

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.
THE CINCINNATI ENQUIRER

:
:
Case No. 2015-1222

STATE OF OHIO, ex rel.
SCRIPPS MEDIA INC. D/B/A WCPO-TV

:
:
:

STATE OF OHIO, ex rel.
THE ASSOCIATED PRESS

:
:
Original Action in Mandamus

STATE OF OHIO, ex rel.
RAYCOM MEDIA D/B/A WXIX-TV

:
:
:

STATE OF OHIO, ex rel.
HEARST CORPORATION D/B/A WLWT-TV

:
:
:

STATE OF OHIO, ex rel.
SINCLAIR MEDIA III, INC. D/B/A WKRC-TV

:
:
:

Relators,

:
:
:

v.

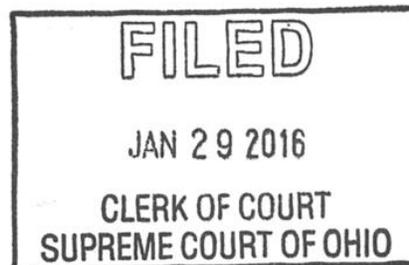
:
:
:

JOSEPH T. DETERS, HAMILTON COUNTY
PROSECUTING ATTORNEY

:
:
:

Respondent.

:
:
:



EVIDENCE SUBMITTED BY RESPONDENT JOSEPH T. DETERS, PROSECUTING
ATTORNEY OF HAMILTON COUNTY, OHIO

John C. Greiner (0005551)
Darren W. Ford (0086449)
Graydon Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Tel: 513-629-2734
Fax: 513-651-3836
jgreiner@graydon.com

Counsel for Relators

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO

Andy Douglas, 0000006
Roger E. Friedmann, 0009874
Christian J. Schaefer, 0015494
Michael J. Friedmann, 0090999
Assistant Prosecuting Attorneys
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
DDN: 513-946-3279 (Douglas)

DDN: 513-946-3025 (Roger Friedmann)
DDN: 513-946-3041 (Schaefer)
DDN: 513-946-3197 (Michael Friedmann)
FAX: 513-946-3018
andy.douglas@hcpros.org
roger.friedmann@hcpros.org
chris.schaefer@hcpros.org
michael.friedmann@hcpros.org

*Attorneys for Respondent, Joseph T. Deters,
Prosecuting Attorney for Hamilton County,
Ohio*

TABLE OF CONTENTS

Affidavit of Mark E. Piepmeier1

Exhibit A – Tensing Body Cam Video5

Affidavit of Julie K. Wilson.....6

Exhibit A – Email directed to all local media on July 22, 201510

Exhibit B – Email records request from Associated Press11

Exhibit C – Email directed to all media on July 23, 201513

Exhibit D – Email records request from WKRC14

Exhibit E – Email directed to all media on July 29, 201516

Exhibit F – Enquirer Editorial.....17

Affidavit of Scott W. Wagner18

Exhibit A – Curriculum Vitae of Scott W. Wagner20

Exhibit B – Opinion26

Body Worn Digital Recording Systems (University of Cincinnati Police Policy).....35

Affidavit of Gwendolyn M. Bender40

Relator The Cincinnati Enquirer's Objections and Answers to Respondent's Interrogatories.....42

Certificate of Service48

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.	:	
THE CINCINNATI ENQUIRER	:	Case No. 2015-1222
	:	
STATE OF OHIO, ex rel.	:	
SCRIPPS MEDIA INC. D/B/A WCPO-TV	:	
	:	
STATE OF OHIO, ex rel.	:	
THE ASSOCIATED PRESS	:	Original Action in Mandamus
	:	
STATE OF OHIO, ex rel.	:	
RAYCOM MEDIA D/B/A WXIX-TV	:	
	:	
STATE OF OHIO, ex rel.	:	
HEARST CORPORATION D/B/A WLWT-TV	:	AFFIDAVIT OF
	:	MARK E. PIEPMEIER
	:	
SINCLAIR MEDIA III, INC. D/B/A WKRC-TV	:	
	:	
<i>Relators,</i>	:	
	:	
v.	:	
	:	
JOSEPH T. DETERS, HAMILTON COUNTY	:	
PROSECUTING ATTORNEY	:	
	:	
<i>Respondent.</i>	:	

State of Ohio)
)ss:
 County of Hamilton)

I, Mark E. Piepmeier, being duly cautioned and sworn, do hereby state the following facts to be true:

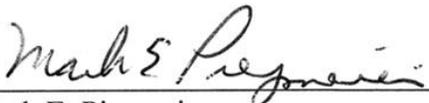
1. I am a Chief Assistant Prosecuting Attorney assigned to the Criminal Division of the Hamilton County Prosecutor's Office.

2. On July 19, 2015, in the early evening I responded to an incident in an investigation wherein University of Cincinnati Police Officer Raymond M. Tensing shot and killed Samuel Dubose during a traffic stop in Hamilton County, Ohio.
3. My purpose in responding to the incident was to act as a legal advisor to the investigating agency, to receive evidence from the investigating agency for presentation to the Grand Jury, and to prepare a case for presentation to the Grand Jury.
4. University of Cincinnati Police Officer Tensing was wearing a body camera that recorded the shooting of Samuel Dubose.
5. The University of Cincinnati body cameras are supplied by Taser International.
6. At the close of each shift the recorded body camera video is down loaded to a server controlled by Taser International.
7. Since the Cincinnati Police Department was conducting the investigation of the shooting of Samuel Dubose by University of Cincinnati Police Officer Tensing, the University of Cincinnati provided a copy of the body camera video of the Dubose shooting to the Cincinnati Police Department.
8. On July 21, 2015, I obtained a copy of Exhibit "A" from Cincinnati Police.
9. A true and accurate copy of the video recording from the body camera worn by University of Cincinnati Police Officer Tensing during the Dubose shooting is attached hereto as Exhibit "A"
10. While I believed that I had all of the copies of the video recording from the camera worn by University of Cincinnati Police Officer Tensing during the

Dubose shooting, after consulting with Prosecuting Attorney Joseph T. Deters, I asked University of Cincinnati Officials and City of Cincinnati Officials not to release any copies of that video recording to which they might have access.

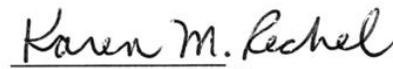
11. Reasons that video recordings such as Exhibit "A" are not released to the public prior to presentation to a grand jury include:
 - A. If witnesses view the body camera before giving testimony, it becomes impossible to differentiate whether the witness's testimony is actually what the witness is able to perceive, remember and relate, or merely an interpretation of the portions of the body camera video the various media choose to broadcast or the witness chooses to view.
 - B. Where there is great public interest in a case, such as this one, it is likely that the media outlets will consult "experts" to render opinions about the contents of the body camera video, and witnesses may consciously or unconsciously alter their testimony based upon the "expert" opinions broadcast about the video.
 - C. Where there is great public interest in a case and the body camera video is broadcast to the public at large before presentation to a Grand Jury, persons seeking publicity or with political motives may come forward claiming to be witnesses and fabricating firsthand knowledge of the events, when in fact they are merely rendering an opinion about the content of the video. If the body camera video is not broadcast, it is unlikely that such persons will have sufficient detailed information to fabricate testimony.
12. Some of the reasons set forth above for withholding the body camera video were present during the investigation of the shooting of Samuel Dubose

13. Just four days after the shooting the Grand Jury of Hamilton County, Ohio on July 23, 2015, began prompt consideration of the shooting incident.
14. On July 29, 2015, only four working days after the Grand Jury convened, the Grand Jury of Hamilton County Ohio returned indictment B1503961 charging University of Cincinnati Police Officer Tensing with murder and voluntary manslaughter in the death of Samuel Dubose.
15. At the conclusion of the Grand Jury proceeding, on that same day, July 29, 2015, the Hamilton County Prosecutor met with the family of Samuel Dubose and showed the family, at the family's request, the footage from the body camera.
16. Again, on that same day, July 29, 2015, the Prosecutor met with the media and, in the early afternoon, released to all the members in attendance, an unedited and unredacted copy of the footage from the body camera."


