

Review and Investigation of Officer Raymond M. Tensing's Use of Deadly Force on July 19, 2015: University of Cincinnati Police Department

Summary of Key Findings

Report to the Office of General Counsel, University of Cincinnati



August 31, 2015

**PRIVILEGED & CONFIDENTIAL
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INTRODUCTION

On July 19, 2015, Officer Raymond M. Tensing (“Officer Tensing” or “Tensing”) of the University of Cincinnati Police Department (“UCPD” or “Department”) shot and killed Samuel Dubose (“Dubose”), an unarmed motorist, during an off-campus traffic stop. The shooting sparked a media firestorm in the wake of a string of highly publicized police shootings throughout the United States, many involving white police officers and unarmed, African American male victims. In the aftermath of the July 19 shooting there have been street protests and calls for reform. On July 29, 2015, a Hamilton County (Ohio) Court of Common Pleas Grand Jury indicted Officer Tensing for Murder and Voluntary Manslaughter, resulting in Officer Tensing’s termination from the UCPD.

Two UCPD officers who arrived on the scene to assist Officer Tensing during the traffic stop and who witnessed various portions of the incident were placed on paid administrative leave pending the outcome of an internal administrative review. Due to the high-profile nature of the shooting and the existence of an ongoing criminal proceeding, the University of Cincinnati (“UC” or “University”) sought the assistance of an independent third-party to review and investigate the incident.

On July 31, 2015, the University through its Office of General Counsel retained Kroll Associates, Inc. (“Kroll”) to conduct the UCPD internal administrative review and investigation of the July 19 incident.¹ Biographical summaries of the Kroll professionals and consultants who conducted the review are contained in the Appendix to this report.

A. Scope of Investigation

The University of Cincinnati retained Kroll to “conduct an extensive review, covering all aspects of the July 19 incident as well as a top-to-bottom review of all UC Police personnel actions associated with the incident.”² Accordingly, Kroll was asked to make findings of fact to assess the traffic stop, Officer Tensing’s use of deadly force, UCPD’s response to the incident, the truthfulness and cooperation of UCPD officers with the Cincinnati Police Department (“CPD”), and the officers’ compliance or non-compliance with all relevant UCPD policies and procedures.

¹ UCPD policy provides that “...Internal Affairs shall conduct an investigation into the circumstances of any incident of firearms discharge, at the discretion of the Chief.” UCPD Firearms and Deadly Force policy, Standard Operating Procedures (“SOP”), Section. III.D.5.

² <http://www.uc.edu/news/NR.aspx?id=22002>

This report and Kroll's investigation are concerned only with facts relevant to this review and defined scope of investigation. Kroll takes no position and makes no findings as to the guilt or innocence of Officer Tensing in his ongoing criminal proceedings. Nothing in this report should be read or interpreted to either support or counter the criminal case against Officer Tensing or the legal defenses that may be available to him and presented at trial. As set forth in UCPD Standard Operating Procedure PE-06, "This investigation shall be subordinate to any criminal investigation. The goals of this investigation shall be to establish if the shooting was within policy, out of policy, or if it was accidental. This investigation will also look at any training implications from the shooting (tactics used, their success or failure)..."³

B. Methodology

In performing this internal administrative review, Kroll interviewed 20 witnesses, including UCPD Chief Jason Goodrich and the 16 UCPD officers and supervisors that responded to the scene of the police shooting on July 19, 2015. Kroll also interviewed UCPD Public Information Officer Michele Ralston and UCPD Dispatcher Nicole Smith. On August 4, 2015, Kroll met with CPD Homicide and Criminal Investigations Section ("CIS") officials (Captain Teresa Theetge, Lt. David Johnston, Sgt. Michelle Winslow, Detective Terry McGuffey, and Specialist Shannon Heine) and the Hamilton County Assistant Prosecuting Attorneys assigned to the Tensing prosecution (Mark Piepmeier and Rick Gibson), who provided Kroll with access to investigative reports, diagrams and photographs, audio recordings, and the written transcripts of statements provided to CPD by Officers Tensing, Kidd, and Lindenschmidt on July 21, 2015.⁴

Kroll also obtained and reviewed the video and audio recordings of the body worn digital recording systems ("body camera" or "body cam") of eight UCPD officers from July 19, 2015, including those who were present when the shooting occurred (Officers Raymond Tensing, Philip Kidd, and David Lindenschmidt) and those who responded to the crime scene shortly after a radio dispatch call came out for an officer-involved shooting (Officers Derek Noland, Jeffrey Van Pelt, Clifford Maxwell, and Brian Limke, and Sergeant Eric Weibel). In reviewing the video recordings from the body cameras worn by Officers Tensing, Kidd, and Lindenschmidt, Kroll obtained the assistance of a video analysis expert using video slowdown software. The expert, who has experience with the Pennsylvania State Police, assisted Kroll in its ability to view the relevant body camera recordings in slow motion, frame-by-frame, in an attempt to break down the crucial moments before, during, and after the shooting. This frame-by-frame review enabled Kroll to clearly analyze and evaluate the facts and circumstances of this rapidly-developing incident.

³ SOP PE-06, Section III.D.5.

⁴ The information provided by CPD and the Hamilton County Prosecutor's Office was pursuant to a signed Non-Disclosure Agreement ("NDA"), dated August 4, 2015, which permitted Kroll to review but not disclose certain documents and information that were not yet released as part of formal discovery in the criminal case. As of this report, the terms of the NDA no longer apply, as discovery has been provided to counsel for Officer Tensing by the Prosecutor's Office.

In addition, Kroll reviewed the indictment of Officer Tensing, official UCPD policies and procedures, UCPD Rules of Conduct, the Memorandum of Understanding with the CPD, relevant computer aided dispatch ("CAD"), organization charts, officer roster

listings, city maps and aerial photographs, the personnel files of Officers Tensing, Kidd, and Lindenschmidt, police training curricula, the UCPD collective bargaining agreement, press releases, media reports, and other relevant documents and information pertaining to the incident. Kroll also visited the scene of the incident and re-enacted the approximate route taken by Officer Tensing leading up to the traffic stop and fatal shooting.

On August 3, 2015, Kroll met with Fraternal Order of Police ("FOP") Ohio Labor Council Staff Representative Tom Fehr and UCPD Officer and FOP representative James Vestring, who were present during interviews of FOP member officers.⁵ At Kroll's request, Fehr contacted attorney Stewart Matthews, who represents Officer Tensing in the ongoing criminal case, to extend an invitation for Officer Tensing to participate in the internal administrative review, and to answer questions about and present his version of the events of July 19. On August 4, 2015, Fehr informed Kroll that Matthews had respectfully declined on behalf of his client to meet with Kroll or in any way to participate in the administrative review. On August 11, 2015, Kroll Managing Director Mark Ehlers confirmed with Matthews by telephone that Officer Tensing did not wish to answer any questions in this internal investigation as long as his criminal case was pending.

A complete list of persons interviewed and documents and evidence reviewed during Kroll's investigation is contained in **Attachment A**.

C. Report Contents

This Report contains Kroll's key factual findings, conclusions, and recommendations. Section Two provides an Executive Summary of the Report. Section Three outlines the UCPD's general authority and applicable policies. Section Four presents Kroll's findings of fact concerning the events of July 19, 2015, and the subsequent investigation. Section Five outlines Kroll's conclusions and analysis of key events, including compliance with official UCPD policies. Finally, Section Six provides recommendations for the University of Cincinnati's consideration as it continues to address the aftermath of this tragic incident.

⁵ Courtney Straw, Staff Representative of the FOP Ohio Labor Council was present for the interviews of a UCPD lieutenant and sergeant on August 4, 2015.

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EXECUTIVE SUMMARY

The fatal shooting of Samuel Dubose during an off-campus traffic stop on July 19 never should have occurred. This incident, which resulted in a tragic loss of life, was entirely preventable.

This conclusion follows a detailed examination of one officer's actions during a single brief encounter and is not an indictment of the University of Cincinnati Police Department. We understand that police officers carry heavy responsibilities fraught with peril and danger and that split second decisions are often required in the heat of the moment. While it is always proper to question and review an officer's actions that result in the death or injury of a citizen, it is essential that the facts and circumstances be examined fairly and without bias or prejudice, and that the split second reaction of an officer be placed in its actual real-time, real-life context. While we have had the benefit of repeatedly viewing slow motion, frame-by-frame video stills (and accompanying audio), of events that transpired over a matter of seconds, the officer's actions must be judged in the actual real-time context in which those actions were made.

Our findings and conclusions are based on a consideration of the evidence in light of the established policy set forth in the UCPD Standard Operating Procedures and Rules of Conduct. None of Kroll's findings should be read or interpreted as a comment on the ongoing criminal proceeding against Officer Raymond Tensing in the Hamilton County Court of Common Pleas. Although we explain our findings in greater detail within the body of this report, a summary of Kroll's key findings and conclusions are set forth below.

- Officer Tensing conducted a lawful and justified traffic stop of Samuel Dubose on July 19, 2015. His actions were authorized by UCPD policy, state law, and the Memorandum of Understanding with the City of Cincinnati.
- Tensing's initial tactics, demeanor, and approach in addressing Dubose were appropriate. The first two minutes of the traffic stop were conducted safely, prudently, and in accordance with generally accepted police practices. Tensing's initial interactions with Dubose, in an attempt to determine if Dubose possessed a valid driver's license, were professional, calm, tactically sound, and appropriately inquisitive.

- Officer Tensing thereafter made critical errors in judgment and exercised poor police tactics that created a hazard of serious bodily injury or death and heightened the risks of a dangerous escalation.
- When Dubose acknowledged he was not in possession of his license and asked Officer Tensing to run his name for verification, Tensing instead instructed Dubose to remove his seat belt and to step outside of the car while attempting to open the driver's side door of the car. The encounter escalated when Dubose pulled the door closed and started the car's ignition.
- Rather than de-escalating the encounter and allowing Dubose to drive away and subsequently calling in a request for assistance, Tensing escalated the situation by improperly reaching into the car in an attempt to restrain Dubose. This violated standard police practice, critical to officer safety, which is taught as part of basic training in the police academy and is reinforced by UCPD Field Training Officers on patrol with Officers-in-Training.
- Tensing further escalated the encounter by drawing his service weapon within one to two seconds of the moment Dubose started the car. Both of Dubose's hands were visible to the officer and Dubose had not demonstrated any aggression or threatening behavior. UCPD policy permits an officer to draw his weapon only when "necessary," consistent with other UCPD policies.⁶
- As set forth in UCPD policies, deadly force is permitted "only as necessary to affect lawful objectives" and an officer may only "use deadly force to protect himself or others from what he reasonably believes to be an immediate threat of death or grievous bodily harm."⁷ Moreover, "only the force reasonable and necessary under the circumstances should be used to effect an arrest, or in self-defense."⁸
- In evaluating Tensing's use of deadly force, we have considered a number of factors, including Tensing's explanation for why he believed deadly force was required, the extent to which any immediate threat confronted the officer based on the seriousness of the offense and Dubose's actions, and whether Tensing created the deadly threat by his own actions. We have concluded that, based on all the evidence, Officer Tensing's use of deadly force on Samuel Dubose violated UCPD policy.
- Tensing has said that he shot Dubose in the head because he believed his life was in danger and that, at the time he fired his weapon, his arm was caught or lodged into the steering wheel of the

⁶ SOP PE-06, Section III.A. and III.A.5.

⁷ SOP PE-06, Section III.A. and III.A.1.

⁸ SOP 1.3.400.

Honda Accord. In his statement to CPD detectives on July 21, Tensing explained that he was “holding on for dear life” and “getting dragged” by the Accord as Dubose attempted to flee the traffic stop. Tensing further stated that, had he not used deadly force under the circumstances, he may have been killed or seriously injured. The evidence Kroll reviewed and analyzed does not lend support to these statements.

- Contrary to Tensing's statements, at no point in the body camera video footage does it appear that Tensing's arm is lodged or caught in the steering wheel of the Accord or other aspect of the car's interior. A split second before Tensing discharged his weapon, Tensing appears to have been in complete control of his arm and hand movements, with no part of his body caught or lodged in the car. Indeed, Tensing's body camera recording appears to show that Tensing's left hand was mostly, if not fully, withdrawn from any possible entanglement with the Accord by the time his right arm aimed his gun at Dubose's head.
- Although it is difficult to determine with certainty whether or not the Accord had moved and, if so, by how much, any car movement before the moment Tensing fired his weapon appears to have been minimal.
- We fully recognize that the actions of Dubose did nothing to help the situation and, to the contrary, made matters worse. By starting his car and attempting to drive away from a lawful traffic stop, Dubose increased the risks of harm and contributed to the tragic outcome. For our purposes, however, it is only Officer Tensing's conduct that is at issue in this review. By reaching into the Accord during what was, until then, a minor and uneventful traffic stop, Tensing set in motion the fatal chain of events that led to the death of Dubose. His subsequent use of deadly force contravened UCPD policy and was inconsistent with basic police tactics and training.
- In addition, Officer Tensing's statements to CPD on July 21, and his earlier utterances to officers on July 19, cannot be reconciled with the evidence. Although Tensing's statements immediately after the shooting can be properly discounted as made during his initial shock from the incident and possibly while under extreme psychological stress, he was provided ample opportunity to clarify those initial assertions two days later when he appeared at CPD with his attorney. Unfortunately, no such clarification occurred.
- The officer's repeated assertions on July 21 that he was “being dragged,” that his arm was “caught or lodged in the steering wheel” or other aspect of the car, and that he was “hanging on for dear life” when he fired his weapon, among other statements, are plainly contradicted by the video and audio recording of the incident. Tensing's statements appear to have violated the UCPD Rules of Conduct, which prohibits officers from “intentionally making any materially false statement(s) in connection with the performance of their duties.” (Section 43(a)).

- All other UCPD personnel who responded to the scene that evening acted properly, professionally, and in accordance with UCPD policies and procedures. UCPD personnel responded to the scene quickly and efficiently, and except for a few actions noted below, the first officers and supervisors on the scene complied with Standard Operating Procedures.
- Although Officer Lindenschmidt erred in his initial attempt to assist with properly securing the scene – he moved Tensing’s patrol car to help block the north side of Rice Street and then picked up Tensing’s flashlight from the street as he walked back towards Valencia Street – his mistakes were unintentional and do not appear to have materially impacted the investigation.
- Moreover, while it was a mistake not to have required Officers Kidd and Lindenschmidt on the evening of July 19 to provide complete statements to CPD, these officers were willing to provide statements that evening and any unnecessary delay in taking their statements was not the fault of Kidd and Lindenschmidt.
- In any event, Kidd’s and Lindenschmidt’s subsequent statements to CPD were credible and consistent with the evidence, their respective points of observation, and normal discrepancies associated with human observation and recollection of fast-moving events. Although Officer Kidd had made some assertions on the night of the shooting of questionable accuracy, he properly clarified any ambiguities or questions concerning what he did and did not observe. Kroll has found no evidence which suggests that Officers Kidd or Lindenschmidt knowingly and intentionally violated UCPD policies, procedures, or the laws of Ohio.

At the conclusion of this report, Kroll provides some recommendations for the University of Cincinnati’s consideration. Further study and analysis of the UCPD’s mission, policies, procedures, existing training, capabilities, and strengths and weaknesses, will only serve to improve the Department’s performance, help it become more mission-focused, and decrease the likelihood of repeating what can only be described as a tragedy for all.

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APPLICABLE POLICIES AND PROCEDURES

This section provides a background and overview of the University of Cincinnati Police Department and outlines some of the official UCPD policies and procedures that are relevant and applicable to this review.

A. Background

The University of Cincinnati is a public research university in the State of Ohio with approximately 44,000 enrolled students. Its uptown campus is divided into East (UC Medical) and West Campuses and is situated on the perimeters of the Clifton Heights, University Heights, and Fairview neighborhoods of Cincinnati. The surrounding area is racially and ethnically diverse and thousands of UC students live off campus in neighborhoods immediately surrounding the East and West Campuses.

The UCPD presently consists of 72 sworn members. It is a fully certified and sworn police force with all of the powers and authority set forth in Ohio Peace Officers Training Commission (OPOTC) standards.⁹ The UCPD's stated mission is to work in "partnership with the community" to "promote a safe, secure and accommodating environment that enhances the University's mission."¹⁰ Its stated core values include:

- Professionalism ("Performing our duties with competency, dignity and reasonable restraint, while allowing understanding and empathy to factor into decisions");
- Respect ("To hold all in high regard for the qualities they possess");
- Integrity ("Honestly live by our Core Values and appropriate ethics, regardless of outside influences");
- Dedication ("A commitment to doing our absolute BEST"); and
- Enthusiasm ("Sharing eagerness, infectious energy and fun while performing our duties").¹¹

⁹ <http://www.ohioattorneygeneral.gov/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/Ohio-Peace-Officer-Training-Commission>. See also: Ohio Revised Code (ORC) 3345.04

¹⁰ UCPD Mission Statement.

¹¹ Id.

Authority and Jurisdiction / Memorandum of Understanding with Cincinnati Police Department

Under the UCPD's Jurisdiction and Mutual Aid policy, UCPD officers are authorized to:

- ...enforce the laws of the State of Ohio and carry out all duties and responsibilities attributed to the police on all properties under the care, custody or control of the University of Cincinnati; and
- enforce the traffic laws as denoted in the Ohio Revised Code on all University streets within the University limits.¹²

In addition, the UCPD presently has a Memorandum of Understanding ("MOU")¹³ with the CPD, which allows for broader jurisdictional authority within the city limits but outside of campus borders. Pursuant to the MOU, the UCPD regularly patrols a several block off-campus radius surrounding the East and West Campuses.¹⁴ Specifically, the MOU with the City of Cincinnati allows on-duty UCPD officers to:

- Conduct felony arrests off campus and then relinquish the case to CPD.¹⁵
- Conduct misdemeanor arrests off campus while maintaining responsibility for the case.¹⁶
- Investigate crimes that originate on campus and continue into the city's jurisdiction.¹⁷
- Conduct arrests for serious motor vehicle violations such as OVI (operating a vehicle while intoxicated) and other motor vehicle violations causing death or serious harm. These cases are to be turned over to the CPD.¹⁸
- Conduct arrests for all other motor vehicle violations that occur off campus while maintaining responsibility for the case.¹⁹

While the scope of the MOU limits the UCPD's authority to the above off-campus police activities, its only geographical limitation is "within the jurisdiction of the City" of Cincinnati.²⁰ Thus, pursuant to the MOU, on-duty UCPD officers have citywide arrest authority for felony and misdemeanor criminal and traffic-related offenses.

