

**REPORT AND OPINIONS OF W. KEN KATSARIS
POLICE CONSULTANT AND TRAINER**

USE OF DEADLY FORCE BY CLEVELAND AND POLICE
OFFICER TIMOTHY LOEHMANN RESULTING IN DEATH OF
TAMIR E. RICE ON NOVEMBER 22, 2014

Submitted to Cuyahoga County Prosecutor's Office November 12, 2015

The basis for the below listed opinions comes from an intensive review of all the materials submitted to me by the Cuyahoga County Prosecutor's Office which are listed as Attachment "A" of this report, as well as the extensive education, training and experience I have gained from over fifty years of involvement in the law enforcement field.

INTRODUCTION OF W. KEN KATSARIS

I am currently a certified Florida Law Enforcement Officer/Instructor, and consultant in law enforcement and corrections. I regularly instruct in a wide area of law enforcement and corrections subjects at the Regional Police/Corrections Academy, where I have been teaching for over 30 years. For over 25 years, I was also an instructor at the Florida Highway Patrol Academy. I also participate in law enforcement seminars throughout the USA where I have instructed Officers, Commanders, Agency Administrators and the Attorneys representing these Agencies on a number of liability and investigation related subjects, including the Internal Review/Investigation Procedures following a complaint or incident. In the past I have instructed over 25,000 Officers from all 50 states including the Federal agencies and the Canadian Royal Mounted Police in a variety of street survival police procedures that are detailed in my C.V.

My law enforcement experience includes service as a Police Officer for the St. Petersburg Florida Police Department, the Tallahassee Florida Police Department, Deputy Sheriff with the Leon County Sheriff's Office, Trooper with the Florida Highway Patrol and the elected Constitutional sheriff who performs as the Chief Law Enforcement Officer of the County of Leon, City of Tallahassee, Florida area.

My academic instructional background includes 10 years as the Department Chairman of the Criminal Justice Program at Tallahassee Community College (Tallahassee, Florida). In this capacity I directed and taught both the advanced in-service Police training programs and the degree granting programs, as well as directing the crime lab used to support local law enforcement. Extensive teaching and training including hands on skill development was taught in both criminal investigation and criminalistics courses. Academic subjects included courses in management, procedures, and criminology.

My experience includes extensive instruction to officers throughout the United States on all of the concepts, issues, and procedures for threat assessment, approaching, controlling, and restraining resisting subjects. For over twenty-five (25) years I instructed at the Florida Highway Patrol Academy on use of force policy and procedure, as well as serving as the force and deadly force advisor for thirteen (13) years to the Director of the Highway Patrol. For over thirty (30) years I have instructed at the Pat Thomas Regional Law Enforcement Academy. Some of my assigned subjects are use of force, deadly force, crisis intervention, and dealing with the mentally ill and emotionally disturbed individual. For over twenty (20) years I have been senior instructor for AELE, the nationally recognized organization providing instruction to commanders of law enforcement agencies and the attorneys representing city, county, and state agencies on civil

liability claims. I also held the position of instructor for the nationally acclaimed Calibre Press Street Survival seminar where I presented specific instruction on the skills and tactics of control, including handcuffing, neck restraint systems, total appendage restraint, active counter-measures, and tactics for pressure point control. I hold certifications as a firearms instructor, use of force instructor, electronic control device (ECD) instructor, handcuffing instructor, total appendage restraint instructor, and lateral vascular neck restraint instructor.

In addition to all of the above experience, training, and education, it is important to also assess one specific consulting practice that I engage in – assessing police involved use of force, including physical force, and force utilizing various police tools such as the police baton, handcuffs, chemical restraint sprays, electronic control weapons, and more specific to this case, firearms. I am either a certified user or instructor of each tool, and have been a state certified firearms, and decision shooting instructor, for over thirty (30) years.

