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CHRIS BRUHN

April 30, 2020

Chief Kevin Gyrion
Clinton Police Department
113 6th Ave. S.
Clinton, IA 52732

Re: *Officer Involved Shooting Death-Jacob Dau*

Dear Chief Gyrion:

The Clinton County Attorney's Office investigated the use of deadly force on April 7, 2020 on JACOB MATTHEW DAU (age 38, referred to hereafter as DAU) by Officer Ryan LIVESAY (hereinafter LIVESAY) of the Clinton Police Department. The sole purpose of this review is to determine if the officer-involved shooting (OIS) of DAU and his subsequent death are legally justified.

My decision in this matter was made after reviewing the following information.

1. Relevant background information on DAU including his criminal history and any previous encounters with law enforcement.
2. Information relating to law enforcement contact with DAU on April 7, 2020.
3. Information detailing the actions and decisions of law enforcement during the entire encounter with DAU.
4. The Clinton Police Department requested the Iowa Division of Criminal Investigation conduct an investigation into the circumstances of DAU'S death. A thorough investigation of the death of DAU was completed. All of the relevant information collected by the DCI during their investigation has been reviewed prior to making any decision in this case.
5. Information gathered by the Iowa State Patrol investigation.

At the time of his death on April 7, 2020, DAU was to have been at a Salvation Army program in Davenport, Iowa under supervision of the Iowa Department of Corrections, but had left the program without permission. DAU'S current probation officer advised that DAU was

enrolled in a program through the Salvation Army to address specific issues. DAU was court ordered to be in this program for six (6) months to a year and walked out of the program after only 5 days. DAU entered the program on March 13th and left on March 18th. The probation officer was not notified that DAU had left the program until March 23rd. After receiving this information, the officer attempted to get DAU revoked from the program and was unable to get that accomplished in time due to restrictions based upon the current coronavirus pandemic. Prior to entering the program DAU was made aware that if he left the program he would likely be incarcerated.

Investigators interviewed a close friend of DAU who spent time with DAU after DAU had run from the Salvation Army program. He indicated DAU did not want to go back to prison and further indicated DAU was not happy in the weeks leading up to his death. He stated in the days leading up to the fatal shooting incident, he and DAU had discussed the possibility of DAU purchasing a vehicle which in his friend's mind was cursed due to his friend knowing the previous owners had died in the vehicle. He recalled DAU stating "maybe that's why I want it", suggesting DAU was considering his own death.

The circumstances that DAU had left the Salvation Army program would provide an explanation as to why DAU chose to elude officers and fail to stop. Additionally, his possible mindset would explain why DAU drove his vehicle at an armed officer.

On the evening of Tuesday, April 7, 2020, at approximately 10:45pm, Officer ROLING of the Clinton Police Department initiated a vehicle stop of a 2010 Grey Honda Accord, driven by DAU. Officer ROLING was in full uniform and was an occupant of a fully marked Clinton police cruiser with top lights and siren. Officer ROLING reported the reason for the stop was that DAU was barred from driving. DAU refused to stop and a vehicle pursuit took place throughout the city area of Clinton and Camanche. While the details of ROLING's pursuit are lengthy, part of my determination is premised upon whether the high-speed pursuit posed an actual and imminent threat to the lives of any pedestrians or bystanders, to other drivers or to the officers involved in the pursuit. In addition, attached is a copy of Roling's in-car squad video.

The chain of events leading to the pursuit happened when ROLING was south bound in the 200blk S. 4th St. As he approached 3rd Ave. S. and S. 4th St. he observed a gray 4 door passenger car with a dealer plate, stopped at the stop sign at 3rd Ave. S. and S. 4th St. facing east. He looked at the driver and he identified the driver as Jacob DAU from past experience with DAU. He continued south bound on S. 4th St. and observed DAU continue east bound on 3rd Ave. S. He went east bound on 4th Ave. S. from S. 4th St. He stopped for the stop sign at 4th Ave. S. and S. 3rd St. and looked to the left. When he looked left he observed DAU continue east bound on 3rd Ave. S. He went north bound on S. 3rd St. and then he went east bound on 3rd Ave. S. As he turned onto 3rd Ave. S. he observed DAU make a right turn onto S. 2nd St. and begin traveling south bound on S. 2nd St. once he got to the stop light at 3rd Ave. S. and S. 2nd St. He could see DAU go east bound on 4th Ave. S. DAU appeared to be trying to get away from him based on his speeds. He turned south bound on S. 2nd St. from 3rd Ave. S. and he activated his emergency lights and siren in an attempt to perform a traffic stop on DAU in the 100blk 4th Ave. S. DAU failed to stop and he began to pursue DAU.