¹² SOP 2.1.100, Sec. III.C.1.

¹³ The actual title of the document is "Mutual Assistance In-Progress Crime Assistance Agreement Between the City of Cincinnati and the University of Cincinnati" (hereinafter referenced as "MOU"), January 28, 2010. An MOU also exists with the Blue Ash Police Department and the Clermont County Sheriff's Department.

¹⁴ The MOU was signed in 2010 and is automatically renewable for three terms of four years, making it valid until the year 2022. MOU Section VII.

¹⁵ MOU Section I. A.

¹⁶ Id.

¹⁷ MOU Section III.

¹⁸ MOU Section I. B.

¹⁹ Id.

²⁰ MOU Section I.A.

Increase in Size and Off-Campus Presence of the UCPD

Historically, the majority of on-campus crime has consisted of petty thefts and other low-level offenses, while reports of off-campus crime are generally of a more serious nature and include robberies, burglaries, and aggravated assaults.²¹ Concerns about rising crime rates grew steadily and peaked in or around 2009, when increased rates of off-campus violent crime led to calls for a more visible police presence in the surrounding blocks and neighborhoods of the uptown campus. In response, the UCPD has increased in size from a force of approximately 45 sworn officers in 2012 to its current staffing of 72 sworn officers.²²

The rapid growth in the size of the UCPD has resulted in more officers assigned to off-campus patrols in marked patrol cars. This in turn has led to more active traffic enforcement efforts by the UCPD officers on patrol, resulting in more car stops and potentially adversarial encounters with the residents and citizens of the surrounding communities. Within the past two years, there has been a large increase in the number of traffic stops conducted by UCPD officers. For example, in 2013, UCPD officers conducted a total of 713 traffic stops. The number of traffic stops more than doubled in 2014 to 1,453. And as of July 31, 2015, year-to-date traffic stops have totaled 2,028.²³

While this does not appear to have been the result of any official policy or directive of the UCPD, Kroll's interviews of UCPD personnel confirms that a marked increase in traffic enforcement has occurred within the past year. Some officers and supervisors expressed concern that increased focus on traffic enforcement has distracted from the UCPD's overriding mission of crime prevention and protecting students and the campus community. It appears to be generally accepted, however, and supported by recent crime statistics, that the added UCPD patrols, both on- and off-campus, have substantially increased police visibility and been a contributing factor to the steady reduction of crime in the area in recent years.

Statistical data shows there has been a steady decrease in reported crimes, both on- and off-campus, over the past five years,²⁴ which generally corresponds to the increased presence and visibility of the UCPD during that time period. Although the number of traffic tickets and citations issued by UCPD officers increased considerably in 2014 and the first several months of 2015, a more extensive review of UCPD enforcement priorities would be needed to properly assess how and whether increased traffic enforcement has impacted other crime prevention efforts.

²¹ 2014 Campus Crime Report, Institute of Crime Science, May 14, 2015, pp. 23, 27.

²² UCPD Officer Count, 2010-2015; Kroll Interview of Assistant Chief Jeff Corcoran, August 20, 2015.

²³ UNCP Traffic Stop Summary, July 31, 2015 (UC Institute of Crime Science); Kroll Interview of Assistant Chief Corcoran, August 20, 2015.

²⁴ *Id.*

Training Requirements

Prior to joining the UCPD, all officers must have attended and graduated from an Ohio certified police academy, having successfully completed a basic police training curriculum.²⁵ Ohio state law currently mandates a minimum of 605 hours of instruction for new police recruits, including a minimum of 60 hours of basic firearms instruction. The training curriculum is comprised of the following topics:²⁶

- (1) Administration
- (2) Legal
- (3) Human relations
- (4) Firearms
- (5) Driving
- (6) Investigation
- (7) Traffic
- (8) Patrol
- (9) Civil disorders
- (10) Unarmed self defense
- (11) First aid
- (12) Physical conditioning

The minimum passing score for basic firearms instruction is 80%.²⁷ A minimum of four hours of annual in-service training is required of every Ohio certified peace officer,²⁸ along with annual firearms requalification.²⁹

UCPD provides to all its members annual in-service training, which consists of a minimum of 24 hours of continuing professional training (classroom and firearms requalification) on topics set forth by the OPOTC.³⁰ For new hires, the UCPD relies primarily on the pre-hire training provided by the police academies and implements three phases of field training for Officers-in-Training ("OIT"): Phase One, when an OIT shadows a more experienced Field Training Officer ("FTO"); Phase Two, when the OIT is given more responsibilities under the direct supervision of the FTO; and Phase Three, when the OIT patrols alone with an FTO providing back-up.

²⁵ There are currently 62 certified police training academies in Ohio. See <http://www.ohioattorneygeneral.gov/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/Directory-of-Peace-Officer-Basic-Training-Academie#>

²⁶ Ohio Administrative Code (OAC) 109: 2-1-16

²⁷ OAC 109: 2-13-05.

²⁸ OAC 109: 2-18

²⁹ OAC 109: 2-13. There are separate qualifications requirements for shotgun and rifle certifications. See OPOTA Shotgun and Rifle Qualification Courses: http://www.ohioattorneygeneral.gov/Files/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/OPOTA-news/2013-7-9_ShotgunQualification-Effective1-1-13_OPC.aspx; http://www.ohioattorneygeneral.gov/Files/Law-Enforcement/Ohio-Peace-Officer-Training-Academy/OPOTA-news/2013-5-30_PoliceRifleCarbineQualCourse_OPC.aspx

³⁰ OAC: 109:2-18-02 Officer training requirements.

B. UCPD Policies and Procedures

As part of this review, Kroll was provided with a complete set of UCPD Standard Operating Procedures ("SOP") and Rules of Conduct. These policies and procedures govern the conduct of UCPD officers and supervisors in the performance of their duties. This section provides an outline of the policies and procedures we believe are most pertinent to this review.

SOP 1.1.100 - Authority and Use of Police Discretion

"Law enforcement officers by state statute have a duty to conserve the peace, to enforce the law, and to arrest violators. This authority should be exercised with a degree of discretion because of how broad in scope it is. Inherent in this authority is the ability to deprive individuals of their two most precious possessions - their freedom and their lives. Officers must always be vigilant to exercise caution and avoid the misuse or abuse of these powers." [SOP 1.1.100, Sec. I]

SOP 61.1.100 – "Traffic Enforcement"

Under the Traffic Enforcement policy, UCPD officers are responsible to enforce traffic laws in designated areas, or patrol zones. Officers are to "take appropriate enforcement action for all violations of traffic laws ... they observe. The basic objective[s] of traffic enforcement [include]":

- Controlling driving behavior through direct enforcement contact and by maintaining a high degree of visibility so that drivers are aware of the police presence and drive accordingly.
- Maintaining a 24 hour traffic enforcement posture [SOP 61.1.100, Sec. I.A. 2-3]

The responsibility for enforcing traffic laws includes the following:

- Traffic citations. UCPD "officers have the authority to issue University citations or [traffic tickets]." Officers are authorized to issue traffic tickets for vehicles without one or both license plates. [SOP 61.1.100, Sec. I.D.2c]
- Driver's license. "Drivers of vehicle[s] who do not have a valid driver's license ... will be issued a citation for operating a vehicle without a driver's license." [SOP 61.1.100, Sec. II.F]
- Suspended license. "If the violator's driving privileges have been revoked or suspended, the officer should cite for driving under suspension. Only a licensed driver should be allowed to drive from the location of the traffic stop." [SOP 61.1.100, Sec. II.F.1]
- Proof of Financial Responsibility. "This law requires police officers to ask drivers for financial responsibility proof (FR Proof) whenever a [traffic ticket] is issued." [SOP 61.1.100, Sec. II.J]

SOP PE 06 – “Firearms and Deadly Force”

The Firearms and Deadly Force policy defines the officer’s paramount duty to protect human life:

Police officers have been delegated the awesome responsibility to protect life and property as well as apprehend criminal offenders. This may entail the use of force which may reasonably be expected to take a life. The apprehension of criminal offenders and protection of property must at all times be subservient to the protection of life. The officer’s responsibility for protecting life must include his own. [SOP PE 06, Sec. I.A]

“Deadly force” is defined as “that force which is likely to cause death or grave injury or which creates a substantial degree of risk that a reasonable and prudent person would consider likely to cause death or grave injury.” The policy “complements the Less Lethal Force policy, and should be reviewed in conjunction with that policy.” [SOP PE 06, Sec. II]

Pursuant to Section III, “Officers shall use force only as necessary to affect lawful objectives. Officers shall fire their weapons as described in the following sections of this procedure.” Moreover, “to minimize danger to innocent bystanders, the officer should shoot at ‘center body mass’ when possible.” [SOP PE 06, Sec. III.A]

The following provisions are most applicable to the matter under review:

1. An officer may use deadly force to protect himself or others from what he reasonably believes to be an immediate threat of death or grievous bodily harm.
2. Officers should not discharge a firearm at or from a moving vehicle except as the ultimate measure of self-defense or defense of another when the suspect is using deadly force.
5. [O]fficers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this policy. ...
6. Deadly force shall not be used against a fleeing felon unless the conditions of section 1 above are met.
7. Every officer shall be issued copies of the procedure, and also shall be instructed in the context of this procedure at least annually during use of force training. Newly hired officers must be instructed in Department procedures, given a copy of the procedure and qualify before carrying a weapon.
8. Officers will read and sign that they received a copy and understand the departmental policy. [SOP PE 06, Sec. III.A.1-2, 5-8]

The UCPD firearms training program is to include comprehensive instruction on “(1) Departmental policy on use of deadly force, (2) the legal requirements, (3) moral responsibilities of carrying a firearm . . . and (5) firearm proficiency.” The proficiency training should “as closely as possible reflect those circumstances and conditions that our police officers are most likely to confront in real-life deadly force situations.” [SOP PE 06, Sec. III.C.1-3, 5]

Any officer, who discharges his or her firearm either unintentionally or officially, is to immediately:

- Determine the physical condition of any injured person and render first aid when appropriate.
 - Request necessary emergency medical aid.
 - Notify the dispatcher of the incident and location. ...
 - . . . remain at the scene (unless injured) until the arrival of the appropriate investigators.
 - . . . complete a public safety statement as soon as possible. ...
 - . . . remain available for further interviews, but in the absence of extraordinary circumstances, formal interviews will not be conducted until 24 to 48 hours have elapsed.
- [SOP PE 06, Sec. III.C.1a-d]

SOP 1.3.400 – “Use of Less Lethal Force”

“Only the force reasonable and necessary under the circumstances should be used to effect an arrest, or in self-defense.” This policy notes the following general considerations:

- This does not mean matching the suspect's force evenly; for instance, trading fist blows.
 - Rather, the officer shall use the minimum force needed to halt the assault, or control the suspect, and prevent the incident from escalating to where higher levels of force, including lethal force, may be required.
 - Using either too little, or too much force results in unnecessary injuries on the part of both the officer and the suspect. Force will not be used by an officer to punish a suspect.
- [SOP 1.3.400, Sec. A, B.]

The policy also describes specific factors to be considered when determining what type of force and the amount of force to use in a given situation:

1. The weapons being used (this includes fists, feet, etc.).
2. Suspect's delivery system (how far away can suspect deliver violence).
3. Ability: The officer's and the suspect's (age, weight, size, strength and skill).
4. Previous history of the suspect (i.e. assault).
5. Ability to escalate or de-escalate (access to weapons, including the officer's).
6. Physical position (does the officer have an escape route, are they able to use it?).
7. Surrounding environment ([including] physical environment). These factors, along with any other special circumstances, must guide the officer in choosing an appropriate tactic. Officers will base their use of force upon the totality of the circumstances. [SOP 1.3.400, Sec. I.C]

SOP PU50 - Body Worn Digital Recording Systems (“BWDR”)

This policy discusses the requirements that each UCPD officer is to wear and maintain a Body Worn Digital Recording System, or body camera. The policy requires, in part, that “Officers responding to a scene shall activate their department issued BWDR ... [p]rior to arriving on-scene when dispatched on a call where they are likely to detain or arrest a person.” [SOP PU50, Sec. I.B(a)(1)]

Moreover, the policy provides specific “[e]xamples of when the department issued BWDR system must be activated including: ... [t]raffic stops, from the initiation to the completion of the enforcement action.” [SOP PU50, Sec. I.B(b)(1)]

4

FINDINGS OF FACT

Kroll's factual findings are based on the interviews conducted to date and our review of all of the materials to which we had access, including the digital body camera video and audio recordings, witness statements, radio dispatch communications, photographs, and other documentation. Although some documents remain unavailable at this time, including the Coroner's report of the autopsy of Samuel Dubose and Officer Tensing's medical records, most of the essential facts of the July 19 incident and the subsequent investigation are not in dispute. Of course, whether Officer Tensing's conduct on July 19 constitutes the crimes of murder and/or manslaughter, or whether the shooting was legally justified, are matters to be decided by a jury in the Hamilton Court of Common Pleas. Our findings concern only whether UCPD personnel acted in compliance or non-compliance with UCPD policies and procedures.

A. Background

On July 19, 2015, at approximately 6:29 p.m., UCPD Officer Raymond Tensing was patrolling off-campus when he initiated a traffic stop of a car driven by Samuel Dubose. It was the events surrounding this traffic stop that led to the tragic and fatal shooting of Mr. Dubose. Officer Philip Kidd ("Officer Kidd" or "Kidd") and Officer-in-Training David Lindenschmidt ("Officer Lindenschmidt" or "Lindenschmidt") arrived as backup for Officer Tensing shortly before the shooting occurred. Consequently, these two backup officers witnessed some of the events that transpired during the incident. They were placed on paid administrative leave immediately after that night's events pending the outcome of this internal administrative review.

1. Officer Raymond M. Tensing

Officer Tensing is 25 years old and was hired by the UCPD on April 14, 2014. He graduated from the Clermont College Police Academy on April 4, 2011, having successfully completed the Peace Officer Basic Training Program. Prior to joining the UCPD, Tensing was a police officer for the Village of Greenhills, Ohio, first in a part-time capacity and later as a full-time police officer.³¹ He graduated from the University of Cincinnati in 2012 with a Bachelor of Science degree in Criminal Justice. While in high school, Tensing was an Explorer in the Hamilton County Sheriff's Office, achieving the rank of Captain.³²

³¹ Statement of Officer Ray Tensing, July 21, 2015 ("Tensing Statement"), p. 2.

³² *Id.*

A review of Officer Tensing's personnel file did not reveal any prior disciplinary infractions. In his most recent Employee Performance Evaluation on April 9, 2015, Tensing was noted to be strong in the area of traffic enforcement and average in community service skills. The evaluator recommended that Officer Tensing more directly interact with members of the public outside of traffic enforcement.³³ On a scale of 1 to 5, with 5 being the most desirable rating, Tensing received the following performance evaluation ratings:³⁴

- Attendance: 5.00
- Attitude: 3.46
- Appearance: 4.00
- Communication Skills: 3.88
- Community Service: 3.00
- Officer Safety: 3.56
- Preliminary Investigation: 3.00
- Police Officer Job Duties: 3.45
- Overall Rating: 3.67

Officer Tensing's personnel file contains a listing of approximately 20 training courses and sessions attended by Tensing from September 2009 to May 2015.

2. Officer Philip W. Kidd

Officer Kidd has been employed by the UCPD for nine and one-half years. Before joining the UCPD in 2006, Kidd worked in retail security and loss prevention. For the past approximately one-and-a-half years, Kidd has been an FTO assigned to several different OITs. He also has served as driving instructor, patrol rifle certification instructor, motorcycle certified operator, and was a member of the Special Response Team ("SRT") of the UCPD before those units were disbanded.³⁵ On July 19, 2015, Officer Kidd was the FTO assigned to OIT David Lindenschmidt. Kidd had been acting as Lindenschmidt's FTO for the prior three to four weeks when the fatal police shooting occurred.³⁶ A review of Officer Kidd's personnel file revealed no prior disciplinary infractions.

3. Officer-in-Training David J. Lindenschmidt

Officer-in-Training Lindenschmidt has been employed by the UCPD since February 2015. He graduated from the Great Oaks Police Academy in January 2013. Prior to joining the UCPD, Lindenschmidt worked for Camp Chautauqua Ministries in Carlisle, Ohio, which was founded by former pro football player Anthony Munoz. When he joined the UCPD in February 2015, Lindenschmidt was placed on desk duty

³³ Tensing Employee Performance Evaluation April 9, 2015. Similarly, Tensing's FTO Report that was filed during Phase 3 of his field training included the following entry on July 5, 2014: "Officer Tensing has been advised to spend more time on campus with regards to visibility and public service."

³⁴ Id.

³⁵ Kroll Interview of Officer Kidd, August 5, 2015. According to Officer Kidd, the UCPD SRT was disbanded after it was once used to conduct a dorm room raid and it was subsequently decided that no SRT was needed on a campus police force.

³⁶ Kroll Interview of Officer Kidd, August 5, 2015.

through the third week of July 2015 due to a shortage of FTO's. Lindenschmidt had received the requisite basic police training while at Great Oaks, which combined with excess training totaled 750 hours as certified by the Ohio Peace Officers Training Academy ("OPOTA"). Lindenschmidt has a high school diploma and has earned some college credits.³⁷

B. The Traffic Stop

On July 19, 2015, at approximately 6:29 p.m., Officer Tensing was patrolling off-campus in a marked patrol car near the intersection of East Hollister and Vine Streets, when he noticed a green Honda Accord with no front license plate pass through the intersection southbound on Vine Street.³⁸ As the car drove past the intersection, Tensing entered into his mobile data computer ("MDC") the car's Ohio tag number (GLN-6917) as it appeared on its rear plate:



Tensing entering Ohio tag GLN-6917

Once he entered the tag number, he found that the Accord was registered to a female. This action was captured on Tensing's body camera approximately nine seconds into the activated recording.⁴¹

³⁷ Kroll Interview of Officer Lindenschmidt, August 5, 2015.

³⁸ Tensing Statement, p.3. Ohio law requires all registered vehicles to affix a license tag onto the front and back of each vehicle. Ohio Revised Code Section 4503.21.

