

Report of the Waterbury State's Attorney Concerning the Death of David Werblow  
on March 15, 2015 in the Town of Branford<sup>1</sup>

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<sup>1</sup> In compiling this report, this office has received invaluable assistance from the Connecticut State Police Central District Major Crime Squad and the Office of the Chief Medical Examiner. The undersigned wishes to acknowledge the cooperation of the Branford Police Department. In particular, Central District Major Crime Detective Matthew Greenstein must be commended for his exhaustive and professional investigation of this matter.

## 1. Legal Authority for the Report

Connecticut General Statute Section currently provides in part that whenever a peace officer in the performance of his or her duties uses deadly physical force against a person and such person dies as a result of such force, the Division of Criminal Justice shall cause an investigation to be conducted into whether or not the use of such force was authorized under Connecticut General Statute Section 53a-22. Until early 2015, the policy of the Division was less clear when it came to the death of an individual caused by the use of non-deadly force used by a peace officer.<sup>2</sup> However, recognizing the need for public transparency and the importance of avoiding the appearance of impropriety, in March 2015, at a meeting of the State's Attorneys, the following policy was unanimously adopted:

**It is the policy of the Division of Criminal Justice that police departments shall immediately notify the State's Attorney of the judicial district in which any death that occurs to a person in police custody or that appears to have resulted from the actions of a police officer.**

**It is further the policy of the Division of Criminal Justice that the Division will investigate any death that is determined to have been caused by a police officer's use of force. In such cases, the State's Attorney's Office in the judicial district in which the death occurred may respond to the scene and may provide immediate assistance to the investigating agency. Within a reasonable time thereafter, however, the Chief State's Attorney shall assign a State's Attorney from a judicial district other than the one in which the death occurred to supervise the investigation and to determine whether criminal charges shall be pursued.**

This Policy has since been enacted into law in Public Act 15-4 of the Connecticut General Statutes, in the June 2015 Special Session of the Connecticut Legislature effective October 1, 2015..

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<sup>2</sup> Although there was no formal policy mandating such investigations, the Division had been issuing such reports as a matter of practice for several years including, "Statement of Deputy Chief State's Attorney Regarding the Death of Marcus Brown, Waterbury, Connecticut, May 1, 2011," "Report of the New Britain State's Attorney Concerning the Death of Seth Victor on September 3, 2013, in the City of New Britain," and New Haven State's Attorney's Report on the "Death of Donovan Graham on June 6, 2008."

Pursuant to this policy, on March 15, 2015, Chief State's Attorney Kevin Kane referred this matter to the State's Attorney's Office for the Judicial District of Waterbury for investigation and the issuance of a report regarding Mr. Werblow's death on March 17, 2015.

## 2. Factual Findings

The following information was obtained through an exhaustive investigation conducted by the Connecticut State Police Central District Major Crime Squad which was greatly aided by the presence of body cameras worn by members of the Branford Police Department.

David Werblow was a resident of a group home for adults with mental health issues located in a residential area of Branford at 134 Burban Drive. Mr. Werblow, a 41-year-old male with no criminal history, was approximately 6 feet 2 inches in height and weighed 278 pounds. He had a long history of mental illness and had been diagnosed with schizophrenia. Mr. Werblow had a history of non-compliance with taking his medication and had numerous admissions to Yale- New Hospital for psychiatric treatment.

On March 15, 2015 at approximately 19:46 hours, David Werblow called 911 asking for transportation to a hospital by Guilford Ambulance.<sup>3</sup> A review of the 911 call reveals that Mr. Werblow was clearly in a delusional state and can be heard asking the dispatcher, "Can you read me George W. Bush?" At approximately 19:50

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<sup>3</sup> At the time of the incident, it was approximately 37 degrees Fahrenheit with clear skies, and patches of snow still on the ground. Since it was evening and the sun had set, the area was dark but illuminated in part by streetlights and the officers' flashlights.

hours, Branford Police Officer John Abley, wearing a department issued uniform that clearly identified him as a police officer, responded to the scene.

The dispatcher advised Officer Abley that the person in distress was David Werblow and that he had called 911 asking to be transported to the hospital for psychiatric evaluation. Officer Abley was familiar with Mr. Werblow and was aware that Mr. Werblow had significant mental health issues. Abley also knew that Mr. Werblow had been involved in several incidents with the Branford Police within the past two years.<sup>4</sup>

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<sup>4</sup> A Branford Police Department in house record search which was confirmed by the CSP in a LINX record check indicated that Werblow had contact with Branford Police on eight separate occasions between February 12, 2013 and March 15, 2015.

On April 9, 2013 Branford Police responded to a call where Werblow was having a schizophrenic episode in the Big Y grocery store. Werblow ended up running from the officers and they ultimately had to Taser Werblow in Kohl's department store. Even after being exposed to the Taser, Werblow continued to struggle with the officers. During the struggle some of the officers suffered minor injuries. Werblow was eventually transported to the hospital for evaluation.

On April 13, 2013, Branford Police responded to a call where Werblow walked away from his group home. Upon the arrival of the officers, Werblow had been walking in the roadway and almost got struck by a vehicle. For unknown reasons Werblow attempted to stop a vehicle that was driving by. Werblow was eventually transported to the hospital for evaluation.