Dau did not stop for the stop sign at 4th Ave. S. and S. 1st St. and continued south bound on S. 1st St. Dau did not stop for the stop sign at 5th Ave. S. and S. 1st St. Dau did not stop for the stop sign at 6th Ave. S. and S. 1st St. and continued to 7th Ave. S. Dau went west bound on 7th Ave. S. to S. 2nd St. Dau went north bound on S. 2nd St. to 6th Ave. S. Dau went west bound on 6th Ave. S. to S. 3rd St. and then north bound on S. 3rd St. Dau did not stop for the stop sign at 6th Ave. S. and S. 3rd St. Dau continued north bound on S. 3rd St. and did not stop for the traffic lights at 5th Ave. S. and S. 3rd St. Dau continued north bound on S. 3rd St. As he was pursuing Dau on S. 3rd St., Dau was traveling approximately 50 mph in a 30 mph zone. Dau went west bound on 5th Ave. N. from N. 3rd St. Dau failed to stop for the stop sign at 5th Ave. N. and N. 4th St. Dau continued west bound on 5th Ave. N. and did not stop for the stop sign at 5th St. and 5th Ave. N. Dau went south bound on N. Bluff Blvd from 5th Ave. N. Dau did not stop for the stop sign at 5th Ave. N. and N. Bluff Blvd. Dau continued south bound on N. Bluff Blvd and was going approximately 50-60 mph in a 30 mph zone. Dau went west bound on 2nd Ave. S. from S. Bluff Blvd. As Dau was traveling west bound on 2nd Ave. S. Dau's speed was approximately 70 mph. Dau did not stop for the stop sign at S. 18th St. and 2nd Ave. S. Dau went south bound on S. 18th St. Dau continued south bound on S. 18th St. and did not stop for the stop sign at 8th Ave. S. and S. 18th St. As he crossed 8th Ave. S. and S. 18th St. he (Ofc. Roling) knew Ofc. Livesay was trying to set spike strips at College Ave. and S. Bluff Blvd. Dau made it to S. Bluff Blvd and failed to stop for the red traffic light at S. Bluff Blvd and College Ave. Dau went south bound on Manufacturing Dr. Dau continued south bound on Manufacturing Dr. where speed reached about 70-80 mph. Dau went east bound on Valley West Ct. from Manufacturing Dr. Dau did not stop for the red traffic light at Valley West Ct. and Lincoln Way and went east bound on Lincoln Way from Valley West Ct. Dau continued east bound on Lincoln Way passing one vehicle on the right. Dau went north bound on S. 16th St. from Lincoln Way. Dau continued north bound on S. 16th St. and did not stop for the stop sign at 27th Ave. S. Dau went through the Honeywell baseball gravel lot next to 25th Ave. S. He went west bound on 25th Ave. S. and Dau came back onto the pavement of 25th Ave. S. Dau went south bound on S. 18th St. and then west bound on 27th Ave. S. As Dau turned west bound on 27th Ave. S. from S. 18th St., there was another vehicle east bound in the 1800blk 27th Ave. S. Dau went into the east bound lane causing the other vehicle to drive off the road to get out of the way. He turned his spot light on at 27th Ave. S. and S. 18th St. to see if there were any other occupants inside the car. He only saw one person in the vehicle. Dau went north bound on S. 19th St. to Manufacturing Dr. and he turned his spotlight off. Dau did not stop for the red light at S. 19th St. and Manufacturing Dr. Dau went south bound on Manufacturing Dr. from S. 19th St. Dau continued south bound on Manufacturing Dr. with speeds about 70 mph. Dau made a wide turn into oncoming traffic and went west bound on Valley West Dr. As Dau was west bound on Valley West Dr., Dau was driving in the middle of the turn lane not the west bound lane. Dau went south bound on Millcreek Parkway. Dau did not stop for the red traffic light at Millcreek Parkway and Lincoln Way as a vehicle was in the turn lane facing east bound and went through the intersection. Dau's vehicle went air borne and landed back onto the road way and continued south bound on 7th Ave. in Camanche. Dau continued south bound and then east bound on 21st St. in Camanche. Dau was approaching Highway 67 from 21st St. and Camanche Police Department was attempting to set up spike strips at Highway 67 and 21st St. The spike strips were not set and Dau went north bound on Highway 67. Dau appeared to hit the median and continued north bound in the south bound lane. As Dau was driving north bound in the south bound lane, Dau met a vehicle and the vehicle had to pull

