

## DOUGLAS COUNTY DISTRICT COURT

Hall of Justice  
1701 Farnam Street  
Omaha, Nebraska 68183-0001  
(402) 444-7004

### MEDIA RELEASE

For Immediate Release

### GRAND JURY CONCLUDES

A Douglas County District Court Grand Jury was convened on November 28, 2017, to investigate the circumstances surrounding the death of Zachary Bearheels on June 5, 2017, while he was being apprehended by, or while he was in the custody of, law-enforcement or detention personnel. The Grand Jury concluded its investigation on Thursday afternoon, December 5 2015, determining that the cause of Mr. Bearheels's death was excited delirium (psychomotor agitation; hallucinations; speech and thought disturbances; reduced response to painful stimuli; bizarre and combative behavior; and hypothermia); physical struggle; and use of a conducted energy device ("Taser").

The Grand Jury concluded that there is probable cause to believe that, on or about June 5, 2017, Ryan McClarty committed the offense of Assault in the Third Degree in violation of Neb. Rev. Stat. section 28-310 (Reissue 2016). The Grand Jury also concluded that there is probable cause to believe that, on or about June 5, 2017, Scotty Payne committed the offense of Assault in the Second Degree in violation of Neb. Rev. Stat. section 28-309 (1) (a, b) (Reissue 2016) and the offense of Use of a Deadly Weapon to Commit a Felony in violation of Neb. Rev. Stat. section 28-1205 (1) (a, b) (Reissue 2016).

The Grand Jury also proposed several recommendations: **(1)** the Grand Jury believes that Sgt. Erik Forehead's actions and inactions were contributing factors to the outcome of the Zachary Bearheels incident; **(2)** the Grand Jury proposes that all officers of the Omaha Police Department undergo annual and mandatory training regarding interactions with mentally ill persons, and specifically those who are affected by Excited Delirium Syndrome; and **(3)** the Grand Jury proposes that all officers undergo annual and mandatory training regarding crisis intervention.

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA,

Plaintiff,

vs.

RYAN McCLARTY,

Defendant.

MISCELLANEOUS CASE 17-27

INDICTMENT

At the January 31<sup>st</sup> through December 31<sup>st</sup> term of 2017 of the District Court of Douglas County, Nebraska, the Grand Jurors were chosen, selected, and sworn in and for the County and State aforesaid, upon their oath present this Indictment and the following:

That on or about the 5<sup>th</sup> day of June, 2017, RYAN McCLARTY, late of the county of Douglas and State of Nebraska, then and there being, did:

**COUNT I**

intentionally, knowingly, or recklessly cause bodily injury to another person, to wit: ZACHARY N. BEARHEELS; or threaten another, to wit: ZACHARY N. BEARHEELS, in a menacing manner, all contrary to the form and Statutes in such cases made and provided, and against the peace and dignity of the State of Nebraska,

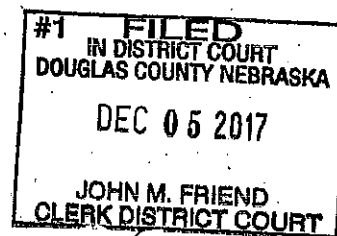
OFFENSE: ASSAULT IN THE THIRD DEGREE

Neb.Rev.Stat. § 28-310, CLASS I MISDEMEANOR

INDICTMENT: A TRUE BILL.

DATED this 5 day of December, 2017.

Grand Jury Foreperson



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

|                    |   |                          |
|--------------------|---|--------------------------|
| STATE OF NEBRASKA, | ) | MISCELLANEOUS CASE 17-27 |
|                    | ) |                          |
| Plaintiff,         | ) |                          |
| vs.                | ) |                          |
|                    | ) | INDICTMENT               |
| SCOTTY PAYNE,      | ) |                          |
|                    | ) |                          |
| Defendant.         | ) |                          |

At the January 31<sup>st</sup> through December 31<sup>st</sup> term of 2007 for the District Court of Douglas County, Nebraska, the Grand Jurors were chosen, selected, and sworn in and for the County and State aforesaid, upon their oath present this Indictment and the following:

That on or about the 5<sup>th</sup> day of June, 2017, SCOTTY PAYNE, late of the county of Douglas and State of Nebraska, then and there being, did:

**COUNT I**

intentionally or knowingly cause bodily injury to another person, to wit: ZACHARY N. BEARHEELS, with a dangerous instrument, to wit: a conducted energy device; or recklessly cause serious bodily injury to another person, to wit: ZACHARY N. BEARHEELS, with a dangerous instrument, to wit: a conducted energy device; AND

**COUNT II**

use a deadly weapon to commit any felony which may be prosecuted in a court of this state, to wit: Assault in the Second Degree with a conducted energy device;

all contrary to the form and Statutes in such cases made and provided, and against the peace and dignity of the State of Nebraska,

OFFENSES: ASSAULT IN THE SECOND DEGREE; USE OF A DEADLY WEAPON TO COMMIT A FELONY

Neb.Rev.Stat. §§ 28-309, CLASS IIA FELONY, and 28-1205, CLASS II FELONY

INDICTMENT: A TRUE BILL.