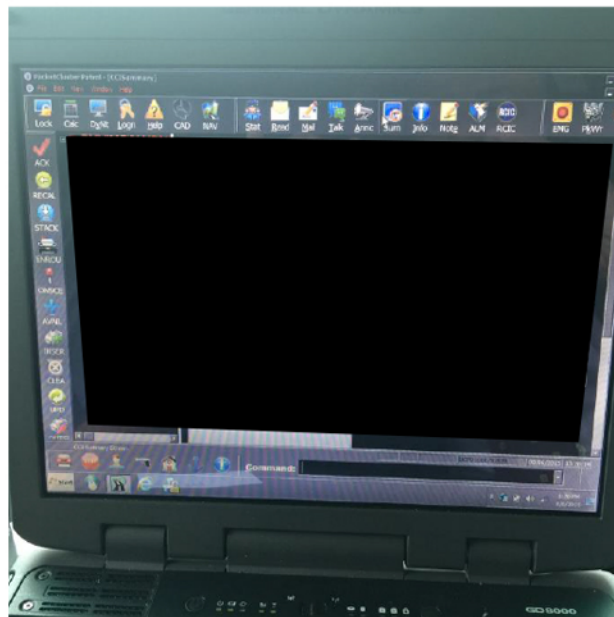
³⁹ Tensing Body Cam at 0:05.

⁴⁰ Tensing Statement, p.3; Tensing Body Cam at 00:09.

⁴¹ Since approximately October 2014, pursuant to the UCPD Policy on Body Worn Digital Recording Systems, SOP PU50, all UCPD officers have been provided with body cameras, which are worn during patrols and affixed to their uniforms at chest level. Once a body camera is activated, a recording of the previous 30 seconds of activity is captured on the recorded video. The audio portion of the body camera does not start until the body camera is activated. Consequently, when reviewing body cam recordings, the first 30 seconds of the recordings are not accompanied by audio.



Tensing's MDC reporting that Ohio tag GLN-6917 is registered to a female.



MDC screen display (redacted) after running Ohio tag GLN-6917.

Officer Tensing immediately followed behind the Accord, which was later found to be operated by Samuel Dubose.⁴³ As Dubose approached Thill Street, Tensing activated his red-and-blue police emergency

⁴² Tensing Body Cam at 0:09.

lights to indicate that he wished for Dubose to pull over and stop. Tensing notified police dispatch that he was initiating a traffic stop on Thill Street just off of Vine Street, and he followed the Accord as it turned onto Thill Street. When Dubose did not immediately pull over, Tensing activated his patrol siren, flipping it on-and-off a few times, in a further attempt to gain Dubose's attention.⁴⁴

Dubose continued to drive without stopping for an approximate 465-foot stretch on Thill Street, as Tensing notified dispatch that the subject vehicle was "slow to stop."⁴⁵ Although Tensing repeatedly activated his siren, Dubose continued driving until he rounded the corner of Thill Street onto Rice Street. According to Tensing's statement to CPD two days later, Dubose "wasn't fleeing from me, he just wasn't stopping."⁴⁶ Once Dubose turned onto Rice Street, however, he pulled over onto the right-hand side of the street and placed his car into park. Tensing parked immediately behind the Honda Accord a few feet from curbside.⁴⁷

Tensing exited his police cruiser and approached on the driver's side of the Honda Accord. As shown and recorded in Tensing's body camera footage, Tensing introduced himself, asked to see Dubose's driver's license, and explained that Dubose was stopped because he did not have a front license plate affixed to his car. Dubose offered that the front tag was in the car's glove compartment. Dubose then turned off the car's engine and used a key to open the glove box to show Tensing the front plate.⁴⁸ Tensing said he did not need for Dubose to produce the plate from the glove box⁴⁹ and explained that it should be affixed to the front of the car. Tensing again asked to see Dubose's driver's license. Dubose poked around his pants pockets and looked around the car, but did not produce a license.

Tensing also inquired about a bottle on the floor of the car and Dubose handed Tensing a bottle of Gin, which he explained was filled with air freshener.⁵⁰ Tensing glanced at the bottle and placed it on top of the Accord's roof.⁵¹ He asked again if Dubose had his license and, after Tensing repeated the question a few times, Dubose eventually admitted that he did not have his license with him. Dubose insisted, however, that he had a valid license and asked Tensing to run his name for verification.⁵² Tensing, however, never asked Dubose to identify himself.

⁴³ Tensing claimed in his statement to CPD that he initially did not know who was driving the car and could not tell if it was a male or female. "All I saw [was] that there was one person driving the vehicle and they were wearing like a red and white designed shirt with a hat on." Tensing Statement, p.6

⁴⁴ Tensing Body Cam at 0:30-1:00.

⁴⁵ Tensing Statement, p.3; Tensing Body Cam at 1:01-1:09.

⁴⁶ Tensing Statement, p.3.

⁴⁷ Tensing Body Cam at 1:09-1:13. A view of Tensing's vehicle from Officer Lindenschmidt's body camera, shortly after the shooting captured the position of Tensing's vehicle during the traffic stop. Lindenschmidt Body Cam at 2:50-3:06.

⁴⁸ An Ohio license plate with tag number GLN-6917 was recovered later that night by the CPD from the car's glove compartment.

⁴⁹ Tensing Body Cam at 1:42-1:51.

⁵⁰ Tensing Body Cam at 1:58-2:06.

⁵¹ Tensing Body Cam at 2:00-2:12.

⁵² Tensing Body Cam at 2:43 – 3:00.

Tensing finally asked Dubose, “Be straight up with me, are you suspended?” Dubose replied, “No, I’m not suspended.”⁵³ (It was later discovered that, in fact, Dubose was driving with a suspended operator’s license.)⁵⁴ Tensing asked again why Dubose did not have his license with him, to which Dubose replied, “Because I don’t. I just don’t. I’m sorry, sir. I’m just gonna go in the house.”⁵⁵ It was at this point that the traffic stop took a tragic turn.

C. The Use of Deadly Force

Tensing stated, “Well, until I can figure out whether you have a license or not, go ahead and take your seat belt off.”⁵⁶ Tensing then reached with his left hand to open the driver’s side door and Dubose immediately reached with his left hand to pull the door shut, declaring, “I ain’t even do nothing.”⁵⁷ As Dubose attempted to pull the driver’s door shut with his left hand (as Tensing attempted to open it), Dubose simultaneously moved his right hand from the steering wheel toward the ignition. Dubose then turned the key to start his engine.

According to Tensing’s body camera footage, Tensing’s right hand was on the roof of the car with no weapon in sight when his left hand first attempted to open the car door. At that precise moment, Dubose’s right hand was on the steering wheel. The car was in park and the engine was off.⁵⁸



Tensing Body Cam at 3:11. Tensing’s right hand is on the roof of the car, while his left hand reaches to open the car door. Dubose’s left hand is visible and his right hand is of the steering wheel.

As Tensing attempted to open the driver’s side door, Dubose tried to pull the door shut with his left hand as his right hand moved from the steering wheel toward his ignition key. Tensing’s right hand was still on the roof of the car with no weapon visible when Dubose first turned the ignition key to re-start the car.⁵⁹

⁵³ Tensing Body Cam at 2:54-2:55

⁵⁴ Regional Crime Enforcement Center Report of Samuel Dubose, August 14, 2015.

⁵⁵ Tensing Body Cam at 3:00.

⁵⁶ Tensing Body Cam at 3:09-3:11.

⁵⁷ Tensing Body Cam at 3:12.

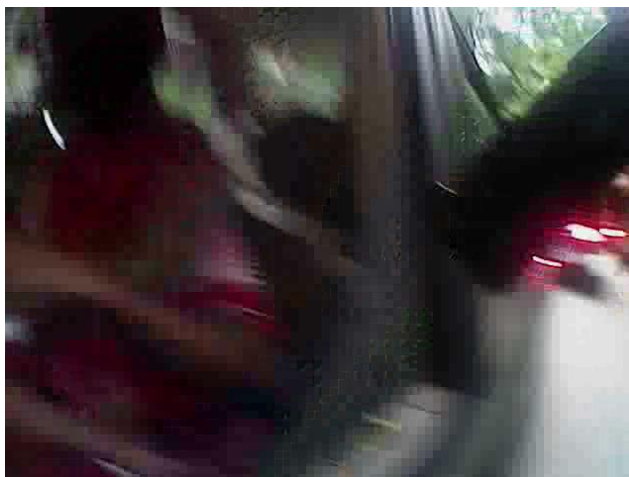
⁵⁸ Tensing Body Cam at 3:11.



Tensing Body Cam at 3:14. Tensing's right hand remains on the car roof. Dubose starts to pull the door shut with his left hand while his right hand reaches for the ignition key.

Once Dubose started the car, Tensing reached his left arm into the car in an apparent attempt to restrain Dubose. As Tensing explained to CPD two days later, "At this point, I was so close to Mr. Dubose, so close to his vehicle, . . . I thought I had a good chance of reaching in and turning the key off before he could go anywhere."⁶⁰

At this stage of the encounter, the video recording from Tensing's body cam becomes slightly blurred as Tensing yells, "Stop! Stop!" and continues to reach into the car, at one point grabbing Dubose's seatbelt as Dubose raises his left arm.⁶¹ At the 3:16 marker of Tensing's body camera footage, approximately two seconds after Dubose first turns the ignition key, Tensing's UCPD-issued .40 caliber Sig Sauer P320 becomes clearly visible in Tensing's right hand.⁶²



Tensing Body Cam at 3:16. Tensing produces his Sig Sauer P320 and points it in the direction of Dubose.

⁵⁹ Tensing Body Cam at 3:14.

⁶⁰ Tensing Statement, p. 4.

⁶¹ Tensing Body Cam at 3:15-3:16.

⁶² Tensing Body Cat at 3:15.

At 3:17, Tensing fires a single gunshot aimed directly at and in close proximity to Dubose's head.⁶³



Tensing Body Cam at 3:17. Tensing discharges a single gunshot aimed at Dubose's head.

A Closer Look

Kroll has examined and analyzed Tensing's body camera recordings with the aid of video slowdown and stabilization software and the assistance of a video analysis expert with Pennsylvania State Police experience. A close examination of the video footage shows that less than three seconds had transpired from the moment Dubose turned the ignition key until Tensing discharged his weapon.⁶⁴ Only then did the car accelerate and drive away – immediately after the gunshot was fired into Dubose's head. Moreover, at no time did Tensing's left arm appear to be caught or entangled in the car's interior and, at the approximate time of the firearm discharge, Tensing's left arm was at or near the seatbelt harness crossing Dubose's chest.

Prior to the gunshot, it is difficult to determine with precision how much, if at all, the car moved, but whatever movement may have occurred appears to have been minimal. For example, a car parked in the driveway of a residence on the west side of Rice Street near the location of the traffic stop can be seen through the front passenger window of the Accord at various points throughout the three-second encounter from when Dubose turns the ignition key until the gunshot is fired. Nevertheless, it appears that prior to the gunshot Dubose had put the car into drive and intended to drive away, and it is not possible for us to know or discern whether Tensing perceived (rightly or wrongly) the car to be moving.

⁶³ Tensing Body Cam at 3:17.

⁶⁴ Tensing Body Cam at 3:14 - 3:17.

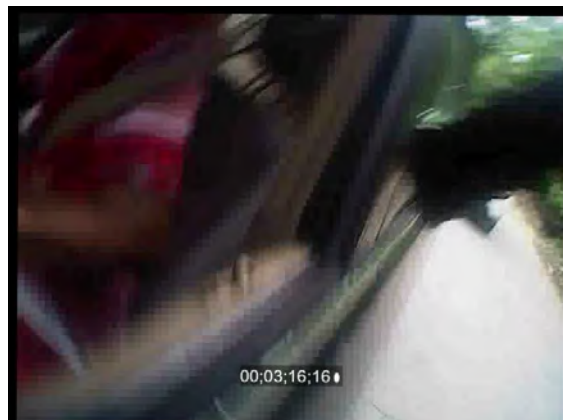
Key points of the encounter are highlighted below:



At 3:15:16, as Dubose turns the ignition key, Tensing immediately reaches into the car with his left hand in an attempt to restrain Dubose.⁶⁵ The parked car in the driveway on Rice Street is partially visible near the top center portion of the video still.



Approximately one second later, at 3:16:15, Tensing appears to be grabbing Dubose's chest area with his left hand while his Sig Sauer P320 becomes visible to the right of the video still.



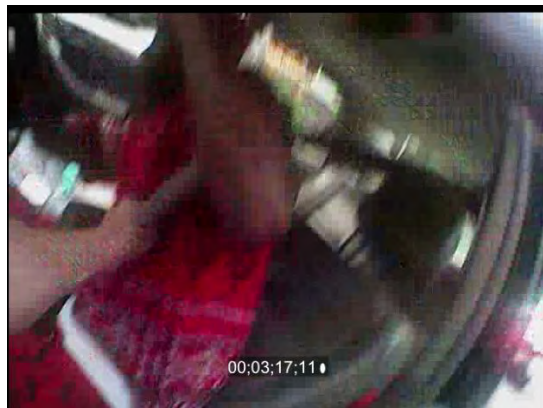
At 3:16:16, Tensing's gun is pointed at Dubose.⁶⁶

⁶⁵ Tensing Body Cam (slow resolution) at 3:15:16.

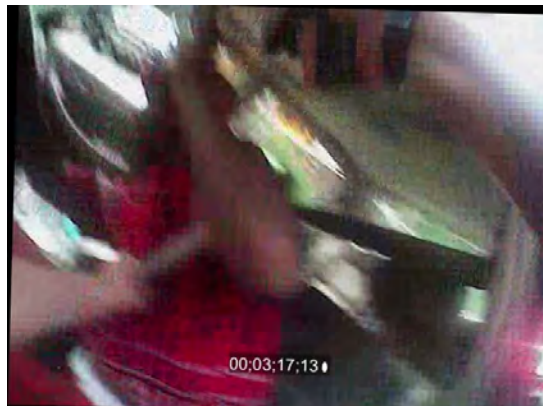
⁶⁶ Tensing Body Cam (slow resolution) at 3:16:16.



At 3:17:05, approximately one second after the gun first appears in Tensing's right hand, Tensing can be seen grabbing onto Dubose's seatbelt with his left hand.⁶⁷



At 3:17:11, Tensing appears to have a firm grip with his left hand on Dubose's seatbelt harness.

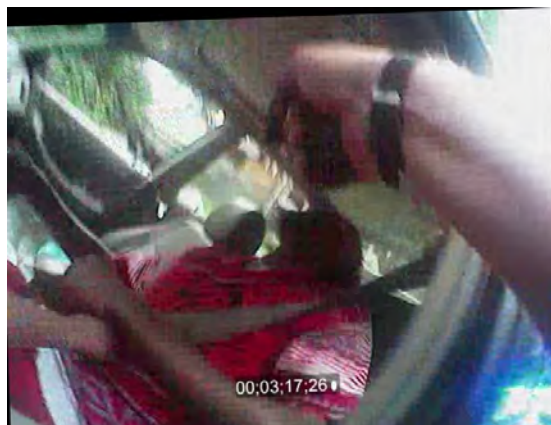


At 3:17:13, Tensing's left hand grabs Dubose's seatbelt harness, while Tensing's right hand points the gun at Dubose's head. Dubose's left arm is raised in apparent self-protection. The parked car on Rice Street remains visible through the front passenger window (top left).

⁶⁷ Tensing Body Cam (slow resolution) at 3:17:05.



At 3:17:21, less than one-tenth of a second later, as Tensing continues to grab onto Dubose's seatbelt and before the car appears to have moved any significant distance - if at all – Tensing's gun is aimed at Dubose's head as Dubose leans or falls away.⁶⁸ The parked car on Rice Street remains visible through the front passenger window.



By 3:17:26, Tensing has fired a single shot into Dubose's head.⁶⁹ Tensing is still standing and his left arm is not entangled in the steering wheel and does not appear to be entangled in the seat belt. The parked car remains visible through the front passenger window, though the Accord appears to have moved slightly forward at this point.



At 3:18:01, Tensing's left arm (lower left portion of still) is no longer reaching for or grabbing Dubose's seatbelt harness. His gun is still visible in the upper right-hand portion of the video still.

⁶⁸ Tensing Body Cam (slow resolution) at 3:17:21

⁶⁹ Tensing Body Cam (slow resolution) at 3:17:25.



At 3:18:06, Tensing's left hand and wrist are pressed against the inside of the lower front driver's side door window frame. The Accord appears to be moving.



At 3:18:15, Tensing's left hand appears to be disengaging from the car as Tensing begins to fall away.



At 3:18:18, Tensing is falling to the roadway, his body camera facing upwards.

Thus, according to the body camera footage, approximately three seconds after Dubose turned the ignition key, two seconds after Tensing first reached into the car, and one second after producing his service weapon, Tensing aimed his gun at Dubose's head and fired. When the gun discharged, it was immediately apparent that Dubose had been struck in the head. He collapsed to his right.

A close review of the audio and video recordings of Tensing's digital body camera reveals that the car engine revved and accelerated immediately after the gunshot was fired. From this, it appears that Dubose's right foot involuntarily pressed down on the accelerator upon the gunshot's impact. The Accord moved away, under its own power at an uncertain speed, angling toward a guard rail on the opposite side of Rice Street.

Moments after he discharged his UCPD firearm, and after the car started to accelerate, Officer Tensing fell backwards, away from the Honda Accord, as the car continued south on Rice Street. Tensing landed on his back with his firearm still pointed outwards in a northerly direction.⁷⁰ During his fall, the flashlight attached to Tensing's belt came loose and landed on the street. He turned himself over, regained his footing, and ran after the Accord south on Rice Street. Tensing was quickly accompanied by Officers Kidd and Lindenschmidt, who had responded to back up Tensing during the traffic stop, arriving seconds before the shooting occurred.⁷¹

The Accord continued up Rice Street and hit the guardrail on the east side of the street before continuing south and colliding into a telephone pole at the corner of Rice and Valencia Streets, approximately 400 feet from the location of the initial traffic stop.⁷² A portion of the car's front assembly was torn off near the guardrail upon initial impact. Dubose apparently died upon impact of the gunshot. When he was next seen approximately thirty seconds later, slumped over behind the wheel of the Honda Accord at Rice and Valencia Streets, he was visibly dead with a gunshot wound to the head and blood splattered throughout the inside of the car.⁷³

D. The Police Response

Officer Lindenschmidt was in only his ninth week of field training as a UCPD officer on July 19, 2015. Lindenschmidt was partnered with his FTO, Officer Kidd.⁷⁴ Shortly after 6:30 p.m., Lindenschmidt was driving a marked UCPD patrol car with Kidd in the passenger seat when they overheard Officer Tensing notify dispatch of a traffic stop being initiated around Thill and Vine Streets with a subject that was "slow

⁷⁰ Tensing Body Cam at 3:21.

⁷¹ Kidd Body Cam at 0:01-0:20; Lindenschmidt Body Cam at 0:06-0:40; Tensing Body Cam at 3:20.

