

**Report of the New Britain State's Attorney concerning the death
of Seth Victor on September 3, 2013, in the City of New Britain¹**

¹ In issuing this report, the undersigned received important assistance from the Connecticut State Police and the Office of the Chief Medical Examiner. Their assistance and expertise permitted the undersigned to have a complete and thorough investigation into this event. In addition, I would like to acknowledge the assistance of the members of the New Britain Police Department, all of whom cooperated with the State Police and the New Britain State's Attorney's Office.

The loss of a human life is a profoundly tragic event. I recognize that the decedent in this matter, Seth Victor, was a young man whose death is grieved by many friends and family. I wish to extend my condolences to them.

I. Legal Authority for Report

Section 51-277a of the Connecticut General Statutes provides that, whenever a peace officer in the performance of his or her duties, uses deadly physical force upon another person and such person dies as a result thereof, the Division of Criminal Justice shall cause an investigation to be made and shall determine whether the use of deadly physical force was appropriate under section 53a-22 of the General Statutes. Prior to triggering the obligation to prepare a report under the statute, there must be two threshold issues determined in the affirmative; whether deadly physical force was used by a peace officer in the performance of his or her duties and whether a death resulted from its use. As a result of the finding in Section III B, this investigation was not mandated by Section 51-277a of the Connecticut General Statutes.

Nevertheless, the lack of a statutory requirement to conduct an investigation does not preclude a review of the facts and circumstances that led to Mr. Victor's death. Article XXIII of the Amendments to the Constitution of the State of Connecticut establishes the primacy of the Division of Criminal Justice in the investigation and prosecution of all criminal matters.² Further, it has been the practice of state's attorneys to issue reports in matters if the state's attorney determines that some type of public statement is necessary.³ Given the involvement of New Britain police officers and the classification of Mr. Victor's death as a homicide by the Chief Medical Examiner,⁴ a report is appropriate.

² Although Article XXIII was adopted in 1984, the authority of State's Attorneys to act exclusively on behalf of the State in criminal matters is long established in our common law. A useful discussion of this authority and its colonial roots can be found in *State v. Keena*, 64 Conn. 212 (1894).

³ See for example: Statement of David I. Cohen, State's Attorney for the Judicial District of Stamford/Norwalk, in reference to the February 16, 2009 attack on Charla Nash by the Chimpanzee Named Travis, Issued December 7, 2009; Statement of the State's Attorney for the Judicial District of Stamford-Norwalk Concerning the Fatal Fire on December 25, 2011, at 2267 Shippan Avenue, Stamford, Issued June 8, 2012; Report of the State's Attorney for the Judicial District of Ansonia-Milford on the Murder of Shangyl Rasim on January 17, 2010, Issued May 24, 2010; and Report of the State's Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 14, 2012, Issued November 25, 2013.

⁴ Black's Law Dictionary defines homicide as "the killing of one human being by the act, procurement or omission of another." Such a classification does not necessarily imply criminal wrongdoing and the preparation of this report does not represent concurrence with this classification by the undersigned.

II. Factual Findings

A. September 2, 2013

At approximately 6:42 p.m. on September 2, 2013, the New Britain Police Department received a phone call from John Wiznewski, the owner of 141 Broad St., who reported that one of his tenants, Seth Victor, was going crazy, high on some type of drug and throwing items out of his window.

141 Broad Street in New Britain is a four story building with two commercial units on the first floor and residential apartments on the remaining floors. It is located on the corner of Broad Street and Horace Street. The building is set back twenty feet from Horace Street and twenty seven feet from Broad Street. There is no yard on either the Broad Street or the Horace Street side of the building, as a paved pedestrian sidewalk surrounds the building on both of these sides.



141 Broad Street, New Britain

Broad Street is a busy thoroughfare with significant vehicular and pedestrian traffic, particularly in the early evening hours. This area of Broad Street consists of small businesses mixed with residential and multi-family dwellings.

Consistent with Mr. Wiznewski's report, when the initial responding officers arrived on scene they found debris on the sidewalk running parallel to Horace Street. Officers observed a television, an electric piano and a lamp, all smashed on the ground in a fashion consistent with having been thrown from a window. As seen below, these items were not trivial in size and would have caused injury to anyone on the sidewalk who might have been struck by them.



Debris found by initial responders

Officers proceeded to Mr. Victor's apartment, 3E. Apartment 3E has windows which open to both Broad Street and Horace Street. Mr. Victor was a physically imposing man, standing at 6 foot 5 inches and weighing 300 pounds. Upon making initial contact, it was clear to the officers that Mr. Victor was uncooperative. Mr. Victor refused to exit his apartment and told officers that if they entered his apartment they would be "going to heaven" and so would he. This prompted the two initial responding officers to request both additional patrol units and an ambulance to standby. When additional patrol officers arrived, they secured the rear hallway so Mr. Victor could be taken into custody should he exit his apartment.

