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October 8, 2024



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**Iowa Attorney General's Review  
of Officer Involved Death**

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Incident of June 30, 2024  
Waterloo, Iowa  
Waterloo Police Department Officer Jason Chopard and  
Officer Thomas Schuster  
Subject Involved: Kelvin Lee Plain, Jr.

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## **Executive Summary**

The Iowa Attorney General's Office concludes that the fatal shooting of Kelvin Plain, Jr. by law enforcement on June 30, 2024, was legally justified.

On June 30, 2024, Waterloo Police were dispatched to a report of a man riding a bicycle and carrying a gun. That man, Plain, fled the scene on his bicycle when Officer Jason Chopard arrived in his patrol car. Plain fell from his bike and continued fleeing on foot, eventually running into Fourth Street, where he struck the front corner of Officer Thomas Schuster's patrol vehicle, which briefly knocked him to the ground. Plain got up and continued to flee, disobeying repeated commands to drop his gun, and Officer Schuster tased him. Plain fell to the ground.

When the officers approached Plain, he rolled onto his back and started shooting at them. He hit Officer Chopard through the door of his patrol vehicle and hit Officer Schuster in both the calf and chest. The officers returned fire and killed Plain. Both officers survived their gunshot wounds after undergoing surgery.

Officers Chopard and Schuster reasonably believed that Plain was a serious and immediate threat to their lives and that deadly force was reasonably required to stop that threat. Following a review of the entire investigation into this incident, the Attorney

General's Office concludes that criminal charges are not warranted and therefore considers the investigation to be closed.

### **Process and Authority**

The Iowa Division of Criminal Investigation (DCI) investigated the incident, and its investigation is complete. It gathered statements and physical evidence and reviewed video footage captured by body-worn and vehicle cameras and a report of the State Medical Examiner. The Attorney General's Office has authority under Iowa Code § 13.12 to assess any officer-involved death to determine whether criminal charges are warranted. The Office has had a full opportunity to review the findings of the investigation and discuss the investigation with the assigned agent. All law enforcement reports, including any audio or video recordings, will be returned to the DCI when this report is issued.

### **Pertinent Facts**

#### **A. History**

Kelvin Plain, Jr., was a 35-year-old African American man, who was last known to reside in Waterloo, Iowa. He had a lengthy criminal history which involved numerous felony convictions for violent offenses including Robbery in the Second Degree and Willful Injury Causing Serious Injury, multiple convictions related to the possession and distribution of controlled substances, convictions for

carrying weapons and being a felon in possession of firearms, perjury, and eluding. In addition, Plain had multiple convictions for violence against law enforcement officers, including Assault, Interference with Official Acts, and Willful Injury stemming from an incident where Plain used his vehicle to ram a Waterloo police officer's patrol vehicle, injuring the officer. Plain's criminal history indicated that he was known to assault peace officers and known to be armed.

Officers Jason Chopard and Thomas Schuster are both certified peace officers. Both are veteran officers, having worked for the Waterloo Police Department for 18 and 20 years, respectively. On June 30, 2024, they were both working first shift (6:30 a.m.–4:30 p.m.) in the patrol division.

## **B. Timeline**

### **1. Call for Service on June 29**

Daphne Johnson lives in Waterloo. On Saturday, June 29, 2024, someone told her that Plain was on the sidewalk in front of her residence and that he created a music video that was posted to social media while in front of her house. Ms. Johnson contacted the Waterloo Police Department to report Plain's activity, and Officer Chopard was dispatched to her residence. While there, Officer Chopard learned that Plain had a history of conflict with Ms.

Johnson's son. Ms. Johnson believed that Plain was engaged in this conduct to intimidate or harass her and the other occupants of the residence and to put pressure on her son. She wanted Plain removed from the property for trespassing. Ms. Johnson also informed Officer Chopard that Plain was known to carry firearms and that she was worried about what Plain might do towards her residence, herself, or her family.

Officer Chopard attempted to call Plain on the telephone but did not reach him.

## **2. Call for Service on June 30**

The next day, Ms. Johnson contacted the Waterloo Police Department from her residence at approximately 8:22 a.m. to report an African American man riding a bicycle with a gun and traveling towards Sumner Street. Ms. Johnson informed officers of the man's path of travel and reported that he left her field of view toward the end of her call with dispatch. She reported that she herself did not see the firearm but that her cousin had and had informed her of it.

Knowing that the call originated from Ms. Johnson's home and having responded to the call for service the day prior, Officer Chopard believed it was likely that Plain was the reported individual. Officer Chopard traveled to the area and did not

immediately observe anyone riding a bicycle. Officer Schuster also responded to the area and spoke to individuals who were near a vehicle on Linn Street. They reported seeing an African American man wearing all green traveling up Adams Street on a bicycle.

After he received this additional information from Officer Schuster, Officer Chopard located an individual matching that description in Sullivan Park who was speaking with someone else. Officer Chopard informed dispatch of his observations and then drove his patrol vehicle towards the individual, whom he would soon discover was Plain. As Officer Chopard got closer, Plain began to ride off on his bicycle. It was clear to Officer Chopard that he was trying to get away. Officer Chopard pursued him through the park in his patrol vehicle.