Mark E. Piepmeier

Sworn to and Subscribed in my presence this 12th day of January, 2016.




NOTARY PUBLIC
KAREN M. RECHEL
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 10-20-2020

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.	:	
THE CINCINNATI ENQUIRER	:	Case No. 2015-1222
	:	
STATE OF OHIO, ex rel.	:	
SCRIPPS MEDIA INC. D/B/A WCPO-TV	:	
	:	
STATE OF OHIO, ex rel.	:	
THE ASSOCIATED PRESS	:	Original Action in Mandamus
	:	
STATE OF OHIO, ex rel.	:	
RAYCOM MEDIA D/B/A WXIX-TV	:	
	:	
STATE OF OHIO, ex rel.	:	
HEARST CORPORATION D/B/A WLWT-TV	:	AFFIDAVIT OF
	:	JULIE K. WILSON
	:	
SINCLAIR MEDIA III, INC. D/B/A WKRC-TV	:	
	:	
<i>Relators,</i>	:	
	:	
v.	:	
	:	
JOSEPH T. DETERS, HAMILTON COUNTY	:	
PROSECUTING ATTORNEY	:	
	:	
<i>Respondent.</i>	:	

State of Ohio)
)ss:
County of Hamilton)

I, Julie K. Wilson, being duly cautioned and sworn, do hereby state the following facts to be true:

1. I am a Chief Assistant Prosecuting Attorney and Public Information Officer of the Hamilton County Prosecutor's Office.

2. On July 20, 2015, I arrived at my office at approximately 8:30 a.m.
3. Some time after my arrival I received a telephone call from John London, a reporter for WLWT, requesting that I provide him the body camera video of the shooting of Sam Dubose by University of Cincinnati Police Officer Raymond Tensing.
4. After making inquiries about available information concerning the shooting and because of public interest in the event I responded to John London's request in an email directed to all local news media on July 22, 2015.
5. A true and accurate copy of my July 22 email directed to all local news media is attached hereto as Exhibit "A".
6. The following day Relator Associated Press sent to me their request for the body camera video of the Dubose shooting.
7. A true and accurate copy of the Associated Press request for the body camera video of the Dubose shooting and my response is attached hereto as Exhibit "B".
8. On July 23, 2015, I sent a follow-up email to all media on my contact list stating that the grand jury had not yet seen the video, and that the Prosecutor's Office would release the footage, just not at this time.
9. A true and accurate copy of my July 23 email directed to all media on my contact list is attached hereto as Exhibit "C".
10. On Friday July 24, 2015, Relator WKRC sent a public records request to me requesting the body camera footage of the Dubose shooting.
11. A true and accurate copy of the WKRC request for the body camera video of the Dubose shooting is attached hereto as Exhibit "D".

12. On July 29, 2015, I sent an email to all media on my contact list stating that Mr. Deters on that day would be releasing the body camera video of the Dubose shooting.
13. A true and accurate copy of the my email to all media on my contact list that the body camera video of the Dubose shooting would be released on July 29, 2015, is attached hereto as Exhibit "E".
14. On Thursday July 29, 2015, the day the grand jury returned an indictment charging University of Cincinnati police officer Tensing with murder and voluntary manslaughter, Hamilton County Prosecutor Joseph T. Deters held a press conference and made the requested body camera video of the Dubose shooting available to all local media, including all of the Relators.
15. On July 30, 2015, the Cincinnati Enquirer printed an editorial that stated:

We salute Deters for showing leadership in moving swiftly yet thoughtfully in a politically charged case involving a police officer. He quickly presented evidence to a grand jury, which handed down a rare murder indictment against a member of the law enforcement community.

Deters steadfastly refused to release the much-anticipated video from Tensing's body cam during the violent encounter. We disagreed with that stance, but this board does respect Deters' twin desires to keep Tensing from adjusting his story to match the video and to avoid a potentially explosive situation before today's indictment was announced.
16. A true and accurate copy of the Cincinnati Enquirer editorial is attached hereto as Exhibit "F".

Julie K. Wilson
Julie K. Wilson

Sworn to and Subscribed in my presence this 12th day of January, 2016.

Karen M. Rechel
NOTARY PUBLIC



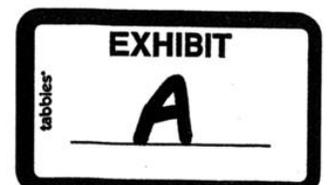
KAREN M. RECHEL
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 10-20-2020

From: Julie Wilson
Sent: Wednesday, July 22, 2015 2:57 PM
To: Media
Cc: Julie Wilson; Mark Piepmeier; Rick Gibson; Michael Friedmann
Subject: Public Records Request

The body cam video in the July 19th UC officer involved shooting will not be released pursuant to:

1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and
2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org



From: Julie Wilson [mailto:Julie.Wilson@hcpros.org]
Sent: Thursday, July 23, 2015 9:00 AM
To: Sewell, Daniel
Cc: Julie Wilson
Subject: RE: Public Records Request

I will add your request to my list. We stand by our statement from yesterday.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org

From: Sewell, Daniel [mailto:DSewell@ap.org]
Sent: Thursday, July 23, 2015 8:25 AM
To: Julie Wilson
Cc: Associated Press3
Subject: RE: Public Records Request

Hello, Julie:

Since the Prosecutor's Office now has custody, I wanted to make sure you have a direct request from us: The Associated Press is requesting any and all videos related to the July 19 incident involving Sam Dubose and University of Cincinnati police officers including Ray Tensing. We are making this request under Ohio Public Records Law. Please respond promptly, and contact me with any questions or issues with this request.

Sincerely,
Dan Sewell/AP

AP

ASSOCIATED PRESS

Dan Sewell/Cincinnati Correspondent

312 Elm Street; Cincinnati, OH 45202

513-241-2386

www.twitter.com/dansewell

From: Julie Wilson [mailto:Julie.Wilson@hcpros.org]
Sent: Wednesday, July 22, 2015 2:57 PM
To: Media
Cc: Julie Wilson; Mark Piepmeier; Rick Gibson; Michael Friedmann
Subject: Public Records Request

The body cam video in the July 19th UC officer involved shooting will not be released pursuant to:



1. Sixth Amendment to the United States Constitution and ORC Section 149.43 (A) (1) (v) as release could jeopardize a possible future fair trial; and
2. ORC Section 149.43 (A) (1) (h) Confidential law enforcement investigatory records. See specifically ORC Section 149.43 (A) (2) (c), Specific confidential investigatory techniques or procedures or specific investigatory work product, and State of Ohio ex rel. Mark W. Miller vs. Ohio State Highway Patrol, 2014-Ohio-2244.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org

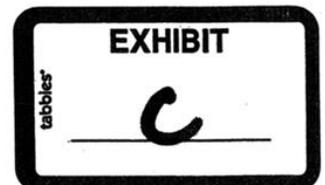
The information contained in this communication is intended for the use of the designated recipients named above. If the reader of this communication is not the intended recipient, you are hereby notified that you have received this communication in error, and that any review, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify The Associated Press immediately by telephone at +1-212-621-1898 and delete this email. Thank you.

[IP_US_DISC]

From: Julie Wilson
Sent: Thursday, July 23, 2015 12:57 PM
To: Media
Cc: Julie Wilson; Mark Piepmeier; Rick Gibson; Michael Friedmann; Chris Schaefer
Subject: Additional Statement regarding video in UC case

Many of you have asked for additional comment from Mr. Deters about the refusal to turn over the UC video. You may quote him as saying, "The law supports our position to not release the video. If you do not want to look at the law and just use your common sense, it should be clear why we are not releasing the video only a few days after the incident occurred. We need time to look at everything and do a complete investigation so that the community is satisfied that we did a thorough job. The Grand Jury has not seen the video yet and we do not want to taint the Grand Jury process. The video will be released at some point - - just not right now."