DATED this 5 day of December, 2017.

          
Grand Jury Foreperson

RECEIVED  
CLERK OF DISTRICT COURT  
COUNTY OF NEBRASKA  
NOV 29 2017

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

#1  
FILED  
IN DISTRICT COURT  
DOUGLAS COUNTY NEBRASKA  
DEC 05 2017  
JOHN M. FRIEND  
CLERK DISTRICT COURT

) MISC. 17-27  
)  
) DOUGLAS COUNTY  
) GRAND JURY REPORT,  
) A TRUE BILL

IN THE MATTER OF  
THE GRAND JURY  
RE: ZACHARY BEARHEELS

The Douglas County Grand Jury was convened by District Court Judge, Duane C. Dougherty on November 28, 2017 to investigate the in-custody death of ZACHARY BEARHEELS. The principal duty of the grand jury investigation was to determine the cause of death of ZACHARY BEARHEELS and to ascertain whether probable cause exists to believe that a crime or crimes have been committed in connection with that death and to determine whether there is probable cause to believe that any detention personnel or law enforcement individual or individuals committed such crime or crimes.

The Grand Jury in the course of its investigation met in closed session from 1:00 p.m. on November 28, 2017 to 1:30 p.m. on December 5, 2017. The normal working day was 9:00 a.m. to 4:00 p.m. There were a total of 20 witnesses who testified before the Grand Jury and a total of 847 exhibits which were received and reviewed. These exhibits consisted of, but were not limited to, a review of multiple police investigation reports, autopsy and toxicology reports, photographs, training manuals and multiple hours of digital media. After a total review of all evidence, and the testimony given, it has been determined that:

- 1) The cause of death of Zachary N. Bearheels is found to be:  
  
Sudden death associated with excited delirium (psychomotor agitation, hallucinations, speech and thought disturbances, reduced response to painful stimuli, bizarre and combative behavior, and hyperthermia), physical struggle, physical restraint, and use of a conducted energy device ("Taser").
  
- 2) The Grand Jury finds that there is probable cause to believe that on or about June 5<sup>th</sup> of 2017 Ryan McClarty committed the criminal act of Assault in the Third Degree pursuant to Neb. Rev. Stat. 28-310. Section 28-310 states: (1) A person commits the offense of assault in the third degree if he: (a) Intentionally, knowingly or recklessly causes bodily injury to another person, to wit: Zachary N. Bearheels; or (b) Threatens another in a menacing manner. Assault in the Third Degree is a Class I Misdemeanor.

Furthermore, The Grand Jury finds that there is probable cause to believe that on or about June 5<sup>th</sup> of 2017 Scotty Payne committed the criminal acts of Assault in the Second Degree pursuant to Neb. Rev. Stat. 28-309 (1)(a) & (b) and Use of a Deadly Weapon to Commit a Felony pursuant to Neb. Rev. Stat. 28-1205 (1)(a) & (b).

Neb. Rev. Stat. Section 28-309 provides: A person commits the offense of assault in the second degree if he or she: (a) Intentionally or knowingly causes bodily injury to another person with a dangerous instrument, to wit: Zachary N. Bearheels with a conducted energy device; or (b) recklessly causes serious bodily injury to another person with a dangerous instrument, to wit: a conducted energy device.

- 3) Accordingly, This Grand Jury, as such, returns "**A TRUE BILL**" and the attached indictments against Ryan McClarty and Scotty Payne.

In addition, this Grand Jury has several recommendations it would like to propose:

- 1) We believe that Sgt. Erik Forehead's actions and inactions were contributing factors to the outcome of the incident with Zachary Bearheels;
- 2) We propose annual and mandatory training for all officers of the Omaha Police Department regarding interactions with mentally ill persons and specifically those that are affected by Excited Delirium Syndrome; and
- 3) We propose annual and mandatory training for all officers regarding crisis intervention training.

Dated this 5 day of December, 2017.

\_\_\_\_\_  
Grand Jury Foreperson