At this point, one of the initial responding officers, Sgt. John Blackmore, exited the building to obtain his ballistic shield and a ram from his cruiser. Upon returning to the building, Mr. Victor saw Sgt. Blackmore and told him that if he didn't drop those items, Mr. Victor would jump from his window. Sgt. Blackmore dropped the items and asked this individual his name. Mr. Victor replied that he was "God" and identified Sgt. Blackmore as the devil. Sgt. Blackmore noted that Mr. Victor would vacillate between extreme agitation and calm as they spoke. When asked how the broken items got on the sidewalk, Mr. Victor admitted to throwing them from his apartment window and told Sgt. Blackmore that he would jump from the window should officers enter his apartment.

Mr. Victor's hostile attitude coupled with his apparent mental instability and uncertainty with respect to whether he possessed a firearm⁵ prompted the scene commanders to take steps to ensure the safety of other individuals in the area of 141 Broad Street. In furtherance of this, the police evacuated the tenants of the other apartments at 141 Broad St., evacuated surrounding homes, mobilized their special response team and closed Broad Street and surrounding streets to both pedestrian and vehicular traffic. At approximately 7:30 p.m., the special response team began to mobilize. As word of the disturbance spread, local news organizations responded and set up cameras on the east end of Broad Street, just beyond the area of the street that was closed.

Crisis negotiators were called in an effort to have Mr. Victor exit his apartment and over the next several hours the police department tried to negotiate with Mr. Victor while gathering relevant information concerning him and his apartment. Police learned that Mr. Victor was a convicted felon who also had been convicted of Interfering with an Officer. A search of the CSP database found no firearms registered to him and his status as a convicted felon would legally preclude him from possessing a firearm.

At approximately 9:00 p.m., Det. Kevin Artruc was able to make contact with Mr. Victor's father, Allan Victor. Allan Victor informed Det. Artruc that his son, to the best of his knowledge, did not own any guns. Allan Victor also related a substantial history of mental health problems, which had apparently worsened over the past several weeks. Allan Victor reported that his son had been previously hospitalized in a mental institution, heard voices, suffered from bipolar disorder and had stopped taking his prescribed psychiatric medications. Allan Victor told Det. Artruc that he recently fired Seth Victor from his job working for the family business.

Throughout the course of the evening, Seth Victor's conduct ranged from threatening to apologetic. On several occasions he announced that he either was or had seen God. He threatened to jump out of his window,⁶ told officers that it was "judgment day" and that everyone was going to die. Alternatively, there were times during the evening that Mr. Victor was somewhat cooperative with police.⁷ At no point during the evening did Mr. Victor agree to exit his apartment or allow police to enter his apartment.

⁵ Upon his arrival at 141 Broad Street, Officer Brian Shea was told by one of the other tenants that Mr. Victor may have a gun. In addition, Mr. Wiznewski told officers that Mr. Victor was an avid pheasant hunter.

⁶ The New Britain Police Department took these threats seriously and made efforts to locate inflatable bags from area fire departments that would break Mr. Victor's fall.

⁷ At one point Mr. Victor permitted one of the officers to clean up some of the items he had thrown out of his window and offered to do so himself if the officers would leave.

Based upon Mr. Victor's conduct and the information they received from third parties concerning his prior mental health issues, the scene commanders concluded that Mr. Victor should be taken into custody and committed pursuant to Section 17a-503⁸ of the Connecticut General Statutes. Although Mr. Victor would also have been criminally charged for his conduct, the primary concern of the officers on scene was his psychiatric instability. Commanders on scene concluded that the safest course of action for all involved would be to continue to negotiate with Mr. Victor and only make entry if Mr. Victor were unaware that entry was being made. Consistent with this course of action, an ambulance remained on standby a short distance from Mr. Victor's apartment waiting to transport him to the hospital. Crisis negotiators continued to make efforts to have Mr. Victor exit his apartment throughout the evening. Mr. Victor consistently refused to do so.

At approximately 11:30 p.m., believing that Mr. Victor had fallen asleep on his bed, entry was made by members of the New Britain Police Department for the purpose of taking Mr. Victor into custody pursuant to Section 17a-503 of the Connecticut General Statutes.