off the road to get out of the way. Once there was no median Dau went back to the north bound lane. Dau was traveling about 70-80 mph.

When it was reported that the pursuit was heading towards Camanche, Officer LIVESAY knew exactly where the pursuit was at the time because he was very familiar with the area and was from the area. As the locations of the pursuit were being called out such as 7th Avenue and crossing the railroad tracks, Officer LIVESAY stated that he was close to Billion Automotive and far away from the pursuit, so he was not going to go out of his jurisdiction at that point and enter the pursuit. As a result, Officer LIVESAY deactivated his emergency lights and thought about what direction the pursuit could take. Officer LIVESAY felt one possibility was that the pursuit could come back into town from Highway 67 which was a very busy intersection with Highway 30. At this location, there was a Kwik Star gas station, a car dealership (Billion Auto) and a lot of people that traveled in and out of the intersection on a daily basis. After Officer LIVESAY turned right onto Highway 67 which goes right into Camanche, he parked his squad car just to the south of the Billion Auto entrance on 67. At that time, Officer SPARKS stated on the radio that the pursuit was coming towards Officer LIVESAY's location.

Upon hearing this traffic, Officer LIVESAY got on the radio and stated his badge number and then stated that he was at the truck stop (Kwik Star) and then exited his patrol vehicle, retrieved his stop sticks and ran eastbound across Highway 67. When describing the area where he was going to set up his sticks, Officer LIVESAY stated that there was five (5) lanes of traffic which included two (2) lanes of southbound traffic and two (2) lanes of northbound traffic. In addition, there was a northbound turn lane which allowed a person to turn into the truck stop followed by a bike path (on the east side of the road) and then a ditch. Officer LIVESAY's plan was to use the ditch as cover in the event of an emergency. In sum, Officer LIVESAY parked his squad by the Billion Auto entrance on Highway 67 and that he positioned himself close to the truck stop entrance into the Kwik Star gas station.

As Officer LIVESAY was setting up his stop sticks, there was a pick-up truck parked on the shoulder (facing north) so Officer LIVESAY waved that truck on as he felt it was in a dangerous position due to the pursuit. Once the truck was gone, Officer LIVESAY observed headlights coming over the hill (south of town) and was trying to determine if it was the suspect vehicle that was coming at him. Officer LIVESAY stated it appeared to be a small sedan and fitted the description of the suspect vehicle and in addition, was being followed by several patrol vehicles with emergency lights and sirens activated. As the suspect vehicle appeared to be traveling at a high rate of speed and coming towards town, Officer LIVESAY stated on the radio that he was deploying stop sticks and at that time, he threw the sticks into the roadway covering a portion of each of the northbound lanes. As the suspect vehicle continued coming down the hill at a high rate of speed followed by squads, Officer LIVESAY observed the suspect vehicle quickly decelerate, squeal its tires, and then swerve all over the road. When this happened, Officer LIVESAY stated that he was not sure if the suspect vehicle was trying to avoid his stop sticks and because everything was happening so fast, he was thinking of what his next step would be.