⁷² Tensing Body Cam at 3:17-3:50.

⁷³ Although Kroll has not seen the official Coroner's Report, there is no dispute that the cause of Dubose's death was from the gunshot wound and not due to injuries sustained from the subsequent collision.

⁷⁴ Kroll Interview of Officer Kidd, August 5, 2015; Kroll Interview of Officer Lindenschmidt, August 5, 2015.

to stop.”⁷⁵ According to Officer Kidd, Thill Street has “a reputation for being a pretty bad area” and there have previously been police runs in that area for “shots fired”⁷⁶ so he and Lindenschmidt decided to proceed in that direction to provide back-up for Tensing. Lindenschmidt drove down McMillan Street and took a right onto Vine Street and a left onto Thill Street.⁷⁷

When they turned onto Thill Street, they did not see Tensing’s cruiser, so they proceeded up Thill Street until they reached the corner of Thill and Rice Streets. As they reached Rice Street, Kidd and Lindenschmidt observed Tensing standing on the driver’s side of the Honda Accord, which was operated by Samuel Dubose. As Lindenschmidt parked the cruiser, Kidd noticed Officer Tensing reaching for the driver’s door handle. Kidd told Lindenschmidt that it appeared Tensing was “about to get him [Dubose] out of the car, we need to get up there now.”⁷⁸ Kidd jumped out of the cruiser from the passenger’s side and witnessed Tensing lunge or reach into the car. He saw the car start moving, saw Tensing fall backwards, and heard a gunshot.⁷⁹

As the Honda Accord took off south on Rice Street, Kidd ran in pursuit with his weapon drawn. He noticed that Tensing had fallen to the ground, but appeared to recover quickly and began running in the direction of the moving vehicle. Kidd called on his radio (attached to his shoulder), “Shots fired! Shots fired!” as he ran besides Tensing on Rice Street. Meanwhile, Lindenschmidt followed behind Tensing and Kidd.⁸⁰



Lindenschmidt Body Cam at 0:11. Tensing is on the left side of the street, Kidd on the right side. Lindenschmidt’s gun is visible in the foreground.

Lindenschmidt later said that he did not see the shooting but only heard the sound of squealing tires and a gunshot as he finished parking his cruiser and jumped from the driver’s side in the direction of the

⁷⁵ Kroll Interview of Officer Kidd, August 5, 2015; Kroll Interview of Officer Lindenschmidt, August 5, 2015; Statement of Officer Phillip Kidd, July 21, 2015 (“Kidd Statement”), p.2; Statement of Officer David Lindenschmidt, July 21, 2015 (“Lindenschmidt Statement”), p. 3.

⁷⁶ Kidd Statement, p.2.

⁷⁷ Lindenschmidt Statement, p.3.

⁷⁸ Kidd Statement, p.2.

⁷⁹ Kidd Statement, p.3.

⁸⁰ Kidd Statement, p.3; Kidd Body Cam at 0:01-0:20; Tensing Body Cam at 3:20-3:42; Lindenschmidt Body Cam at 0:06-0:40.

moving car.⁸¹ As the car was “speeding away,” Lindenschmidt saw Tensing fall and roll backwards. He yelled to Tensing, “Are you hit? Are you okay?” believing initially that Tensing may have been shot.⁸² Lindenschmidt ran south on Rice Street in the direction of the moving car with his gun drawn.⁸³



Lindenschmidt Body Cam at 0:06. Tensing's patrol car is pictured on the right, while Tensing is in the center left portion of the frame, regaining his footing. A car traveling north on Rice Street has just passed by Tensing.

All three officers arrived at the Honda Accord within seconds of each other. The Accord by this time had collided with a telephone pole at the corner of Rice and Valencia Streets. The engine was still running, but Dubose was motionless and slumped over onto the passenger side of the car. While Kidd and Lindenschmidt covered the car with guns drawn, Tensing walked around the front of the Accord, looked into the car, and reached through the driver's side window to turn the car off.⁸⁴ Kidd immediately called for a medic, supervisors, an administrative page, and more officers.⁸⁵



Tensing Body Cam at 3:45. The engine of the Accord is still revving at a high pitch sound. Dubose is slumped over onto the passenger side of the car. Kidd is pictured to the right of the photo. Tensing's arms and gun appear at the top of the photo.

⁸¹ Lindenschmidt Statement, pp.3-4.

⁸² Lindenschmidt Statement, p.4

⁸³ Lindenschmidt Statement, p.4; Kroll Interview of Lindenschmidt, August 4, 2015; Lindenschmidt Body Cam at 0:06-0:40.

⁸⁴ Lindenschmidt Statement, p.4; Kidd Statement, p.3; Kidd Body Cam at 0:34-0:48; Tensing Body Cam at 4:01-4:14.

⁸⁵ Kidd Statement, p.4; Kidd Body Cam at 0:57-1:02.

Within minutes, several more police units arrived onto the scene. UCPD officers Derek Noland and Jeffrey Van Pelt, who were separately patrolling off-campus and engaged in their own traffic stops, responded immediately to calls for “shots fired.” Noland was east of campus and heading west on University Avenue when a car in front of him ran through a red light and pulled over on Jefferson Avenue; as Noland ran the tag, he heard a reference to “slow to stop” followed minutes later by “shots fired.” Noland immediately left his traffic stop without dismissing the subject and drove straight to Thill and Rice Streets.⁸⁶ Officer Brian Limke, who was backing up Noland in a separate patrol car during Noland’s traffic stop, arrived on scene behind Noland.⁸⁷

Officer Van Pelt was conducting his own traffic stop (he was on the phone with Sergeant Eric Weibel) when the call came out for shots fired. Van Pelt informed the subject of his traffic stop that he had to respond to an emergency and dismissed the driver.⁸⁸ He then drove straight to Thill and Rice Streets, arriving on the scene just behind Officer Noland within one to two minutes of the shooting.⁸⁹

After parking his cruiser, Noland approached Officer Kidd on Rice Street and asked him if Kidd was the officer involved. Kidd replied that it was Officer Tensing.⁹⁰ Noland subsequently overheard Tensing state that he “was being dragged” as an explanation for the shooting.⁹¹ Van Pelt noted that, when he first arrived on the scene, he did not have a clear indication of what had occurred, so after blocking off the south side of Rice Street, he approached Tensing and asked if he was okay. Tensing said, “I’m good. I got dragged by him. Got caught in the car.”⁹² Noland then established a perimeter position at 108 Valencia Street, while Van Pelt manned the perimeter at 2263 Rice Street.⁹³

Sergeant Weibel arrived at approximately 6:34 p.m., the first UCPD supervisor on the scene.⁹⁴ Weibel had been parked in his cruiser near the UC Medical Arts Building at 222 Piedmont, on the phone with Officer Van Pelt, when he heard the call for “shots fired” over the police dispatch radio. Weibel responded immediately to Thill and Rice Streets.⁹⁵ Weibel said that when he first arrived on the scene, he instructed Lindenschmidt to move Officer Tensing’s patrol car so he could maneuver around the vehicle and drive closer to the site of the Honda Accord.⁹⁶

⁸⁶ Kroll Interview of Officer Noland, August 5, 2015.

⁸⁷ Kroll Interview of Officer Limke, August 20, 2015.

⁸⁸ Van Pelt Body Cam at 9:20-9:25.

⁸⁹ Kroll Interview of Officer Van Pelt, August 5, 2015; Van Pelt Body Cam at ~11:15.

⁹⁰ Kidd Body Cam at 3:06.

⁹¹ Kroll Interview of Officer Noland, August 5, 2015.

⁹² Van Pelt Body Cam at 13:45-13:49; Kroll Interview of Officer Van Pelt, August 5, 2015.

⁹³ Kroll Interview of Officer Van Pelt, August 5, 2015; Kroll Interview of Officer Noland, August 5, 2015; UCPD Information Report, p.2.

⁹⁴ UCPD information Report, p.1.

⁹⁵ Kroll Interview of Sergeant Weibel, August 4, 2015. Weibel noted that he had initially passed Thill Street while on Vine because he did not see any activity on Thill. He then backed up and drove down Thill Street towards Rice, where he observed Tensing’s and Lindenschmidt’s cruisers parked on Rice.

⁹⁶ Kroll Interview of Sergeant Weibel, August 4, 2015.

According to Lindenschmidt's body camera footage, it appears that, a few minutes after the Honda Accord was secured, Lindenschmidt entered and moved Tensing's patrol car on his own volition in an attempt to block off the crime scene at the north end of Rice Street. While Lindenschmidt was in the process of moving Tensing's patrol car, Weibel arrived in his patrol car and honked to Lindenschmidt to let him pass.⁹⁷ About a minute later, after Lindenschmidt retrieved yellow police tape, he walked towards Tensing's loose flashlight and picked it up from the street, then quickly returned it when another officer instructed Lindenschmidt that the flashlight should remain where he found it. Lindenschmidt then placed the flashlight back on the street in close proximity to where he found it.⁹⁸



The above photographs from Lindenschmidt's body camera show where Tensing's flashlight landed after Tensing fell to the street following the shooting (top left), Lindenschmidt picking up the flashlight (top right), and Lindenschmidt placing the flashlight near where he found it (above) (Officer Maxwell, whose feet appear on the top of the above photograph, directed Lindenschmidt to return the flashlight).

Meanwhile, after driving further south on Rice Street, Weibel exited his vehicle and saw Tensing standing beside the decedent's car. Officer Kidd informed Weibel that Tensing had shot the driver of the Honda Accord. Weibel walked towards the Accord and observed Dubose's body slumped over, obviously deceased. According to Weibel, Tensing was in "shock."⁹⁹ Weibel looked at Tensing, who said, "I shot

⁹⁷ Lindenschmidt Body Cam at 3:07-3:51.

⁹⁸ Lindenschmidt Body Cam at 4:22-4:34.

⁹⁹ Kroll Interview of Sergeant Weibel, August 4, 2015.

one round on him. He took off on me . . . I almost got ran over by him.”¹⁰⁰ Weibel instructed Tensing to “relax” and walked away to request the presence of a “District Four boss” (CPD supervisory official).¹⁰¹

According to body camera footage, CPD officers and supervisors arrived quickly, with CPD Sergeant Nate Asbury the first to arrive, followed by several additional CPD officers, medical units and crime scene technicians.¹⁰² Several higher-level supervisors from both UCPD and CPD also began arriving over the next 15 to 30 minutes, including CPD Lt. Col. James Whalen and Captain Howard, and UCPD personnel Captains Rodney Chatman (the first UCPD Captain to arrive), Jeff Thompson and Dudley Smith, Assistant Chief Jeff Corcoran, Detective Robert Doherty, and Lt. Chris Elliott.

UCPD Officer Clifford Maxwell was also on duty on July 19, acting as the FTO for OIT Kia Williams.¹⁰³ They were patrolling on campus and had just pulled into the campus green garage on Martin Luther King Drive to review paperwork when they heard a radio call for shots fired. They responded immediately and arrived on scene a few minutes after Officers Noland, Officer Van Pelt, and Sergeant Weibel had arrived.¹⁰⁴

It was determined within twenty to thirty minutes that CPD would handle the investigation of the shooting.¹⁰⁵ The crime scene was secured by police tape and with officers standing guard at various perimeter positions. Officer Tensing was transported to University Hospital by CPD as he had complained of soreness and possible injuries to his left arm as a result of the incident. Officers Maxwell and Williams were asked to report to University Hospital to maintain order while Tensing was examined. Meanwhile, Officers Lindenschmidt and Kidd were placed into separate CPD transport vehicles and taken to CPD-CIS for questioning as part of the investigation.¹⁰⁶

E. The Investigation

For purposes of this review, the investigation into the fatal police shooting began as soon as the incident ended and the scene was secured.

Contemporaneous Statements Made at the Incident Scene

Officer Tensing made several contemporaneous utterances immediately after the shooting that were captured on his and other officers’ body cameras, stating repeatedly that he thought he “was going be run over,” he “was being dragged,” and his arm “got caught in the car.”¹⁰⁷ Standing near the Accord after it had crashed at Rice and Valencia Streets and, after turning off the engine, Tensing reported to dispatch,

¹⁰⁰ Kroll Interview of Sergeant Weibel, August 4, 2015; Weibel Body Cam at 2:33-2:45.

¹⁰¹ Kroll Interview of Sergeant Weibel, August 4, 2015; Weibel Body Cam at 2:54-3:30.

¹⁰² Kidd Body Cam at ~5:49; Tensing Body Cam at ~9:00.

¹⁰³ Williams is no longer a member of the UCPD.

¹⁰⁴ Kroll Interview of Officer Maxwell, August 6, 2015.

¹⁰⁵ Kroll Interview of Captain Chatman, August 3, 2015; Kroll Interview of Sergeant Weibel, August 4, 2015.

¹⁰⁶ UCPD Information Report, p.2; Lindenschmidt Body Cam at 8:54-8:57; Kidd Body Cam at 8:10-8:24.

¹⁰⁷ Tensing Body Cam at 4:15-8:35.

"I almost got run over by the car. He took off on me. I discharged one round. Struck the male in the head."¹⁰⁸

Tensing subsequently stated to Officer Kidd, "He didn't reach for anything. I just got tangled in the car. I thought I was going to be run over."¹⁰⁹ Tensing repeatedly shook his left arm and made a grunting sound. He then told Kidd, "I think I'm okay. He was just dragging me." Kidd replied, "Yeah, I saw that."¹¹⁰ Tensing stated again that "I thought I was going to get run over, I was trying to stop him."¹¹¹

When Officers Noland and Van Pelt arrived and approached Tensing on foot, Tensing said, "I thought I was going to get run over. He was dragging me."¹¹² He said his hand "got caught inside" and that he "fired one round. I probably got caught in the steering wheel or something."¹¹³

Less than a minute later, Officer Kidd approached Tensing and the following conversation ensued:

Tensing: "He was dragging me man."

Kidd: "Yeah. You good?"

Tensing: "I'm good. I just got my hand and my arm caught."

Kidd: "Yeah. I saw that."¹¹⁴

A short while later, Sergeant Weibel approached Tensing and looked into the Accord. Tensing volunteered, "I almost got ran over by him." Weibel put his hand up and said, "Okay. Relax,"¹¹⁵ as Officer Kidd added, "Yeah. Don't say anything."¹¹⁶

A minute or two later, Tensing explained to Weibel that he had conducted a traffic stop of the Accord because there was no front license plate. Two CPD officers then approached and asked if Tensing was hurt. Tensing said that his arm "hurts a little bit" and that the driver "took off on me" and "I got my hand stuck in the car."¹¹⁷ The CPD officers then walked with Tensing several paces north on Rice Street, separating him from the other officers. He was questioned further about any injuries or medical needs and it was determined that Tensing would be transported to the hospital to be examined. Approximately ten to fifteen minutes later, Tensing was transported by CPD to University Hospital.¹¹⁸

Sergeant Weibel briefly questioned Officer Kidd on the scene after Kidd told him that "Lindenschmidt and I saw it."¹¹⁹

¹⁰⁸ Tensing Body Cam at 4:34-4:43; Dispatch Recording at 3:54-4:03.

¹⁰⁹ Tensing Body Cam at 4:53-5:07.

¹¹⁰ Tensing Body Cam at 5:44-5:45; Kidd Body Cam at 2:18-2:21.

¹¹¹ Tensing Body Cam at 5:46-5:47; Kidd Body Cam at 2:22-2:23.

¹¹² Tensing Body Cam at 6:21-6:23.

¹¹³ Tensing Body Cam at 6:25-6:30.

¹¹⁴ Tensing Body Cam at 6:55-7:00; Kidd Body Cam at 3:31-3:36.

¹¹⁵ Tensing Body Cam at 7:33-7:35; Weibel Body Cam at 2:44-2:45.

¹¹⁶ Kidd Body Cam at 4:11-4:13.

¹¹⁷ Tensing Body Cam at 9:46-10:09.

¹¹⁸ UCPD Information Report, p.2; Kroll Interview of Sergeant Weibel, August 4, 2015.

¹¹⁹ Kidd Body Cam at 7:39-7:40.

Weibel: "Did you see him [Tensing] get dragged?"
Kidd: "Yes."¹²⁰

The UCPD Information Report

Based on his brief discussions with Tensing and Kidd on the scene, all of which were captured on one or more body camera recordings, and with other officers, Weibel paraphrased the information approximately six hours later in the UCPD Information Report.¹²¹ This is the only official UCPD police report pertaining to the July 19 incident of which Kroll is aware.

It does not appear that Weibel had any substantive discussions with Officer Lindenschmidt that evening. In the UCPD Information Report, Weibel recounted what he recalled of Tensing's remarks after arriving to the scene that evening:

Officer Tensing stated that he was attempting a traffic stop (No front license plate) when, at some point, he began to be dragged by a male black driver who was operating a 1998 Green Honda Accord (OH.GLN6917). Officer Tensing stated that he almost was run over by the driver of the Honda Accord and was forced to shoot the driver with his duty weapon (Sig Sauer P320). Officer Tensing stated that he fired a single shot. Officer Tensing repeated that he was being dragged by the vehicle and had to fire his weapon.¹²²

The report also noted that "Officer Kidd was on scene with OIT Lindenschmidt. Officer Kidd told me that he witnessed the Honda Accord drag Officer Tensing, and that he witnessed Officer Tensing fire a single shot. It is unclear how much of this incident OIT Lindenschmidt witnessed."¹²³

Weibel later explained to Kroll that the only substantive conversations he had with Officers Tensing and Kidd about that evening's events prior to completing the UCPD Information Report were those captured on his digital body camera recordings. Within approximately fifteen to twenty minutes of Weibel's arrival on the scene, Tensing was transported to University Hospital. Meanwhile, Kidd and Lindenschmidt were placed into separate CPD cruisers and transported to CPD-CIS for questioning.¹²⁴

After reviewing the digital body camera recordings, including all discussions captured between Officer Kidd and Sergeant Weibel, Kroll finds that, although Kidd responded affirmatively when Weibel asked him if he saw Tensing being dragged, at no point did Kidd claim to have seen the actual discharge of Tensing's weapon. It appears that Weibel's UCPD Information Report thus inaccurately reported that Officer Kidd said "he witnessed Officer Tensing fire a single shot."

¹²⁰ Kidd Body Cam at 7:43-7:45.

¹²¹ Kroll Interview of Sergeant Weibel, August 4, 2015.

¹²² UCPD Information Report, pp. 1-2.

¹²³ UCPD Information Report, p.2.

¹²⁴ Kroll Interview of Sergeant Weibel, August 4, 2015.

