

Dec. 1, 2015

I have the following to say at this point in time:

This was a tragic incident. No one at age 12 should lose his or her life this way. Neither should anyone at 18, 20, 40 or 90 years of age, for that matter.

This does not change the few simple, but important, facts in this case and the straightforward law that applies at this stage, which is an inquiry about criminal charges. Police officers are authorized by state and federal law to use force, including deadly force. One of the circumstances in which an officer can legally use deadly force is when the officer reasonably believes that he or she is protecting the officer's own life or the life of someone else. For that matter, deadly force can be used under the reasonable fear of serious physical harm.

On the day in question, Officers Garmback and Loehmann were advised that a male was waving, pointing, threatening and scaring people with a gun in a public park immediately adjacent to a recreation center. The dispatch did not refer to a "12 year old" and did not describe or mention a "toy gun".

When the officers neared the pavilion in the park, Rice started to move away from their cruiser. Rice then turned and walked toward the cruiser as it drew closer to the pavilion. The officers did not expect this.

Officer Garmback applied the cruiser's brakes, but under conditions, the car slid to within several feet of the pavilion and Rice.

Unfortunately, Rice pulled a gun from his waistband at or very near the time Officer Loehmann exited the cruiser. Both officers saw Rice's hand on the weapon. Both officers saw Rice lift the weapon from the front right area of his pants. (That the gun was drawn is an uncontested fact. The weapon was out and on the ground near Rice after the shooting.)

Tamir Rice pulled the weapon while Officer Loehmann had his firearm trained on Rice and was directing Rice to show his hands. The legal question, therefore, is whether a reasonable police officer in Officer Loehmann's position at that moment would believe that he had to protect himself from serious physical harm or death.

Under this analysis, it is quite clear that Officers Garmback and Loehmann acted within the bounds of the law.

– Michael P. Maloney