Of equal importance to over 30 years of actual police experience in the field and the forty-five (45) plus years of teaching tens of thousands of police officers from all fifty (50) states, in both practical, hands-on use of force, and deadly force issues, I have extensive experience doing case evaluations for the purpose of presenting reports and opinions to the Court. I have also participated in testifying, under oath, in both depositions and trials in both state and federal courts, where my testimony reflected I found police misconduct, that conduct was considered criminal and/or civilly responsible for negligence, gross negligence, deliberate indifference, as well as objectively unreasonable. In the alternate, where the facts and circumstances were present to render favorable opinions as to police officer conduct, such as in the use of force or deadly force, my report, deposition testimony or trial testimony reflected those opinions as well.

Over a thirty (30) year history of litigation and court expert consulting, my work would reflect a near split between my findings and opinions of the police conduct and conformance/non-conformance to recognized policy and police accepted, recognized and trained practices. The checks and balances of this consulting evaluation of police conduct comes from cross examination, under oath, as to the police conduct being critiqued. Therefore, my record of opinions, both supportive of police conduct or below a recognized standard of care findings of police performance have been archived, public, and very transparent.

Because all of the material listed in attachment “A” was carefully and fully reviewed, and is detailed and readily available, I will not attempt to summarize all the facts and circumstances of this case file. To do so in a complete, and thorough fashion, would simply be reiterating the salient information already archived, and in some fashion summarized by the investigative process. Also, because I am evaluating the conduct of the Cleveland Police Department’s specific response to a specific 911 call, I will only utilize the information known to the Cleveland 911 call taker, dispatcher, and Officers Frank Garmback, Timothy Loehmann, as well as the brief, and video archived actions, of Tamir Rice as the officers arrive on the scene. This approach is the Court established review process of all officer involved shootings.

My opinions of the Cleveland Police Department (CPD) response will be directed at four (4) areas of CPD actions: The 911 call about “a guy with a gun;” the dispatch information provided, via radio to Officers Garmback and Loehmann; the response and approach of the officers to specific dispatch information as they arrived at the Cudell Rec Center; and the shooting of Tamir Rice.

Again, these opinions will be rendered only on the information known by members of the CPD, and not all of the information revealed as a result of an intensive evaluation of multiple surveillance cameras, and witness interviews.

THE 911 CALL

On November 22, 2014 at approximately 3:22 p.m., the Cleveland Police Department (CPD) Communication Center received a 911 call from a male who identified himself as [REDACTED]

His immediate report was:

“I’m sitting here in the park by West Boulevard by the West Boulevard Transit Station. There’s a guy with a pistol. It’s probably fake, but he’s pointing it at everybody.”

He further reported:

“Guy keeps pulling it in and out of his pants. It’s probably fake, but you know what? It’s scaring the shit out of me.”

[REDACTED] continues by answering specific questions of the dispatcher, and ultimately gives a description of the “guy” and his clothing. Then he said:

“He’s sitting on a swing right now, but he keeps pulling it in and out of his pants, and pointing it at people. He’s probably a juvenile, you know?”

[REDACTED] went on to say

“He’s right here by the, you know, youth center or whatever, and he keeps pulling it in and out of his pants. I don’t know if it’s real or not.”

THE DISPATCH TO OFFICERS

When the call is dispatched to Officers Garmback and Loehmann (One Adam twenty-Five or 1A25), the Dispatcher gave the following information to the officers:

“He ([REDACTED]) said in the park by the Youth Center, there’s a Black Male

sitting on a swing. He's wearing a camouflage hat, a gray jacket with black sleeves. He keeps pulling a gun out of his pants and pointing it at people."

Dispatch assigned it a code 1 (one), the highest priority emergency code for a police call indicating arrive as quickly as possible using due regard for citizen safety.

OPINION OF 911 CALL AND DISPATCH TO OFFICERS

My experience, education, and training in the areas of Communications Center Operations and the generally recognized practices for both call taking and dispatching will reveal that I have served in both roles as a Law Enforcement Officer Call Taker and Dispatcher. Furthermore, I supervised a County 911 Call Center and Dispatch Operation as the elected Sheriff and Chief Law Enforcement Officer, as well as serving for many years as a Communication and Dispatch Instructor for both local and state police agencies in Florida, through the regional and state Police Academy. With this as the basis of my review of this case file facts about the CPD Call Taker, and Dispatcher, I render the opinion that the Call Taker did gather sufficient information from "██████" and handled the call appropriately.