On April 17, 2013, Branford Police responded to a call where Werblow jumped out of a vehicle and ran into the street with no regard for traffic. Upon the arrival of the officers, Werblow was signaling to drivers to stop their vehicles. It appeared that Werblow was attempting to gain entry into the vehicles. An officer ultimately had to chase after Werblow, physically restrain him and place handcuffs on him. Werblow was eventually transported to the hospital for evaluation.

On August 19, 2014, Branford Police responded to the commercial business of Town Fair Tire for Werblow being violent and his caretaker unable to control him. When the officers arrived, Werblow's caretakers explained that Werblow snuck out of the group home and walked to the Town Fair Tire where he went in and out of the store several times and went behind the counter. Werblow was eventually transported to the hospital for evaluation.

On March 6, 2015, Branford Police responded to Alps Road where Werblow was walking in the middle of the road and not moving for traffic. Upon the officer's arrival, they observed Werblow walking in the middle of the road. The officers tried speaking with Werblow, but he wouldn't listen to them. Werblow had to be physically restrained and placed in handcuffs. Werblow was eventually transported to the hospital for evaluation.

In the remaining three incidents, Branford Police assisted and Werblow was transported to the

Upon Officer Abley's arrival, he activated his department issued body camera which remained on during the entirety of the incident in question.<sup>5</sup> Abley immediately met with a staff member outside of the home who briefed him about Mr. Werblow's condition. Officer Abley observed Mr. Werblow go inside the residence and saw a staff member follow him inside. Officer Abley advised one of the staff members to stand at the front door to block Mr. Werblow if he decided to run, since Abley knew that Mr. Werblow had a history of such behavior. Officer Abley then went to the side door to try to make eye contact with Mr. Werblow. At this point, although it was a cold winter evening, Mr. Werblow exited through the front door of the residence barefooted and wearing only a tee shirt and pants. As Officer Abley had feared, Mr. Werblow began walking away from him and into the middle of the street. Officer Abley followed Mr. Werblow and observed Mr. Werblow trying to enter his police cruiser which was parked in front of the residence. Mr. Werblow was unable to gain entry into the cruiser because Officer Abley had previously locked it.

At this point, Officer Abley asked dispatch for help and was advised that additional officers were on their way to the scene. Mr. Werblow then began walking rapidly down the street. Officer Abley and a female staff member immediately followed him.<sup>6</sup> Body camera recordings reveal that Officer Abley was breathing in a heavy manner as he followed Mr. Werblow down the street. Both Officer Abley and

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hospital without incident.

<sup>5</sup> The body cameras worn by members of the Branford Police Department on March 15, 2015 had both an audio and video capacity. Due to the lack of an adequate light source, the video footage is dark and unclear. The audio portion of the body recordings appears to record the incident in its entirety.

<sup>6</sup> This same female staff member was present during the entire incident.



the staff member can be heard on the body camera footage calling Mr. Werblow's name and ordering him to "Stop" and "Come Back." Werblow then continued walking west on Burban Drive near the double yellow line in the middle of the roadway. Officer Abley followed Mr. Werblow on Burban Drive and saw him approach a civilian vehicle. Abley successfully signaled the driver with his flashlight to leave the area to prevent Mr. Werblow or the driver from being hurt, and to prevent Mr. Werblow from trying to enter the car. Abley then un-holstered his department issued Taser in case another car approached, and he was forced to attempt to restrain the obviously agitated Mr. Werblow before the other officers arrived. Abley continued to continuously yell Mr. Werblow's name and repeatedly told him to "Stop" and "Get on the Ground." The staff member who was following Mr. Werblow and Abley can also be heard on the body camera footage pleading with Mr. Werblow to stop and listen to the officer. Mr. Werblow can be heard on the body camera footage talking irrationally. In response to the officer's order that he "Get on the ground." Mr. Werblow can be heard stating, "I'm not going to the ground."

A pick up truck was then observed traveling down Burban Drive in the direction of Mr. Werblow. Mr. Werblow was still walking in the middle of the relatively dark street at this time. Officer Abley unsuccessfully attempted to wave off this vehicle, and it continued to approach. As it traveled past him, Mr. Werblow reached for the passenger side door in an attempt to gain entry into the truck. The driver of the truck swerved out of his lane of traffic in an attempt to avoid hitting Mr. Werblow and to prevent him from gaining entry into his vehicle. Mr. Werblow then walked

towards Jefferson Road. Officer Abley continued to follow him and can be heard on the video repeatedly asking Mr. Werblow to "Stop" or "Get down on the Ground."

Mr. Werblow then walked down a residential driveway at 92 Burban Drive, and towards a vehicle that had been parked there. Abley continued to order Mr. Werblow to stop and cooperate. Mr. Werblow ignored the officer and began to climb into the driver's seat of the parked car. It was at this time that Officer Abley discharged his Taser for the first time hitting Mr. Werblow in the back with the prongs. An examination of the body camera footage reveals that Officer Abley had told Mr. Werblow to "Stop" or "Get Down" *at least forty times* before he first deployed his Taser.