Officer Rejean Ouellette was the first officer to enter Mr. Victor's apartment. Officer Ouellette was wearing a uniform that clearly identified him as a New Britain police officer. He entered armed with a department issued AR-15. An AR-15 is a lightweight, 5.56 mm rifle requiring the use of both hands for effective operation. Officer Ouellette was immediately followed in by a number of other New Britain officers, all of whom were readily identifiable as police officers. Officer Ouellette entered Mr. Victor's apartment through his kitchen door and moved toward the bedroom. He saw Mr. Victor lying on the bed through the open bedroom door. Prior to entering the bedroom, Officer Ouellette announced himself as a police officer and instructed Mr. Victor to show his hands. This command roused Mr. Victor who responded by screaming and waving his arms. Mr. Victor lunged at Officer Ouellette and grabbed the barrel of his AR-15.⁹ After grabbing the barrel of the rifle, Officer Ouellette was able to bring the rifle to the left side of his body at which time Mr. Victor grabbed the butt of the AR-15 and attempted to pull it from Officer Ouellette. Officer Ouellette delivered three

⁸ This statute provides, in pertinent part, that "Any police officer who has reasonable cause to believe that a person has psychiatric disabilities and is dangerous to himself or herself or others or gravely disabled, and in need of immediate care and treatment, may take such person into custody and take or cause such person to be taken to a general hospital for emergency examination under this section."

⁹ This portion of the encounter is captured on video by a WFSB camera. The camera is set up on the east end of Broad Street and looks into Mr. Victor's window as police make entry. The undersigned expresses his appreciation to WFSB for making this footage available.

punches to Mr. Victor's facial area in an attempt to obtain control of the rifle from Mr. Victor.

Nearly simultaneous to this, other officers attempted to gain control of Mr. Victor, using force on him in an attempt to regain control of the AR-15 and restrain Mr. Victor. Sgt. Michael Grossi, observing Mr. Victor's actions toward Officer Ouellette, kicked Mr. Victor in the facial area several times in an effort to have him release the rifle. Officer Brian Shea deployed his X-26 Taser Conducted Energy Device¹⁰ (hereinafter "Taser") striking Mr. Victor in the chest area. During this initial struggle to handcuff Mr. Victor, Officer Shea activated his Taser on four occasions.¹¹ Due to the extremely close quarters in Mr. Victor's bedroom and his movement, the Taser wires became wrapped around Officer Shea's right arm causing him to be shocked and drop the Taser.



Officer Shea's X 26 Taser

Officer Kyle Lamontagne kicked Mr. Victor in the torso during this struggle in an attempt to bring him under control. Officers were also making efforts to restrain Mr. Victor by holding onto his legs and arms and attempting to handcuff him. Mr. Victor was continuously combative with the officers and noncompliant with their requests.

¹⁰ When its probes are deployed, a conducted energy device is primarily designed to disrupt a subject's central nervous system by means of deploying electrical energy sufficient to cause uncontrolled muscle contractions and override an individual's voluntary motor responses.

¹¹ Each Taser activation is recorded in the device's memory. The Taser used by Officer Shea was provided to the Connecticut State Police and examined by Trooper First Class Matt Allen, a Master Instructor on the use of Tasers and an individual qualified to perform Taser informational downloads. The *activation* of the Taser is not synonymous with the *application* of the Taser to an individual. In this case, there is no question that Mr. Victor's non-compliance resulted in multiple applications of the Taser, however, not all of Officer Shea's Taser activations resulted in the device being applied effectively to Mr. Victor.

Eventually, Mr. Victor was able to be handcuffed by Officers Matthew Marino and Officer Lamontagne. However, due to his very large size, he was unable to be handcuffed behind his back and instead had to be handcuffed in front of him with police using two sets of handcuffs. Immediately after handcuffing Mr. Victor, police called for the pre-deployed paramedic team to respond. Paramedics were unable to respond due to Mr. Victor's continued assaultive behavior after being handcuffed.



Mr. Victor's bedroom

Officers tried to convince Mr. Victor to walk downstairs on his own, which he refused to do. As police began to try to carry Mr. Victor he began kicking them and punching them while handcuffed. At one point, while handcuffed, Mr. Victor attempted to obtain one of the officer's handguns from their holster. Mr. Victor's conduct led to additional force being used on him. Mr. Victor's behavior would oscillate between rational, compliant conduct and dangerous, assaultive conduct. Police were able to move him from the close quarters of his bedroom into his living room.

Additional physical force was used on Mr. Victor during the periods that he was actively engaging in assaultive conduct against the officers despite the fact that he was handcuffed. This force consisted of a fist strike to the torso by Officer Lamontagne, a punch to the face by Det. Christopher Brody and additional activations of the Taser by Officer Shea. During one of Officer Shea's Taser activations, Mr. Victor was able to snap one of the wires leading from the Taser, rendering its probes ineffective. As a result, Officer Shea subsequently utilized the drive stun technique in an effort to compel

compliance from Mr. Victor.¹² Officers struggled to place restraints on Mr. Victor's ankles and were ultimately able to do so, although even this additional restraint did not end Mr. Victor's assaultive conduct. During these struggles, Mr. Victor would become intermittently compliant, even asking officers if they were injured¹³. A short time thereafter he would begin his assaultive conduct anew.