Other UCPD Officers' Involvement

Sergeant Weibel also recorded the names of most of the other officers, including UCPD and CPD officers, who had arrived to the scene of the shooting and assisted in securing the scene and gathering evidence. Based on that document and Kroll's subsequent interviews of UCPD officers, it appears that the other UCPD officers and supervisors who arrived to the scene included the following:

- Officers Noland and Van Pelt arrived on the scene within a minute or two of the shooting. As previously noted, they eventually secured perimeter positions on Valencia and Rice Streets, respectively. Each had brief a conversation with Officer Tensing, which were recorded on their respective body cameras.¹²⁵
- Officer Clifford Maxwell and OIT Kia Williams arrived a few minutes after Noland and Van Pelt. After Tensing was transported to University Hospital, Maxwell was instructed to report to the hospital and minimize hall traffic and disruption. Maxwell and Williams reported to the hospital, where they observed Tensing through a door. They had no conversations or discussions with Tensing and were not privy to whatever conversations he had with anyone while at the hospital.¹²⁶
- Captain Rodney Chatman was the first Captain to arrive on the scene, as he lives only a few minutes from its location. When Chatman arrived on the scene, he spoke by phone with Chief Goodrich and consulted with CPD officials. When it was determined that CPD would handle the investigation, Chatman concurred in that decision. Chatman eventually responded to the hospital to check on Tensing. While there, Chatman spoke briefly with Tensing, asking if he was okay and whether he would like for Chatman to make any calls for him, and stating that "we will all get through this like a family."¹²⁷
- Captain Jeff Thompson arrived after the scene had been secured and Officers Tensing, Kidd, and Lindenschmidt were no longer present. He observed that UCPD and CPD officers were continuing to maintain a secure perimeter around the incident scene and he learned from Assistant Chief Corcoran that CPD was to handle the investigation and that all UCPD personnel not needed on site should be sent back to the station or on other assignments. Later that evening, Thompson reported to CPD-CIS, where Officers Kidd and Lindenschmidt were waiting to provide statements. However, after it became apparent that an FOP attorney was not immediately available to speak with the officers, it was decided that CPD would allow Kidd and Lindenschmidt up to 48 hours to provide a statement, after they had a chance to consult with their union counsel. Thompson told Kroll that he did not believe the Firearms and Deadly Force policy

¹²⁵ Kroll Interview of Officer Noland, August 5, 2015; Kroll Interview of Officer Van Pelt, August 5, 2015.

¹²⁶ Kroll interview of Officer Maxwell, August 6, 2015.

¹²⁷ Kroll Interview of Captain Chatman, August 3, 2015.

permitted witness-officers to delay a statement, but CPD was willing to allow it, so Thompson did not attempt to overrule that decision.¹²⁸

- Captain Dudley Smith arrived after the scene had been secured and Officers Tensing, Kidd, and Lindenschmidt were no longer present. Captain Smith later retrieved from UCPD headquarters a new service weapon and ammunition, which he delivered to Tensing at the hospital (to replace Tensing's service weapon that had been used in the shooting and was seized by CPD for evidentiary purposes). When he saw Tensing that evening, Smith said, "Ray, I don't want to discuss with you the incident, I am just giving you your new firearm and ammo." Smith said he also advised Tensing to shut down his Facebook page in light of what happened.¹²⁹
- Lt. Chris Elliott arrived after the scene had been secured and he was initially ordered by Captain Thompson to gather evidence from Tensing at the hospital. Elliott and Detective Robert Doherty subsequently reported to the hospital; however, as it was ultimately determined that the investigation was to be handled by CPD, no evidence or substantive investigation was performed.¹³⁰
- Detective Doherty arrived after the scene had been secured and, though he was prepared to take photographs, he was informed the investigation was being handled by CPD. Doherty later accompanied Lt. Elliott to the hospital to check on Tensing. While at the hospital, Doherty spoke briefly to Tensing, advising him that he should not say anything about the incident for 48 hours as permitted by UCPD policy, and to allow time for his "head to clear."¹³¹

Officer Tensing's Medical Examination

Kroll has not been provided access to Officer Tensing's medical records, which we understand have not been obtained by the CPD or the Hamilton County Prosecutor's Office. However, photographs taken of Tensing while at the hospital and two days later at CPD-CIS show evidence of minor bruising on the inside of Tensing's left forearm, although the origin and source of the bruising cannot be discerned from the photos alone. Photos also suggest that Tensing may have suffered a minor abrasion to his left knee. Additional photos appear to show scuff marks to Tensing's leather gun belt and uniform that are consistent with his having fallen backwards onto the pavement during the incident. In any event, it appears Tensing suffered no significant injuries resulting from his traffic stop and encounter with Samuel Dubose on July 19, 2015.

¹²⁸ Kroll Interview of Captain Thompson, August 3, 2015.

¹²⁹ Kroll Interview of Captain Smith, August 3, 2015.

¹³⁰ Kroll Interview of Lt. Elliott, August 4, 2015.

¹³¹ Kroll Interview of Det. Doherty, August 5, 2015.

Search of Honda Accord

Subsequent investigation resulted in the CPD's seizure of the Honda Accord for processing. A search warrant was obtained for the Accord, which eventually found a single spent shell casing on the floor of the car's back seat and a projectile lodged into a loose radio console on the floor of the front passenger area. Further processing identified approximately four small bags and a jar of marijuana, \$2600 in cash, prescription medications, and miscellaneous items. Kroll notes, however, that these additional facts not known to Officer Tensing at the time of the traffic stop cannot be considered for this review. Accordingly, the presence of these additional items in the car is not relevant to our analysis of Tensing's actions before or during the traffic stop and whether he complied with UCPD policies and procedures. The presence of illegal contraband, however, and the fact that Dubose was driving under suspension, may be relevant to show Dubose's then-existing state of mind, and perhaps to explain why Dubose was apparently anxious to drive away from the traffic stop.

The 48-Hour Delay in Obtaining Witness Statements

Pursuant to the UCPD Firearms and Deadly Force Policy (SOP PE-06), an officer directly involved in a shooting is allowed up to 48 hours before he or she is required to submit to an investigative interview.¹³² The purpose of this policy is to allow "the officer time to meet with legal and psychological counsel" and to allow for "time to recover from [the] shock disruption period" and to provide an accurate statement.¹³³

On its face, this policy applies only to "involved officers" and not to officers who witness a critical incident, or who respond to a crime in progress. On July 19, 2015, although Officer Tensing was properly permitted to delay making any official statement about the shooting, Officers Kidd and Lindenschmidt were transported to CPD-CIS for questioning. However, upon the advice of Officer James Vestring, the UCPD FOP representative, Kidd and Lindenschmidt were instructed not to make any statements or to submit to any interviews before having an opportunity to consult with an FOP attorney. Although attempts were made that evening by Officer Vestring to contact the on-duty FOP counsel located in Columbus, Ohio, the attorney was not immediately available and stated that he could not arrive to CPD-CIS for at least three hours, sometime approaching midnight.¹³⁴

Some confusion ensued as to whether the officers were entitled to delay providing a statement. However, Lt. Col. Whalen and other CPD officials, after discussing the matter with Captain Thompson, eventually relented and delayed the taking of statements from Kidd and Lindenschmidt until they could consult with their FOP attorney. Consequently, the questioning of Officers Kidd and Lindenschmidt by CPD was re-

¹³² UCPD Firearms and Deadly Force Policy, PE-06, pp. 7-9.

¹³³ *Id.* p. 9.

¹³⁴ Kroll Interview of Officer Kidd, August 5, 2015; Kroll Interview of Officer Lindenschmidt, August 5, 2015; Kroll Interview of Captain Thompson, August 3, 2015; Kroll Interview of CPD Lt. Col Whalen, August 3, 2015.

scheduled for July 21, 2015, the same day on which a statement was scheduled to be taken from Officer Tensing.¹³⁵

Witness Statements Taken by CPD-CIS

Audio recorded and transcribed statements were taken from Officers Lindenschmidt, Kidd, and Tensing by CPD Detective Terry McGuffey and CPD Specialist Shannon Heine on July 21, 2015.

Officer Lindenschmidt

Officer Lindenschmidt was questioned shortly after 10:00 a.m. on July 21. When asked to describe the events of July 19, Lindenschmidt explained that, upon arriving on the scene, he could see that Tensing was engaged in a traffic stop and “standing at the driver door” with his “hand on the door handle.”¹³⁶ He then looked back to park his patrol car and, when he subsequently jumped out, he “had no visual of Officer Tensing or the suspect’s car.”¹³⁷ Lindenschmidt said that, “as soon as I stepped out of the vehicle . . . I heard squealing tires and then a couple seconds later, a gunshot.”¹³⁸ The next thing he saw was the Honda Accord speeding away and Officer Tensing falling backwards onto the street. His first thought was that Tensing had been shot and, as he ran south on Rice Street with his gun drawn, he yelled to Tensing to see if he was okay or had been “hit.”¹³⁹ Lindenschmidt quickly determined that Tensing was alright as Tensing regained his footing. Lindenschmidt continued to pursue the Accord with his gun drawn, as he followed Tensing and Kidd to the corner of Rice and Valencia Streets.¹⁴⁰ Lindenschmidt said that, after Tensing walked around the Accord and turned off the engine, Tensing said that he “got tangled in the vehicle and . . . I thought he was gonna run me over.”¹⁴¹

Officer Kidd

Officer Kidd was questioned next, at approximately 11:09 a.m. Kidd stated to CPD that he was in the passenger side of the patrol car being driven by Lindenschmidt when they arrived to back-up Tensing’s traffic stop. When they arrived, Kidd noticed “Tensing standing at the car door with a bottle in his hand . . . And then it looked like . . . Officer Tensing was reaching for the door handle, trying to open the door . . . so I told [Lindenschmidt] all right, well he’s about to get him out of the car, we need to get up there now.”¹⁴² Kidd said that, as he jumped from the car he saw Tensing appear to “lunge[] into the car . . . It looked like he reached in, like into the passenger compartment of the car. Car started moving. Officer Tensing started falling backwards. I heard a shot. I started running towards the car. The car takes off

¹³⁵ Id.

¹³⁶ Lindenschmidt Statement, p. 3.

¹³⁷ Id.

¹³⁸ Id. pp. 3-4.

¹³⁹ Id. p. 4.

¹⁴⁰ Id. p.4.

¹⁴¹ Id. p. 8.

¹⁴² Kidd Statement, p.2.

down the street. . . . Tensing was on the ground, he got up, seemed like he got up relatively quickly. So I assumed he hadn't been shot. I didn't know where the shot had come from.”¹⁴³

Kidd said he immediately “got on the radio and said shots fired, shots fired!” He then asked Tensing “if the guy had a gun.” When they reached Rice and Valencia Streets, Kidd said the Accord’s engine was “revving” and he “saw the driver slumped over the center console.” Kidd called for a “medic, a supervisor . . . an admin page, and more officers” and he covered Tensing at gunpoint while Tensing went to turn the engine off.¹⁴⁴

Upon further questioning, Kidd clarified that, after he first arrived on the scene and saw Tensing inside the stopped car, he then saw the “vehicle started moving . . . Officer Tensing started falling backwards . . . I heard a shot.”¹⁴⁵ Kidd said he did not recall seeing Tensing drawing his weapon – “when he got up from the ground he had it, but I don’t remember seeing him pull it.”¹⁴⁶ Only after they ran down the street and Tensing “got on the radio and said that he fired one shot and struck the subject in the head” did Kidd confirm that Tensing had fired his weapon.¹⁴⁷ Upon further questioning, Kidd said that he saw the Accord start moving shortly after he saw Tensing lunge into the car, though he could not say exactly how quickly that occurred. He estimated that perhaps three to five seconds passed from the time Tensing reached into the car to when Tensing separated from the car.¹⁴⁸

At one point, Kidd was asked, “Could you tell if the car was pulling [Tensing] or dragging him?” Kidd replied, “He was moving with the car, I don’t know, I don’t know how he was moving, if he was stuck, I don’t know, but he was . . . [t]he car was moving, he was moving.”¹⁴⁹ He later said, “I didn’t see how he fell, I saw him get away from the car, I don’t know how that happened.”¹⁵⁰

Officer Tensing

Officer Tensing appeared on July 21 with his attorney, Stewart Matthews. His statement began at 1:58 p.m. In discussing the events of July 19, Tensing stated that he was at the intersection of E. Hollister and Vine Streets when he saw “a green Honda Accord with no front license plate coming from that intersection” and traveling southbound on Vine Street.¹⁵¹ Tensing said he then ran the car’s rear license plate into his MDC, which reported the car was registered to a female “under a driving suspension.” “That’s when I pulled out southbound on Vine Street . . . to initiate a traffic stop.”¹⁵²

¹⁴³ Id. p.3.

¹⁴⁴ Id. p.3.

¹⁴⁵ Id. p. 6.

¹⁴⁶ Id. pp.6-7.

¹⁴⁷ Id. p.7.

¹⁴⁸ Id. p.14.

¹⁴⁹ Id. p.14.

¹⁵⁰ Id. p.18.

¹⁵¹ Tensing Statement, p. 3.

¹⁵² Id.

As the Accord approached Thill Street, Tensing “flipped on” his cruiser’s police emergency lights and “simultaneously called out over my radio that I was conducting a traffic stop . . . on Thill Street just off of Vine.”¹⁵³ Tensing noted that the driver did not stop right away, so he “flipped on my siren a couple times just to make sure that he knew I was behind him attempting to pull him over.”¹⁵⁴ The Accord continued “all the way down Thill Street” as Tensing continued to flip on his siren. Tensing explained that the driver “wasn’t fleeing from me, he just wasn’t stopping. He just kept driving” and did not stop until he had turned the corner around Rice Street, at which point he pulled over to the side of the road and Tensing pulled up behind him.¹⁵⁵

Tensing advised dispatch that the driver “was slow to stop” and then exited his police vehicle. Tensing said that he introduced himself to “Mr. Dubose” and asked “for his Driver’s License several times, [but] he did not produce one.”¹⁵⁶ When Dubose asked why Tensing stopped him, Tensing said he “explained . . . to him that his front license plate . . . was not on the vehicle.”¹⁵⁷ Tensing said that Dubose removed his ignition key and “reached over to the glove box with his key and unlocked the glove box with his key. He then pulled out the front license plate and showed me that he did, in fact, have a front license plate.”¹⁵⁸ Tensing told Dubose there was no need to remove the plate from the glove box, stating, “you don’t need to reach for that, it’s okay.”¹⁵⁹ He “again asked him for his Driver’s License” and Dubose “made movements with his hands like he was digging in his pockets.” Tensing kept asking for a license and Dubose finally “said he had one but it wasn’t on him.”¹⁶⁰

Tensing said he asked Dubose, “[J]ust be honest with me, are you under a driving suspension?” Dubose “said no” and then “said something to the effect of you can run my Social Security Number, I can give you my, my Social.”¹⁶¹ Tensing told CPD, “at that point, I could not ID him. I did not know who he was,” so Tensing “advised him that I was gonna detain him and I proceeded to . . . open the car door.”¹⁶² Tensing continued:

As I opened the car door . . . I advised him to . . . remove his seatbelt. And immediately after that, he reached up and turned the key, which was in the ignition at this point, he turned the key back on. At this point, I was so close to Mr. Dubose, so close to his vehicle . . . I thought I had a good chance of reaching in and turning the key off before he could go anywhere. . . . So as I reached in to knock the key out and turn the key off . . . he put it in drive. It was a . . . center console shifter. He put the vehicle in drive and he just mashed the accelerator as he pulled out. And my hand and my left arm . . . somehow got caught or tangled up in the steering wheel as he’s accelerating. . . . [A]t this point I lost my balance and I fell against his car on the left side of my body. . . was hanging on the

¹⁵³ Id.

¹⁵⁴ Id.

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ Id.

¹⁵⁸ Id. pp.3-4.

¹⁵⁹ Id. p.4.

¹⁶⁰ Id. p.4.

¹⁶¹ Id. p.4.

¹⁶² Id. p.4.

side of his car and I was kinda facing backwards. My body was facing his trunk. As he continued to accelerate . . . my arm was still stuck at this point . . . I could not free it. . . . [A]t that point, I was think[ing] oh my gosh, I'm getting dragged by this guy's car, I don't wanna die today. I'm in fear of my life. . . . [A]t some point, my hand is still stuck as I'm drawing my weapon out. Thinking this guy's actively trying to kill me right now. I don't want to die today on this street. I don't want to get run over by his vehicle. So I pulled my gun out, and as I'm falling . . . I'm kinda below the plane of his, his window. So the only shot I could see that I could take to stop the threat, was a head shot. That's the only part of his body I could really see at that point and had . . . a clear visual of. . . . I told him, I believe twice, to stop the vehicle. Stop. Stop. I just wanted him to stop the car. That was my goal. He still just continued to accelerate and that's when I discharged one round. And I hit him in the head with that round. . . . I did that because I was in fear of my life. I was holding on for dear life. I did not want to get sucked underneath his car and run over by the tires. Um, it's difficult to explain.

. . . Immediately after I discharged, when I discharged the round my hand at that point, I believe[,] was free from the vehicle, but the vehicle was still in motion at that point. He was still accelerating[,] he had his foot mashed [against] the accelerator. . . . I was trying to grab his shirt. I was trying to hold just for dear life because the vehicle, like I said, at that point was in motion. And he was rapidly accelerating. And . . . there was a vehicle that was parked on the street in front of his vehicle. So in order for him to pull out, to go, he had to turn left a little bit to get back on the street. As he turned left, that's when I was getting dragged . . . and my hands became free. . . . I was either trying to grab his shirt or have my hand over the window sill, just trying to hold on for dear life, because I did not wanna get sucked underneath his tires and ran over. And I knew when I initiated the traffic stop also, that there is a guardrail with posts that face the street, and it was on the east side of Rice Street. And I knew if he would have kept driving that way, he could have easily scraped me off the side of his car with one of those posts, and I'd be dead. . . . [S]o I was just hanging on for dear life when I fired the shot . . . and I hit him in the head. Immediately after that, I somehow became unlodged from the car and my arm came over the door, out of the window, and I fell off the car as he continued to rapidly accelerate down the street. . . . I fell on my back and . . . slid on my back on the pavement for I don't know how long. . . . that's when Officer Kidd and Officer Lindenschmidt were pulling around the corner. And I believe they witnessed it and they were running up to me as it happened and . . . I stood back up again and at that point, we heard . . . a loud crash. . . . So we all ran towards the crash scene on foot. . . . [A]s we rounded the corner . . . we could see that he had ran [sic] in to . . . a wall and had wedged his vehicle between a wall and a telephone pole. At that point . . . all three of us had . . . the car at gunpoint still because we didn't know what he was gonna do . . . or if I had even shot him. . . . I advised Officer Kidd to cover me and I went around the vehicle which was still screaming . . . and the engine was . . . revving. . . . [S]o I went around the vehicle and I shut the key off. Then I came back around . . . they called for other officers . . . and we secured the scene.¹⁶³

Upon further questioning, Tensing explained that, during the traffic stop he had "looked down on the floorboard" and noticed a "bottle of alcohol," which Dubose handed to him and which Tensing placed on the top of the car. Tensing said that at no point prior to Dubose attempting to drive away did Tensing reach for or place his hand on his weapon.¹⁶⁴ Tensing said that, when he did pull his weapon, "It was to . . . stop the threat. I believed at that point, when I was getting dragged by his vehicle, that he was actively trying to kill me. . . . I would have either been sucked underneath his vehicle and run over and killed or he

¹⁶³ Id. pp. 4-6.