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org



From: Julie Wilson
Sent: Friday, July 24, 2015 2:00 PM
To: 'Timothy Meredith'; Triffon Callos
Cc: Julie Wilson
Subject: RE: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

Just for clarification....we stand by our previous statements for not releasing the video at this time.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org

From: Julie Wilson
Sent: Friday, July 24, 2015 1:59 PM
To: 'Timothy Meredith'; Triffon Callos
Cc: Julie Wilson
Subject: RE: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

You are on our list.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org

From: Timothy Meredith [<mailto:TMeredith@sbgvtv.com>]
Sent: Friday, July 24, 2015 1:54 PM
To: Julie Wilson; Triffon Callos
Cc: Timothy Meredith
Subject: Open Records Request -- Video from scene of officer involved shooting JUL 19, 2015

Hi Julie –

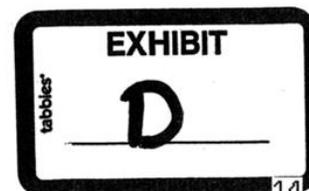
Under the provisions of the Ohio Revised Code 149.43, I am requesting access to a copy of all video from the scene of a University of Cincinnati Police officer involved fatality shooting on July 19, 2015. This request includes dash cam/MVR from any UC PD and Cincinnati Police Department vehicles that responded to the scene, as well as so called "body cam" video from any officers from either department who worked the scene and specifically UC Police officer Ray Tensing.

Please notify me in advance of any costs associated with the request.

If all or any part of this request is denied, please cite the specific exemption(s) which you think justifies your refusal to release the information and inform me of your agency's administrative appeal procedures available to me under the law.

I would appreciate your handling this request as quickly as possible.

Sincerely,



Tim Meredith

News Assignment Manager

Local 12 News WKRC-TV

Cincinnati, Ohio

(513) 763-5423

From: Julie Wilson
Sent: Wednesday, July 29, 2015 11:31 AM
To: Media; Carrero, Jacquellena (NBCUniversal); Carroll, Jason; Chris Welch (chris.welch@turner.com); General Reuters News (us.general-news@thomsonreuters.com); Jack Stripling; Jim Dalrymple; Kyle Jaeger (kjaeger@attn.com); Lowery, Wesley; Nicole Sanseverino (Nicoles@cbsnews.com); Nobles, Wilborn; Rogers, Katie; ryanfelton13@gmail.com; Shortell, David; Steve Bittenbender
Cc: Julie Wilson; Mark Piepmeier; Rick Gibson; McKinley Brown
Subject: UC Officer Involved Shooting/Change in plans...

Mr. Deters will release the body cam video on this case today.

Julie K. Wilson
Chief Assistant Prosecutor/Public Information Officer
(O) 513-946-3213
(Fax) 513-946-3017
julie.wilson@hcpros.org



ENQUIRER EDITORIAL

A TIME FOR GRIEF AND JUSTICE FOR SAM DUBOSE

The video of an unarmed Cincinnati being shot by a University of Cincinnati police officer is sickening, heartbreaking and shocking.

Sickening because violent encounters that unfolded that Sunday evening in Mount Auburn should never unfold in this country.

Heartbreaking because of the significant labors so many have made to elevate police-community relations in our city and the potential risk of seeing those labors crumble.

And shocking because of the speed in which a simple question – “Where is your license?” – became a bullet, a bullet that claimed a man, a father, a friend.

In the process, Sam DuBose became an inexplicable and tragic statistic.

We mourn today with DuBose's family and our entire community. Our worst fears were confirmed by Hamilton County Prosecutor Joe Deters' release Wednesday of the bodycam video showing UC Police Officer Ray Tensing fatally shooting DuBose during a routine, nonviolent traffic stop.

In a raw, emotional news conference, Deters pulled no punches in announcing murder charges against Tensing. His words echo the thoughts of so many in our city – including this editorial board – after seeing the video.

It was “the most asinine act I've ever seen a police officer make. It was totally unwarranted,” the veteran prosecutor said.

“It's an absolute tragedy in the year 2015 that anyone would behave in this manner. It was senseless.”

Tragedy can divide a community, or it can become a source of strength.

This incident – and the national attention, scrutiny and potentially divisive elements that will follow – undoubtedly is a painful one. But if Cincinnati loses its hope and its pledge to bridge the differences that occasionally separate us, that would



Audrey DuBose, the mother of Sam DuBose, receives a hug after her son's funeral Tuesday.

THE ENQUIRER/CARRIE COCHRAN

be the true tragedy.

Early indications are hopeful. DuBose's family has called for calm, expressing gratitude that the prosecutor's office pursued charges aggressively.

We also salute Deters for showing leadership. He quickly presented evidence to a grand jury, resulting in a rare murder indictment against a member of the law enforcement community.

Deters steadfastly refused to release the much-anticipated video from Tensing's body camera during the

violent encounter. We disagreed with that stance, but this board does respect Deters' twin desires to keep Tensing from adjusting his story to match the video and to avoid a potentially explosive situation before the indictment was announced.

Police officers in general – and specifically Cincinnati officers – must not be blamed for the actions of one UC officer. But there are systemic questions that demand answers. Tensing's actions that evening raise serious questions about the training and preparedness of UC police officers.

And as Deters said, “This doesn't happen in the United States. It might happen in Afghanistan ... but people do not get shot in a traffic stop unless they're violent toward the police officer.”

DuBose was not.

For now, we praise a system that by our estimation has worked thus far: a swift investigation that yielded an appropriate charge.

We cannot undo what occurred July 19. But we can move forward in a constructive way, through grief, toward justice.

EXHIBIT

tabbles

F

IN THE SUPREME COURT OF OHIO

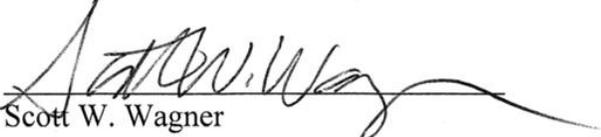
STATE OF OHIO, ex rel. :
THE CINCINNATI ENQUIRER : Case No. 2015-1222
:
STATE OF OHIO, ex rel. :
SCRIPPS MEDIA INC. D/B/A WCPO-TV :
:
STATE OF OHIO, ex rel. :
THE ASSOCIATED PRESS :
:
Original Action in Mandamus
STATE OF OHIO, ex rel. :
RAYCOM MEDIA D/B/A WXIX-TV :
:
STATE OF OHIO, ex rel. :
HEARST CORPORATION D/B/A WLWT-TV :
:
AFFIDAVIT OF
SCOTT W. WAGNER
:
SINCLAIR MEDIA III, INC. D/B/A WKRC-TV :
:
Relators, :
:
v. :
:
JOSEPH T. DETERS, HAMILTON COUNTY :
PROSECUTING ATTORNEY :
:
Respondent. :

State of Ohio)
)ss:
County of Hamilton)

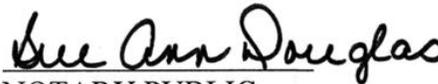
I, Scott W. Wagner, being duly cautioned and sworn, do hereby state the following facts to be true:

1. I am employed as a Professor of Justice and Safety at Columbus State Community College.

2. I have been retained to render an expert opinion in the above captioned case concerning the release of body camera video footage prior to the completion of an investigation and presentation of a case to a grand jury.
3. My curriculum vitae is attached hereto as Exhibit "A".
4. My expert opinion is attached hereto as Exhibit "B".


Scott W. Wagner

Sworn to and Subscribed in my presence this 15th day of January, 2016.