Paramedics arrived at Mr. Victor's apartment with a restraint chair and administered a sedative to him in his foot. At about this time, Mr. Victor's breathing had become shallow and staggered. Both officers on scene and paramedics began CPR on Mr. Victor. After several minutes, he began breathing again and a pulse was reestablished. At this point, he was transported to the Hospital of Central Connecticut's New Britain campus. Commanders on scene learned that Mr. Victor's prognosis was poor and, given the circumstances, notified this office.

At approximately 12:30 a.m. on September 3, 2013, the undersigned met Supervisory Inspector Conrad Fongemie and Inspector Jack Wenz at the New Britain Police Department and proceeded to the mobile command center that had been set up in the rear parking lot of Sacred Heart Church on Broad Street. After being briefed by command staff on the scene, the undersigned consulted with New Britain Police Chief James Wardwell and it was decided

¹² In normal operation, probes deployed from a Taser carry wires that connect to the target and deliver electrical pulses into the target's neural network. These electrical pulses overwhelm the normal nerve traffic, causing involuntary muscle contractions and brief incapacitation as a result of the impairment of motor skills. The drive stun technique, however, is primarily a pain compliance option. An officer using the drive stun techniques does not deploy the probes of the Taser, but physically drives the Taser into contact with the individual and activates it. Probe deployment is usually considered more desirable if incapacitation is the desired objective. In addition, it is widely recognized that due to automatic reflex actions, most persons will struggle and fight to separate from a drive stun because of the pain. Taser X-26C User Manual at p. 19. This statement from the manufacturer has been confirmed by the United Kingdom's Independent Police Complaints Commission which found that, "In several of the investigations reviewed for this report, when a Taser has been used solely in drive-stun mode, this either did not result in the control the officers were hoping to achieve or it made the person involved struggle and resist further, sometimes leading to further use of the Taser." IPCC Review of Taser Complaints and Incidents 2004-2013, p. 21. In fact, the latest Department of Justice model guidelines for the use of electronic control weapons by police departments state, "Agencies' policy and training should discourage the use of the drive stun mode as a pain compliance technique. The drive stun mode should be used only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option." 2011 Electronic Control Weapon Guidelines, p. 19.

In this case, the informational download from the Taser shows that it was activated fifteen times after the initial four activations during the process of handcuffing Mr. Victor. It is likely that a majority of these activations resulted in actual applications of force to Mr. Victor and a majority of those were via the drive stun technique.

¹³ One New Britain officer, Det. Chris Brody, was injured during this incident. He suffered a broken finger and tore several ligaments in the finger.

that the investigation of this matter would be conducted by the Connecticut State Police and the Connecticut Division of Criminal Justice. Mr. Victor died at the hospital at approximately 2:00 a.m. The scene was secured by New Britain officers and at 3:00 a.m. Central District Major Crime assumed control of the scene.

Throughout the course of this investigation the New Britain Police Department and all of its members have been fully cooperative. Having reviewed all of the reports, statements, photos, sketches and other materials prepared in connection with this investigation, I am satisfied that the investigation has been thorough and professional. Twenty eight interviews were conducted, and the scene at 141 Broad Street was processed, diagrammed and photographed. It took the Connecticut State Police over one year to complete their work in connection with these events and there is no further investigative avenue left to pursue.¹⁴ The investigation is complete.

B. The Autopsy.

On September 4, 2013, an autopsy was conducted on Mr. Victor by Dr. James Gill, the Chief Medical Examiner. Mr. Victor was a very large man, 6 foot 5 inches tall and weighing 300 pounds. Dr. Gill found a variety of blunt impact injuries to the head, neck, trunk and extremities of Mr. Victor. The most remarkable anatomic finding in examining Mr. Victor's head was a nasal fracture. The blunt impact injuries to the head did not result in any cranial fracture or epidural, subdural or subarachnoid hemorrhage. The blunt impact injuries to the trunk are most notable for resulting in fractures to the anterior right 4th, 5th and 6th ribs.¹⁵ However, there was no injury to any internal organs.

In addition to the blunt impact injuries, there were injuries to Mr. Victor consistent with the use of a Taser on the right shoulder and back. These injuries consist of paired puncture wounds.

¹⁴ Those portions of the Connecticut State Police reports not otherwise privileged prepared in connection with this matter will be made available for inspection at the Office of the New Britain State's Attorney during regular business hours.

¹⁵ These anterior rib fractures are likely the result of the CPR performed on Mr. Victor, not any blows to the torso received by him. Rib fractures of this sort are very common secondary findings after the performance of CPR. *Frequency of rib and sternum fractures associated with out-of-hospital cardiopulmonary resuscitation is underestimated by conventional chest X-ray*, RESUSCITATION, Feb. 2004, p. 157-162. They are further consistent with the report of Officer Lamontagne, who, while performing CPR on Mr. Victor, reported feeling a rib break during chest compressions.

