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IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
AREA PROSECUTIONS DIVISION

September 17, 2021

Kristofer Lyons
Jones County Attorney
Jones County Courthouse
500 West Main, Rm 201
Anamosa, IA 52205

RE: OIS – Jeremy Michael Berg

Dear Mr. Lyons:

Due to a potential conflict of interest, your office requested the Iowa Attorney General's Office review the circumstances of a shooting incident that occurred in Jones County in a rural area near Martelle on the evening of August 31, 2021. At 8:00 p.m. on this date the Jones County Dispatch received a 911 call from a resident in rural Martelle, Iowa, reporting a structure fire. Several Fire Departments responded to the scene as well as law enforcement officers. At 8:11 p.m. dispatch informed the responding agencies that it was reported the nephew (Jeremy Berg) keeps going into the building; talking about dying in the fire, and he has a significant drug history. Shortly after law enforcement arrived, Jeremy Berg pulled out a knife and was behaving erratically. Deputies from the Jones County Sheriff's Office and the Anamosa Police Department responded. The incident involved 45-year-old Jeremy Berg. Primarily involved with Mr. Berg were Jones County Sheriff's Deputies James Rickels and Tim Miller as well as Officers Nick Brokaw, Gabe Humphrey, and Tyler Hunt with the Anamosa Police Department.

At your direction, the sole purpose of our review is to determine if the actions of Deputy James Rickels, Deputy Tim Miller, Sgt. Nick Brokaw, Officer Gabe Humphrey, and Officer Tyler Hunt in the use of lethal force against Jeremy Berg were legally justified.

The incident was investigated by the Iowa Division of Criminal Investigation. The investigation is now complete, and I have had a full opportunity to review the findings. A short summary of the known facts determined by investigators will follow. Only those facts that pertain to the issues concerning whether the officers were justified in using deadly force will be summarized. Please refer to the DCI criminal investigation file for further details.

On August 31, 2021, at approximately 8:00 p.m. Jones County dispatch received a 911 call concerning a structure fire in rural Martelle, Iowa. Several Fire Departments

responded to the call, as well as Deputies James Rickels and Tim Miller from the Jones County Sheriff's Office. While law enforcement was enroute dispatched informed them it was reported the nephew (Jeremy Berg) keeps going into the building; talking about dying in the fire, and he has a significant drug history.

Deputy James Rickels was the first officer to arrive at the at 8:17 p.m. Deputy Rickels saw Jeremy Berg sitting down and a couple of family members were talking to him. Deputy Rickels asked Mr. Berg what happened, and he responded he was not sure. It was apparent that Berg has severe burns to parts of his body. Deputy Rickels asked if Berg if he had used drugs earlier and he did not respond. A family member nodded his head in the affirmative. His grandma said Berg had stated he wanted to die in the fire. Berg was moved to area away from the burning shed/shop. Deputy Rickels told Berg to stay seated and wait for the ambulance to arrive so they could check him out. Berg did not comply and got up off the ground. Deputy Rickels tried to restrain Berg, but he was able to get away. Berg then pulled a knife from his pocket. This is all shown on Deputy Rickels bodycam. Berg pulled the knife out at 8:20 p.m. Deputy Rickels told Berg to put the knife down several times and he did not comply. A family member also told Berg to put the knife down and he said, "no". Deputy Rickels informed dispatch that Berg had a knife. Deputy Rickels used nonlethal force and tased Berg, he fell to the ground, but pulled out the probes and kept the knife in his hand. Berg stood back up and with the knife in his hand. Deputy Rickels continued to request for Berg to put the knife down, but he refused. Mr. Berg's grandma told him not to do this to your grandma, but Berg continued to stand in a grass area with a knife in his right hand. Deputy Rickels told Berg "We want to help you" and told Berg several times to drop the knife, but Berg did not comply with the commands.