¹⁶⁴ Id. p.7.

would have gone along that guardrail and scraped me off the side of his vehicle, and I would have been killed.”¹⁶⁵

Asked whether his feet were being dragged, Tensing said that “all I remember is just being dragged. I could feel myself, after I lost my balance, I could just feel my body going with his vehicle and picking up momentum and being dragged by his car.”¹⁶⁶ He was not running alongside the car, but “was stationary and after [Dubose] put it in drive and mashed the accelerator, the momentum of his vehicle went forward, made me lose my balance. That’s when I got my arm caught somewhere in his steering wheel. I got my arm, my left arm lodged in there.”¹⁶⁷ Tensing said he believes he reached “two-and-a-half to three feet” into the car and stuck his left arm “through the top part of the steering wheel . . . to try to turn the key off.”¹⁶⁸ Tensing said that “after . . . I shot him, my arm became . . . free and I believe I was grabbing for his shirt or grabbing for his seatbelt just to try to hold on, to not get sucked underneath the vehicle.”¹⁶⁹ Tensing estimated that he was dragged by the car for “fifteen to maybe twenty feet” and that the car was traveling at “I would guess, fifteen miles an hour.”¹⁷⁰

Tensing acknowledged that he had viewed his digitally recorded body cam footage with his lawyer prior to giving his statement to CPD.¹⁷¹ He also said that the only injuries incurred were “[b]ruising on the underside of my left arm . . . a minor contusion to the left side of my knee, minor bruising. And then a sore lower back near my gun belt.”¹⁷² He made no follow-up visits to a physician after visiting the hospital on July 19.

The Indictment

On July 29, 2015, a Hamilton County Court of Common Pleas Grand Jury charged Tensing with Murder, in violation of Section 2903.02(A) of the Ohio Revised Code, and Voluntary Manslaughter, in violation of Section 2903.03(A) of the Ohio Revised Code.

¹⁶⁵ Id. p.8.

¹⁶⁶ Id. p.8.

¹⁶⁷ Id. p.9.

¹⁶⁸ Id. pp. 9-10.

¹⁶⁹ Id. p.10.

¹⁷⁰ Id. p.10.

¹⁷¹ Id. p.15.

¹⁷² Id. p.16.

5

INVESTIGATIVE CONCLUSIONS AND ANALYSIS

Based on the evidence reviewed and the findings of fact as outlined in Section Four, and in light of applicable UCPD policies and procedures, Kroll makes the following investigative conclusions:

A. Justification for Traffic Stop

Officer Tensing was authorized by UCPD policy, state law, and the MOU with the CPD, to conduct a traffic stop of the 1998 Honda Accord operated by Samuel Dubose on July 19, 2015.

- According to the UCPD Traffic Enforcement Policy, SOP 61.1.100, UCPD officers have “[t]he responsibility for the enforcement of traffic laws” and “while on duty . . . shall take appropriate enforcement action for all violations of traffic laws . . . they observe.”¹⁷³ UCPD officers thus “have the authority to issue University of Cincinnati citations and Ohio Uniform Traffic Tickets.”¹⁷⁴
- The traffic offenses for which UCPD officers are authorized to enforce include, pursuant to Section 45 of the Ohio Revised Code (Ohio Motor Vehicle Laws): (1) failure to display in plain view on the front and rear of the motor vehicle the distinctive number and registration mark and any validation sticker issued, and (2) driving a vehicle with a suspended operator’s license.¹⁷⁵
- The MOU then in effect between the UCPD and the CPD provided UCPD officers with citywide jurisdiction to enforce misdemeanor and other traffic violations.¹⁷⁶
- The evidence supports the conclusion that Officer Tensing observed in plain view that the green 1998 Honda Accord operated by Dubose did not properly display a license plate on the front of the vehicle. Tensing viewed the car’s rear license plate and properly entered Ohio tag number “GLN6917” into the patrol car’s MDC terminal. Tensing’s body camera video shows that he entered the correct tag number into the MDC, which immediately displayed that the car was a 1998 Honda Accord owned by an individual whose Ohio Operator’s License was currently under “Suspension.”

¹⁷³ SOP 61.1.100, Section I.A.

¹⁷⁴ SOP 61.1.100, Section I.D.

¹⁷⁵ SOP 61.1.100, Section I.D.2.

¹⁷⁶ MOU Section I.B.

- Tensing's initial observation and subsequent query of the Accord's visible rear license plate revealed potentially two Ohio Motor Vehicle Law violations: (1) Section 4503.21: Display of license plates and validation stickers (a minor misdemeanor offense), and (2) Section 4510.11: Driving under suspension or in violation of license restriction (Misdemeanor offense of the first degree).
- Officer Tensing thus had reasonable and articulable justification to initiate the traffic stop and to investigate the operator to ascertain his or her identity and to determine if the car was being driven by a person in lawful possession of a valid operator's license. His actions were authorized by and in accordance with Ohio traffic statutes, UCPD policy and the existing MOU.

B. Officer Tensing's Initial Approach

The early stages of Officer's Tensing's encounter with Dubose were handled calmly and professionally, and his tactical approach was sound.

- Officer Tensing properly initiated the traffic stop by using his marked patrol car's red-and-blue emergency lights and siren, which is heard distinctly on the body camera audio. Tensing also properly reported that the driver of the Accord was "slow to stop." When the Accord finally pulled over on Rice Street heading southbound from the corner of Thill Street, Tensing was approximately one-half mile from the UC campus. Tensing properly parked his patrol vehicle behind the Honda Accord, which provided a safe zone for him to approach the Accord without being struck by vehicular traffic turning right from Thill Street onto Rice Street.
- Tensing properly approached the Accord on the driver's side, which provided a tactical advantage over the operator and allowed Tensing to be positioned safely to the rear of the driver. This sound tactic required Dubose to look over his left shoulder and slightly to his rear to view Officer Tensing. By standing to the rear of the driver's side door jamb, Tensing had safely positioned himself in a manner that minimized the risk of being pushed into oncoming traffic should the driver's door be opened.
- Tensing appropriately addressed Dubose and identified himself as "Officer Tensing UC Police." Tensing properly advised Dubose that he was stopped for not having a license plate on the front of the vehicle, and his subsequent investigatory questions were also appropriate, including "Do you have a license?", "Where is your license plate?", "Is this your car?", "Are you under suspension?" and "Why don't you have your license on you?"
- In sum, Officer Tensing's initial approach to the vehicle was conducted safely and prudently in accordance with generally accepted police practices. His initial interaction with Dubose was professional and appropriately inquisitive.

C. Tactical Errors During the Traffic Stop

Although the traffic stop was justified, and Officer Tensing's conduct during the stop initially calm and professional, he thereafter made critical errors in judgment that created an elevated risk of a serious or fatal bodily injury. In particular, Tensing's decision to reach into an occupied vehicle in an attempt to stop the operator from driving away escalated the encounter into a potentially deadly situation for himself and for Dubose.

- It is standard police practice, critical to officer safety, never to reach into an occupied vehicle during a traffic stop. It is taught as part of basic training in the police academy and is reinforced by FTOs on patrols with Officers-in-Training. Almost all of the UCPD officers interviewed by Kroll confirmed that they have been properly trained to not reach into a vehicle during a traffic stop. Many of these same officers cited the tragic line-of-duty death of CPD Officer Kevin Crayon on September 1, 2000. Officer Crayon was dragged to his death after reaching into a vehicle in an attempt to stop a 12-year-old driver from striking pedestrians and fleeing the scene.¹⁷⁷
- Although Tensing stopped the Accord because it lacked a front license tag and was registered to an owner (Dashonda Reid) whose license was suspended, Tensing learned shortly into his initial inquiries that Reid was not operating the Accord and that the front license plate was in the car's glovebox. Dubose also confirmed that the Accord belonged to Reid, whom Dubose identified as his "wife." At this point, the apparent reasons for the initial car stop were resolved, except for the technical violation that the front license plate was in the glovebox instead of affixed to the car.
- Nevertheless, it was appropriate for Officer Tensing to request to see Dubose's driver's license.¹⁷⁸ Dubose's evasiveness in answering whether or not he had a driver's license in his possession was readily apparent, though Dubose eventually acknowledged he was not in possession of his operator's license and asked Officer Tensing to run his name for verification. Tensing instead sought to have Dubose step out of the car. He did not ask for Dubose's name and date of birth or social security number, or other identifying information, which could have been entered into MDC.
- By instructing Dubose to remove his seat belt and to step outside of the car while simultaneously attempting to open the driver's side door of the car, Tensing lost his tactical advantage over the operator by positioning himself next to the driver's side door instead of to the rear of the driver's

¹⁷⁷ <http://www.gcphs.com/LODD/Crayon.html>

¹⁷⁸ "Drivers of vehicle who do not have a valid driver's license as indicated by the Ohio BMV or from their state of residence will be issued a citation for operating a vehicle without a driver's license." UCPD Traffic Enforcement Policy, SOP No. 61.1.100, Section II.F.

side door. This placed Tensing at risk of being pushed into traffic had Dubose pushed open the car door or attempted to drive away.¹⁷⁹

- Rather than de-escalating the encounter and allowing Dubose to drive away and calling the UCPD dispatcher to request assistance, Tensing improperly reached into the car in an attempt to restrain Dubose. Although it is unclear from the body camera video footage how far into the car Tensing reached and whether he initially made physical contact with Dubose, at some point Tensing's left hand grabbed the seat belt harness near Dubose's mid-chest area.
- Tensing continued escalating the encounter by drawing his service weapon within one to two seconds of the moment Dubose started the car. Dubose was unarmed and both of his hands were visible to Tensing. Although the body camera recording shows that Tensing was not caught or lodged in the car and was not dragged by the car at any point, the video also shows that even before the car appears to have moved moments later, the gun barrel of Tensing's firearm entered the open driver's side window, pointed directly at Dubose. Moreover, while the gun was pointed in a slightly downward direction at Dubose, Tensing's left hand had grabbed ahold of and clenched Dubose's seat belt harness, which simply added to the growing risk that Tensing would or could be pulled by the car when it accelerated.
- The International Association of Chiefs of Police (IACP) Use of Force Model Policy (February 2006) states that "[f]irearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants."¹⁸⁰
- In sum, Officer Tensing engaged in a series of poor police tactics that created an officer and citizen safety hazard, exposure to serious bodily injury or death, and elevated the risks that a dangerous escalation of force would occur.

D. Officer Tensing's Use of Deadly Force

As set forth in the UCPD Firearms and Deadly Force policy, SOP No. PE-06, deadly force is permitted "only as necessary to affect lawful objectives" and an officer may only "use deadly force to protect himself or others from what he reasonably believes to be an immediate threat of death or grievous bodily

¹⁷⁹ In the UCPD FTO Standard Evaluation Guide, among the conduct listed as unacceptable to officer safety are: "Expos[ing] weapon to suspect," "[s]tand[ing] in front of/next to violator's vehicle door," and "[s]tanding in front of door when making contact with occupants." Section 21, p.12.

¹⁸⁰ IACP Model Policy on Use of Force, Section IV. Procedures, Section B(3). Deadly Force Restrictions.

harm.”¹⁸¹ This policy also requires that “officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this policy.”¹⁸² Moreover, pursuant to the Use of Less Lethal Force Policy, SOP 1.3.400, “only the force reasonable and necessary under the circumstances should be used to effect an arrest, or in self-defense.”¹⁸³

In evaluating Officer’s Tensing’s use of deadly force on July 19, 2015, we must consider, based on all the evidence, a number of factors, including Tensing’s explanation for why he believed deadly force was required, the immediate threat confronting the officer based on the seriousness of the offense and Dubose’s actions, and whether Tensing created the deadly threat by his own bad tactical decisions. We conclude that, based on all the evidence, Officer Tensing was not justified in using deadly force on Samuel Dubose and that by doing so he violated the UCPD Deadly Force and Less Lethal Force policies.

The Immediate Threat, Severity of Offense, and Dubose’s Actions did not Justify Deadly Force

- Officer Tensing has stated that he shot Dubose in the head because he believed his life was in danger and that, at the time he fired his weapon, his arm was caught or lodged into the steering wheel of the Honda Accord and he was “holding on for dear life” and “getting dragged”¹⁸⁴ by the Accord as it accelerated away from the traffic stop. Tensing stated that he believed that, had he not used deadly force under the circumstances, he may have been killed or seriously injured.¹⁸⁵ The evidence reviewed and analyzed by Kroll does not lend support to these statements.
 - At no point in the body camera video footage does it appear that Tensing’s arm is lodged or caught in the steering wheel of the Accord, or the driver’s seatbelt, or any other aspect of the car’s interior.
 - At the precise moment of the shooting, Tensing’s left hand appears to be grabbing onto Dubose’s seatbelt harness as his right hand points a gun at Dubose’s head. Tensing appears in complete control of his arm and hand movements and no part of his body appears to be in any way caught or stuck in the car. In fact, it appears that Tensing’s left hand was mostly, if not fully, withdrawn from any possible entanglement with any part of the vehicle by the time he aimed his gun at Dubose.
- Although it is difficult to determine with certainty whether or not the Accord had moved and, if so, by how much, any movement before the moment Tensing fired his weapon appears to have been minimal as evidenced from Tensing’s body camera footage.

¹⁸¹ SOP PE-06, Section III.A.1.

¹⁸² SOP PE-06, Section III.A.5.

¹⁸³ SOP 1.3.400.

¹⁸⁴ Tensing Statement, pp. 4-5.

¹⁸⁵ Id.

- First, a car parked in the driveway at a residence on the west side of Rice Street can be seen through the passenger's side window of the Accord at various points throughout the encounter, despite Tensing having moved from the rear of the driver's side door to the front of the driver's side door facing Dubose. In some stills, Tensing's parked patrol car is also visible in close proximity to the events depicted.
- Second, it is not until after the gunshot is heard that the body camera audio captures the sound of the Accord's engine revving at a high pitch sound and then the car accelerates proceeding south on Rice Street.
- Third, once the gunshot is fired and the car begins to accelerate, a slow resolution and stabilized view of the body camera video shows that Tensing's left hand is still inside the driver's side door cradling the inside rear portion of the window frame. His left thumb is centered on the window's frame and his left four fingers are on the inside portion of the door. As the car begins to accelerate away, Tensing's left hand can be seen moving away from the rear portion of the driver's side door window frame.
- Tensing then falls and spins to his left, landing onto the surface of Rice Street facing in a northerly direction. Tensing's firearm remained firmly gripped in his right hand as an unidentified car passes him while traveling north on Rice Street.
- The video appears to show that Tensing falls down and regains his footing approximately ten to twenty feet south of the traffic stop. This fact would be consistent with his hand having been pressed against the door frame after the gunshot and when the car started to accelerate. The high acceleration which occurred at that point appears to have been the result of Dubose's involuntary reaction to the gunshot.
- Viewed in its totality, we believe that the body camera evidence shows that Officer Tensing's use of deadly force during his encounter with Samuel Dubose violated the three UCPD policies identified in Section Three, in that (1) such force was not "necessary ... to protect himself or others from what [the officer] reasonably believes to be an immediate threat of death or grievous bodily harm;"¹⁸⁶ (2) "officers shall not draw or exhibit their firearm unless circumstances create reasonable cause to believe that it may be necessary to lawfully use the weapon in conformance with other sections of this policy;"¹⁸⁷ and (3) "only the force reasonable and necessary under the circumstances should be used to effect an arrest, or in self-defense."¹⁸⁸

¹⁸⁶ SOP PE-06, Section III.A.1.

¹⁸⁷ SOP PE-06, Section A.5.

¹⁸⁸ SOP 1.3.400.

- We have seen no evidence, and we know of no contention on Tensing's part, that Dubose at any time made any movements that could have mistakenly led Tensing to believe Dubose was reaching for a weapon. Dubose's hands are clearly visible throughout the duration of the encounter with Tensing. Contrary to Tensing's subsequent statements, there is no evidence that Tensing was caught or being dragged by the car prior to the fatal gunshot.

Creation of Deadly Threat

- Tensing's decision to reach into the vehicle when Dubose started the car engine escalated and rendered unsafe what was, until then, a minor and uneventful traffic stop. According to Tensing's statement to CPD two days after the incident, Tensing had "reached pretty far in" the car, "I would imagine two-and-a-half to three feet"¹⁸⁹ when Dubose turned the ignition key. This led to additional actions by Dubose and Tensing that elevated the risk of a deadly encounter. While it is true that, had Dubose complied with Officer's Tensing's requests and not attempted to drive away, no shooting likely would have occurred, it is also true that, had Tensing exercised discretion and sound judgment consistent with his police training and generally accepted police practices, and de-escalated the encounter by allowing Dubose to simply drive off, his use of deadly force during this traffic stop would have been entirely avoidable.
- Even if the facts were to support the conclusion – and we do not believe they do – that Officer Tensing at some point was caught or lodged into the car and risked being dragged such that his only reasonable alternative was to shoot his weapon to eliminate the threat, Tensing's tactical decision to reach into an occupied vehicle in an attempt to stop the operator from driving away created the officer safety threat that apparently led to Tensing's split-second decision to fatally shoot Dubose.
- When police officers use personalized approaches outside of their police training, the result can result in deadly consequences for the officer and/or citizen. This is precisely what happened in this case.

E. Appropriateness of UCPD Response

A review of all of the evidence, body camera recordings, witness statements, and documentation shows that, with a few exceptions noted below, the actions of UCPD personnel immediately following the July 19 police shooting were proper and in accordance with UCPD policies and procedures.

