassionate investigation to determine if this was indeed a tragic crime – or a tragic accident.

The Supreme Court instructs us to judge an officer's conduct by what he or she knew at the moment – not by what was learned later.

We are instructed to ask what a reasonable police officer with the knowledge he had would do in this particular situation.

The Supreme Court prohibits second-guessing police tactics with 20/20 hindsight, and the law gives the benefit of the doubt to the officers who must make split-second decisions when they reasonably believe their lives or those of innocent bystanders are in danger.

Based on these rules, it became clear through this investigation that the actions of Officers Loehmann and Garmback were not criminal for reasons that Assistant County Prosecutors Matthew Meyer and James Gutierrez have outlined in a written report that will be available online.

The death of Tamir Rice was an absolute tragedy.

It was horrible, unfortunate and regrettable.

But it was not, by the law that binds us, a crime.

Throughout this process, we, too, have heard the chants.

We, too, want Justice for Tamir.

But justice would not be achieved by bringing charges that would violate the ethical canons of our profession because we know these charges could not be sustained under the law and our Constitution.

This decision does not mean the legal system is finished with this case.

In our country we have parallel systems of justice, and the civil justice system may yet provide the Rice family with some of the accountability they deserve.

But the Grand Jury lived with this case for more than two months, heard all the witnesses and was there to evaluate their credibility.

In cases where police use deadly force against a citizen, we now have other citizens review the evidence and make the final call.

As a local judge recently said, if you don't trust the Grand Jury, you don't trust your neighbors.

I trust the people of Cuyahoga County to make the final call – in this case and in every other police use of deadly force case.

This was a horrible event.

It should not happen again, and there already have been lessons learned and that is the positive side of this tragedy.

Already, steps have been taken to assure that these events do not reoccur:

- The city has bought body cams for all its officers. That will help.
- Dash cams are on the way for CPD and suburban departments using \$1 million that our office has seized from criminals.
- The consent agreement between the City and the Department of Justice will dramatically change the way the city hires, trains and manages its police. I applaud Mayor Jackson for his leadership on this.
- Finally I want to call on the manufacturers of toy guns not to make guns that look so much like the real thing. If the color and design of Tamir's pellet gun had screamed "Toy" then the call that set this tragedy in motion might never have been made.

The Grand Jury has fully investigated this case and made its final decision.

Now it is time for our community to learn from this tragedy and start to heal. Before anyone reaches their own conclusions, please review the facts and the evidence this investigation has uncovered.

I call for the leaders of our community to respect the process and the decision of the Grand Jury and to urge others to express their opinions in a peaceful and lawful manner.

(Remarks as prepared for delivery)