Deputy Tim Miller arrive at the scene at 8:23 p.m. Deputy Rickels again used nonlethal force and deployed his taser a second time, but it did not appear to have any affect on Berg as he continued to hold the knife in his right hand. Berg walked towards the deputies with his hand raised with the knife and was told to stop. Berg stopped, but he refused to put the knife down and a standoff ensued. The Deputies commanded Berg multiple times to put the knife down, but Berg does not comply. Kevin Steele a fire fighter and reserve Jones County deputy talked to Berg and attempted to persuade him to put the knife down so they could get him help. This continued for several minutes as other law enforcement officers arrived at the scene.

Sgt. Nick Brokaw, Officer Tyler Hunt and Officer Gabe Humphrey from the Anamosa Police Department arrived at the scene at approximately 8:30 p.m. When the Anamosa officers arrived, they saw Berg with a knife in his hand and Firefighter Steele talking to him trying to get Berg to drop the knife. Steele asked Berg to drop the knife multiple times, but Berg did not comply. Deputies Rickels and Miller were also in the immediate area. Other law enforcement officers also arrived to provide assistance. Since Berg did not comply with commands to drop the knife, a decision was made to fire a less lethal shotgun firing bean bags. The bean bags struck Berg and Steele used his taser, but neither seem to have any affect on Berg and he began to run toward a house. Several officers pursued Berg. Berg then stopped, he turned around, gave a yell, raised his right hand with the knife and charged the officers. The Officers feared for their safety or other

officers' safety. Deputy Rickels, Deputy Miller, Sgt. Brokaw, Officer Hunt and Officer Humphrey fired their service weapons and fired multiple shots at Berg. Berg fell to the ground and was moving for a short period of time. Berg still had the knife in his hand. Eventually, officers were able to remove the knife and immediately began providing medical care.

An autopsy was conducted of Jeremy Berg on September 1, 2021, by the Iowa State Medical Examiner's Office. It was determined that multiple bullets struck Berg causing his death. Other than the gunshot wounds there was nothing discovered at Berg's autopsy that was remarkable or relevant regarding his cause and manner of death.

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 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 like 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. Under Graham reasonableness of police use of force cannot be evaluated from the perspective of a civilian nor can it be evaluated with a clearer vision afforded by 20/20 hindsight. The Court further stated that the fact law enforcement officers often are required to react quickly in tense, uncertain, and rapidly evolving situations are factors that must be considered in determining reasonableness. Since Graham, the Supreme Court has narrowed the analysis to focus on the exact moment that the force was applied.

Officers in this situation were confronted with a person who was behaving in a threatening manner and was armed with a knife that could have caused serious injury or death to any person including officers. When Berg pulled the knife, he kept the knife out the entire time. The officers made repeated efforts to de-escalate the situations by giving multiple commands to drop the knife and comply with the officers. In addition, the officers deployed less lethal options on five separate occasions (a taser was deployed three times and a less lethal shotgun with bean bags was fired twice), but they were unable to subdue Berg, or get him to drop the knife. If Berg would have stopped and unarmed himself there would have been no need for the use of lethal force. Because of Berg's actions in quickly advancing towards the officers with a knife raised in his hand, they had no other reasonable choice but to shoot Berg. Otherwise, the officers or innocent by-standers would have been put in harm's way.

The actions of Deputy James Rickels, Deputy Tim Miller, Sgt. Nick Brokaw, Officer Gabe Humphrey, and Officer Tyler Hunt were entirely legally justified. The decision to fire at Berg was reasonable under the circumstances. Prior to discharging their weapons, the officers were faced with a deadly threat solely created by Jeremy Berg. Berg was provided

every opportunity to end the confrontation peacefully. Instead, Berg continued the threat by charging at the officers with a knife in his hand.

The Iowa Attorney General's Office considers this matter closed. If you have any questions, please do not hesitate to call me at (515) 281-3648.

Sincerely,

A handwritten signature in blue ink that reads "Douglas D. Hammerand". The signature is written in a cursive style with a large initial 'D'.

Douglas D. Hammerand
Assistant Attorney General
Area Prosecutions Division
IA Attorney General's Office

Copy to:

Iowa Division of Criminal Investigation - S/A Trent Vileta

Jones County Sheriff - Greg Graver

Anamosa Police Chief – Jeremiah Hoyt