- Officers Lindenschmidt and Kidd exercised good police instincts in responding to Thill and Rice Streets as back-up for Officer Tensing when he initiated his traffic stop of Dubose. While their presence neither prevented nor contributed in any way to the fatal outcome, Kidd and

¹⁸⁹ Tensing Statement, p.9.

Lindenschmidt took proper note of the location and the “slow to stop” reference from Tensing in choosing to back him up. See SOP 41.2.101 (“Officer Back-Up”).

- After arriving at Thill and Rice Streets, hearing a gunshot, and seeing Officer Tensing fall to the ground as the Accord traveled south on Rice Street, Officers Kidd and Lindenschmidt properly drew their service weapons and ran in hot pursuit of what appeared at that time to be a fleeing suspect following a gunshot whose origins were unknown to those officers at that moment.
- When Kidd and Lindenschmidt reached the corner of Rice and Valencia Streets and observed that the Accord had collided with a telephone pole, the officers properly covered Tensing with their weapons as Tensing approached the driver’s side of the Accord to look inside and disengage the engine.
- Once the Accord was secured and Dubose’s condition was observed, the officers immediately and appropriately called for a medic and for more officers, and quickly notified CPD District Four, consistent with SOP PE 06, Sec. III.D.
- As other UCPD officers arrived, the scene was efficiently and properly secured with police tape. Other officers appropriately kept watch of the surrounding homes and people, with some officers positioned at perimeter locations to maintain the integrity of the scene.
- The only potential disruptions to the scene of the shooting occurred when Officer Lindenschmidt moved Officer Tensing’s patrol car to help block the north side of Rice Street, and then later picked up Tensing’s flashlight from the street as he walked back towards Valencia Street. In that Officer Tensing had committed a fatal shooting during a routine traffic stop, the position of Tensing’s patrol car at the time of the stop may have been an important detail to the subsequent investigation. The same is true of the precise location and position of Tensing’s flashlight, which was potentially relevant to where Tensing fell and other relevant facts. Lindenschmidt’s actions were thus in violation of SOP 42.2.100 (“Case Assignment Closures and Responsibilities”), Sec. IV.F.1.¹⁹⁰
 - Nevertheless, Kroll finds that Officer Lindenschmidt’s crime scene errors were unintentional and perhaps best described as “rookie” mistakes. Lindenschmidt acknowledged openly to Kroll that his actions noted above were simple mistakes from which he has learned. It does not appear that Lindenschmidt’s mistakes had any material effect on the criminal investigation. The flashlight was immediately placed back to its approximate location, as captured on Lindenschmidt’s body camera footage, and the position and location of Tensing’s patrol car during the traffic stop was captured on

¹⁹⁰ The first officer on the scene must “observe all conditions, events and remarks and maintain the crime scene to ensure that evidence is protected and not lost or contaminated.” SOP 42.2.100, Sec. IV.F.1.

Lindenschmidt's body camera recording before he moved the vehicle to block off the street.

- Sergeant Weibel, the first UCPD supervisor to arrive at the scene, activated his body camera as required by department policy upon his arrival.¹⁹¹ However, a review of the video footage shows that Sergeant Weibel deactivated his body camera after about twenty minutes while he remained on-scene. During Kroll's interviews, Sergeant Weibel acknowledged that he could have captured more conversations at the scene had he left his body camera on; he admitted, in hindsight, that he should not have de-activated his body camera until after he had left the scene.
- In general, according to UCPD policy, a body camera "should be used to record activities where law enforcement action is being taken, or where other circumstances could result in an officer's actions being questioned."¹⁹² Although Sergeant Weibel's conduct may have technically contravened SOP PU50, it does not appear that any material evidence or conversations failed to be recorded as a result. For example, Officers Tensing, Kidd, and Lindenschmidt had been transported from the scene – Tensing to the hospital, Kidd and Lindenschmidt to CPD – by the time Weibel first de-activated his body camera.
- Additionally, while Officer Kidd activated his body camera within a minute or less of arriving on the scene – he can be seen activating his body camera 30 seconds into the recording, by which time he is near the Accord after it has come to a halt at Rice and Valencia Streets – arguably, he should have activated it prior to his arriving on scene. SOP PU50, Sec. 1.B(b)(1) states that examples of when the body camera "must be activated" includes "[t]raffic stops, from the initiation to the completion of the enforcement action," and "[i]nvestigatory stops."¹⁹³ Moreover, "[o]fficers responding to a scene shall activate their department issued [body camera] . . . [p]rior to arriving on-scene when dispatched on a call where they are likely to detain or arrest a person."¹⁹⁴ While Officer Kidd cannot be entirely faulted for having failed to immediately activate his body camera, as he was responding to what he perceived to be an emergency situation and was properly focused on the events and not on activating his body camera, had he activated the body camera in anticipation of the back-up scenario, additional valuable evidence may have been captured of the fatal shooting.
- Sergeant Weibel completed the only UCPD report of this incident based on a cursory review of his body camera footage and his recollection six hours later of what he had learned while on the scene earlier that evening. Although the essential facts of the incident and Tensing's on-scene

¹⁹¹ SOP PU50, Sec. 1.C requires UCPD personnel to maintain activation of a body recorder "until the incident has concluded . . . all witnesses and victims have been interviewed" and "no further law enforcement action is likely to occur."

¹⁹² SOP PU50, Sec. 1.B.

¹⁹³ SOP PU50, Sec. 1.B (b).

¹⁹⁴ SOP PU50, Sec. 1.B (a).

explanation were contained in the UCPD Information Report, it appears that Sergeant Weibel inaccurately reported that Officer Kidd had stated that “he witnessed Officer Tensing fire a single shot.” As Weibel explained to Kroll, his only conversations with Kidd and Tensing that evening were captured on his body camera recordings. Our review of the relevant body camera videos and audio found no statement from Officer Kidd that he saw Tensing fire his weapon (although Kidd responded “Yes” when asked by Weibel, “Did you see him [Tensing] being dragged?”).

- UCPD officials appropriately and timely agreed to allow the CPD to handle the investigation of the fatal police shooting. Although the lack of additional UCPD documentation regarding the July 19 incident was apparently a result of the decision, made within approximately thirty minutes of the incident, that CPD would handle the investigation of the shooting, it would have been preferable for UCPD to have better documented the events of that evening, including having obtained incident reports from Officers Kidd and Lindenschmidt. In any event, more clarity on this point may be helpful for future such incidents. For example, according to the International Association of Chiefs of Police (“IACP”) Model Policy on Officer-Involved Shootings (May 2012), it is recommended that officers file individual use-of-force reports and that an officer-in-charge prepare a separate overall use-of-force report with attached individual reports to be submitted to the department’s chain-of-command and the prosecuting attorney.¹⁹⁵

F. Truthfulness and Cooperation of UCPD Officers with Investigation

Officer Tensing

Based on our findings of fact and evaluation of the body camera video footage, we find Officer Tensing was not factually accurate – and possibly not truthful – in his statements to the CPD on July 21, 2015, in an apparent violation of UCPD Rules of Conduct, Section A.43(a).¹⁹⁶

While Tensing also made a number of statements that were captured on the body camera recordings immediately after the shooting that are not supported by the evidence, it is possible that many of those initial statements were made during the period of post-incident traumatic stress or the initial “shock disruption period” as indicated by UCPD’s Firearms and Deadly Force policy. Two days later, upon further reflection, Tensing had an opportunity to clarify those initial assertions. Unfortunately, no such clarification occurred.

The most significant and material of Officer Tensing’s factually inaccurate statements are listed (and highlighted in bold) below:

¹⁹⁵ IACP Model Policy on Officer-Involved Shootings (May 2012).

¹⁹⁶ UCPD Rules of Conduct, Section A.43(a) states: “Employees are prohibited from intentionally making any materially false statement(s) in connection with the performance of their duties.”

- During the approximately twenty to thirty minutes immediately after the shooting, Tensing attempted to explain what happened to several different UCPD and CPD officers on the scene and why he shot the driver of the Honda Accord. Among other statements, Tensing made the following assertions:
 - “I thought he was gonna run me over.”
 - “...[I] almost got ran over by the car. He took off on me.”
 - “...I thought I was gonna get ran over. He didn’t wait for anything.”
 - “I thought I was gonna get run over. . . . He just took off on me, man. I thought he was gonna run me over.”
 - “I thought I was gonna get run over. I was trying to stop him.”
 - “I thought he was gonna run me over. **He was dragging me.**”
 - “...he took off on me. **My hand was caught inside.**”
 - “...I just got my hand or my arm caught inside.”
 - “He kept reaching around. I told him to step out of the car, couldn’t produce a license, so that’s when he put it in drive and started taking off. I reached in, and I shot one round at him. He took off on me. **I got my hand caught in the car.** I almost got ran over by him. I’m good. **I just got dragged by him.**”
 - “**Got dragged by him. I got caught inside the car.**”
 - “...he drug me in his car.”
 - “**I got dragged by the car.** He took off on me, **got my hand stuck inside the car.**”
 - “...I missed his tires luckily but **I was just getting drug by him.**”
 - “**I got drug by his car. My arm got stuck inside the steering wheel or somewhere inside there.**”
 - “[My arm] **got locked in the car somehow.**”¹⁹⁷
- As outlined in our findings of fact, there is no evidence that Officer Tensing was dragged by the Honda Accord or that his arm got caught in the “steering wheel,” or anywhere else inside the car, before firing his weapon, as suggested by Tensing’s statements in bold above. (Although it is also questionable whether he reasonably believed he was going to be “run over” by the Accord before firing his weapon, those and similar statements go to Tensing’s state of mind.) Although these statements were not made under oath or pursuant to a formal investigation or inquiry, police officers are expected at all times to be truthful and candid with fellow officers and superiors; any misleading or intentionally false statements are a violation of the officer’s oath and ethical obligations. See UCPD Rules of Conduct, Sec. A.43.

¹⁹⁷ Transcript of Tensing Body Camera Recording, July 19, 2015 (emphasis added).

- We understand, however, that the many statements made by Officer Tensing on the scene of the shooting occurred within several minutes of what was undoubtedly a traumatic experience for him and that he was likely in a state of high stress and adrenaline at the time he made these statements. Indeed, pursuant to the UCPD Firearms and Deadly Force Policy, SOP No. PE-06, “formal interviews” of an officer involved in a use of deadly force are generally not to be conducted “until 24 to 48 hours have elapsed.”¹⁹⁸ The purpose of this policy is to allow “the officer time to meet with legal and psychological counsel. It also allows the officer time to recover from their shock disruption period, and provide the most accurate statement.”¹⁹⁹ Recognizing therefore, that some or all of Officer’s Tensing’s statements made on the scene immediately following the shooting may possibly have been tainted by his “shock disruption period,” he was provided with 48 hours and an opportunity to consult with counsel before being required to provide a formal statement as part of the CPD investigation. However, when interviewed by CPD two days later, rather than clarify his on-scene statements or “provide the most accurate statement,” Officer Tensing made things worse.
- We are particularly troubled by the following bolded statements made by Officer Tensing during his interview with the CPD on July 21, 2015:
 - “. . . as I reached in to knock the key out and turn the key off . . . [Dubose] put the vehicle in drive **and he just mashed the accelerator as he pulled out. And my hand and my left arm . . . somehow got caught or tangled up in the steering wheel as he’s accelerating.** . . . [A]t this point, I lost my balance and I fell against his car” and “**the left side of my body . . . was hanging on the side of his car and I was kinda facing backwards. My body was facing his trunk. As he continued to accelerate . . . my arm was still stuck at this point . . . I could not free it . . .**”²⁰⁰
 - “[A]t some point, **my hand is still stuck as I’m drawing my weapon out.** Thinking this guy’s actively trying to kill me right now. I don’t want to die today on this street. I don’t want to get run over by this vehicle. **So I pulled my gun out, and as I’m falling . . . I’m kinda below the plane of his, his window. So the only shot I could see that I could take to stop the threat, was a head shot.** That’s the only part of his body I could really see at that point and had . . . a clear visual of . . . I told him, I believe twice, to stop the vehicle. Stop. Stop. . . . **He still just continued to accelerate and that’s when I discharged one round.** . . . I did that because I was in fear of my life. **I was holding on for dear life.**”²⁰¹
 - “**I was just hanging on for dear life when I fired the shot.**”²⁰²
- The clear implication of the above statements is that Officer Tensing was physically caught or tangled in the steering wheel of the Accord precisely as Dubose pressed on the accelerator and began to speed away; that Tensing was “hanging on the side” of the car, “hanging on for dear life”

¹⁹⁸ SOP PE-06, Section III.D.1.d.

¹⁹⁹ Id.

²⁰⁰ Tensing Statement, p.4 (emphasis added).

²⁰¹ Tensing Statement, pp.4-5 (emphasis added).

²⁰² Tensing Statement, p.5.

as the car “continued to accelerate” and that the only way to prevent his being dragged further or run over by the tires of the car was to shoot Dubose in the head. We find little or no support in the evidence to support those assertions.

- A close examination of the video footage shows that less than three seconds had transpired from the moment Dubose turned the ignition key until Tensing discharged his weapon.²⁰³ While Tensing was still standing, and only after Tensing fired a single shot into Dubose’s head, did the car begin to accelerate and move away. Prior to the gunshot, whatever car movement or acceleration had occurred, if any, appears to have been minimal.
 - Although Dubose had put the car into drive and appears clearly to have intended to drive away, there is no evidence that Tensing was caught or being dragged by the car prior to the fatal gunshot. His statements to the contrary are not factually accurate.
 - We cannot fully assess the truthfulness or accuracy of Tensing’s expressions of his subjective fear that he would be run over or killed. However, even though it is apparent that Dubose had put the car into drive and intended to drive away, there is no evidence that Tensing’s possible subjective belief that he would be run over was, under all the circumstances, a reasonable belief.
- We note that Officer Tensing and his counsel will have an opportunity at his criminal trial to present a claim of self-defense consistent with what he described to CPD on July 21, 2015. We note further that the Prosecutor’s burden of proof in a criminal trial is beyond a reasonable doubt.

Officer Kidd

- Officer Kidd made some initial statements on the scene of arguably questionable credibility (e.g., “Yeah, I saw that” in response to Officer Tensing’s statement, “He was dragging me”²⁰⁴ and “Yes” in response to Sergeant Weibel’s question, “Did you see him [Officer Tensing] being dragged?”²⁰⁵). Nevertheless, his subsequent detailed statements to CPD and to Kroll reasonably clarified more precisely what he did and did not see in the first few seconds of when he arrived on the scene and exited the patrol car – i.e., that he saw Tensing reach into the car, saw the Honda Accord start moving, saw Tensing fall backwards onto the street, and heard a gunshot.
- Kroll notes that, on the body camera recordings of July 19, Officer Kidd never himself used the term “dragged” when describing what he witnessed, but simply affirmed the use of that term when it was presented to him by Tensing a little more than two minutes after the shooting and by

²⁰³ Tensing Body Cam at 3:14 - 3:17.

²⁰⁴ Kidd Body Cam at 2:18-2:21.

²⁰⁵ Kidd Body Cam at 7:43-7:45.

Weibel approximately five minutes later. Kidd clarified to Kroll that he did not actually see Tensing being dragged by the Accord, and he confirmed the accuracy of what he told the CPD, that he saw Tensing reach into the car, saw the car move and Tensing fall backwards, heard a gunshot, and the car speed off – all in a matter of seconds.²⁰⁶

- When questioned about his responses to Tensing and Weibel as recorded on the body camera video footage, Kidd said he did not know if he was simply being supportive of Officer Tensing or just “filling in the blanks.”²⁰⁷ Kidd noted that he was in a daze at that point and he cannot remember precisely what he may have been thinking at the time.²⁰⁸ We find that Kidd’s explanation for his statements on the scene appear reasonable, particularly in light of his subsequent and more detailed clarifications. There is simply no evidence that Officer Kidd attempted to cover-up for Officer Tensing or that he and Tensing in any way conspired to present a favorably false narrative of what occurred during the traffic stop.
- Officer Kidd’s statements to CPD and to Kroll are consistent with, and do not contradict, the video footage captured on the body cameras worn by Tensing, Kidd, and Lindenschmidt. Kroll notes, however, that Kidd’s body camera was not activated until he reached the Honda Accord approximately thirty seconds after he first exited the patrol car, and thus the first thirty-seconds of video (without sound) begins as he is running south on Rice Street, just past Tensing’s patrol car and after the shot has been fired. Kidd’s body camera thus did not capture the traffic stop, the altercation between Tensing and Dubose, or the shooting.
- Officer Kidd was cooperative and forthcoming during Kroll’s interview. As with his statement to CPD, Kidd answered all questions asked of him, and he demonstrated no evasiveness or hesitancy in answering each question presented.

Officer Lindenschmidt

- Officer Lindenschmidt appears to have answered all questions put to him truthfully and accurately. We have found no evidence, body camera footage, witness statement, or report that in any way contradicts Officer Lindenschmidt’s detailed statement to CPD and additional statements to Kroll.
- Officer Lindenschmidt also expressed no evasiveness or hesitancy in answering each question asked of him.

²⁰⁶ Kidd Statement, p.3.

²⁰⁷ Kroll Interview of Officer Kidd, August 4, 2015.

²⁰⁸ Id.

Other UCPD Officers or Officials

- There is no evidence of attempts by a UCPD officer to conceal evidence or intentionally taint the scene of the shooting. Although a few officers, including Officers Kidd and Sergeant Weibel on the crime scene after the shooting, and Detective Doherty at the hospital, instructed Tensing to remain quiet and not say anything, there was nothing improper with that advice and, in fact, UCPD policy permits an officer involved in a use of deadly force incident to delay making any statements about the event for up to 48 hours.²⁰⁹
- Other than the minor mistakes made by Officer Lindenschmidt previously addressed, the UCPD performed its functions and responsibilities on July 19 with appropriate professionalism and integrity and, once it was decided that CPD would handle and take responsibility for the investigation, UCPD presented no resistance and did not interfere in that investigation.

The Delay in Witness Statements

- The UCPD Firearms and Deadly Force policy does not contain any provision allowing for an officer who witnesses a critical incident to delay making a statement. The policy (SOP PE 06) provides only that the involved officer may do so.²¹⁰
- Although there was some confusion at CPD-CIS on the night of July 19 of whether Officers Kidd and Lindenschmidt were entitled to wait 48 hours to provide a statement, the delay in taking statements from these officers was not the fault of Kidd and Lindenschmidt. Kroll is satisfied that Kidd and Lindenschmidt were each willing to provide a statement that evening. First, the officers waited for several hours at CPD before it was decided to postpone the statements because an FOP attorney was not immediately available. Second, the FOP representative, Officer James Vestring, who had only been the representative for four months and was still learning his role, insisted that Kidd and Lindenschmidt were entitled to speak with an FOP attorney before submitting to questioning and Vestring made clear that he did not want these officers questioned until that time. Third, because the attorney said he could not arrive until close to midnight, CPD decided at that point to postpone the statement until July 21. In any event, the subsequent statements of Kidd and Lindenschmidt were otherwise credible and consistent with other corroborating evidence.