When the suspect vehicle did not hit the stop sticks, Officer LIVESAY observed the suspect vehicle turn in his direction and once it was pointed towards him, he could very clearly hear the vehicle accelerate in a very rapid manner trying to pick up speed as fast as possible. At

this time, Officer LIVESAY was standing on the sidewalk (bike path) and was not on the traveled portion of the roadway at all (out of traffic). He stated that if the driver's sole purpose was to kill him, then the suspect vehicle would have no problem doing so even if it meant driving into the ditch to kill him. Officer LIVESAY continued by stating that if he went to his right, we would have been exposed to the suspect vehicle coming at him from that way as well. As things quickly progressed, Officer LIVESAY observed and heard the suspect vehicle jump the curb and come in his direction. Please note that later in this letter, I outline and attach Trooper MESSERICH's diagram which shows the distance between where the vehicle hit the curb and LIVESAY is 49 feet. Also, MESSERICH's aerial photos show the area described by LIVESAY. **Officer LIVESAY stated that when the vehicle jumped the curb, he felt the drivers mission was to hit him, kill him or cause serious bodily injury and continue the pursuit.** Officer LIVESAY felt this way because the driver had all five (5) lanes open to avoid him. Officer LIVESAY reiterated several times when describing these events that the entire event happened in the blink of an eye.

When Officer LIVESAY determined that he (LIVESAY) had nowhere else to go and was going to be hit by the suspect, he made the decision to use deadly force to stop the threat. He then drew his service weapon and aimed it at the driver of the vehicle with the purposes of stopping the threat.

At 10:57:51 pm, LIVESAY's BWC records the first shot is fired at the suspect vehicle. The suspect vehicle is observed traveling on the eastern most side of the bike path and Officer LIVESAY is on the bike path as well. The video shows Officer LIVESAY fired seventeen times as the car was upon his position, arriving at and going past his position. The video shows there were no pauses in the gunfire once LIVESAY began firing.

At 10:57:56 pm, the BWC showed this is when the last shot was fired. The video shows the suspect vehicle had traveled through the west entrance of Kwik Star and came to rest in a water filled ditch just west of the Kwik Star's semi-truck weigh scales.

At that point, Officer LIVESAY did not know if the suspect was going to come back and continue to use his vehicle in a deadly manner or was armed. Officer LIVESAY then ran towards the suspect vehicle to make contact with the driver. There were already several units and squads at the same position giving commands for the driver of the suspect vehicle to show his hands. Some officers had their weapons drawn and as Officer LIVESAY approached the vehicle, he continued to hear officers giving verbal commands to the driver to show his hands. When Officer LIVESAY got close to the driver, he holstered his duty weapon and transitioned to his Taser. As the driver was being detained outside of the car, Officer LIVESAY observed a gunshot wound in the upper back region of the suspect and other officers started yelling for a medical bag and ambulance to be en route to their location.

Officer LIVESAY noted to investigators that the intersection he was at was a scary intersection because you had Highway 30 meeting Highway 67 with a twenty-four (24) hour gas station that was very busy along with a Walmart store, several hotels and other businesses that people frequented and they were all in danger due to the driver of the fleeing vehicle. If he (the suspect) was willing to hit an officer, what else was he willing to do to keep the pursuit going? This suspect was putting the public and other officers at risk. Officer LIVESAY continued by

stating that his goal was to save my own life and that is why I did what I did. There was no way I could have jumped out of the way with the speed that the suspect was traveling at.

LIVESAY's body worn camera was turned on and working. It recorded the events as related. A copy of the recording from the time he leaves his squad to deploy stop sticks, the vehicle approaching with squealing tires, to the shooting until the car comes to a stop is part of this letter. The video is not a sole factor in my decision. In viewing the video regarding this case, I did consider the fact that the video is not an accurate reproduction of what the officer was perceiving and experiencing during this critical incident, where the officer's life was being threatened by the actions of DAU. Because of the distortions caused by the encoding process regarding digital video, it is important for the viewer to have a surface understanding of these technical video issues that separate the reality that the officer was facing and the digital representation of that reality through the video evidence. As an example of limitations of video evidence, in this video the distance of objects in the video appear to be considerably further away from the camera than they are in reality. Additionally, the sounds heard on the video are somewhat muffled in comparison to the sound produced in reality, i.e., squealing tires, DAU's vehicle striking the curb, the sound of the vehicle's revving motor, etc. The angle of the camera is not always on the car in relation to where the officer makes critical decisions, such as when the beam from the headlights is all that is visible, not the position of the car. These are all aspects of the video that are not necessarily in alignment with the way Officer LIVESAY perceived the incident and subsequently made decisions regarding the perceived deadly threat he was facing. Thus, in viewing this video please note that the video cannot be used as standalone evidence regarding the officer's reality and existence within the context of this incident to determine why the officer decided to do what he did and why he decided to do it.