NOTARY PUBLIC



Background and Experience

Scott W. Wagner
2910 Silver Street
Granville, Ohio 43023
Phone: 614-306-4234

Law Enforcement and Instructional Experience

-Undercover Investigator

Ohio Department of Liquor Control
Cincinnati District
November 1981 to June 1982

Activities: During my time there, I worked as an Undercover Investigator, enforcing Ohio Laws and Liquor regulations against violators on and off Department of Liquor Control premises. Other activities included conducting surveillance and investigating interstate liquor violations.

-Undercover Investigator

Licking County Sheriff's Office
Metropolitan Enforcement Group
Narcotics Investigation
June 1982 to January 1984

Activities: I conducted individual and group undercover investigations and enforcement activities against suspected drug traffickers using long term and buy bust enforcement techniques. Other activities included interacting with state/federal drug task force operations and assisting other agencies in their drug enforcement activities.

-Police Officer

Reynoldsburg Police Department
January 1984 to September 1991

Activities: As a full time officer with the City of Reynoldsburg, I worked mostly uniform patrol assignments. I was certified as a police firearms and defensive tactics instructor and conducted training for the agency. Other experience included crime scene processing, working as an acting shift supervisor, and developing department equipment policy through the establishment of a Safety Committee through the Mayor and Safety Directors office.

-Adjunct Faculty Member

Columbus State Community College
Criminal Justice Department
September 1988 to September 1991



-Full Professor-Police Academy Commander

Columbus State Community College

September 1991 to September 1995

Specialty Areas of Instruction: Police Patrol Procedures, Traffic Accident Investigation, Criminal Investigation, Police Firearms, Arrest and Control and Police Physical Fitness, Computerized Firearms Simulation Training, and advanced police academy training in excess of state minimum requirements.

-Assistant Professor-Police Academy Commander

Columbus State Community College

September 1995 to September 2000

Specialty Areas of Instruction: Police Patrol Procedures, Traffic Accident Investigation, Criminal Investigation, Police Firearms, Arrest and Control and Police Physical Fitness Computerized Firearms Simulation Training, and advanced police academy training in excess of state minimum requirements.

-Associate Professor-Police Academy Commander

Columbus State Community College

September 2000 to Present

Specialty Areas of Instruction: Police Patrol Procedures, Traffic Accident Investigation, Criminal Investigation, Police Firearms, Arrest and Control and Police Physical Fitness Computerized Firearms Simulation Training, and advanced police academy training in excess of state minimum requirements.

-Full Professor-Police Academy Commander

Columbus State Community College

September June 2004 to August 2013

Specialty Areas of Instruction: Police Patrol Procedures, Traffic Accident Investigation, Criminal Investigation, Police Firearms, Arrest and Control and Police Physical Fitness Computerized Firearms Simulation Training, Terrorism, and advanced police academy training in excess of state minimum requirements, and the creation of the 727 Counter Terror Training Unit at the Columbus State Bolton Field Aviation Maintenance Facility.

Adjunct Faculty/Lecturer-The Ohio State University-Sociology Department

January 2014 to Present

I instruct upper level undergraduate courses in Terrorism, Juvenile Delinquency, Criminal Investigation, Crime Control, Criminology, and Careers in Law Enforcement.

-Special Deputy Sheriff

Union County Sheriff's Office

September 1991 to September 2011 (RETIRED)

Duties: Road Patrol, Special Response Team (SWAT-Assistant Team Leader and Sniper), Physical Fitness Training, Accreditation Development, Firearms and Arrest and Control Training Officer, development of Use of Force and equipment selection and policy.

-Police Sergeant

Village of Baltimore Police Department-Baltimore, Ohio
September 2011 to Present

Duties: Tactical Operations, Firearms and other training, General Operational Assistance, Narcotics Investigation

Ohio EMA Intelligence Liaison Officer for Baltimore P.D. March 2015 to Present

Educational Background

-Graduated from Granville High School, June 1975
Achieved Honor Role Status for 4 quarters

-Graduated from Ohio State University, June 1980
B.A. in History, 2.97 GPA

Law Enforcement Basic Training

-Graduated from Tri-County Police Academy, Ohio Peace Officer Certification, January 1981

-Graduated from The Ohio State Highway Patrol Basic Training Academy Class #54
Tied for Top Academic Honors, April 1984

Advanced Law Enforcement and Related Training

-Accident Investigation 40 hour Advanced Course
The Ohio State Highway Patrol, September 1985

-Police Physical Fitness Specialist Certification
The Ohio Peace Officer Training Academy
August 1986

-Police Firearms Instructor
The National Rifle Association
December 1986

-Basic Instructional Skills-General Law Enforcement Topics Certification
The Ohio State Highway Patrol, March 1987

-Police Firearms Instructor-Revolver
The Ohio Peace Officer Training Academy
March 1987

-Police Firearms Instructor-Shotgun
The Ohio Peace Officer Training Academy
March 1987

-Police Firearms Instructor-Semi-Automatic Pistol
The Ohio Peace Officer Training Academy
February 1988

-Police Straight Baton/PR-24 Baton Instructor Certification
The Ohio Peace Officer Training Academy
July 1989

-Police Unarmed Self-Defense Instructor
The Ohio Peace Officer Training Academy
February 1990

-Defensive Driving Instructor
The Ohio Peace Officer Training Academy
June 1990

-Aerosol Chemical Weapons Specialist Certification
ISPI Incorporated
May 1992

-Cultural Sensitivity Instructor Certification
The Ohio Peace Officer Training Academy
May 1992

-Trained in the JUST[®] (Judgement Under Stress Training) Computerized Firearms Simulator System purchased by Columbus State. I have used this system to train hundreds of area in-service officers as well as our own academy cadets on use of force and firearms training since the system was purchased.
September 1992

-Certified as Close Quarter Personal Control Instructor
March 1993

-Select Fire Assault Weapons Instructor Certification
The Ohio Peace Officer Training Academy
August 1998

-Certified Range 2000[®] Use of Force Simulator System Instructor. Columbus State purchased the new system to keep up with technological advancements that provide added realism to this type of training. We are now able to do more work with less than lethal force options on this system.
January 2001

-Certified Glock Factory Pistol Armorer 2002, Recertified 2005.

- Certified as Victims Rights Instructor September 2003
- Certified as M-26 Advanced Taser, X-26 Taser, and X-26 C Taser Instructor September-October 2004
- Certified as a 1st Responder/Hazmat/Weapons of Mass Destruction/Personal Protective Equipment Instructor June 2005
- Trained in Advanced Tubular Assault Training by Crimson Trace Corporation, September 2006.
- Certified as a SLATT (State, Local Anti-Terrorism Training) Instructor by Bureau of Justice Assistance, March 2007
- Certified as a Basic Police Sniper-Columbus Police Department, August 2007.
- Received "Flying While Armed" Certification, Columbus Police Dept. Aug. 2008
- Certified as an X26P Taser Instructor March 2013
- Certified as a "Below 100" Officer Safety Instructor, October 2014
- Trained in CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES (28 CFR PART 23) ONLINE TRAINING-Bureau of Justice Assistance. February 23, 2015
- Trained in ADVANCED CRITICAL INFRASTRUCTURE PROTECTION-FEMA/Ohio EMA/Texas A&M Engineering Extension Service May 14, 2015
- Trained in AWR-122LE Prevention and Deterrence of Terrorist Acts June 2015, Ohio EMA/Louisiana State University
- Trained in Jurisdictional Threat and Hazard Identification, August 4, 5 2015. FEMA/Texas A&M

Related Activities

- Member of the American Society of Law Enforcement Trainers since 1990
Attended the 1992, 1994, 1995, 1996, 1997,1998, 1999, 2000, and 2001 International Seminars. Taught at the 1995, 1996, 1998 and 1999 Seminars.
- Area Representative of the *Law Enforcement Alliance of America*. In this capacity, I served on Attorney General Betty Montgomery's Law Enforcement Transition Committee in 1994, and wrote and passed two pieces of legislation in the Ohio General Assembly that were signed into law. These were the Prison Inmate Weight Lifting Ban in July of 1996, and the Law Enforcement Disarming Prevention Act in April of 1997.