In his police report that was generated after the incident, Officer Abley explained that he was concerned that if Mr. Werblow was able to get into the car he could have found a key to start the vehicle and drive away endangering himself and others. Abley stated that he was especially concerned about this possibility since he would have been unable to chase the car because his patrol car was located a considerable distance away.<sup>7</sup> Abley reported Mr. Werblow seemed unaffected by the deployment of the Taser and records show that Abley tasered Mr. Werblow several more times in an attempt to get him to cooperate.<sup>8</sup> Abley then notified dispatch that he had deployed his Taser. Abley warned Mr. Werblow again that if he did not exit the

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<sup>7</sup> A car key was later found in the console of the car during the search by the CSP in an area readily accessible to Mr. Werblow. Additionally, two screwdrivers were located in the glove box that could easily have been used as weapons. On the body camera footage, one officer can be heard saying he "didn't think that there were keys in the car," while another officer can be heard saying, "he was trying to get in the car" to get away.

<sup>8</sup> It should be noted that on a prior occasion when he was also tasered by the police, it was reported that he also appeared unaffected by the deployment.

vehicle that he would have to taser him again. Body camera footage reveals Abley telling Mr. Werblow to “Exit the vehicle” while warning him that he would be tasered again if he did not comply. Mr. Werblow still refused to cooperate and instead tried to close the car door and shut the officer outside. Abley then tasered Werblow again.<sup>9</sup>

It was at this point that Branford Police Officer Dominick Eula arrived to assist Abley. Eula had been at another call but had heard on the radio that Abley needed help, so he left the other scene to assist in subduing Mr. Werblow. Eula was wearing a department issued uniform and a body camera that recorded the incident. Officer Eula was also aware of Mr. Werblow’s history of mental illness, physical size and prior incidents involving the Branford Police. Eula stated when he arrived he positioned his patrol car behind the parked car where Werblow was seated and in a manner to make it more difficult for Mr. Werblow to drive off in the car. Eula reported that he heard Officer Abley ordering Mr. Werblow out of the car and then saw Officer Abley taser Mr. Werblow. Both Abley and Eula reported that the tasing did not seem to affect Mr. Werblow. Officer Eula stated that at this time, Mr. Werblow was throwing items out of the car at him and Officer Abley.<sup>10</sup> Eula reported that he grabbed Mr. Werblow by the arm to try to get him out of the car but explained that Mr. Werblow was too large and he was unable to remove him. Officer

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<sup>9</sup> While it is unclear, exactly what Taser deployments occurred before Office Eula’s arrival, it appears most likely that Abley tasered Mr. Werblow 3 times before Eula’s arrival. It is likely that Mr. Werblow was being tasered a fourth time was in the process of arriving when Office Eula was arriving and two times after his arrival.

<sup>10</sup> It appears that Mr. Werblow had thrown at least two items at the officers, a phone charger which he had found in the car and the phone from the group home that he still had with him.



Abley reported that at this time, Mr. Werblow was holding on to the steering wheel to prevent Officer Eula from removing him.

Abley then deployed his Taser for the last time and Eula was finally able to remove him from the car and get him to the ground. Mr. Werblow continued to struggle and actively resisted the officers' attempts to handcuff him. It was during this time that dispatch attempted to reach Abley to find out what was happening because the officers hadn't responded to an earlier request for a status update. Abley told dispatch that "He's fighting with us, that's what's going on." Body camera footage demonstrates that this assertion by Abley occurred at least 41 seconds after the conclusion of the final Taser deployment.

Once he was successfully handcuffed, Abley notified dispatch that Mr. Werblow was in custody and requested an ambulance since he had used his Taser. The records of the Branford Fire Department reveal that an ambulance was dispatched to the scene at 19:51 hours for the purpose of a psychiatric call. Both Eula and Abley reported that at this point, Werblow did not appear to be in any distress. The officers can be heard on body camera recordings commenting on successfully ending the situation before any harm occurred to anyone. Officer Abley then told dispatch that Werblow had been taken into custody without injury.

At this point more officers from the Branford Police Department arrived along with members of the East Haven Police Department who had also come to the scene to assist. On the body camera recording, Officer Abley can be heard telling the other officers that this incident was very much like the other incidents involving Mr. Werblow. When Branford Police Lt. Patrick O'Malley arrived on the scene,

approximately four minutes after Mr. Werblow had been handcuffed, he checked him and observed that Mr. Werblow appeared to be suffering from some type of medical distress. Officer Eula then checked Werblow's vital signs and discovered Werblow did not have a pulse. Officer Eula immediately began CPR. Another call was made to the ambulance to hasten its arrival and the code was changed to a "priority one" call for an "unresponsive person." Branford Fire Department medical personnel arrived on the scene at 20:03 hours and began to administer medical treatment. Werblow was transported to Yale-New Haven Hospital at 20:22 hours where he was pronounced dead by Attending Physician Karen Kubanyik at approximately 20:35 hours on March 15, 2015.