While still within the park, Plain fell from his bicycle. As he fell, a handgun also fell from his person and landed on the ground. It was at this moment that Officer Chopard also identified the individual as Plain, whom he knew to be a convicted felon. Officer Chopard radioed dispatch that Plain indeed had a firearm and watched as Plain picked up the firearm and began to run from him. Officer Chopard continued his pursuit of Plain in his patrol vehicle and pursued him into Fourth Street.

Just as Plain ran out of Sullivan Park into Fourth Street, Officer Schuster approached in his patrol vehicle on Cottage Street,

traveling to the park from the east. While Officer Schuster was approaching the park, he heard Officer Chopard radio that “he’s got a gun.” As Officer Schuster approached Fourth Street, he saw Officer Chopard’s patrol vehicle traveling through the park with a man matching the description provided running from him. Just as the man ran into Fourth Street, Officer Schuster was able to identify him as Plain

As Plain entered Fourth Street from Sullivan Park, Officer Schuster positioned his patrol vehicle to block him. Plain hit the front right corner of Officer Schuster’s patrol vehicle and fell to the ground. Officer Schuster exited his patrol car just as Plain regained his footing and attempted to continue to run from officers. Officer Schuster yelled “drop the gun” and deployed his taser twice. The first deployment did not gain the expected result, so Officer Schuster deployed it a second time, which struck Plain and caused him to go the ground. Plain unsuccessfully tried to get up and run again but promptly fell back down. On both occasions when Plain hit the ground, he was face down.

Officer Chopard pulled his patrol vehicle alongside Plain with his service pistol drawn just as Plain began to roll from his stomach onto his back. In one fluid motion Plain rolled over, extended his right arm, and began firing at Officer Chopard’s patrol vehicle before turning to fire multiple rounds at point-blank range at Office

Schuster. Officer Schuster moved away from Plain and fell to the ground, and Plain again fired upon Officer Chopard. In all, Plain fired 11 shots at the officers. He struck Officer Chopard's vehicle several times, one of those shots passing through the door and striking Officer Chopard in the abdomen. He struck Officer Schuster twice, once in the leg and once in the chest. The shot to the chest was stopped by Officer Schuster's ballistics vest.

After Plain's first shot, the officers returned fire with their service pistols. Plain was hit seven times and died at the scene from those wounds.

Officer Chopard was able to radio dispatch that he had been struck by gunfire. Responding officers learned that Officer Schuster was also struck and the responding officers, along with medical personnel, were able to provide medical attention to the officers. The officers were transported to Allen Hospital where they both underwent surgery. Both survived.

### **3. Other Evidence**

Additional evidence not available to the officers before Plain opened fire confirmed that he was an immediate danger to others in the area, particularly Ms. Johnson. DCI's investigation turned up a video of Plain making rap videos for social media directly in front of Ms. Johnson's residence. Additionally, at least one video



was located of Plain rapping and performing for a camera where he states “eat with it, sleep with it, shit with it” while displaying a firearm. He sings “you know I got it on me” (referencing a firearm) repeatedly and displays multiple firearms, one of which appears to be the firearm he used to try to murder Officers Chopard and Schuster. On Plain’s cell phone was a selfie video of himself riding his bicycle in front of Ms. Johnson’s residence approximately 15 minutes before the shooting.

The autopsy conducted by the state medical examiner revealed that Plain had been shot seven times and had methamphetamine and cannabinoids in his system.

### **Applicable Law**

To be justified, the force an officer uses must be reasonable. Force is reasonable if a reasonable person, in like circumstances, would judge the force to be necessary to prevent an injury or loss. It can include deadly force if (1) it is reasonable to believe that such force is necessary to avoid injury or risk to the person’s or another person’s life or safety and (2) 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. Under *Graham*, reasonableness of police force cannot be evaluated from the perspective of a civilian or the perspective afforded by 20/20 hindsight. The Court further stated that the fact that law enforcement officers are often 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.

### **Analysis**

Officers Chopard's and Schuster's actions and the use of deadly force were legally justified. Their decision to fire at Plain was reasonable under the circumstances. Plain was a known felon and known to carry a gun. Officer Chopard knew Plain had a history of violence toward law-enforcement officers. When Officer Chopard approached Plain after receiving a report that Plain had a gun and had been threatening Ms. Johnson, Plain fled. Plain dropped the gun while fleeing—confirming that he was a felon in possession of a firearm—picked it up, and continued fleeing. Officer Schuster attempted to block Plain's path with his cruiser, then attempted to subdue Plain with oral commands, and then attempted to subdue

him by tasing him, even deploying the taser a second time, rather than drawing his service pistol, when the first attempt did not have the desired effect. While lying on the ground as a result of being tased, Plain suddenly opened fire on the officers, firing 11 shots at them and striking them three times.

Plain continually escalated the situation while the officers continually employed the lowest necessary amount of force. He fled when approached; he continued trying to flee when his route was cut off and he was given oral commands to stop and drop his gun; he attempted to stand and continue running when tased to the ground; and he suddenly rolled over and started shooting at the officers when they approached within a few feet of him. Only then did the officers fire. They reasonably believed that their lives and the lives of others in the vicinity were under immediate threat, and they responded with a reasonable use of deadly force. The responsibility for the incident and for Plain's death lies with Plain.

### **Conclusion**

The Iowa Attorney General's Office concludes that Officers Chopard's and Schuster's actions in this incident were legally justified and that criminal charges are unwarranted. The Office considers the criminal investigation into this incident to be closed.