

Supplemental Preliminary Expert Report of Jeffrey J. Noble

1. This report is a supplemental preliminary expert report based on my review of the enhanced video prepared by Forensic Video Solutions and the written statements of Officer Loehmann and Officer Garmback.

The Enhanced Video Provides Additional Evidence of the Officers' Reckless Tactical Decision-Making, the Lack of Time for any Commands to have been Provided and Followed or any Assessment Made by the Police, and the Fact that Officer Loehmann Shot Tamir within one Second of Opening his Car Door

2. The Forensic Video Solutions enhanced video has prepared the video in 326 slides depicting each frame of video from three different cameras.
3. Slide 9 gives the first indication of the police vehicle entering the park.
4. Slide 75 shows Tamir standing and a notation indicates he stands "10 seconds prior to police vehicle stopping."
 - a. The enhanced video serves to support my opinion that the officers should have seen Tamir prior to the point where they began their emergency braking.
 - b. Tamir was standing and there were no obstructions that would have prevented the officers from seeing Tamir under the gazebo.
 - c. Regardless of whether the officers saw Tamir or not, their entry into the park and the speed they drove through the park was reckless and no similarly situated, reasonable officer would have engaged in such reckless tactical decision making.
5. Slide 113 has a notation that reads: "Rice moved toward police vehicle"—but that is a misleading notation, because the police vehicle had not arrived yet, so it is not accurate to say that Tamir was moving "toward" the vehicle. In fact, Tamir was moving perpendicular to the police car.
6. There are four slides that show the critical moment of the shooting, which represent a combined total of 2 seconds according to the timestamp:
 - a. Slide 121 shows Tamir walking forward with his arms to his sides and the police vehicle pulling up in front of the gazebo. The vehicle is still in motion.
 - b. Slide 122 shows Tamir is standing. A notation on the frame indicates "Rice moves forward and lowers arm to waist" and "Passenger door opens." The

frame does not reveal Tamir's movement immediately before or after the frame. Rather, it is a frame of a continuous event.

- 1.) The picture is grainy and lacks detail.
 - 2.) Tamir's arm movement may have been normal movement due to his walking forward.
 - 3.) Neither of Tamir's hands can be seen.
 - 4.) The frame does not provide perspective. For example, you cannot tell the distance between Tamir's hands and his body. Nor can one tell if Tamir is reaching for something, if anything is in his hand, if he is attempting to raise his hand in the air (possibly due to the officers' orders) or some other action. In the immediately preceding frames, Tamir's hands were empty.
- c. Slide 123 shows Tamir standing and an upward movement of his shoulder and elbow. A notation on the frame indicates "Rice's right shoulder and arm move upward" and "Loehmann exits police vehicle."
- 1.) As with the other frames, this picture is grainy and lacks detail.
 - 2.) The frame does not provide perspective and you cannot tell the distance between Tamir's hands and his body.
 - 3.) Officer Loehmann is out of the police vehicle, with his gun drawn and pointed towards Tamir.
 - 4.) Since the next frame shows Tamir's upper body fully bent over less than one second later, it appears that Tamir is reacting to already having been shot or fear that he is about to be shot.
 - 5.) Contrary to the statements of Mr. Katsaris, Ms. Crawford and Officer Loehmann, there is no evidence that Tamir lifted his jacket and reached into his waistband, nor is there any notation indicating any movement of Tamir's jacket or any reaching into his waistband.
- d. Slide 124 shows Tamir's upper body bent over. A notation states "Rice reacts to gunshot." It appears this frame shows Tamir after he has been shot. The next frame shows Tamir on the ground.
- e. The total elapsed time between Slide 122 (when Lohemann opens the car door) and Slide 124 (when Tamir is doubled over, shot) is 1 second, according to the

timestamp. If Slide 123 depicts Tamir already reacting to having been shot, then the time elapsed is even shorter.

7. It is my opinion to a reasonable degree of professional certainty that the enhanced video provides additional evidence of the officers' reckless tactical decision-making, the fact that the officers almost certainly saw Tamir from far away as they drove towards the gazebo, the lack of time for any commands to have been given or any assessment made by the police, and the fact that Officer Loehmann shot Tamir within one second of opening his car door.

Officers Loehmann's and Garmback's Written Statements Provide Additional Evidence of Their Reckless Tactical Decision-Making and Fail to Provide any Justification for Officer Loehmann's Use of Deadly Force

8. Officer Loehmann's statement provides additional evidence of the officers' reckless tactical decision-making and fails to provide any justification for his use of deadly force.
 - a. As discussed in my initial report, a reasonable police officer would have stopped at the entry of the park to survey the area. Without question, a reasonable officer would have immediately stopped and taken cover when they saw a subject who was reportedly armed with a gun a short distance away. Moreover, Officer Loehmann described the weather conditions and that it was cold, wet, and the grass had a "dusting" of snow, conditions that any reasonable police would know would make stopping difficult.
 - b. Officer Loehmann stated he saw Tamir "pick up an object and stick it down into his waistband and he stood up and walked towards the Recreation Center."
 - 1.) If Officer Loehmann saw Tamir pick something and put it in his waistband, there are only two possibilities of when that action occurred.
 - 2.) First, would have been prior to slide 23 because between slide 23 and 75 Tamir's hands are visible on the picnic table. The officers' vehicle is seen entering the video at frame 9 and the vehicle had likely just entered the park at that moment. Once Officer Loehmann saw Tamir, it should have added to the importance of using proper police tactics as the officers were responding to a report of a man with a gun in the park, he claims he saw Tamir dressed similarly to the description he was given, and he claims he saw Tamir appear to secret something in his waistband.
 - 3.) Second, if the action that Officer Loehmann claims he saw occurred as Tamir stood up (slide 75), that was still 10 seconds before the officers' vehicle came to a stop.