## 2. Medical Findings

On March 16, 2015 the Office of the Chief Medical Examiner conducted an autopsy to determine the cause of Mr. Werblow's death. In a report dated June 11, 2015, Chief Medical Examiner James Gill, M.D. determined Werblow's final cause of death to be "Sudden Death following physical altercation including electric shocks and restraint during psychotic episode due to schizophrenia." Dr. Gill also listed "Obesity" as a "Significant Condition" and determined that the final manner of death was "Homicide (physical altercation during arrest by police)." The report indicated that Werblow had scattered red abrasions on the knees, right elbow, right forearm, left wrist area, right ankle, right foot second toe, left cheek, neck and back. Also noted were puncture wounds to the back area and a contusion to the right eyebrow

region. Dr. Gill also reported that no internal visceral or skeletal injuries were observed.

In speaking with Dr. Gill for the purpose of preparing this report and understanding his findings, Dr. Gill rendered the opinion that if the *sole* cause of Mr. Werblow's death had been the deployment of Taser, Mr. Werblow would have suffered cardiac arrest and died within ten to fifteen seconds after he was last tasered. Rather, Dr. Gill opined that in this case, since the body camera footage reveals that Mr. Werblow was still alive after that period of time, Mr. Werblow's death was the result of the combination of factors that have been listed on the autopsy report. Dr. Gill stated that although Mr. Werblow's body did reveal evidence that he had been tasered, it was not possible to definitely state how many times that had occurred based on the marks on his body alone. Dr. Gill stated that possible contributory factors included Mr. Werblow's obesity, the stress of the struggle with the officers, his schizophrenia, his exertion during the incident and the stress of his delusional state. Additional testing revealed that at the time of his death, Mr. Werblow had caffeine and a therapeutic level of an anti-psychotic medication in his system. In a subsequent interview with the parents of Werblow, they revealed that their son had suffered from an elevated heart rate which they referred to as "arrhythmia."

### 3. The Investigation

Since Mr. Werblow had died during an incident involving the Branford Police Department, it was determined that the Connecticut State Police (CSP) should investigate the matter. Consequently, a call was made to the Central District Major Crime Squad (CDMCS) on March 15, 2015 at approximately 20:40 hours asking for their assistance. The Central District Major Crime Squad arrived on-scene at approximately 23:00 hours on March 15, 2015. They started to process the scene at approximately 00:30 hours and completed the task at approximately 04:00 hours on March 16, 2015. As part of their investigation, Central District Major Crime Squad investigators attended the post mortem examination at the Office of the Chief Medical Examiner. They collected evidence such as the Taser deployment wires, conducted a neighbor canvass and took formal statements from several neighbors and employees of the group home. Additionally, they took numerous photos and searched the car where Mr. Werblow had been seated.

The CSP determined through their investigation that Officer Abley was the only officer who deployed his Taser in this incident. Officer Abley's department issued Taser X26 with a Taser cartridge was seized by the CCMC on the evening of the incident. On March 16, 2015 at approximately 13:15 hours, CDMC investigators met with CSP Taser Master Instructor/Taser Armorer Trooper Matthew Allen for the purposes of obtaining the Taser downloads from Officer Abley's assigned Taser (Serial number X00-658878). Trooper Matthew Allen also provided assistance with the interpretation of this information. An inspection of this unit revealed that the

Taser was in proper working order. Trooper Allen further explained that while the data does indicate how many times and for how long a duration the Taser was fired, it is not capable of determining whether or not the recipient received the electric impulse generated. If the intended target successfully removed the probes and/or the probes failed to penetrate clothing, the downloaded data would not reflect that the delivered electrical impulse was not actually received by the intended target, despite the electrical impulse being recorded.<sup>11</sup> The download indicated that the Taser was activated on seven separate occasions between March 15, 2015 at 20:05:49 and 20:07:10. Based on these downloads the following information has been deduced:

Date	Taser Start Time	Taser End Time	Duration
3/15/2015	20:05:42	20:05:49	7
3/15/2015	20:05:50	20:05:55	5
3/15/2015	20:05:58	20:06:13	15
3/15/2015	20:06:15	20:06:21	6
3/15/2015	20:06:22	20:06:26	4
3/15/2015	20:06:42	20:06:44	2
3/15/2015	20:07:05	20:07:10	5

A review of Officer Abley's Taser download and body camera video indicates that the first five Taser deployments occurred in a very rapid fashion with approximately one to three seconds between deployments. The period of time between the last two deployments was longer so Mr. Werblow was given a longer amount of time to comply with Officer Abley's verbal commands before he was tasered again.

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<sup>11</sup> When CPR was being administered, the body camera shows the Taser deployment wires were still on Werblow's back and records show that hospital personnel later removed the Taser deployment wires.



Five Branford Police Officers who responded to the scene were equipped with operating body cameras that recorded some or most of the incident.<sup>12</sup> All of the footage was downloaded to a DVD-R and provided to CDMC investigators. CDMC investigators then seized these recordings as evidence.