-Wrote and had introduced into the United States House of Representatives, H.R. 1573 the "Gun Retention Act of 1995". Sponsored by former U.S. Congressman Robert Ney. May 3, 1995. H.R. 1573 did not pass into law.

-Authored several articles that have appeared in Guns and Weapons for Law Enforcement, Combat Handguns, The Police Marksman, the LEAA Advocate Magazines, Gun Digest, Tactical Gear Magazine and Police and Security News.

-Developed Concealed Carry Permit Training Course at Columbus State Community College to meet state requirements for civilian concealed weapons carry in Ohio January 2004.

-Member of International Law Enforcement Educators and Trainers Association September 2003 to Present

-Member of American Society of Law Enforcement Trainers since 1990
Attended the 1992, 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2001 International Seminars. Taught at the 1995, 1996, 1998 and 1999 Seminars.

January 2005 to Presented Office Citation for Outstanding Performance of Duty from the Union County Sheriff's Office, March 3, 2004.

-Developed and founded the 727 Counter Terror Training Unit at Columbus State. The training taught advanced tubular assault training on Buses, Trains and Aircraft in April 2006.

-Writer and Field Editor for Tactical Gear and Gun Digest Publications-numerous articles written to date-tactical lighting forum at www.tacticalgearmag.com

-Writer for Harris Publications (Guns and Weapons for Law Enforcement-Concealed Carry Firearms-Combat Handguns) with articles online at www.tactical-life.com

-Author of Own the Night, Section and Use of Tactical Lights and Laser Sights-Soft Cover, Gun Digest Publications-2009

-Author of Tactical Shotguns-Soft Cover-Gun Digest Publications, 2011.

-Author of The Gun Digest Guide to Survival Firearms, Soft Cover, Gun Digest Publications December 2012.

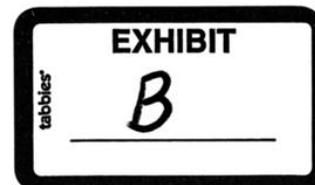
-Writer for the U.S. Concealed Carry Association September 2013 to Present

Exhibit B

Opinion of Scott W. Wagner

The issue of when to release critical evidence in criminal cases, particularly those of a high profile nature, has reached a watershed moment here in Ohio and across the United States due in large part to pressures directed at law enforcement agencies from those in the media and citizens groups alike. In this particular case, the question of evidence release revolves around video footage obtained through an officer worn “bodycam” recording device, although the issue can and should be expanded to include the timeliness of the release of video captured through cruiser mounted “dashcams” or other publicly sourced video devices such as traffic and security cameras.

The rapidly expanding use of officer worn bodycams by law enforcement agencies has come about as a way of insuring “officer accountability” and, also, documenting what is occurring at a given scene. Officers being held accountable for their conduct is of course, a desirable goal. The problem, as I view it, is that this Tsunami-like tidal wave of pressure to instantly adopt a new and emerging technology without having taken the time to make the necessary adaptations, adjustments and procedural changes to determine precisely how that new technology can be interwoven into daily law enforcement duties, presents a myriad of issues. This rush to this new video technology is fraught with unresolved and unforeseen questions. One of the premier issues that comes to mind (which is the centerpiece of the case before this court), is how and when the information gathered by high-tech video devices can be released while still preserving the rights of all parties who are potentially affected by said technology. Our criminal justice system has not fully had the time to adjust to these changes. After all, it was not until five to ten years ago that most courts and society held that a law enforcement officer’s word to the



public and on a witness stand was considered to be beyond reproach. Today that former belief in law enforcement is no longer the case, and video evidence is being demanded in situations where it was never demanded (or available) before. Law enforcement and criminal justice agencies are seeking to adjust to this new paradigm.

As I see it, there are a number of issues that present themselves when determining just how soon to release captured video evidence to the public. In this particular case, the demand to release the video material captured by Officer Tensing's Taser® video recording unit was desired to be released immediately. This despite the fact that the Hamilton County Prosecutor's release of the video was by nearly anyone's account, conducted in an extremely rapid and diligent manner. It was in public and media hands only ten days from the actual occurrence of the incident. The ten days it took to release the video appeared to be a remarkable compromise between assuring the integrity of the law enforcement investigation, and assuring the right of the public to be informed of the officer's actions in this high profile case.

For all practical purposes, the investigation into the activities of decedent Samuel Dubose that led to the shot being fired by Officer Tensing began at the point Officer Tensing made a conscious decision to stop Dubose and determine why the vehicle Dubose was driving was missing its front license plate. Having valid front and rear license plates displayed on one's vehicle is a statutory requirement of state law in Ohio, as well as in Ohio city/township/village ordinances. While not a major infraction, it is a lawful reason for a traffic stop. Proximate to the time that Officer Tensing made the conscious decision to stop the vehicle driven by Dubose, he did—per department policy—activate his bodycam, which began recording the events that followed up until and through the tragic ending. The activation of the bodycam, in addition to fulfilling agency compliance requirements, served to mark the beginning of an ongoing

investigation—albeit a misdemeanor one—into whether Dubose was in compliance with motor vehicle licensing laws and regulations in Ohio. As such, I believe the video immediately became evidence in an investigation that can and did result in criminal charges, which means that like many other portions of an ongoing investigation, the video was not immediately available for public view. For example, most portions of investigative case reports are not immediately available for public view, (witness and suspect statements, investigators narratives and other information) and generally only face sheets of any given report file are released to the media until the investigation has been completed and moves into the court system. Video information should be considered by the court to be equivalent to any other sensitive information in an open investigative case file. It should not be considered as immediate fodder for “You Tube” viewers simply due to its existence.

Immediate release of video evidence raises issues that are critical to the integrity of investigations into officer conduct by the involved agency, outside agencies, or the prosecutor’s office, and should give pause to any inclination to immediately release such evidence to the general public.

While pictures, or in this case a video, may be worth 1000 words, they present a one dimensional view of the situation that they captured, with many relevant aspects missing that could better define for all what actually occurred. Most importantly they don’t capture what the officer personally saw. Videos or photographs only capture what is observed through their objective lens—and the direction it happens to be pointed in at the time—and not what the officer is actually observing or feeling.

It is well documented by established authorities in the field (Colonel David Grossman et. al.) that there are certain physiological effects that change human perception during critical

incidents involving life and death situations—particularly in cases where the law enforcement officers, members of the military, or civilians are in fear of losing their life, whether the camera captures that immediate threat that generated the fear or not. I have personally experienced some of these physiological effects both in training scenarios and in actual law enforcement situations, including SWAT missions. Typical among these physiological effects are audio exclusion (diminished sound recognition), tunnel vision—which results in a reduced awareness of what is in the periphery rather than direct field of view—memory distortion, and time and spatial distortion. These are all the result of human anatomy and physiology, and are manifestations of what occurs during the well documented “fight or flight” phenomena. These physiological responses and distortions are not attempts by officers or others involved in use of deadly force situations to lie about what transpired. They occur in most humans, good and bad, who find themselves in these situations. The effects are most pronounced in people who are experiencing the sensations for the first time, particularly after they are startled into a response. Sometimes these distortions are upsetting enough to cause the person experiencing them to not react at all (freezing like a deer caught in the headlights) to the imminent threat. These distortions and officer/witness/suspect statements must later be reconciled with what is on the captured video before the information is released to the public, otherwise the prospective jury pools involved in the aftermath of the event may become tainted in their objectivity. This is resolved by debriefing of the officer and interviewing witnesses and suspects in the aftermath of the event.

