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DIANE L. HOUK

September 10, 2015

Timothy McGinty  
Cuyahoga County Prosecutor's Office  
The Justice Center, Courts Tower  
1200 Ontario Street, 9th Floor  
Cleveland, Ohio 44113

*Re: Aggravated Murder charges against Officer Timothy Loehmann*

Dear Prosecutor McGinty:

As you know, we represent Samaria Rice, her daughter, T.R., and the Estate of Tamir Rice. Thank you for arranging to have Assistant Prosecuting Attorneys Matthew Meyer and James Gutierrez meet with us and Ms. Rice last week to obtain an update on the status of the criminal investigation of Officers Timothy Loehmann and Frank Garmback.

We are writing to follow up on our discussion in that meeting to underscore our request that when you present the matter to the grand jury, you include a request for an aggravated-murder charge against Officer Loehmann. As we explained to prosecutors Meyer and Gutierrez during the meeting, and as elaborated below, Aggravated Murder under the prong at R.C. 2903.01(C)—unlike the rest of the statute—does not require “prior calculation and design,” only a “purpose” to cause death, where the victim is under age 13.

Ohio Revised Code for Murder, § 2903.02(A), provides in relevant part that “No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.”

Aggravated Murder under R.C. 2903.01(C), however, does not require “prior calculation and design.” In relevant part, the statute provides: “No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.” All that is required is the purpose to cause the death of someone under the age of 13.

Tamir Rice was 12-years-old when Officer Loehmann purposely killed him by shooting him.

Ohio case law is clear: killing a child under the age of thirteen creates the narrowing circumstances for eligibility under aggravated murder. *See Fitzpatrick v. Bradshaw*, 2009 U.S. Dist. LEXIS 105102, at \*119–123 (S.D. Ohio Nov. 5, 2009). And it does not matter whether Officer Loehmann *knew* that Tamir Rice was 12 at the time of the shooting:

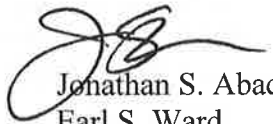
[T]he General Assembly's desire to protect child victims independent of the offenders' knowledge or intent that a victim is a young child is rationally based on the need to protect young children from violence. Thus, the fact that the state is not required to prove that Drummond knew that the victim was under the age of 13 does not make the statute void for vagueness.

*State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 235 (citations removed)

Ohio is not an outlier in its definition of aggravated murder; similar statutory language has been upheld in other states. *See Black v. State*, 26 S.W.3d 895 (Tex.Crim.App.2000); *Stevens v. State*, 691 N.E.2d 412 (Ind.1997); *State v. Colon*, 272 Conn. 106, 864 A.2d 666 (2004).

We ask that when you seek charges from a grand jury, you include the charge of aggravated murder. Please feel free to communicate with us at anytime regarding this important matter.

Sincerely,



Jonathan S. Abady  
Earl S. Ward  
Zoe Saltzman

c: Subodh Chandra (via email)  
William Mills (via email)  
Matthew Meyer, Assistant Prosecuting Attorney  
James Gutierrez, Assistant Prosecuting Attorney