The report issued by the CDMC established the following timeline based on a review of the body camera footage:<sup>13</sup>

- 00:01 – Officer Abley arrives at 134 Burban Drive, Branford, Connecticut and observes Werblow walking back inside the residence.
- 00:41 – Officer Abley follows Werblow into the residence at 134 Burban Drive.
- 00:53 – Werblow leaves the residence and Officer Abley follows him.
- 01:10 – Werblow attempts to gain entry into Officer Abley’s police vehicle, but the vehicle is locked. Officer Abley is following Werblow on Burban Drive and giving the command to “Get on the ground” to Werblow numerous times. Werblow is non-compliant and is making irrational statements.
- 02:24 – Officer Abley is giving the verbal command to “Get on the ground.” Werblow can be heard responding, “I’m not going to the ground.”
- 04:31 – Werblow gains entry into the vehicle parked at 92 Burban Drive and Officer Abley deploys his Taser at Werblow for the first of seven separate Taser deployments. Werblow can be heard making noise as a reaction to being exposed to the Taser.
- 05:10 – Officer Eula arrives on scene and attempts to extract Werblow from the vehicle.

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<sup>12</sup> They were: Officers John Abley, Dominick Eula, Joseph Harrington and Lawrence Rooney and Lt. Patrick O’Malley.

<sup>13</sup> It should be noted that the times listed below for the body camera videos are only for purposes of identifying when the body camera started and finished recording. The times don’t correlate with the actual time of that specific day. Additionally, the official time indicated on the body camera videos is approximately four hours ahead of the actual time of the incident.

04:31 – 06:00 – Officer Abley deploys the Taser at Werblow on seven separate occasions during this time. Officer Abley gives numerous verbal commands to Werblow, which he doesn't comply with. Werblow is actively resisting the officers at this point. Officer Abley is heard stating, "I'm going to Taser you again, get on the ground."

06:02 – The officers have extracted Werblow from the vehicle and have him on the ground in the prone position attempting to place him in handcuffs. Werblow is actively resisting the officers at this point.

06:08 – Werblow is heard making an inaudible statement.

06:16 – Werblow is heard making an inaudible statement.

06:18 – The officers are attempting to place Werblow in handcuffs.

06:41- Lt. O'Malley and the Branford Police Dispatch requested a status update from the officers on scene and Officer Abley responded to the dispatch via the police radio, "He's fighting with us, that's what's going on!"

07:02 – An officer is heard stating that Werblow is twitching.

07:03 – Werblow is now in handcuffs.

07:39 – Other officers arrive on scene.

07:39 – The Ambulance is en route per the Branford Dispatch for Taser deployment.

11:12 – Lieutenant O'Malley arrived on scene and was briefed by Officer Abley.

11:52 - Lieutenant O'Malley observed that Werblow appeared pale and not breathing.

12:06 – The Officers prepare to give Werblow CPR.

12:10 – The Officers advised dispatch to have the ambulance "Step it up."

12:15 – The Officers began CPR on Werblow.

12:43 – Paramedics arrive on scene and continue CPR on Werblow.

23:45 – Werblow is transported to the hospital via Ambulance.

Officer Abley, consistent with his union's policy, did not give a formal statement. He and other members of the Branford Police Department did generate reports that described the incident. Members of the CDMC conducted a canvass of the neighborhood and took a number of statements. These statements and reports were consistent with the body camera footage with one exception.<sup>14</sup> There is *no* evidence in any of the videos, or in the witness statements, that Mr. Werblow was kicked, slapped, verbally harassed, punched, "stacked on top of" or otherwise abused by any officer present. Some civilian witnesses did report seeing the officers performing CPR.

The Branford Police Department has adopted a written formal policy governing the use of force by department personnel. Investigators obtained a copy of this policy entitled, "Branford Police Department General Order 1.57, Use of Force, effective date, January 9, 2015".<sup>15</sup> Officer John Abley and the other officers on the

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<sup>14</sup> One civilian witness reported that Mr. Werblow might have died during the struggle with the officers rather than after that struggle. This version and other major contentions of this party were not supported by the body camera footage. This witness later stated that she had been distracted during the incident by looking at something else that was happening and had used the phone to make a call for part of the time.

<sup>15</sup> A review of this general order revealed a number of directives pertinent to this incident and they are as follows:

Section C, Subsection 3 Use of Force Authorization and Limitations:

Officers of the Department are authorized to use only the amount of force necessary to accomplish lawful objectives. Force may be used:

- a. To affect an arrest or prevent the escape from custody of a person whom the officer reasonably believes has committed an offense.
- b. To defend the officer or others from the use, or imminent use of physical force.
- c. To take persons into protective custody when authorized by law, such persons who are a danger to themselves or others, persons incapacitated by alcohol, and/or runaway children.
- d. To prevent somebody from committing suicide or inflicting serious physical injury upon themselves.

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- c. To assist a licensed physician or psychologist in providing necessary medical treatment.
  - f. To control a situation, and to overcome passive or active resistance to a lawful order.
  - g. To neutralize an unlawful assault and defend themselves or others from harm.

The authorized use of physical force ends when resistance ceases and/or the officer has accomplished the purpose necessitating the use of force. Justification for the use of force is used, including levels of resistance, suspect's behavioral cues, the number of officers and/or offenders present, and the availability of other options.

Force shall never be used to subject a person to torture and/or other cruel or inhumane or degrading treatment or punishment.