²⁰⁹ SOP PE 06, Sec. III.D.1.

²¹⁰ Id.

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RECOMMENDATIONS

Based on our review of the UCPD policies and procedures relevant to this inquiry, and the facts learned during this internal administrative review, Kroll offers the following recommendations. Specifically, we believe the UCPD should:

- Determine, after due consideration, whether to enter into a modified agreement with the City of Cincinnati to limit the parameters of UCPD off-campus patrols. Specifically, UCPD should consider whether to confine off-campus patrol zones to areas of the city that are adjacent to UC campuses and contain student housing or facilities consistent with the UCPD's mission to provide safety and security for UC students and the university community. UCPD should also consider whether to address, in a possibly modified agreement, the parameters of the legal authority of UCPD Officers who may patrol in the neighboring areas.
- Re-assess and evaluate the defined mission of the UCPD. Although UCPD officers attend the same police academies and receive similar in-service and other training as CPD officers, the experiential learning environments in which these respective police departments operate are not the same. Working as a police officer on a university campus and providing safety and security to faculty, students and visitors is distinctly different from patrolling racially, ethnically, and socio-economically-diverse urban neighborhoods. Police departments should emphasize their strengths and recognize inherent and mission-based limitations. Certain aspects of urban policing are best left to the city police department so as to avoid training, investigatory, tactical and operational conflicts or deficiencies that can negatively impact relationships with the affected communities. Kroll's preliminary assessment of the UCPD is that, while it does many things well, as a Department it lacks the experiential skill sets necessary to perform all of the operational requirements of urban policing, which requires the training and experience to not only conduct routine traffic stops, but also to investigate serious crimes, engage diverse multi-ethnic communities, and patrol areas of the city not affiliated with the university or its mission.
- Revise the UCPD Firearms and Deadly Force policy to require that any officer involved in a shooting which causes serious bodily injury or death submit to a toxicology test to ensure the officer was not under the influence of alcohol or any unauthorized controlled substances at the time of the incident. This would prevent any speculation or concern as to whether an officer

involved in a critical incident acted under the influence of drugs, alcohol, or medication. While there is no evidence in this case that Officer Tensing had any alcohol, drugs, or medications in his system or that this concern applies in any way to him, revising existing policy would help protect officers involved in future incidents while preventing unnecessary and unjustified speculation.

- Clarify Department protocols for when an officer is permitted to delay the need to submit to an interview following a critical incident such as an officer-involved shooting. There presently appears to be a conflict between the advice provided by the FOP representative on July 19 to Officers Kidd and Lindenschmidt and the mandates of the Firearms and Deadly Force policy. The policy permits a window of up to 48 hours before an officer involved in a shooting must submit to an interview with Internal Affairs or the investigating authorities. This protocol does not extend to officers who merely witness all or part of an incident. This protocol should be clarified in future management-labor meetings and in written policy so that it is clearly understood, consistent with best practices, and leaves no doubt of officers' responsibilities during future critical incidents.
- Commission a more extensive review of UCPD Policies and Procedures, including but not limited to: traffic enforcement, firearms and deadly force, less lethal use of force, critical incidents and related processes, pursuit, body cameras, associated training and all other interrelated policies, including general and special orders and memoranda.
- Clarify the UCPD Body Worn Digital Systems policy concerning when officers are to activate and de-activate the devices.
- Design and implement enhanced cultural diversity and competency training for UCPD officers. The importance of this topic cannot be underestimated and should involve a comprehensive interactive cultural competency training that provides UCPD officers with the skills necessary to interact with diverse communities. This is a critical need since the UCPD is predominately a white police force that has off-campus student housing located in culturally and ethnically diverse neighborhoods, including some predominantly African-American neighborhoods of varying socio-economic demographics.
- Re-assess and evaluate whether and how to create a more diversified police force that more accurately reflects the rich diversity of the University of Cincinnati and surrounding communities.
- Further evaluate and assess existing training requirements. Kroll notes that the issue of police training standards has been the subject of intense scrutiny and debate since the 2014 police

shootings of John Crawford III near Dayton and Tamir Rice in Cleveland.²¹¹ These incidents led Ohio Attorney General Mike DeWine to appoint a task force in December 2014 to examine the minimum training standards for Ohio Peace Officers.²¹² In April 2015, the Ohio Attorney General's Advisory Group on Law Enforcement Training issued 33 recommendations designed to improve basic and in-service training for all Ohio Peace Officers.²¹³ These recommendations included a substantial increase in the minimum hours of basic instruction and additional course curricula for such topics as Community-Police Relations, Implicit Bias and Procedural Justice, Mental Health, and Scenario and Stress Induced Training.²¹⁴ The Ohio Senate and House subsequently introduced bills to toughen Ohio police training standards.²¹⁵ The UCPD should conduct an extensive review and evaluation of its own in-house and in-service training standards and curriculum, and Field Training Manual, to ensure that its training standards incorporate these statewide training objectives.

- Create an In-Service Training Module to specifically address traffic stop safety. This training should emphasize the inherent dangers to officers, drivers, passengers, and innocent by-standers when an officer reaches inside an occupied motor vehicle during a traffic stop.

²¹¹ <http://www.daytondailynews.com/news/news/state-regional/ohio-ag-task-force-to-release-report-on-police-rel/nk2Rr/>

²¹² <http://www.ohioattorneygeneral.gov/Files/Briefing-Room/News-Releases/OPOTA/2015-LETAG-Report-Web-and-Press-Release>

²¹³ Id

²¹⁴ Id p. 12.

²¹⁵ http://www.cleveland.com/open/index.ssf/2015/05/ohio_lawmakers_take_first_step.html

APPENDIX

Biographical Summaries of Kroll Team

Mark J. Ehlers, Managing Director

Mark Ehlers is a managing director in the Philadelphia office of Kroll. Mark has close to 30 years of combined legal, financial and investigative experience in both the public and private sectors. Prior to joining Kroll, Mark served for 18 years as an Assistant United States Attorney, first in the District of Columbia and later in the Eastern District of Pennsylvania. While in D.C., Mark prosecuted hundreds of street-level criminal cases, ranging from misdemeanor drug and assault offenses to first-degree murders. He spent approximately four years in the Felony One Trial Division, where he prosecuted homicide and sex offense cases. As a federal prosecutor in the Eastern District of Pennsylvania, including eight years with the Organized Crime Strike Force, Mark investigated and prosecuted a wide range of white collar crime and organized criminal enterprises, including Russian fraud rings and North Philadelphia drug gangs. As a prosecutor, Mark worked in close cooperation with the Metropolitan Police Department (Washington, D.C.), the Uniformed Secret Service, the U.S. Capitol Police, the Philadelphia Police Department, the Pennsylvania State Police, several local suburban police departments, and virtually every federal law enforcement agency. Since joining Kroll, Mark has conducted internal and external investigations, best practice reviews, and risk and threat assessments for a diverse array of public and private sector clients, including the North Carolina State Highway Patrol, the Borough of Barrington (NJ) Police Department, the Metropolitan Transit Authority Police and Triborough Bridge and Tunnel Authority Police (NYC), and the Delaware River Port Authority, Department of Public Safety, among others.

John “Rick” Brown, Kroll Senior Consultant

Rick Brown is a former Lieutenant Colonel for the Pennsylvania State Police (PSP). During his 29-year career with the PSP, Rick served in a number of key positions, including Deputy Commissioner of Administration and Professional Responsibility. In 2004, Rick was appointed by Pennsylvania Governor Edward G. Rendell to maintain executive oversight of the Bureau of Integrity and Professional Standards (including the Internal Affairs Division), Equal Employment Opportunity Office/Heritage Affairs Office, Department Discipline Office and the Early Intervention Program Office. He also had executive oversight of the PSP’s Bureau of Training and Education and led the recruitment of minorities and women. Rick was a key member of the Pennsylvania Governor’s Executive Diversity Council and is a graduate of the FBI National Academy. From 2003-2004 Rick was the designated liaison to the Commonwealth of Pennsylvania, Office of the Inspector General, during its independent review of policies and procedures relating to sexual misconduct investigations. Rick is a recipient of the Pennsylvania State Police Medal of Commendation, among the department’s highest honors. Since retiring from the PSP in 2010, Rick has worked as a law enforcement consultant focused on building transparent policing policies and process change that provides organizational efficiencies, accountability, diversity, community education, training and monitoring. He has served on independent monitoring teams involving federal Consent Decrees of police departments in Oakland, California, and Detroit, Michigan, assessing use of force issues including officer-involved shootings. Rick also served on an auditing team pursuant to a state consent decree in Niagara Falls, New York on accountability and community engagement processes, and has consulted for police departments in Anchorage, Alaska; East St. Louis, Missouri; Puerto Rico; and Middletown, Pennsylvania.

David B. Mitchell, Kroll Senior Consultant

Dave Mitchell has devoted his entire career to law enforcement, and he is a nationally recognized leader and expert on police management and administration. Dave has a combined 42 years of law enforcement experience, having spent 24 years as a police officer for the Prince Georges County (Maryland) Police Department, including six years as Chief of Police, followed by eight years as the Superintendent of the Maryland State Police. From 2003 to 2009, Dave was the Delaware Secretary of Homeland Security, overseeing seven agencies, including the Delaware State Police and Division of Capitol Police. Dave

holds a law degree from the University of Maryland, and he is a graduate of the FBI National Academy and the FBI National Executive Institute. Dave is a former Executive-in-Residence at the Johns Hopkins University, Division of Public Safety Leadership, and he is a member of the core faculty of the JHU Public Safety Executive Leadership Program. Dave helped lead Kroll's past work with the DRPA's Public Safety Department, the North Carolina State Highway Patrol, and the Tennessee Highway Patrol, among other assignments. Dave currently serves as the Director and Chief of Police of the University of Maryland Police Department.

William C. Nugent, Senior Managing Director

A former federal prosecutor, Bill Nugent is a senior managing director and the Head of Kroll's Philadelphia office. Bill works with governments, law firms and private sector clients to conduct complex investigations, monitor regulatory compliance, and conduct best practice reviews, among other services. For more than seven years, Bill served as an Assistant U.S. Attorney in the Eastern District of Pennsylvania, where he gained broad experience working on federal criminal investigations, including three years as a member of the Organized Crime Strike Force. Prior to that, Bill was a litigator in the Philadelphia office of Wolf, Block, Schorr and Solis-Cohen, where he handled white collar crime and civil fraud cases. Bill has notable related experience. In 2003, Pennsylvania Governor Edward G. Rendell appointed Kroll, with Bill as the lead, to be the Independent Monitor of the Pennsylvania State Police. Bill also led the engagement with the Delaware River Port Authority (a bi-state authority of the Commonwealth of Pennsylvania and the State of New Jersey), which assignment involved a management audit of the DRPA's Public Safety Department due to Kroll's special knowledge and expertise in policing, security and public safety. Bill also led Kroll's review of the North Carolina Highway Patrol concerning allegations of trooper misconduct.

Walter ("Terry") Batty – Kroll Senior Advisor

From 1971 to 2003, Terry Batty was an Assistant U.S. Attorney for the Eastern District of Pennsylvania, retiring from that Office due to a disability. Terry was Chief of Appeals in that Office for 27 years, supervising all criminal appeals before the United States Court of Appeals for the Third Circuit. Terry also handled a full case load of criminal investigations and trials for 25 of those years, and was the lead prosecutor in more than 50 criminal jury trials. He worked closely with agents assigned to the Federal Bureau of Investigation, the Bureau of Alcohol, Tobacco, and Firearms, and the Internal Revenue Service. As a Senior Kroll Advisor, Terry helped author an extensive Kroll Report concerning allegations of sexual harassment within the Pennsylvania State Police, and he rendered valuable assistance in Kroll's organizational review of the Delaware River Port Authority, Department of Public Safety. In addition to advising Kroll, Terry continues to practice civil and criminal law in the Eastern District of Pennsylvania.

ABOUT KROLL

Kroll is the leading global provider of risk solutions and investigations. For more than 40 years, Kroll has helped clients make confident risk management decisions about people, assets, operations, and security through a wide range of investigations, due diligence and compliance, cyber security, physical and operational security, and data and information management services. Headquartered in New York with more than 55 offices across 26 countries, Kroll has a multidisciplinary team of nearly 2,300 employees and serves a global clientele of law firms, financial institutions, corporations, non-profit institutions, government agencies, and individuals.

ATTACHMENT

UCPD Personnel Interviewed

August 3, 2015: Kroll Interviewers Mark Ehlers, Dave Mitchell and Rick Brown (In-person)

1. Jason Goodrich, Chief of Police
2. Lieutenant Colonel Jim Whalen, Assistant Chief, Cincinnati Police Department
3. Michele Ralston, Public Information Officer
4. Captain Jeff Thompson, Field Operations
5. Captain Rodney Chatman, Professional Responsibility

August 4, 2015: Kroll Interviewers Mark Ehlers, Dave Mitchell and Rick Brown (In-person)

1. Captain Dudley Smith, Support Services
2. Lieutenant Chris Elliott, Research & Planning, Internal Affairs, Background Investigations
3. Sergeant Eric Weibel, Supervisor, Second Watch, B Squad

August 5, 2015: Kroll Interviewers Mark Ehlers, Dave Mitchell and Rick Brown (In-person)

1. Officer David Lindenschmidt, Patrol
2. Officer Philip Kidd, Patrol
3. Detective Robert Doherty, Investigator
4. Officer Derek Noland, Patrol
5. Officer Jeffrey Van Pelt, Patrol

August 6, 2015: Kroll Interviewers Mark Ehlers and Rick Brown (In-person)

1. Officer Doug Barge, Former Union President
2. Nicole Smith, Clery Specialist and former UCPD Dispatcher
3. Officer Clifford Maxwell, Patrol Officer
4. Officer Eric Frey, Patrol Officer

August 20, 2015: Kroll Interviewers Mark Ehlers and Rick Brown (Telephonically)

1. Lieutenant Colonel Jeff Corcoran, Assistant Chief of Police
2. (Former) Officer-in-Training Kia Williams (no longer with UCPD)
3. Sergeant Eric Weibel, Supervisor (supplemental interview)
4. Officer Brian Limke, Patrol

Documents and Evidence Reviewed

1. UCPD Standard Operating Procedures Manual
2. UCPD Rules of Conduct
3. UCPD Information Report, dated July 21, 2015
4. Officer Raymond Tensing Central HR File
5. Officer Raymond Tensing Education and Certificates received
6. UCPD Offer Letter to Raymond Tensing
7. Officer David Lindenschmidt Personnel File
8. Officer David Lindenschmidt Guardian Tracking Report
9. Officer David Lindenschmidt FTO (Field Training Officer) records
10. Officer David Lindenschmidt FTO-1 records
11. Officer David Lindenschmidt FTO-2 records
12. Officer David Lindenschmidt Training and Education
13. Photograph of Officer David Lindenschmidt
14. UCPD Organizational Chart
15. UCPD-OIS Body Camera Video, Officer Raymond Tensing, July 19, 2015
16. UCPD-OIS Body Camera Video, Officer Philip Kidd, July 19, 2015
17. UCPD-OIS Body Camera Video, Officer David Lindenschmidt, July 19, 2015
18. UCPD-OIS Body Camera Video, Sergeant Eric Weibel, July 19, 2015
19. UCPD-OIS Body Camera Video, Officer Cliff Maxwell, July 19, 2015
20. UCPD-OIS Body Camera Video, Officer Derek Noland, July 19, 2015
21. UCPD-OIS Body Camera Video, Officer Jeffrey Van Pelt, July 19, 2015
22. UCPD-OIS Body Camera Video, Officer Brian Limke, July 19, 2015
23. Compact Disk (CD) Containing Audio-recorded interviews of UCPD Officers Raymond Tensing, David Lindenschmidt, and Philip Kidd by CPD-CIS, July 21, 2015
24. Transcribed Audio –recorded interviews of UCPD Officers Raymond Tensing, David Lindenschmidt and Philip Kidd by CPD-CIS, July 21, 2015
25. (redacted)
26. Computer Aided Dispatch (CAD) Report, Officer Tensing, July 19, 2015
27. Collective Bargaining Agreement (CBA) between the University of Cincinnati Law Enforcement Officers and the Fraternal Order of Police, Ohio Labor Council, July 1, 2014
28. Copy of UCPD Official Personnel Record for Officer Philip W. Kidd
29. UCPD Public Safety Beat Structure
30. CD Containing Audio of Radio Dispatch Recording of Shots Fired, July 19, 2015
31. CD provided by CPD-CIS containing the following information:
 - A. Honda Accord processing photos, July 2015.
 - B. Photos of Officer Tensing at UC Hospital, July 19, 2015

- C. Photos of Officer Tensing at CPD-CIS, July 21, 2015
 - D. Photos of Officer Tensing's Gun Belt, Uniform, and Service Weapon, July 19, 2015
 - E. Photos of Incident Scene, July 19, 2015.
 - F. Affidavit and Completed Search Warrant Return, 1998 Honda Accord, July 21, 2015
 - G. Audio Recording of Interview of CPD Sergeant Nate Asbury, July 20, 2015
 - H. CPD PI Diagram (Crime Scene Sketch), July 19, 2015
- 32. Copy of Indictment, Hamilton County Court of Common Pleas, Case Number B1503961, July 29, 2015
 - 33. (redacted)
 - 34. Memorandum of Understanding ("MOU") - University of Cincinnati and City of Cincinnati, January 28, 2010
 - 35. CAD Report verifying Officer Tensing as Patrol Unit UC/9233
 - 36. (redacted)
 - 37. (redacted)
 - 38. MOU - Hamilton County and UCPD (undated and unsigned)
 - 39. FTO, Standard Evaluation Guides
 - 40. FTO Report for Officer Raymond Tensing, July 5, 2014
 - 41. Ohio Peace Officer's Training Curriculum BAS-023 Effective 11-1-08
 - 42. UC Institute of Crime Science, UCPD Traffic Stop Summary, July 31, 2015
 - 43. UCPD Officer Count, 2010-2015
 - 44. UC Institute of Crime Science, 2014 Campus Crime Report, May 14, 2015
 - 45. UC Campus Maps
 - 46. CAGIS Online Maps – City of Cincinnati