We also have the perspectives of two officers who witnessed DAU drive his vehicle at LIVESAY. We have the perspective of Officer ROLING, who was the lead pursuit squad following DAU. ROLING observed as DAU got closer to the truck stop he could see DAU start to brake and swerve left. He next observed DAU go right and then go even further right (direction East). ROLING knew LIVESAY was on the east side of the road. He then observed LIVESAY in front of DAU's vehicle near the front driver side head light. He observed LIVESAY trying to get out of the way of DAU, but DAU was not even on the roadway. **DAU was on the bicycle path and it appeared DAU was trying to run LIVESAY over with the vehicle. At that time, he reported he was scared for LIVESAY's life.** He observed LIVESAY discharge his firearm multiple times at DAU.

We also have the perspective of Officer SCHWANDT, who saw the incident unfold from the opposite direction, which was ahead of the pursuit. When he arrived in the area of Kwik Star and Billion auto he observed LIVESAY with his spike strips standing in the grass by a water filled drainage ditch. He parked his squad across the Highway 67 behind LIVESAY's squad, which was located near the east entrance to Billion auto. From there, he observed DAU approach the area traveling northbound on Highway 67 with units still pursuing him. He noted DAU suddenly slammed on the brakes and began skidding with the tires squealing as he was approaching LIVESAY's area. DAU then turned directly toward LIVESAY and began accelerating over the curb and through the grass toward LIVESAY. As he began running toward LIVESAY he observed LIVESAY jumping out of the way and trying to back pedal away from

the vehicle but DAU continued to swerve and try to aim the vehicle at LIVESAY as he was still accelerating. He stated at that moment **he was in fear for LIVESAY's life as DAU was attempting to run him over.** This belief caused SCHWANDT to draw his pistol as he moved to LIVESAY's location. SCHWANDT further noted **DAU continued to attempt to run LIVESAY over with the vehicle; and as DAU continued he got extremely close to LIVESAY until LIVESAY had no escape and drew his pistol.** SCHWANDT then observed LIVESAY began firing his pistol into the driver's side area toward DAU. Once LIVESAY began firing DAU started swerving toward Kwik Star parking lot and accelerating even more rapidly away. DAU accelerated across the entrance and then ramped the car into a deep drainage ditch where it came to rest.

On the afternoon of Wednesday, April 8, 2020, investigators executed a signed search warrant, authorizing the search and examination of the gray 2010 Honda Accord EX-L Four-Door Sedan (Temporary Tags; Titled out of the state of Wisconsin), which had been operated the previous evening by DAU leading up to and during the officer-involved shooting incident which ultimately killed DAU.

Throughout the course of the search and examination of the vehicle, several items of evidentiary value were located and taken possession of: One (1) Black Ruger-brand backpack containing several items to include but not limited to small packaging containers containing a substance consistent in appearance to crystal methamphetamine, drug paraphernalia, a nickel-plated revolver-style Remington 1875 *Replica* BB/Pellet gun (Serial No. 19E39168), loaded to capacity with six (6) rounds of WinGun 700 Ammunition, and a dagger. This backpack was located into the front passenger seat of the vehicle.

Later, on Wednesday, April 15, 2020, a follow-up search of the vehicle by investigators located what appeared to be a black and gray revolver-style handgun, positioned upside down within the vehicle's center console compartment. Upon further examination, the item was determined to be a SNR .357 revolver-style six-shot pellet/BB gun (SN: 19622388), loaded with five rounds of unmarked ammunition.