Section C, Subsection 9, Conducted Electronic Weapons:

A Conducted Electronic Weapon (CEW, aka TASER®) is authorized for use when other less lethal options have been ineffective, or when it reasonably appears such options will be ineffective in subduing the subject. Conducted Electronic Weapons shall only be used in situations where the subject is actively resisting or attempting to avoid arrest by the escape and poses an imminent threat to the safety of him/herself, another person, or the officer.

***Branford Police  
Department -  
CEW Policy:***

Investigators were provided a copy of Branford Police Department General Order 1.62, Conducted Electrical Weapon (CEW), effective date, January 9, 2015. A review of this general order revealed a number of directives pertinent to this incident and they are as follows:

Section 6, Deployment Of The CEW:

1. CEW's may be used:
  - a. CEW's should only be used against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others:
    - i. CEW's may be used when force is legally justified to prevent the reasonably foreseeable threat or actual attempted assault, battery, and/or injury to officers, other person, and/or the subject; or
    - ii. In cases where officer/subject factors reasonably indicate that the officers, offender, and/or other person(s) likely endangered by the use of passive and/or active force by the subject.
2. Whenever possible, prior to a CEW deployment, a loud, clear warning of a CEW deployment should be made. When aiming the CEW at a subject, officers should adhere to the manufactures preferred target zones whenever reasonably possible. Officers should take into consideration the capabilities and limitations of the CEW whenever employing it at close quarters.

scene were up to date on their use of force and CEW training. As part of their investigation, detectives from the CDMC also obtained the disciplinary records of all officers involved. The investigation revealed that Officer Abley had received retraining in the use of a CEW on September 2, 2009 after he was alleged to have improperly deployed his Taser in an incident where he had used his Taser but it had failed to connect with the intended target or anyone else.

#### 4. Analysis

Connecticut General Statute Section 53a-22 sets forth the circumstances under which a peace officer may employ force in the performance of his or her duties.<sup>16</sup> A

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3. Verbal commands should be given to the subject in attempt to minimize the number of CEW discharges needed for the subject compliance, officers should, while deploying the CEW, reasonably direct (order) the subject as the incident mandates. Such verbal commands may include, “stop resisting,” “lie flat,” “put hands behind your back,” etc. It is understood that deployments against humans may be very dynamic in nature and the probes may impact unintended areas.

<sup>16</sup> “Use of physical force in making an arrest or preventing escape: (a) For purposes of this section, a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of physical force to make an arrest or to prevent an escape from custody. A peace officer, special policeman appointed under section 29-18b or an authorized official of the Department of Correction or the Board of Pardons and Paroles who is effecting an arrest pursuant to a warrant or preventing an escape from custody is justified in using the physical force prescribed in subsections (b) and (c) of this section unless such warrant is invalid and is known by such officer to be invalid.

(b) Except as provided in subsection (a) of this section, a peace officer, special policeman appointed under section 29-18b or authorized official of the Department of Correction or the Board of Pardons and Paroles is justified in using physical force upon another person when and to the extent that he or she reasonably believes such to be necessary to: (1) Effect an arrest or prevent an escape from custody of a person whom he or she reasonably believes to have committed an offense, unless he or she knows that the arrest or custody is unauthorized; or (2) defend himself or herself or a third



peace officer is justified in using physical force to effectuate an arrest or prevent an escape, or to defend himself/herself or others from the imminent use of force. A peace officer is permitted to use deadly force in the performance of his/her duties if he/she has a reasonable belief that such force is necessary to defend himself/herself from the use or imminent use of deadly physical force, or to effect a felony arrest which involves the use or threatened use of serious physical injury.

*Does the Discharge of a Taser under these circumstances constitute the use of Deadly Force under Connecticut Law?*

Connecticut General Statute Section 53a-3 defines an "electronic defense weapon" as a "weapon which by electronic impulse or current is capable of immobilizing a person temporarily, but is not capable of inflicting death or serious physical injury." The Taser utilized by Officer Abley was an X26 Advanced Taser ®System which is defined as:

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person from the use or imminent use of physical force while effecting or attempting to effect an arrest or while preventing or attempting to prevent an escape.

(c) A peace officer, special policeman appointed under section 29-18b or authorized official of the Department of Correction or the Board of Pardons and Paroles is justified in using deadly physical force upon another person for the purposes specified in subsection (b) of this section only when he or she reasonably believes such to be necessary to: (1) Defend himself or herself or a third person from the use or imminent use of deadly physical force; or (2) effect an arrest or prevent the escape from custody of a person whom he or she reasonably believes has committed or attempted to commit a felony which involved the infliction or threatened infliction of serious physical injury and if, where feasible, he or she has given warning of his or her intent to use deadly physical force."