It is my opinion however, that the Dispatcher should have provided additional information, gathered by the Call Taker from "██████" to the officers who were assigned this high priority call. That information would have included the specific information that the "guy with the gun" is "probably a juvenile," and that "██████" indicated that, while the firearm was described as "probably a fake," he also clearly reported "I don't know if it's real or not." It is also my opinion that this specific information would not be very helpful to the officers in terms of decision making, it was information they should have been provided. It is not helpful

information because the statement “probably a juvenile” is an approximate possible age range of any age under eighteen (18), which certainly does not in any way diminish the threat potential, and the statements about the firearm are far too ambiguous to be taken as relevant unless the circumstances were clearly different than this situation unfolded. The comment that “it’s probably a fake,” was followed by “I don’t know if it’s real or not.” Again, the officers should be given all known, and reported information to allow them to process as they are approaching, and assessing the potential threat(s). Given the split second decision Officer Loehmann had to make, observing the approach of a 5’7”, 195 pound male, matching the description of the “guy with a gun,” who “keeps pulling it out of his pants, and pointing it at people,” the officers focus, threat assessment, movement of Rice towards Loehmann, possibly not reacting to Loehmann’s commands, and though not perfectly clear, appears to be reaching for his waist under his shirt/jacket (video), the only objectively reasonable decision to be made by Loehmann was to utilize deadly force and deploy his firearm. The lack of dispatch information gained by the Call Taker from “██████” became irrelevant to the deadly force decision. I include this error by the Dispatcher as instructive only, as given some other of many potential scenarios, it might have been relevant. It definitely was not in this situation.

**THE POLICE VEHICLE APPROACH
BY OFFICER GARMBACK AND THE
DEADLY FORCE DECISION BY OFFICER LOEHMANN**

From the Ohio State Highway Patrol reconstruction of the 1A25 vehicle’s approach and travel through the Culdell Rec Center area, it was determined that Officer Garmback was

driving at speeds between thirteen (13), and seventeen (17) miles per hour (MPH). It appears that the officers were heading for the area of the swings, where the “guy with the gun” was last reported being seen. However, the described subject they were looking for (Rice) was apparently spotted, not at the swings, but instead at the Gazebo area, which is not far from the swings. It also appears that this presence at the Gazebo was not expected, causing Officer Garmback to apply the brakes suddenly, and hard, skidding for forty (40') feet, and ten (10") inches. This fact is relevant to an assessment of the tactical deployment decision of the vehicle stop being in close proximity to the identified subject of the “guy with a gun” dispatch call. When overlaid against the movement, and actions of Tamir Rice, as can be seen in the video, which would be the same view the officers had, it is obvious to me, from the totality of the circumstances, that the vehicle stop position was not by choice, but by necessity.

Also, the lack of any further vehicle movement to create distance between the potential threat, and the officers, would comport with the threat assessment of other reasonable officers similarly situated. With the identified subject (Rice) approaching the police vehicle, and appearing to lift his jacket and reach for the waist area of his pants, the potential threat from possible gunfire at the officers, while making any attempt to move the vehicle, would place them at significant risk of injury or death. Making an immediate exit from the police vehicle to confront the threat, immediately moving to use the police vehicle as cover with guns drawn, while beginning to give commands, even before exiting the vehicle, would be appropriate, reasonable, and comport with policy and training. The recently provided “ambush training” would certainly mandate this movement, and action by the officers.

However, it is obvious from the surveillance video that both the close proximity of Officer Loehmann to Tamir Rice, the identified threat assessment reasonably made by the officer, which shows Rice's movement toward the waist, the fact that the dispatch call was "a guy with a gun," and that "he keeps pulling a gun out of his pants and pointing it at people," provided only one split second choice for Officer Loehmann under what is clearly a tense and rapidly evolving situation that required the application of deadly force to protect both or either of the officers. This decision, in my opinion, was clearly objectively reasonable, given the totality of the circumstances.