Dr. Gill also had occasion to examine Mr. Victor's heart. Mr. Victor suffered from both Cardiac Hypertrophy, essentially an enlargement of the heart that puts the heart at an increased risk for an arrhythmia, and Coronary Artery Atherosclerosis. His Coronary Artery Atherosclerosis was moderate with up to 60% atherosclerotic stenosis of his mid right coronary artery.

Dr. Gill found Mr. Victor's cause of death to be:

CARDIAC ARRHYTHMIA DURING BIPOLAR PSYCHOTIC EPISODE WITH PHYSICAL ALTERCATION (BLUNT IMPACTS AND SHOCKS) AND RESTRAINT COMPLICATING HYPERTENSIVE AND ATHEROSCLEROTIC CARDIOVASCULAR DISEASE¹⁶

III. Legal Analysis

Section 51-277a of the Connecticut General Statutes provides that, whenever a peace officer in the performance of his or her duties, uses deadly physical force upon another person and such person dies as a result the Division of Criminal Justice shall cause an investigation to be made and shall determine whether the use of deadly physical force was appropriate under section 53a-22 of the General Statutes. As such, there are two statutory prerequisites to trigger the obligation to conduct an investigation; the use of deadly force and a death which is the result of such use of force.

A. The use of deadly force as defined by C.G.S. Sec. 53a-3(5)

In investigations of this nature, it is usually self-evident that the officer or officers who are the subjects of the investigation have used deadly physical force. That is not the case here. As such, a discussion of what constitutes deadly physical force is appropriate.

Deadly physical force is a legal term defined by Connecticut General Statutes Section 53a-3(5) as "any physical force which can be reasonably expected to cause death or serious physical injury." As defined by Connecticut law, deadly physical force is not any physical force that results in the death of the individual on whom it is employed. Indeed, the legislature, in defining the term, uses the phrase "reasonably expected." In determining whether a particular use of force constitutes deadly physical force under our statute, the result of the use of force may be instructive but it is not determinative. Instead, the reasonable expectation of the individual employing the physical force must be the guiding principle in making the

¹⁶ Dr. Gill also found Mr. Victor's obesity to be a contributing condition. His BMI was 36.

determination whether deadly physical force was used. In determining this, a useful formulation is the objective-subjective test employed by our Supreme Court in *State v. Smith*, 273 Conn. 173, 185 (2002).¹⁷ In this instance, the test is as follows:

1. Did the officers expect that the force used would cause death or serious physical injury, and;
2. Was this expectation objectively reasonable

Serious physical injury is also a term defined by Connecticut General Statutes Section 53a-3(4) as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ." Loss of consciousness, even momentarily, has been held to constitute serious physical injury under Connecticut General Statutes Section 53a-3(4). *State v. Rumore*, 28 Conn. App. 402 (1992) see also *State v. Atkinson*, 46 Conn. Sup. 130, 146 (1999) ("It may be inferred that a loss of consciousness has been caused by a serious impairment of a bodily organ, through an impairment of the function of the brain, known by common experience to be an organ of the body requiring the use of oxygen to sustain its operation and activity.")

Given the above, there are only two officers who might possibly be found to have used deadly force within the meaning of the statute; Officer Shea and Sgt. Grossi. The force used by each officer must be evaluated.

i. Officer Brian Shea

Officer Shea was the New Britain officer responsible for the use of the X-26 Taser Conducted Energy Device. He employed the Taser utilizing two distinct methods, initially by deploying its probes in an attempt to incapacitate Mr. Victor and after Mr. Victor rendered this method ineffective by breaking one of the wires, using the drive stun technique.

The first issue is whether Officer Shea expected that the use of his Taser would cause death or serious physical injury to Mr. Victor by deploying its probes in an attempt to incapacitate him. The New Britain Police Department has a specific policy concerning the use of these

¹⁷ The test formulated in *Smith* concerns the reasonableness of an officer's belief in the context of C.G.S. Sec. 53a-22. Nonetheless, it is an appropriate formulation for the similar determination of an officer's reasonable expectation in the context of C.G.S. Sec. 53a-3(5), particularly in the absence of any other guiding case law to make such a determination. *See generally State v. Wayne*, 60 Conn. App. 761 (2000).

devices.¹⁸ Officers are trained in accordance with this policy and Officer Shea was trained in accordance with this policy and properly qualified as a Taser operator. The policy notes that the use of a Taser is considered to be non-lethal force.¹⁹ In fact, part of the training protocol followed by the police department to demonstrate the nonlethality of these devices is to employ them on every officer during training. Consistent with this, Officer Shea had the X-26 Taser Conducted Energy Device deployed on him. In light of this, I conclude that Officer Shea had no expectation that his deployment and subsequent activation of the Taser probes would cause death or serious physical injury. Although, there is little question that Officer Shea expected that his deployment of the Taser probes would temporarily immobilize Mr. Victor, such brief incapacitation as the result of the use of Taser could not be expected by Officer Shea to constitute serious physical injury under the circumstances found here. Given Officer Shea's training, his own experience with the Taser, his lack of knowledge concerning Mr. Victor's medical history and what appears to be a distinction drawn by our law between serious physical injury and the temporary immobilization caused by electronic defense weapons²⁰, Officer Shea had no belief his use of the Taser in this fashion would cause serious physical injury.