*An "electronic control device" that uses compressed air propelled wires and probes to transmit energy to a remote target, thereby controlling and affecting the central nervous system of the body. The X26 Advanced TASER® system is a specific electronic control device, manufactured by TASER® International, Inc. X26 Advanced TASER® system fires two probes up to a distance of 21 feet from a replaceable Advanced TASER® cartridge. The cartridge attaches to the muzzle end of an Advanced TASER® device, is sighted by a built in laser, and is fired by a trigger. The probes are connected to the device by a high-voltage insulated wire. When the probes make contact with the target, the X26 transmits electrical pulses along the wires and into the body of the target through up to two inches of clothing. The X26 Advanced TASER® uses this electrical output to cause "neuromuscular incapacitation" to the body. This electrical output temporarily causes an uncontrollable contraction of the muscle tissue." (Source: CT State Police Administration & Operations Manual (5<sup>th</sup> Edition), Section 13.4)*

Thus, it can be determined the Taser employed by Officer Abley, is an electronic defense weapon under our law.

In *State v. Smith*, 273 Conn 173, 185, the Connecticut Supreme Court announced a standard to be used in determining if an officer's use of force was justified and reasonable. In making this determination, the Court held that one must look at both the "subjective" and "objective" reasonableness of the officer's conduct. Using this two-step analysis, one must look first at whether or not (1) the officer subjectively expected that the force used would cause death or serious injury, and then (2) whether or not the officer's expectation was objectively reasonable.

Thus, the first analysis must be whether Officer Abley subjectively and reasonably believed that the use of the Taser on the evening in question would cause death or serious physical injury to Mr. Werblow. As noted earlier, the Branford Police Department has a policy that specifically states that the use of a Taser is considered to be *non-lethal force*. The Connecticut State Police have a similar policy. Abley was also familiar with the fact that Mr. Werblow had been

tasered in the past without serious injury. Although he was doubtlessly aware that the use of his Taser would ultimately result in the temporary immobilization of Mr. Werblow, Officer Abley cannot be said to have subjectively believed that the use of such a device would result in serious bodily injury to Mr. Werblow based upon his training, experience and departmental policies.

Using the next step of the *Smith* test, it must now be determined if Officer Abley's belief was objectively reasonable. In 2011, the United States Department of Justice, Office of Justice Program issued an extensive report regarding deaths that followed the use of "conducted energy devices" such as the Taser used in this case. In this study it was concluded 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 non-stressed, non-intoxicated persons." In this report that studied 962 Taser uses over a two year time frame, it was determined that 99.7% of individuals who were tasered sustained no or very mild injuries. In fact, the author concluded that,

People rarely die after being pepper sprayed or shocked with a Taser. However, if injury reduction is the primary goal, agencies that allow use of these less-lethal weapons are clearly at an advantage. Both weapons prevent or minimize the physical struggles that are likely to injure officers and suspects alike. Although both cause pain, they reduce injuries, and according to current medical research, death or serious harm associated with their use is rare. In that sense, both are safe and similarly effective at reducing injuries. Both should be allowed as possible responses to defensive or higher levels of suspect resistance. This recommendation is supported by the findings and is now followed by most agencies that responded to

the national survey.<sup>17</sup>

Likewise in 2012, in the *Journal of Emergency Medicine*, the author studied 1201 Taser deployments and found that not a single one had resulted in immediate and fatal heart dysrhythmias.<sup>18</sup> In yet another article, James R. Roberts, M.D. stated, "Although the jolt of a TASER is an electrical insult to the body, the evidence shows that it is relatively harmless."<sup>19</sup>

Perhaps most importantly, a Taser such as the one used by Officer Abley is not defined as a "dangerous weapon" or its deployment as the use of "deadly force in Connecticut."<sup>20</sup> Connecticut General Statute 53a-3(20) states, "Electronic defense weapon means a weapon which by electronic impulse of current is capable of immobilizing a person temporarily, *but is not capable of inflicting death or serious bodily injury, including a stun gun or other conductive energy device.*" Because of this law, applicable research and police training standards, the use of a Taser by a law enforcement officer has never been determined to be the use of deadly force in Connecticut.<sup>21</sup> Accordingly, it has been established that Officer Abley's belief that the

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<sup>17</sup> U. S Department of Justice, Eric Holder Attorney General, "Police Use of Force, Tasers and Other Less Lethal Weapons," <https://www.ncjrs.gov/pdffiles1/nij/232215.pdf>, p. 12-14. This study does note an increased risk with multiple Taser deployments and certain mental health conditions.

<sup>18</sup> William D. Bozman, M.D., et al., "Transcardiac Conducted Electrical Weapons (Tasers) Probe Deployment: Incidents and Outcomes," *Journal of Emergency Medicine*, [http://journals.lww.com/em-news/Fulltext/2012/03000/Infocus\\_ED\\_Treatment\\_of\\_Tasered\\_Patients.11.aspx](http://journals.lww.com/em-news/Fulltext/2012/03000/Infocus_ED_Treatment_of_Tasered_Patients.11.aspx).

<sup>19</sup>[http://journals.lww.com/emnews/Fulltext/2012/03000/Infocus\\_ED\\_Treatment\\_of\\_Tasered\\_Patients.11.aspx](http://journals.lww.com/emnews/Fulltext/2012/03000/Infocus_ED_Treatment_of_Tasered_Patients.11.aspx).

<sup>20</sup> See also the report on the "Death of Donovan Graham on June 6, 2008," Michael Dearington State's Attorney, Judicial District of New Haven.