Debriefing the officer is today standard procedure in the aftermath of officer involved shootings, and is frequently governed by union contracts. Normally, officers are advised NOT to give statements in the immediate aftermath of a shooting incident, due in a major part to the distortions I outlined in the paragraph above. Neither can their departments force them into

giving immediate statements. In central Ohio, officers involved in critical stress incidents have access to the Fraternal Order of Police Critical Incident Stress Management (CISM) team which is designed to help them in the aftermath of an event like an officer involved shooting. The major CISM goal is helping to prevent the onset of Post Traumatic Stress Disorder (PTSD). The side effect of the debriefings is obtaining a more accurate recall of the events with reduced distortion. These debriefs should occur within the first 24 hours after the event, and are often repeated again up to two days after the incident. The CISM procedure is woven into, and plays a major part in the law enforcement investigation of the shooting incident. If the video was released to the public before the officer involved in the shooting had a chance to review it, there is a possibility that the stress and shock involved in “not being the first to know” might not only hamper the investigation, but also the officer’s recovery from the event. The involved officer(s) must have the right to view their actions on video prior to its release to the public, which is again, likely to be a union contract related issue. It is critical to remember that the majority of officer involved shootings are ruled as justifiable uses of force, and the officer has a right to fairness in the process, as well as a right to psychological healing and recovery for duty.

Debriefing is a different process for civilian witnesses, as the law enforcement agency itself is not responsible for providing counseling, so civilian “debriefing” is actually an interviewing process. Even so, consideration should also be given to the fact that witnesses and suspects may also be affected by the same physiological distortions that affect the officer. Citizens are not afforded any union protection that most law enforcement officers are, and in their case, the unreleased video footage can be used to help verify or deny what any witness is reporting. In the case of citizens, they should not see the video until after they have given their initial statements, and their memory and observations can thus be reconciled with what the video

shows. It is unfortunate that in the Ferguson, Missouri incident that there was no bodycam video available for investigative review. Such evidence could have gone a long way in negating the false allegations being made by a friend of the deceased as well as those who were at the scene who were disinclined to assist in accurately reconstructing the events. However, even in the Ferguson case, had video been available it could not and should not have been released during the investigation, and held until such time that the grand jury was convened.

There is yet another issue that has recently arisen out of the use and release of bodycam video. It is an issue which has not been called into major question when considering the use of cruiser mounted cameras. It is the issue of a citizen's Fourth Amendment right to be "secure in their persons, homes, papers and effects" as understood by the general public.

While a bodycam does not capture everything, it captures a lot. We are now in a situation where officers are walking into people's homes and businesses—and into some of their most private areas (such as bedrooms or bathrooms)—with camera's recording their every step and everything within their field of view. This is not just occurring in homes of suspects, but, where jurisdictions mandate, in the homes and in the presence of people with whom the officer is having any sort of "meaningful contact". Questions of privacy, HIPA law, capturing of personal or financial information, revelation of sensitive conversations such as might be recorded in cases of domestic abuse, child abuse and rape, and perhaps countless other such considerations have arisen, some of which are in conflict with current Public Records Law. This may indicate a need for reconsideration by the Ohio Legislature of current Public Records Law in order to develop standardized policy regarding the release of video or other evidence to the public that may contain such sensitive information, and to make sure information of concern unrelated to the case at hand is not inadvertently released.

Even in the Dubose case a portion of these concerns arose. Once Officer Tensing activated his bodycam, it clearly captured the information visible on his Mobile Data Terminal/Computer screen. This view was made available to the general public without redaction. What is likely displayed there is information involving Officer Tensing's last dispatched run or his last traffic stop or records check. All such information is held by the state to be confidential, and would likely have been edited out of the released video had standardized guidelines been in place. Immediate release of such information could very well provide to those with ill intent and the requisite computer skills an avenue to exploit.

Investigation of an officer involved shooting has the same considerations involved in the investigation of a homicide between civilians with the added aspect of government entities being involved and perhaps being held liable for the actions of their law enforcement employees. Additionally, there is the possibility (as in the Ferguson, Missouri case) of involvement by the federal government through the Department of Justice and/or the Federal Bureau of Investigation. These investigations must be as thorough and free from error as humanly possible.

Investigation has been defined as follows: "An **investigation** is a patient, step-by step inquiry or observation, a careful examination, a recording of evidence or a legal inquiry". It is important to realize that some degree of patience is needed by all concerned in order to assure that any investigation comes to its rightful conclusion. Pressure from the outside to release sensitive evidence of any type or source to public scrutiny is a sure invitation to a compromise or miscarriage of justice. This untimely release could prevent any investigators involved from examining said evidence without bias or perhaps sufficient time, since there would be the constant media blare of uninvolved "experts" rendering their opinion of the case and assigning guilt or innocence to the parties involved. Maintaining control of evidentiary items is critical to

insuring a careful examination of the facts, which preserves the rights of all involved, and also of those who are not initially involved, but who might be drawn inadvertently into the unfolding events. On the other hand, a reasonable time period—one that could perhaps be stated in terms of a certain amount of days from the recording of the evidence until a day the public could be expected to see the evidence or portions of it—would be helpful in assuaging community concerns if consistent standards are established. This would prevent incidents like those recently revealed in Chicago, where a cruisercam video was released which showed the shooting of a young man who did not pose an imminent threat. The video was not released until a full year after the incident. It is obvious that there was an attempt being made in Chicago to cover the incident up. There is no such indication of any sort of cover-up being a part of the shooting investigation in Hamilton County.

I firmly believe that there needs to be a movement towards the establishment of reasonable standards, as promulgated by law, that can help guide law enforcement agencies and prosecutor's offices in Ohio when it comes to the release of—in this case—video evidence. Standardization should also help to allay community concerns in these situations as well, since all parties concerned will know that there is in fact a clock running, and that the video information will be released by a certain date and time. I also think that the video should not be released before a grand jury is seated, since such video played in advance and reviewed by media “experts” many times will taint the potential grand jury pool. This also serves to protect the integrity of the investigation by all involved governmental entities. While a standard of this nature may place a burden on smaller jurisdictions where grand juries are not continually seated, it might also provide the impetus to resolve these cases as quickly as possible, which is beneficial to all parties involved.

Scott W. Wagner

Source: On Combat-The Psychology and Physiology of Deadly Conflict in War and Peace,

Grossman, Colonel Dave, Christensen, Loren W., Warrior Science Publications, 2008

Dated: January 15, 2015



<u>Title</u> Body Worn Digital Recording Systems		<u>SOP Number</u> PU50	
Approval Signature Chief Jason Goodrich			
Reviewed/Revised by			Pages 1 of 5
Last Revision Date 10/12/14 JRC 1/29/15		Effective Date 10/13/14	

1. PURPOSE AND SCOPE

The use of the Body Worn Digital Recording (BWDR) system provides an unbiased audio/video recording of events that officers encounter. These recordings can be useful for the documentation of evidence, the preparation of offense reports, and future court testimony. These recordings can also protect officers from false allegations of misconduct and be of use when debriefing incidents or evaluating performance. This policy covers the use of the Department issued BWDR systems.