The next issue is whether Officer Shea expected that the use of his Taser by the drive stun technique would cause death or serious physical injury to Mr. Victor. The drive stun technique, however, is primarily a pain compliance option. It generally does not result in the incapacitation of the subject on whom it is used. As to the drive stun technique, I conclude that Officer Shea had no expectation that his conduct would cause either death or serious physical injury to Mr. Victor.

Officer Shea's beliefs were objectively reasonable. Broadly speaking, there is general consensus in the scientific community that conducted energy devices do not typically cause death. The United States Department of Justice, Office of Justice Programs, issued an extensive report in May 2011 regarding deaths that follow the use of "conducted energy devices" such as Tasers. The Department of Justice report noted that "[t]here is no conclusive medical evidence within the state of current research that indicates a high risk of serious injury²¹ or death from the

¹⁸ The training undergone by officers and the policies in place by their departments is relevant to the subjective beliefs held by the officers at the time they are deploying force. These factors may be somewhat less relevant with respect to the objective reasonableness of the belief.

¹⁹ Non-lethal force is distinct from deadly physical force, which is statutorily defined.

²⁰ Connecticut General Statutes Sec. 53a-3(20)

²¹ This report uses the definition of serious physical injury as provided in Connecticut's General Statutes and case law interpreting that provision.

direct or indirect cardiovascular or metabolic effects of short-term [conducted energy device] exposure in healthy, normal, nonstressed, nonintoxicated persons." *Study of Deaths Following Electro Muscular Disruption*, May 2011, Page 3 (and sources cited therein). It must be acknowledged that there is ongoing debate among experts in the medical community concerning whether the use of Tasers can cause cardiac arrest. In 2012, *Circulation*, a journal published by the American Heart Association, published a case study concluding that conducted energy devices can cause cardiac electrical capture and provoke cardiac arrest due to ventricular tachycardia/ventricular fibrillation. However, the author of this study, Dr. Douglas Zipes, has acknowledged that he is a paid expert in numerous lawsuits against the manufacturer of the most common conducted energy device on the market, the Taser.²² Also in 2012, the *Journal of Emergency Medicine* published an article entitled *Transcardiac Conducted Electrical Weapon (TASER) Probe Deployments: Incidence and Outcomes*,²³ which sought to determine the incidence and outcomes of transcardiac Taser probe impact locations in a large series of actual deployments. This article concludes that none of the 1,201 cases examined produced immediately fatal dysrhythmias.

Another comprehensive study monitoring Taser usage under real world conditions was done by the National Institute of Justice. This study reviewed 962 Taser deployments in six police departments over a two year period. It found that 99.7% of the individuals on whom the Taser had been deployed suffered no injuries or mild injuries only. Skin punctures, bruises and cuts accounted for 98.5% of the mild injuries seen. Moderate or severe injury took place in only .3% of the deployments. Two of the 962 individuals died after being taken into custody. However, after investigation and autopsy, both deaths were determined to be unrelated to Taser use.²⁴ In short, the recent literature does not alter the conclusion of the Department of Justice's 2011 report that there is "no conclusive medical evidence within the state of current research that indicates a high risk of serious injury or death from the direct or indirect cardiovascular or metabolic effects of short-term [conducted energy device] exposure in healthy, normal, nonstressed, nonintoxicated persons." *Study of Deaths Following Electro Muscular Disruption*, May 2011, *supra*. In light of this, Officer Shea's beliefs, as outlined above, were objectively reasonable.

²² Written testimony of Dr. Douglas P. Zipes submitted to the Connecticut legislature's Judiciary Committee in support of H.B. No. 6628 (2013).

²³ Vol. 43, Issue 6, 970-75.

²⁴ See: <http://www.nij.gov/topics/technology/less-lethal/pages/monitoring-ced-use.aspx>, retrieved on December 11, 2014

To conclude, Officer Shea did not use deadly physical force as defined by Connecticut General Statutes Sec. 53a-3(5) either when he used his Taser by deploying its probes and activating them in an effort to incapacitate Mr. Victor or when it was operated by the drive stun technique.

ii. Sgt. Michael Grossi

Sgt. Grossi is the other officer who, by kicking Mr. Victor in the face several times while Mr. Victor attempted to gain control of Officer Ouellette's AR-15, may be found to have used deadly physical force as it is defined by Connecticut General Statutes Sec. 53a-3(5). In Connecticut, an individual who kicks another in the head repeatedly while wearing footwear engages in conduct that might reasonably be expected to result in serious physical injury. This issue has been addressed on two occasions by our Appellate Court. *State v. Johnson*, 14 Conn. App. 586 (1988), cert. denied 209 Conn. 804; *State v. McColl*, 74 Conn. App. 545 (2003), cert. denied 262 Conn. 953.