During the processing of this vehicle, it was noticed there was dealer advertising plate showing the vehicle had been purchased from Richardson's Motors in Dubuque, IA. It was also noticed there was a new purchase paper tag in the back window of the vehicle showing the vehicle had been purchased by J. M. out of Galena, IL. J. M. reported he was the owner of the vehicle but it had been missing for several weeks. J. M. stated he had let a female use the vehicle while in Savanna, IL but she did not return the vehicle. J. M. also stated he had no idea who JACOB DAU was and never gave DAU permission to drive his car.

On April 8, 2020, at approximately 12:52am, Iowa State Patrol Trooper Mike MESSERICH arrived at the scene. Trooper MESSERICH is a Technical Investigator with the State Patrol. Trooper MESSERICH is trained in the use of a total station device which is used to measure distances and create scale diagrams. Trooper MESSERICH is also issued a State Patrol drone. Trooper MESSERICH was able to fly the scene taking photographs. Trooper MESSERICH's measurements are organized and plotted in an attached drawing. The drawing

illustrates the distance from the curb where DAU's car left the street to Officer LIVESAY was 49 feet. Also attached is a photograph of the bike path where LIVESAY stood.

On April 8, 2020, DAU's body was transported from Mercy Hospital to the Office of the State Medical Examiner in Ankeny, Iowa. On April 9, 2020, an autopsy was performed on JACOB MATTHEW DAU by Dr. Jonathan Thompson. Dr. Thompson determined DAU died as the result of a single gunshot wound that entered DAU on the left upper torso just behind the left armpit. Dr. Thompson determined the round went through DAU's left lung, hit a vertebrae, traveled through his right lung and came to rest in DAU'S right chest wall. The bullet remained in DAU's body. Please be cautioned in placing any significant weight on the trajectory of the bullet. The trajectory of the bullet as it entered and traveled through DAU's body can be affected by even the slightest movement; for example, DAU could have turned his body at any time for any reason. Toxicology testing on DAU was not completed at the time of this letter, although any toxicology results are irrelevant to this determination.

The results of the autopsy determined there was only one bullet that struck DAU. The only officer to fire his weapon was LIVESAY. The firearm used was seized just after the shooting. After an examination of the firearm by investigators it was determined that LIVESAY fired a total of 17 shots. Sixteen shell casings from the fired rounds have been recovered from the scene.

In order to be justified, the force used by the officer who fired the shots must have been reasonable. Reasonable force is that force which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another and it is reasonable to believe that such force is necessary to resist a life force or threat. Iowa Code 704.1, 704.2 and 704.3.

In Graham v. Connor, 490 U.S. 386 (1989) the United States Supreme Court held that the use of deadly force by a police officer must be evaluated from the perspective of a reasonable police officer on the scene and in the same circumstances. Reasonableness of police use of force cannot be evaluated from the perspective of a civilian nor can it be evaluated with the more clear vision afforded by 20/20 hindsight under Graham. The Court further stated that the fact that law enforcement officers often are required to react quickly in tense, uncertain, and rapidly evolving situations needs to be taken into account in determining reasonableness. Since Graham, the Supreme Court has narrowed the analysis to focus on the exact moment that the force was applied.

Another case which resembles the facts in this incident is Plumhoff v. Rickard, 572 U.S. 765 (2014). In Plumhoff the police were led on a high-speed chase where the vehicle being chased spun out in a parking lot. The driver still used the accelerator while his bumper was against a patrol car causing an officer to fire 3 shots into the car. The driver managed to drive away, almost hitting an officer. Officers fired 12 more shots as the driver sped away. The United States Supreme Court in Plumhoff determined a chase with excessive speed, passing vehicles and forcing vehicles to alter course lasting over 5 minutes was outrageously reckless posing a grave public safety risk. The Plumhoff decision noted officers were justified in using

deadly force in the 10-second span where 15 shots were fired in order to end a severe threat to public safety. The Plumhoff ruling further pointed out officers need not stop shooting until the threat has ended, noting “if lethal force is justified, officers are taught to keep shooting until the threat is over.” Plumhoff v. Rickard, 572 U.S. 765, 777 (2014).