<sup>21</sup> Report of the New Britain State's Attorney concerning the death of Seth Victor on September 3, 2103" and "Death of Donovan Graham on June 6, 2008," Michael Dearington, State's Attorney New Haven Judicial District.

use of the Taser would not result in serious physical injury to Mr. Werblow was objectively reasonable as well.

Since the use of the Taser by Officer Abley did not constitute deadly force under Connecticut law, it must now be determined if his conduct falls within the permissible parameters of Connecticut General Statute Section 53a-22(b). Clearly, the use of a Taser constitutes force under this part of the statute. Peace officers are permitted to use force in order to effectuate an arrest or to prevent an escape, or to prevent the threat of physical force to the officer or a third party. In the present case, Mr. Werblow was in a psychotic state. He had a history of confrontations with the Branford Police Department and on one prior occasion had caused minor injuries to the officers involved. In fact, his behavior on this occasion was almost identical to his behavior during his other encounters with the Branford Police Department. On the evening in question, Mr. Werblow was posing a risk of harm not only to himself, but to others by walking in the center of the roadway, running towards moving vehicles on a darkened night and attempting to gain entry into passing cars. Officer Abley followed Mr. Werblow for approximately two-tenths of a mile and had ordered him to stop at least forty times before he deployed his Taser for the first time. He also was alone at the scene and did not have the benefit of other officers there to help him control Mr. Werblow, and his patrol car was parked a considerable distance away. Officer Abley used his Taser to prevent Mr. Werblow, a large and clearly delusional man, from entering an unlocked parked car and gaining access to its contents. Abley, thus, acted reasonably in using non-lethal force to protect the public safety by attempting to stop Mr. Werblow before he had the



opportunity to gain access to possible weapons, or start the car and drive away potentially seriously injuring or even killing himself or others.

The investigation also revealed that Mr. Werblow did not seem greatly affected by the Taser deployments during the struggle. Mr. Werblow can be heard on the body camera struggling and speaking after the initial Taser deployments. Officer Abley can be heard on the recordings warning Mr. Werblow to get out of the car or he would be tasered again. Mr. Werblow refused to comply with the officer's orders even after being tasered several times. Moreover, it has been established that Mr. Werblow continued to resist even after he had been tasered for the last time and extracted from the car.

Investigation also determined that Mr. Werblow was not struck, kicked or otherwise harmed by the officers. Nor was he tasered after he had been successfully subdued. Thus, it has been established that Officer Abley's sole purpose in his use of force on the night in question was to control Mr. Werblow and prevent him from harming himself or the public, and hence was justified and appropriate.

Given the conclusion that Officer Abley used reasonable non-lethal force in subduing Mr. Werblow, and the conclusion of Chief Medical Examiner Dr. James Gill that Mr. Werblow's death was not solely the result of the Taser deployments, an analysis of whether or not the use of the Taser was a proximate cause of his death will not be conducted here.

## 5. Conclusion

David Werblow tragically died on March 15, 2015 after an incident with

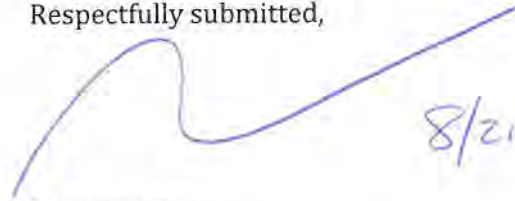
Branford Police officers. Officer Abley had warned Mr. Werblow to stop forty times before he deployed his Taser for the first time. Additionally, Officer Abley did not deploy the Taser for the first time until Mr. Werblow had entered a car and potentially had gained access to weapons and/or escaping in the vehicle, which posed a serious danger to both Mr. Werblow and the public at large. Even after he had deployed his Taser, Officer Abley warned Mr. Werblow repeatedly that he would have to deploy his Taser again if Mr. Werblow continued to resist. Mr. Werblow seemed unaffected by the Taser deployments and continued to struggle with the officers.

Under Connecticut law the use of a Taser under these circumstances does not constitute deadly force. Officer Abley acted in conformance with both Branford Police and CSP standards regarding the use of the Taser. Alone and faced with a large and psychotic individual who had a history of resisting police, and who had been tasered in the past without incident, Officer Abley appropriately used force to prevent Mr. Werblow from endangering himself and others and acted in conformance with Connecticut General Statute Section 53a-22. Thus, I am in agreement with the conclusion of the CDMC report which stated that "It appears that Officer Abley and the other involved Branford Police Officers did adhere to the General Orders and Regulations regarding the Use of Force and CEW policy and its application to the circumstances of the event." Although not formally analyzed, I will also note that I have reviewed the conduct of the other officers present and have determined that the use of force, if any, by each of them was appropriate and in accordance with Connecticut General Statute 53a-22. It should also be noted that the

presence of the body camera footage has provided extremely valuable information regarding this matter and has confirmed the reports of the officers and witnesses.

For the foregoing reasons, the Division of Criminal Justice will take no further action with respect to the use of force in this case.

Respectfully submitted,



8/21/15

Maureen Platt  
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Judicial District of Waterbury