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Via Electronic Mail and Federal Express

Timothy McGinty
Cuyahoga County Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street, 9th Floor
Cleveland, Ohio 44113

Re: Police Officers' Waiver of Fifth Amendment Privilege against Self-Incrimination

Dear Mr. McGinty:

As you know, this firm, The Chandra Law Firm LLC, and FirmEquity represent Samaria Rice; her daughter T.R.; and Tamir Rice's estate. Counsel for officers Loehmann and Garmback and a police-union representative have publicly admitted that the officers who killed Tamir Rice took the oath and read the grand jury their prepared, previously unsworn statements "against legal advice," and then refused to answer any questions based on the Fifth Amendment. But the law is clear: by reading their self-serving statements, the officers waived their Fifth Amendment privilege and are now required to answer questions on cross-examination.

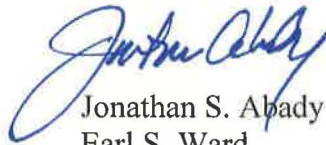
Under longstanding Supreme Court precedent, by testifying under oath about their conduct toward 12-year-old Tamir, the officers have now waived their Fifth Amendment right to be silent in the grand-jury proceeding on that subject: a witness can "***not take the stand to testify in [his] own behalf and also claim the right to be free from cross-examination on matters raised by [his] own testimony on direct examination.***" *Brown v. United States*, 356 U.S. 148, 155-56 (1958). As the Supreme Court has explained, every "witness has the choice, after weighing the advantage of the privilege against self-incrimination against the advantage of putting forward his version of the facts and his reliability as a witness, not to testify at all." *Id.* But the witness "cannot reasonably claim that the Fifth Amendment gives him not only this choice but, if he elects to testify, an immunity from cross-examination on the matters he has himself put in dispute. It would make of the Fifth Amendment not only a humane safeguard against judicially coerced self-disclosure but a positive invitation to mutilate the truth a party offers to tell." *Id.* See also *Vill. of Barnesville v. Hunkler*, No. 86-B-7, 1987 WL 5709, at *3 (Ohio Ct. App. Jan. 22, 1987) (various U.S. Supreme Court citations omitted) ("[The accused's]

option is either to stay off the stand entirely or to testify in his own behalf. Thus, his privilege as well as its waiver has wider scope than of an ordinary witness. By volunteering to testify, he throws away his shield and opens himself to inquiry as to all relevant matters pertaining to the crime for which he is on trial.”); *State v. Dunton*, No. 48944, 1985 WL 8007, at *9 (Ohio Ct. App. Apr. 25, 1985) (“Having taken the stand, [the witness] opened himself up to cross-examination”). Under this clearly established law, there is no question that Officers Loehmann and Garmback waived their Fifth Amendment privilege by appearing before the grand jury, taking the oath, and reading their own self-serving statements.

No one—now except police officers in Cuyahoga County apparently—is ever permitted to have it both ways: make a self-serving statement under oath but be free of any cross-examination to expose the truth. The officers’ statements were replete with opportunities for aggressive cross-examination. The irregular tactics these officers used, the contradictions between—and physical impossibilities claimed in—their statements, and the facts left unsaid yet apparent from the video evidence are ripe for cross-examination.

Your office must bring the officers back in to answer those questions and, if they refuse, ask the Court to compel their testimony and hold them in contempt if they continue to refuse to answer questions. You also need to inform the grand jurors that they have the independent right to themselves recall the officers, question them, and ask the Court to compel their testimony if they refuse to answer. To do anything else undermines the search for the truth in this case and does a great disservice to the Rice family, the Cleveland community, and the nation.

Sincerely,



Jonathan S. Abady
Earl S. Ward
Zoe Salzman

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