

CASE NO. 875208

ASSIGNED JUDGE McDonnell

In Re: Investigation into the November 22, 2014 Shooting Death of Tamar Rice, a Minor

**FILED**

2017 MAR 27 PA 1-32  
CLERK OF COURTS  
CUYAHOGA COUNTY

DISPOSITION

- |  |  |  |
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| <input type="checkbox"/> 02 REASSIGNED       | <input type="checkbox"/> 81 JURY TRIAL             | <input type="checkbox"/> 89 DIS. W/PREJ.   |
| <input type="checkbox"/> 03 REINSTATED (C/A) | <input type="checkbox"/> 82 ARBITRATION DECREE     | <input type="checkbox"/> 91 COGNOVITS      |
| <input type="checkbox"/> 04 REINSTATED       | <input type="checkbox"/> 83 COURT TRIAL            | <input type="checkbox"/> 92 DEFAULT        |
| <input type="checkbox"/> 20 MAGISTRATE       | <input type="checkbox"/> 85 PRETRIAL               | <input type="checkbox"/> 93 TRANS TO COURT |
| <input type="checkbox"/> 40 ARBITRATION      | <input type="checkbox"/> 86 FOREIGN JUDGMENT       | <input type="checkbox"/> 95 TRANS TO JUDGE |
| <input type="checkbox"/> 65 STAY             | <input type="checkbox"/> 87 DIS. W/O PREJ          | <input type="checkbox"/> 96 OTHER          |
| <input type="checkbox"/> 69 SUBMITTED        | <input type="checkbox"/> 88 BANKRUPTCY/APPEAL STAY | <input checked="" type="checkbox"/>        |

NO. JURORS \_\_\_\_\_  
START DATE \_\_\_\_/\_\_\_\_/\_\_\_\_  
END DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

COURT REPORTER  
CV17875208 98208698  


- PARTIAL
- FINAL
- POST CARD

DATE 3, 24, 17 (NUNC PRO TUNC ENTRY AS OF & FOR \_\_\_\_/\_\_\_\_/\_\_\_\_ )

Opinion. Final. Costs to Petitioners.

OSJ

JUDGE

JOURNAL

CIVIL CASE STATUS FORM

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

FILED

IN RE:

INVESTIGATION INTO THE NOVEMBER 22, 2014 )  
SHOOTING DEATH OF TAMIR RICE )  
CLEVELAND COURTS )  
CUYAHOGA COUNTY )

2017 MAR 27 A 11:33

CASE NO. CV 17-875208

JUDGE NANCY R. MCDONNELL

OPINION

Petitioners Reverend Kyle Earley, Reverend Larry Howard and Michelle Kinney, members of the NAACP, filed a Petition for Release of Grand Jury Transcripts. The case was randomly assigned to a judge of this court. The Administrative Judge re-assigned the case to this trial court as it oversaw the Grand Jury which received evidence concerning the shooting death of Tamir Rice which occurred on November 22, 2014. The investigation concluded in December of 2016. No indictment was returned.

Petitioners seek the release of the following:

- (1) All exhibits, including but not limited to diagrams, charts and photographs,
- (2) All written statements submitted to or considered by the Grand Jury,
- (3) All expert reports submitted to or considered by the Grand Jury,
- (4) The testimony of experts who testified before the Grand Jury,
- (5) All law enforcement reports submitted to or considered by the Grand Jury, and
- (6) Transcripts of all special instructions and arguments provided to the Grand Jury by the Prosecuting Attorneys.

The state has filed a response indicating that a limited release of that portion of the Grand Jury transcripts containing the legal and voting instructions provided to the Grand Jurors would be appropriate in this case. The prosecutor has not requested this release for use in the performance of his duties. The prosecutor indicated "The State's position should not be viewed

as precedent and is instead tailored to the specific, unique facts of the case at bar. (See Prosecutor's response at Page 4).

Criminal Rule 6(E) governs the release of Grand Jury transcripts. The rule provides:

**(E) Secrecy of proceedings and disclosure.** Deliberations of the grand jury and the vote of any grand juror shall not be disclosed. Disclosure of other matters occurring before the grand jury may be made to the prosecuting attorney for use in the performance of his duties. A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist who transcribes recorded testimony, may disclose matters occurring before the grand jury, other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(emphasis added).

The rule is unambiguous in that only the court can permit disclosure in accordance with Criminal Rule 6(E). In this instance, Petitioners' request is clearly not in connection with a judicial proceeding nor is it made by a defendant upon showing that grounds for dismissal of an indictment exist. The Ohio Supreme Court has adopted the position that transcripts can be released in the two situations described above. State vs. Greer, 66 Ohio St. 2d 139, 1981 Lexis 481. While the investigation into Tamir Rice's death is most certainly a matter of great public interest, the rule does not contemplate release of the Grand Jury transcripts requested in this matter.

However, this does not end the inquiry. In the past, courts have had the occasion to rule on Petitions for Release of Grand Jury Transcripts. One such case is from New Jersey, State vs. Kearney, 109 N.J. Super. 502 (1970) 263 A.2d 817. In that case the Prosecutor was requesting the release of Grand Jury transcripts after the acquittal of all defendants in a murder trial. The court noted that the case had considerable notoriety and was featured in *Look* Magazine article entitled "Murder, New Jersey Style." The Prosecutor sought the release because the article was critical of his office and felt if left unanswered public confidence in law enforcement would be undermined. The court relying on several cases wrote:

At the instance of a defendant grand jury testimony may be disclosed if justice so requires. *State v. Moffa*, 36 N.J. 219 (1961); R. 3:13-3. And the veil may be broken in the discretion of the court if disclosure would serve a legitimate investigatory purpose and the material disclosed would be pertinent to pending judicial proceedings. *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.*, 211 F.Supp. 729 (D.N.D. Ill. E.D. 1962). Public disclosure, however, has not been sanctioned.