The reported criminal activity – "pulling a gun out of his pants and pointing it at people," and the actions of Tamir Rice lifting his jacket and reaching for his waist, was not only consistent with the reported, and dispatched, criminal information, but also reflects an immediate threat of death or serious injury to either or both of the responding officers. These circumstances comport with deadly force decision making determined by Court guidance, training, policy, and reasonable, and accepted police practices.

It is simply obvious that the officers had a reasonable belief that Rice was armed. The trained threat assessment of the focused observations of the movements of the reported armed person, especially the hand movements, and the movements toward the waist – an obvious "high risk" area for being a known gun concealment area – combined with the reported, and dispatched, information that the "guy with the gun," "(He) keeps pulling a gun out of his pants, and pointing it at people," allows less than a split second decision to apply deadly force, reasonably. Training and research on action-reaction timing reveal that even the trained police officer can't wait to determine what the real intentions of the subject are. This would just be a

serious compromise of safety given the dynamics of the totality of the circumstances, and actions of this specific encounter. Given the notice of the police presence to Rice, and the specific threatening actions of Rice toward the reported gun location area on his body, Rice's actions provided no other alternative to Officer Loehmann than to apply deadly force.

I realize there is some question yet to be answered, if it even could be conclusively determined, that a warning, or more warning should be given of the potential before the use of deadly force. However, the immediacy of the threat, the amount of definitive description of the armed subject, and the hand movement toward the already identified location of "the gun," makes any, or further warning notice, against the backdrop of the obvious uniformed police presence, and information known, totally irrelevant and surely not "feasible."

The issue of the "possible fake" gun, and whether the officers were given that information or not, is also not relevant. Even if the officers were told the 911 caller said "it's possibly fake," the officers would also have been told the 911 caller reported "I don't know if it's real or not." The gun experience of the caller is an unknown, but we do know the caller still reported "it's scaring the shit out of me," indicating he had a reasonable belief the gun was real.

We also now know that the replica gun – identifying "orange tip" had been removed, and otherwise this specific replica model is an almost identical replica of a real production pistol. In any event, I again reiterate, given the specific action of Tamir Rice, which can be generally seen on the surveillance video, it would not have been reasonable to delay the application of deadly force to confirm either Tamir Rice's intent or the identification of the gun being reached for by Rice. And, we also know that Rice was warned by the owner of the replica gun that the "orange

tip” identifying the gun as a replica firearm had been removed and that the gun really “looks real.”

This unquestionably was a tragic loss of life, but to compound the tragedy by labeling the officers conduct as anything but objectively reasonable would also be a tragedy, albeit not carrying with it the consequences of the loss of life, only the possibility of loss of career. But based on the circumstances outlined above, this outcome for the officers would be to judge them by other than the Court decisions on the use of deadly force, the State law, training provided by the State of Ohio, the CPD, and the recognized and accepted National Police Best Practices.

If additional information, evidence, or statements are provided that supplement the materials listed in Attachment “A” of this report, I reserve the right to amend, add to, or change my opinions.



W. Ken Katsaris

ATTACHMENT "A"

MATERIALS PROVIDED BY THE
CUYAHOGA COUNTY PROSECUTOR'S OFFICE

CSD Report

911 DISPATCHER

CECSSR Subpoena
Grand Jury Subpoena
911 Call Request
911 Transcript
Constance Hollinger
Beth Mandl
Dispatcher Interview requests
CAD Unit History
Event Summary

LOEHMANN

Akron Police Department
Cuyahoga County Sheriff
Euclid
Independence
Officer Urbania

TAMIR RICE

Cell phone search
Children and Family Services
CHP Investigation
Guidestone
School

INVESTIGATION

AVL
CPD Officers
CPD Witnesses
Crime Scene
Interview Requests
CDR Cameras
Duty Assignments
Frank Woyma Interview

EMS

EMS Audio transcript
EMS Run Sheet
EMT Bittel
Aaron Nicholson
Patrick Hough

WITNESSES

[REDACTED]

CUDELL REC

Sign in Logs
Other CRC Documents

MEDICAL EXAMINER

toxicology Report

Autopsy

Trace Evidence

DNA

CD'S/DVD containing:

Evidence

Interviews

Photos

Video of Shooting

Other Surveillance Camera Video