A. GENERAL INFORMATION

DEPARTMENT ISSUED BODY WORN DIGITAL RECORDING SYSTEM

- (a) All police officers will be issued a BWDR system and will be trained in the operation of the equipment prior to its use. BWDR equipment will be used in accordance with Ohio law and this procedure. All uniformed patrol officers will wear their issued BWDR while on duty. Special assignment and plainclothes officers will wear their BWDR when engaged in activities where the use is reasonably foreseeable. **Officers will notify and try to obtain consent prior to recording interviews with crime victims and witnesses. Officers will note in their ARMs report their reasoning if they fail to record an activity that is required by department policy.** Officers will not use any personally owned recording equipment or devices while on duty without approval from the Chief or Assistant Chief. **Data images, video, and metadata captured, recorded, or otherwise produced by the BWDR is the sole property of the University of Cincinnati Police Department.**
- (b) Officers who discover an operational defect with the BWDR system will attempt to correct the problem according to the training provided (I.E.: Reseating cables, Cycling the power, etc.). If the BWDR is found to have a physical defect or malfunction, the employee will notify the supervisor, and write up the device for service describing the events leading up to failure. The supervisor will issue the officer a spare BWDR.
- (c) Officers shall not:
 - a. Bypass or attempt to override the equipment.
 - b. Erase, alter, or delete any recording produced by the BWDR.

B. WHEN DEPARTMENT ISSUED BWDR SYSTEM USE IS REQUIRED

This section is not intended to describe every possible situation where the system may be used. In general, the BWDR should be used to record activities where law enforcement

action is being taken, or where other circumstances could result in an officers actions being questioned. In some circumstances it may not be possible to capture images of an incident due to conditions or location of the camera, however the audio portion can be valuable evidence and is subject to the same activation requirements.

- (a) Officers responding to a scene shall activate their department issued BWDR:
 - 1. Prior to arriving on-scene when dispatched on a call where they are likely to detain or arrest a person; or
 - 2. Have detained or arrested a person; or
 - 3. Are attempting to detain or arrest a person; or
 - 4. Are confronting disorderly or hostile subjects; or
 - 5. Are searching for or collecting evidence, especially where drugs or money are involved; or
 - 6. Any other situation where the officer believes that documentation of their activities is desirable.

- (b) Examples of when the department issued BWDR system must be activated include, but are not limited to:
 - 1. Traffic stops, from the initiation to the completion of the enforcement action.
 - 2. DWI investigations including field sobriety tests
 - 3. Warrant service
 - 4. Investigatory stops
 - 5. Any contact that becomes adversarial in an incident that would not otherwise require recording. In those situations, it may be impractical or unreasonable for officers to activate their BWDR system before taking police action. In that case, officers will activate their BWDR as soon as possible to record the remainder of the incident.

- (c) In addition to the required situations, officers may activate the system anytime they believe its use would be appropriate and/or valuable to document an incident.

- (d) There may be instances in which an officer is required to take immediate action to an event that occurs directly in front of them which may not allow time to activate their BWRD. In these circumstances, the officer shall activate their BWDR as soon as practical.

C. WHEN DEPARTMENT ISSUED BWDR SYSTEM DEACTIVATION

IS AUTHORIZED

Once the BWDR system is activated it shall remain on until the incident has concluded.

- (a) For purposes of this section, conclusion of an incident has occurred when:
 - 1. After an arrested suspect has been transported to the station.
 - 2. All witnesses and victims have been interviewed.
- (b) Recording may cease if no further law enforcement action is likely to occur (e.g., after a field stop has concluded and the subject is sent on their way)

D. WHEN DEPARTMENT ISSUED BWDR SYSTEM USE IS NOT REQUIRED

Activation of the BWDR systems is not required during routine patrol, or while the officer is engaged in non-enforcement activity, such as meal breaks or routine conversation with the general public.

E. BODY WORN DIGITAL RECORDINGS AS EVIDENCE

- (a) Officers will securely upload all recordings captured on any BWDR system they are carrying by the end of their tour of duty to the www.evidence.com.
- (b) Recordings not needed as evidence or other official UCPD business may be erased after 15 days from the date of the recording.
- (c) Recordings will be preserved for the duration of any court proceedings or internal investigations.

F. REVIEW OF ALL BWDR SYSTEM RECORDINGS

This section outlines the review of department issued BWDR system recordings.

- (a) Recordings may be reviewed:
 - 1. By an officer to make sure the BWDR system is working
 - 2. By an officer to assist with the writing of a report, supplement, or memorandum.
 - 3. By authorized persons for the purpose of reviewing evidence
 - 4. By a supervisor investigating a specific act of employee conduct

5. By authorized Department personnel participating in an official capacity such as a personnel complaint, administrative inquiry, criminal investigation, or use of force review.
 - (b) Recordings may be reviewed for the purpose of training. If an involved employee objects to showing a recording, their objection will be submitted to their supervisor to determine if the training value outweighs the employee's objection.
 - (c) Recordings will not be used or shown with the intent to ridicule or embarrass any employee.
 - (d) Employees shall not obtain, attempt to obtain, or convert for their personal use or for the unauthorized use of another person, any information obtained by a BWDR system. Employees shall not make personal copies or attempt to upload recordings to social networking sites (e.g., You-Tube, Facebook).
 - (e) Recordings may be released to the Prosecutor through the normal evidentiary process. Any other release of a recording must be approved through the normal records release process.

G. STORAGE and CHARGING

- (a) All officers will only **upload, charge and store** their BWDR in the docking stations located in the squad room.

IN THE SUPREME COURT OF OHIO

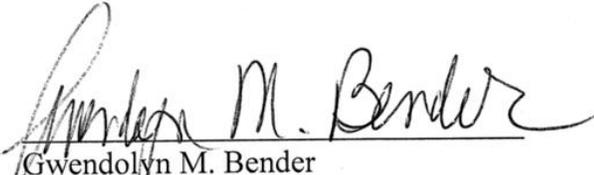
STATE OF OHIO, ex rel.	:	
THE CINCINNATI ENQUIRER	:	Case No. 2015-1222
	:	
STATE OF OHIO, ex rel.	:	
SCRIPPS MEDIA INC. D/B/A WCPO-TV	:	
	:	
STATE OF OHIO, ex rel.	:	
THE ASSOCIATED PRESS	:	
	:	Original Action in Mandamus
STATE OF OHIO, ex rel.	:	
RAYCOM MEDIA D/B/A WXIX-TV	:	
	:	
STATE OF OHIO, ex rel.	:	
HEARST CORPORATION D/B/A WLWT-TV	:	
	:	AFFIDAVIT OF
	:	GWENDOLYN M. BENDER
	:	
SINCLAIR MEDIA III, INC. D/B/A WKRC-TV	:	
	:	
<i>Relators,</i>	:	
	:	
v.	:	
	:	
JOSEPH T. DETERS, HAMILTON COUNTY	:	
PROSECUTING ATTORNEY	:	
	:	
<i>Respondent.</i>	:	

State of Ohio)
)ss:
 County of Hamilton)

I, Gwendolyn M. Bender, being duly cautioned and sworn, do hereby state the following facts to be true:

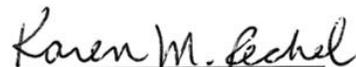
1. I am the Chief Assistant Prosecuting Attorney for the Municipal Court Division of the Hamilton County Prosecutor's Office.

2. I am familiar with the use of dash cam video recordings by assistant prosecuting attorneys prosecuting cases in the Hamilton County Municipal Court.
3. The primary uses of dash cam video by the Municipal Court Division of the Hamilton County Prosecutors Office is for evidence of (1) traffic violations leading to traffic stops and (2) performance by drivers requested to perform psychomotor tests after a traffic stop.
4. Typically, the dash cam video is played for the trier of facts hearing motions to suppress evidence and trials involving violations of *R.C.4511.19*.


Gwendolyn M. Bender

Sworn to and Subscribed in my presence this 25th day of January, 2016.




NOTARY PUBLIC

**KAREN M. RECHEL
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 10-20-2020**

**In the
Supreme Court of Ohio**

**STATE OF OHIO, *ex rel.*
THE CINCINNATI ENQUIRER, et al.**

Relators,

vs.

**JOSEPH T. DETERS, HAMILTON
COUNTY PROSECUTING ATTORNEY,**

Respondent.