Ultimately the court in Kearney, supra, denied the Prosecutor's request for the Grand Jury transcripts. Petitioners in the instant matter are not defendants and the material is not pertinent to pending judicial proceedings.

Petitioners rely on In re May, (S.D.N.Y. 1987) 13 Media L Rptr. 2198.<sup>1</sup> Gary May, an Associate Professor of History at the University of Delaware, was writing a book concerning a public official in the 1950's who was accused of being a communist. Professor May filed a Petition to Release the Grand Jury Transcripts relative to the criminal investigation. The court opined that there must be a balancing of the public interest in disclosure against the interest of

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<sup>1</sup> The Opinion in May, supra, was originally published but later withdrawn by the issuing court. The Opinion itself was obtained from the Cuyahoga County Library.

continued Grand Jury secrecy. The court granted the Petition as the case was over 35 years old and the trial long since concluded. The May case, supra, is distinguishable from the instant petition as this case is recent in time and there are pending disciplinary hearings for the individuals involved in the shooting.

Another case on this topic, In re Grand Jury Investigation, (No. M-91-00432, 1991) is from the Court of Common Pleas in Hamilton County. In that case the Prosecutor sought an Order Releasing Grand Jury Transcripts to the County Commissioners in a case alleging misconduct on the part of some county building inspectors. The basis for the request was to assist the Commissioners in disciplinary hearings against building inspectors and to shed light on criticism of the Grand Jury. The trial court denied the Petition for lack of a showing of an exception to the secrecy requirement. Additionally, the court opined Criminal Rule 6(E) does not provide release of transcripts to non-judicial entities.

In the Hamilton county case, the trial court presented a well-reasoned opinion as to why Grand Jury transcripts should remain secret despite an exception known as the "historical interest" exception. The court wrote:

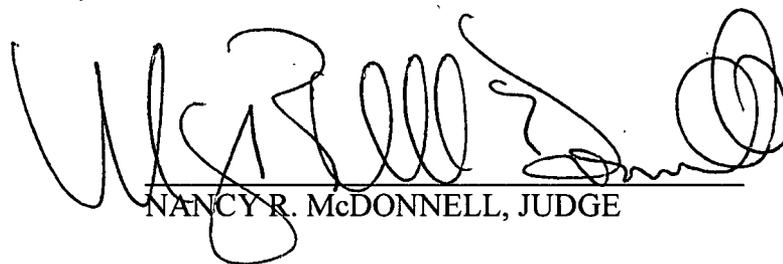
Needless to say, the present case, despite the inflamed rhetoric which has surrounded it, is not possessed of such uniqueness or historical value as to justify the use of this rare exception. The persons involved are still very much alive; and disciplinary proceedings related to this matter are just about to begin. If the grand jury proceedings in this case were to be opened to the public on the basis of the historical-interest exception, the secrecy of the grand jury would be trivialized, and such secrecy violable in virtually every publicized case involving some controversy, real or manufactured.

The shooting death of Tamir Rice has received an enormous amount of media coverage. There have been vigils and community protests demonstrating strong public interest in the particulars of the investigation. However, this alone is insufficient grounds to set aside the dictates of Criminal Rule 6(E) or to allow for an exception which would persuade this court to

grant the petition. Petitioners have failed to show a particularized need for the transcripts. To grant the petition would erode the plain language of Criminal Rule 6(E). Furthermore, the investigation into Tamir Rice's death only concluded four months ago and as is noted earlier in this opinion disciplinary proceedings are presently underway.

This court recognizes Petitioners' well-intentioned request. However, based on an analysis of Criminal Rule 6(E), the limited precedent available and the reasons set forth in the foregoing opinion, the petition must be denied. To do otherwise would eviscerate the historical practice of guarding the secrecy of grand jury proceedings. Release herein could set a precedent whereby eventually any entity for almost any reason could be granted release of grand jury transcripts.

The Petitioners' request is hereby denied.



NANCY R. McDONNELL, JUDGE

Date: March 27<sup>th</sup>, 2017

**CERTIFICATE OF SERVICE**

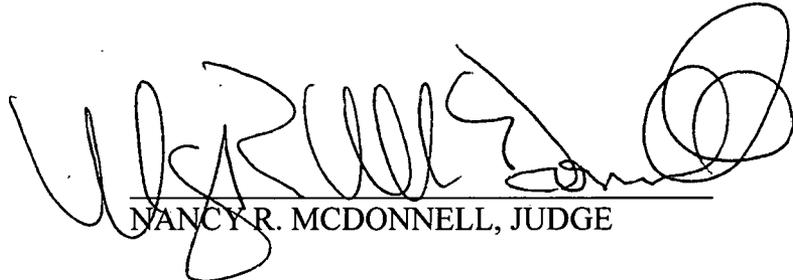
A copy of the foregoing Opinion was sent by ordinary U.S. Mail this 24<sup>th</sup> day of

March, 2017 to:

Michael L. Nelson, Sr., Esq.  
55 Public Square, Suite 1500  
Cleveland, OH 44113  
*Attorney for Petitioners*

James L. Hardiman, Esq.  
3615 Superior Avenue, Suite 3101-D  
Cleveland, OH 44114  
*Attorney for Petitioners*

Prosecutor's Office for Cuyahoga County  
Justice Center Towers  
1200 Ontario Street  
Cleveland, OH 44113



NANCY R. MCDONNELL, JUDGE