Looking at Graham my decision as to the reasonableness of the police use of force takes into account the officer’s perspective by looking at a number of factors. I look at the time of day; which in this case was late night. I look at the lengthy pursuit (approximately 12 minutes), the officer’s involvement in the pursuit and the high degree of danger the pursuit posed to the public’s safety (as noted in ROLING’s detailed account of the pursuit). I also look at the perspectives of the officers who were following DAU and were waiting for DAU. I account for LIVESAY’s location (water-filled ditch to the left, highway to the right, the car on the bike path, etc.), the sounds, (squealing tires of the approaching vehicle, the boom as tires hit the street curb approximately 49 feet away, the motor revving, sirens, radio dispatch, etc.), the optics (the vehicle’s swerving/bobbing/moving headlights coming at LIVESAY in the dark, the flashing patrol lights, other squad headlights both in front and behind the officer, etc.), his footing (grass, dirt, dimpled access pad, etc.), his equipment (setting up stop sticks, radio, weapon, etc.), his training and duty to protect and serve the public, his fellow officers and himself (Iowa Law Enforcement Academy training and Police Department training, etc.), and his actions during the shooting (fired 17 continuous shots in 5 seconds) to stop the threat to himself and others. Additionally, I took into account the events LIVESAY faced unfolded in a very short time frame; actually mere split seconds. These are just some of the factors I have mulled through in reaching my decision.

Based on a complete review of the case with the Iowa Division of Criminal Investigation and a full review of the facts and circumstances surrounding the death of DAU and the actions of LIVESAY in firing his weapon, it is determined that LIVESAY was legally justified under the laws of the State of Iowa in using deadly force on DAU. The actions of LIVESAY were objectively reasonable under the circumstances. DAU presented an immediate and clear danger to the officer attempting to lawfully arrest him and to any person who was nearby (such as at the adjacent Kwik Star) or happened to be on the street or in the intersection of Highway 67 and Highway 30 or in the vicinity of DAU. LIVESAY was confronted with a direct and deadly threat posed by DAU toward himself and potential pedestrians or drivers sharing the roads.

In the instant an officer has to make a decision to shoot, he must process the situation and circumstances before him in his own mind independent of other officers. The decision must be made quickly at the time the threat is perceived. There is no time to consult other officers concerning a decision to shoot or not shoot. In this particular incident, LIVESAY was objectively reasonable in firing his weapon to neutralize the threat posed by DAU. DAU presented a deadly threat. When it appeared DAU chose to drive his vehicle at the officer, the reaction of the officer in defending himself or others had to be made in a split second. In the mind of LIVESAY this threat was reasonably present through and including the moment that last shot was fired. LIVESAY had no reason to believe that DAU wanted to stop. LIVESAY had no reason to believe DAU would fail to run him over or continue to endanger others until he neutralized DAU. Under the circumstances given DAU’s behavior, his refusal to stop his vehicle

after a lengthy and dangerous high speed pursuit, his choice to steer his vehicle at the officer (he had multiple lanes to avoid the officer), his choice to continue to drive directly toward the officer left LIVESAY with the choice of firing at DAU in order to end the deadly threat or waiting to see if DAU would drive over him or hurt an innocent bystander.

Any death at the hands of law enforcement is tragic and regrettable. No police officer ever wishes to fire their weapon at another human being. Unfortunately police officers are, at times, placed in untenable positions by persons they encounter. DAU left LIVESAY no other reasonable alternative under the circumstances than to shoot. The death of DAU is determined to be a justifiable homicide under the laws of the State of Iowa. The Clinton County Attorney's Office considers the officer-involved investigation closed. No criminal charges are justified or warranted against LIVESAY.

If our office can be of further assistance or if you have any further questions or concerns about the findings expressed in this letter please do not hesitate to contact me at mwolf@clintonca.net or (563)249-1782.

Sincerely,



Michael L. Wolf
Clinton County Attorney

Attachments:

CPD ROLING In-Car Camera Video (permission to release)
CPD LIVESAY BWC Video (permission to release)
ISP Diagram (Do not have permission to release as public record)
ISP Photo (Do not have permission to release as public record)

Copies to:

Special Agents Rick Rahn
& Derek Riesen
Iowa Division of Criminal Investigation
22365 20th Ave.
Stockton, IA 52769

Trooper Mike Messerich #166
Iowa State Patrol
22365 20th Ave.
Stockton, IA 52769