Case No. 2015-1222

**RELATOR THE CINCINNATI ENQUIRER'S OBJECTIONS AND ANSWERS TO
RESPONDENT'S INTERROGATORIES**

JOHN C. GREINER (0005551)*
**Counsel of Record*
Darren W. Ford (0086449)
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 629-2734
Fax: (513) 651-3836
E-mail: jgreiner@graydon.com

Counsel for Relators

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO
Andy Douglas (0000006)
Roger E. Friedmann (0009874)
Christian J. Schaefer (0015494)
Michael J. Friedmann (0090999)
230 East Ninth Street, Suite 4000
Cincinnati, OH 45202
DDN: (513) 946-3279 (Douglas)
DDN: (513) 946-3025 (Roger Friedmann)
DDN: (513) 946-3041 (Schaefer)
DDN: (513) 946-3197 (Michael Friedmann)
Fax: (513) 946-3018
E-mail: andy.douglas@hcpros.org
roger.friedmann@hcpros.org
chris.schaefer@hcpros.org
michael.friedmann@hcpros.org

*Counsel for Respondent, Joseph T. Deters,
Prosecuting Attorney for Hamilton County,
Ohio*

Pursuant to Ohio Civil Rule 26 and 33, Relator The Cincinnati Enquirer ("The Enquirer") submits its objections and answers to the interrogatories propounded by Respondent.

GENERAL OBJECTIONS

1. The Enquirer objects to each definition and interrogatory to the extent that it purports to impose requirements or obligations greater than or different from those imposed by the Ohio Civil Rules and the Local Rules and Orders of the Court.

2. The Enquirer objects to each interrogatory that is overbroad, unduly burdensome, or not reasonably calculated to lead to the discovery of admissible evidence.

3. The Enquirer objects to each interrogatory to the extent that it seeks information protected by the attorney-client privilege, the attorney work product doctrine, or any other applicable federal or state law privilege.

4. The Enquirer incorporates by reference every general objection set forth above into each specific response given. A specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response is not intended to be a waiver of any general objection to that interrogatory. The Enquirer does not waive its right to amend its responses.

INTERROGATORIES

INTERROGATORY NO. 1. Identify all persons who participated in any manner in responding to these interrogatories.

ANSWER: The Enquirer, with assistance of counsel, participated in responding to these interrogatories.

INTERROGATORY NO. 2. Relator, The Cincinnati Enquirer published an Editorial in its print addition on July 30, 2015. The Editorial is attached hereto as an attached hereto as Exhibit "A". In it, the Enquirer specifically stated:

We salute Deters for showing leadership in moving swiftly yet thoughtfully in a politically charged case involving a police officer. He quickly presented evidence to a grand jury, which handed down a rare murder indictment against a member of the law enforcement community.

Deters steadfastly refused to release the much-anticipated video from Tensing's body cam during the violent encounter. We disagreed with that stance, but this board does respect Deters' twin desires to keep Tensing from adjusting his story to match the video and to avoid a potentially explosive situation before today's indictment was announced.

What rule of law does Relator Enquirer seek to have The Ohio Supreme Court establish in this case in order to satisfy: (a) Relator Enquirer's disagreement with Respondent Joseph T. Deters' stand regarding release of the Body Camera Video and similar body camera videos created by University of Cincinnati Police Department officers set out in Exhibit "A"; (b) to keep police officers and witnesses from adjusting their stories to match the video evidence; and, (c) to avoid a potentially explosive situation?

ANSWER: The Enquirer objects to this interrogatory to the extent it is overly broad, unduly burdensome, not calculated to lead to the discovery of admissible evidence, and exceeds the scope of discovery as permitted by the Ohio Civil Rules. The Enquirer

further objects to this interrogatory to the extent it seeks information covered by attorney-client privilege and/or the attorney work product doctrine. The Enquirer further objects to this interrogatory to the extent it is vague. Subject to, and without waiver of these objections, the Enquirer states that it does not seek to create new law, but rather to enforce the provisions of R.C. 149.43.

INTERROGATORY NO. 3. The shooting of Michael Brown occurred on August 9, 2014, in Ferguson, Missouri, a northern suburb of St. Louis. Brown, an 18-year-old African-American man, was fatally shot by Darren Wilson, 28, a white Ferguson police officer. This led to multiple days of rioting. What rule of law does the Enquirer want established either by the Ohio Supreme Court or Ohio General Assembly in order to satisfy: (a) Relator Enquirer's and other news media's desire for information in situations involving police shootings of members of the public; (b) the need for prosecutors and police officials investigating police shootings of members of the public to prevent police officers and witnesses from adjusting their stories to match physical and video evidence; (c) to avoid rioting such as occurred in Ferguson, Missouri after the shooting incident on August 9, 2014; and, (d) to provide the due process to which the police officers involved and the persons harmed are entitled?

ANSWER: The Enquirer objects to this interrogatory to the extent it is overly broad, unduly burdensome, not calculated to lead to the discovery of admissible evidence and exceeds the scope of discovery as permitted by the Ohio Civil Rules. The Enquirer further objects to this interrogatory to the extent it seeks information covered by attorney-client privilege and/or the attorney work product doctrine. The Enquirer further objects to this interrogatory to the extent it seeks information regarding other news media which information is not in the custody or control of the Enquirer. Subject to, and without waiver of these objections, the Enquirer states that it does not seek to create new law, but rather to enforce the provisions of R.C. 149.43.

AS TO THE OBJECTIONS:

Of Counsel:

GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 621-6464
Fax: (513) 651-3836

John C. Greiner by
Darren W. Ford (86449)

John C. Greiner (0005551)*
*Counsel of Record
Darren W. Ford (0086449)
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Phone: (513) 629-2734
Fax: (513) 651-3836
E-mail: jgreiner@graydon.com
dford@graydon.com

COUNSEL FOR RELATORS

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing *Objections and Answers to Respondent's Interrogatories* was served upon all counsel of record via Regular U.S. Mail, postage prepaid, pursuant to Ohio R. Civ. P. 5(B)(2)(c), on this 22nd day of January, 2016.

Joseph T. Deters, Esq.
Prosecuting Attorney, Hamilton County, Ohio
Andy Douglas
Roger E. Friedmann
Christian J. Schaefer
Michael J. Friedmann
230 East Ninth Street, Suite 4000
Cincinnati, OH 45202

John C. Greiner by
Darren W. Ford (86449)
John C. Greiner (0005551)

AS TO THE ANSWERS TO THE INTERROGATORIES:

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

VERIFICATION

I hereby acknowledge that the foregoing Answers to Interrogatories are true to the best of my knowledge and belief.



Affiant

The foregoing Answers to Interrogatories were acknowledged before me this 22nd day of January, 2016, by Peter Bhatia.



Notary Public

2-20-19

My Commission Expires



Molly Elizabeth Gerdes Schmidt
Notary Public, State of Ohio
My Commission Expires 02-20-2019

Respectfully submitted,

JOSEPH T. DETERS
PROSECUTING ATTORNEY
HAMILTON COUNTY, OHIO



Andy Douglas, 0000006 (Lead Counsel)
Roger E. Friedmann, 0009874
Christian J. Schaefer, 0015494
Michael J. Friedmann, 0090999
Assistant Prosecuting Attorneys
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
DDN: 513-946-3279 (Douglas)
DDN: 513-946-3025 (Roger Friedmann)
DDN: 513-946-3041 (Schaefer)
DDN: 513-946-3197 (Michael Friedmann)
FAX: 513-946-3018
andy.douglas@hcpros.org
roger.friedmann@hcpros.org
christian.schaefer@hcpros.org
michael.friedmann@hcpros.org

*Attorneys for Respondent, Joseph T. Deters,
Prosecuting Attorney of Hamilton County,
Ohio*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via hand delivery on the 29th day of January, 2016, upon:

John C. Greiner
Darren W. Ford
Graydon Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157



Andy Douglas, 0000006
Assistant Prosecuting Attorney