Under the two prong analysis, the first issue is whether Sgt. Grossi expected that kicking Mr. Victor several times in the face would result in death or serious physical injury. There is no reason to believe that Sgt. Grossi had any expectation that delivering these kicks to Mr. Victor would result in his death and I conclude that in delivering these kicks, Sgt. Grossi had no expectation that they would result in the death of Mr. Victor. Such a conclusion is objectively reasonable in light of all of the circumstances of the event as they were perceived by Sgt. Grossi.

The issue of whether Sgt. Grossi expected his kicks to cause serious physical injury need not be reached as any such belief that they would not cause such injury would be objectively unreasonable. Connecticut recognizes that a loss of consciousness, however brief, constitutes a serious physical injury. *State v. Rumore*, supra. Additionally, facial fractures, including a broken nose and broken teeth, may constitute serious physical injuries under Connecticut law. *State v. Lewis*, 146 Conn. App. 589, 608 (2013) It is now well established that blows to the head can lead to a loss of consciousness. This fact has been widely publicized in the popular media and is not a medical curiosity beyond the ken of the average person.²⁵ In consideration of this, a belief that kicking someone

²⁵ This has been of particular note recently in football. However, it has been well known and discussed in the popular media for at least two decades. See New York Times, *SUPER BOWL XXVIII*; A

in the head several times while wearing footwear would not be expected to cause serious physical injury would be objectively unreasonable.

To conclude, Sgt. Grossi used deadly physical force as defined by Connecticut General Statutes Sec. 53a-3(5) when he kicked Mr. Victor several times in the face while Mr. Victor struggled for control of Officer Ouellette's AR-15.

B. Did Seth Victor die as a result of Sgt. Grossi's kicks to his facial area

Connecticut General Statutes Sec. 51-277a requires a use of deadly force and a death "as a result thereof" to trigger a statutory investigation. In most cases, causation is clear. However, in this matter, Mr. Victor died as the result of a cardiac arrhythmia, which ultimately caused him to go into cardiac arrest. If Sgt. Grossi's kicks to Mr. Victor's facial area cannot be shown to be the proximate cause of Mr. Victor's death, then there is no statutorily required investigation.

An act or omission to act is a proximate cause of a death when it substantially and materially contributes, in a natural and continuous sequence, unbroken by an efficient, intervening cause, to the death. It is a cause without which the death would not have occurred. It is a predominating cause, a substantial factor from which the death follows as a natural, direct and immediate consequence. *State v. Griffin*, 251 Conn. 671, 712-13 n. 17 (1999). When the result is a foreseeable and natural result of an individual's conduct, the law considers the chain of legal causation unbroken and holds the individual responsible. *State v. Boles*, 223 Conn. 535, 542 n.5 (1992).

In this case, it is clear that Sgt. Grossi's kicks to Mr. Victor's face were not the proximate cause of his cardiac arrhythmia, which commenced both many minutes later and after a great deal of additional activity by Mr. Victor. The kicks delivered by Sgt. Grossi did not result in any cranial fracture or epidural, subdural or subarachnoid hemorrhage. These kicks did not cause any injury that had any relation to Mr. Victor's ultimate cause of death. These kicks do not constitute the "cause without which the death would not have occurred"; *State v. Griffin*, supra at 715; and therefore, Sgt. Grossi did not use deadly physical force which resulted in the death of another.

Footnote Continued From Previous Page

Common N.F.L. Question: How Many Fingers Do You See? By FRANK LITSKY, Published: January 26, 1994.

C. Although not finding that the deadly physical force used was the proximate cause of Mr. Victor's death, was the force used by the officers in this case nonetheless appropriate under Connecticut General Statutes Sec. 53a-22(c) and 53a-22(b)

Although the conclusion in Section III B. of this report relieves the Division of Criminal Justice of its statutory responsibility to determine whether the use of deadly physical force was appropriate, the circumstances presented in this case nonetheless compel such an analysis.

Connecticut General Statutes Sec. 53a-22(c) delineates the permissible use of deadly force by peace officers. It sanctions the use of deadly physical force only in two situations: (1) where the officer reasonably believes such force to be necessary to defend himself or a third person from the use or imminent use of deadly physical force; or (2) to effect the arrest or prevent the escape of a person whom the officer reasonably believes has committed or attempted to commit a felony which involved the infliction or threatened infliction of serious physical injury. Connecticut General Statutes Sec. 53a-22(b) sanctions the use of physical force by a peace officer: (1) to effect an arrest or prevent an escape from custody; or (2) defend himself or a third person from the use or imminent use of physical force while effecting an arrest or preventing an escape.