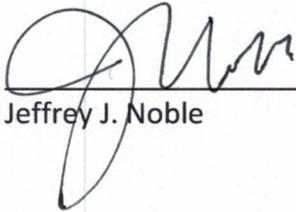
- 4.) While Officer Loehmann claims they “were even with the swing set” when he saw Tamir, the enhanced video reveals they had not yet reached the swing set when Tamir stood up. It appears the officers reached the swing set area at slide 91 when their vehicle begins to turn left to avoid the swing set area of the playground.
 - 5.) Officer Loehmann’s statement indicates he saw Tamir at a minimum of 10 seconds before their car came to a stop and the video enhancement shows it was before the officers were at the swing set. Officer Loehmann may also have seen Tamir much earlier, prior to slide 23, which would increase the time the officers had visual contact with Tamir. Indeed, there were no obstructions and nothing preventing the officers from seeing Tamir as they entered the park.
 - 6.) Based on the information available to the officers at the time, whether the officers saw Tamir 10 seconds before or longer, they had ample time to stop their car at a safe distance and assess the situation in accordance with proper police practices. Their failure to stop and confront Tamir from a distance which would have allowed them time and cover was reckless and directly led to the death of Tamir.
- c. Officer Loehmann claims Tamir lifted his shirt and reached down into his waistband – facts that are directly contradicted by the video.
 - d. Officer Loehmann claims he and Officer Garmback were yelling at Tamir, “Show me your hands.” Yet, the vehicle’s windows were closed (as confirmed by Officer Garmback in his statement) and Officer Loehmann shot Tamir within a second of his door opening. Moreover, if the officers had indeed been yelling, “Show me your hands,” and Tamir was attempting to comply with the officers’ orders, it follows that Tamir may have been raising his hand as he had been ordered.
 - e. Officer Loehmann claims he has worked many cases including homicides, aggravated robberies with a gun and assaults with weapon and he claims he was “involved in many active shooter cases.”
 - 1.) Officer Loehmann was sworn in as a Cleveland police officer on August 29, 2014, less than three months before the shooting of Tamir.
 - 2.) It appears that Officer Loehmann may be embellishing his experience as a police officer as it would be unusual for an officer of Officer Loehmann’s tenure to have been involved in so many incidents. Moreover, an “active shooter” is defined as an individual actively engaged in killing or

attempting to kill people in a confined and populated area.¹ I was able to locate only one “active shooter” incident in Cleveland and that occurred on May 9, 2003 at the Case Western Reserve University—long before Officer Loehmann joined the force.

- 3.) Importantly, Officer Loehmann identified this incident as an “active shooter” situation. There was no information that would lead a reasonable police officer to believe this was an “active shooter” situation. There were no claims that a single shot had been fired or that anyone was injured in any way, and the officers could see as they arrived there was no one else in the area. Officer Loehmann’s inaccurate assessment of the situation may be a factor in his unreasonable use of deadly force.
9. Officer Garmback’s statement fails to provide any justification for his reckless tactical decision-making that directly led to Officer Loehmann’s use of deadly force.
 - a. Officer Garmback said, “I observed that the male was not at the swing set.” He does not state where he was at when he made this observation.
 - b. Officer Garmback said when he did not see Tamir at the swing set he, “entered the park and drove by the swing set toward the gazebo.” He then states, “As we moved in to the park, I saw the male in the gazebo.” Officer Garmback’s statements are unclear regarding his position when he made these observations.
 - c. Officer Garmback said he believed Tamir was about to run, but he does not offer any facts to support his conclusion. Indeed, the video shows Tamir standing and slowly walking toward the edge of the concrete flooring of the gazebo perpendicular to the police vehicle.
 - d. Officer Garmback said he applied his brakes and the car did not stop where he intended. Even if Officer Garmback stopped when he first applied his brakes he would have been too close to Tamir and his actions would have been tactically reckless. Moreover, a veteran police officer would know that when driving on grass that was wet and had a light layer of snow his stopping distance would be increased.

¹ See, “Active Shooter: How to Respond, U.S. Department of Homeland Security https://www.dhs.gov/xlibrary/assets/active_shooter_booklet.pdf; PERF, *Critical Issues in Policing Series: The Police Response to Active Shooter Incidents*. (March 2014) http://www.policeforum.org/assets/docs/Critical_Issues_Series/the%20police%20response%20to%20active%20shooter%20incidents%202014.pdf; and <https://www.fbi.gov/about-us/office-of-partner-engagement/active-shooter-incidents>

- e. Officer Garmback said both he and Officer Loehmann ordered Tamir to “show his hands,” but acknowledges that he believes, and as the scene photographs confirm, the windows of the cruiser were up at the time of the event.
 - f. Indeed, it may have been Tamir’s action of raising his hand as he was ordered that in part caused Officer Loehmann to use deadly force. A reasonable officer would have ordered Tamir to “Freeze,” or “Don’t move” to avoid an action that may be perceived as a deadly threat.
10. It is my opinion that the statements of Officers Loehmann and Garmback fail to offer justification for their reckless tactical decision-making or Officer Loehmann’s unreasonable use of deadly force. Indeed, Officer Loehmann’s statements reveal that at least he saw Tamir before the officers reached the swing set which was at least 10 seconds before their car came to a sliding stop.



Jeffrey J. Noble

12/4/15

Date