In evaluating an officer's reasonable belief under section 53a-22(c)(1), the test is both subjective and objective. First, the officer must believe that the use of deadly force is necessary to defend himself or another from the imminent use of deadly physical force. Second, that belief must be objectively reasonable. *State v. Smith* 73 Conn. App. 173, cert. denied 262 Conn. 923 (2002).

The test is not whether it was in fact necessary for the officer to use deadly physical force in order to defend against the imminent use of deadly physical force. The test is whether the officer *believed* it was necessary to use deadly physical force and whether such belief was objectively reasonable, based on the facts and circumstances known to the police officer at the time that the decision to use deadly force was made. *State v. Silveira* 198 Conn. 454 (1986); *State v. Adams* 52 Conn. App. 643 (1999).

The United States Supreme Court has explained this test in a civil rights case:

The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20/20 vision of hindsight...The calculus of reasonableness must embody allowance of the fact that police officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving---about the amount of force that is necessary in a particular situation.

Graham v. Connor 490 U.S. 386 (1989)

Turning first to Sgt. Grossi's three kicks to the face of Mr. Victor. These three kicks were delivered while Mr. Victor was actively struggling to obtain control over Officer Ouellette's AR-15. An attempt to take control of an officer's firearm during a struggle is a transformative moment within the context of that interaction. There can be only one purpose an individual struggling to obtain control of an officer's firearm has: to use that firearm against the officer or others present. In the three calendar years preceding this report, fourteen police officers from throughout the United States have been murdered after having their service weapon taken from them.²⁶ Efforts to gain control over an officer's firearm are sufficient to cause a reasonable belief in the mind of officers present that the individual attempting to gain control of the weapon will imminently use deadly physical force. Our law does not require that the police, when they reasonably perceive themselves to be fighting for their lives, retreat or use less than lethal force. To the contrary, our law justifies the use of deadly physical force to save their own lives or the lives of innocent third parties in such situations. In light of the foregoing, Sgt. Grossi's use of force during this encounter was justified.

For the same reasons, under Connecticut General Statutes Sec. 53a-22(b), Officer Shea's use of his Taser was also justified. Officer Shea initially deployed his Taser probes and activated them four times during Mr. Victor's struggle to obtain control over Officer Ouellette's AR-15. He subsequently used the Taser additional times after Mr. Victor had been handcuffed in front of his body while still in his bedroom. This second deployment of the probes and subsequent activations came at a time during which Mr. Victor was actively resisting and, more significantly, made another effort to obtain an officer's service weapon. Although handcuffed in front of his body, Mr. Victor was still able to punch responding officers, kick the officers and use his hands in an attempt to gain control over one of their firearms. He had sufficient mobility while handcuffed that he was able to disable the Taser probes by snapping one of the wires and breaking the circuit, thereby

²⁶ FBI Uniform Crime Reports, Officers Feloniously Killed, 2011-2013.

rendering the Taser inoperable in all but drive stun mode. In light of the foregoing, Officer Shea's use of force during this encounter was justified.²⁷

IV. Conclusion

On September 3, 2013, at approximately 6:42 in the evening, the New Britain Police Department responded to 141 Broad Street in New Britain. Officers found Seth Victor, a physically enormous man, who was in the midst of a bipolar psychotic episode. By his conduct and words, police justifiably determined that Mr. Victor posed a danger both to himself and others. In addition to his mental illness, Mr. Victor was a convicted felon who had a prior history of resisting arrest. After shutting down a major thoroughfare, Broad Street, and evacuating Mr. Victor's neighbors, the police chose to wait Mr. Victor out. For nearly five hours, Mr. Victor refused to exit his apartment or allow police in. When police eventually made entry, Mr. Victor immediately began fighting with them. He twice during these events attempted to obtain officers' guns. Members of the New Britain Police Department used force, including deadly physical force, during their efforts to subdue Mr. Victor. The officers who used force on Mr. Victor were justified in doing so in accordance with Connecticut General Statutes Sec. 53a-22(c) and 53a-22(b). The deadly physical force used cannot be found to have been the proximate cause of Mr. Victor's death.

The Division of Criminal Justice will take no further action with respect to the use of deadly physical force in this incident.

Respectfully Submitted,

Brian Preleski
State's Attorney
Judicial District of New Britain

Dated: December 23, 2014

²⁷ Although not formally analyzed in this report, I will note that I reviewed the use of force by the remainder of the officers present and determined that the force employed by each of them was justified in accordance with Connecticut General Statutes Sec. 53a-22(b).