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**MEMORANDUM**

**TO: Federal Way Police Department Detectives Richard Adams and Matthew Novak**

**FROM: Adam Cornell, Prosecuting Attorney** AC

**DATE: February 1, 2021**

**RE: Valley Investigations Team Investigation / Involved Officer: Auburn Police Department Officer Kenneth Lyman / Involved Person: Enosa Strickland, Jr.**

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I write to you in your capacity as the assigned case detectives on the above-described Valley Investigations Team (hereinafter VIT) in-custody death investigation. The investigation was compelled by the May 20, 2019, deadly use of force by Auburn Police Department Officer Kenneth Lyman against Enosa Strickland, Jr.

**Summary**

At the request of Pierce County Prosecuting Attorney Mary Robnett, I agreed to review this matter after it came to light that some of the investigative material she and other members of her office had reviewed mistakenly contained Garrity-protected statements of Officer Lyman and other derivative evidence. Preliminary to the report's review by my Chief Criminal Deputy Matthew Baldock and myself, and consistent with the dictates of the prevailing case authority, two of my deputy prosecuting attorneys were directed to independently cleanse the relevant investigative materials and remove all Garrity-protected material and any derivative content that might have flowed from the protected statements.<sup>1</sup> Once that task was accomplished, Mr. Baldock and I separately reviewed the investigative materials to assess the lawfulness of Officer Lyman's actions.

In the course of my review, I also familiarized myself with the Auburn Police Department's Use of Force policy, finding it to be materially consistent with other local and national policies and the established standard that the force used be objectively reasonable under the totality of the circumstances, as set forth by the United States Supreme Court in *Graham v. Connor*. Additionally, I, and another member of my leadership team, spoke to professionals with extensive experience in law enforcement and training law enforcement officers regarding constitutionally appropriate force, including deadly force. Finally, I drew on my own practical and legal experience both as a former Deputy Prosecuting Attorney assigned to Snohomish County's equivalent of the VIT, and as the elected Prosecuting Attorney charged with reviewing and deciding whether criminal charges are merited in officer use of deadly force cases.

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<sup>1</sup> Any reference herein to statements made by Officer Lyman were voluntary and not subject to Garrity protections.

After completing my review, and after consulting with Mr. Baldock at length, I have concluded that when applying the facts in this case to law applicable in Washington, there is insufficient evidence to prove a crime was committed. Broadly, based on the information known to Auburn Police Officer Kenneth Lyman at the time, he had a good faith basis for using deadly force against Mr. Strickland, Jr. and that a similarly situated reasonable officer would have believed the use of deadly force was necessary under the facts and circumstances. For the reasons more particularly set forth below, this matter will be declined for prosecution.

I am mindful that the investigative record makes it clear Enosa Strickland, Jr. was well-loved by his family and friends who knew him to be a kind, respectful, and thoughtful young man. I am also aware that for those who knew and cared about Mr. Strickland, Jr., the circumstances surrounding his death are as confounding as his death is devastatingly sad. And while it is important for all of us to recognize the pain and grief caused by Mr. Strickland, Jr.'s unfortunate passing, my ethical obligation is to only pursue a prosecution that I believe can be proven to a trier of fact beyond a reasonable doubt, and it can neither acquiesce to, nor be influenced by, our sympathies.

### Applicable Law

Consideration of the filing of any criminal charge in Washington related to an offense against a person—including the crime of homicide as discussed in this Memorandum—requires the threshold application of RCW 9A.411(2)(a) which pertains to evidentiary sufficiency. The statute provides in pertinent part: “[c]rimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder.”

This incident occurred on May 20, 2019, approximately six months after the passage of Initiative 940, later modified by the legislature, which changed the standard for use of deadly force by police officers. See RCW 9A.16.040. Saliiently, the revised statute removed the requirement for proof of malice and proscribed a good faith standard. Accordingly, “good faith’ is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.” RCW 9A.16.040(4).

### Relevant Facts

On May 20, 2019, at approximately 12:47 a.m., Auburn Police Department Officers Kenneth Lyman and Derek Morse were dispatched to an apartment complex for a report of a domestic disturbance. The reporting party, [REDACTED] told dispatchers that her ex-boyfriend, Enosa Strickland, Jr. had arrived at her apartment and was tapping and scratching on her front door and was refusing to honor her request that he leave her home. She suspected he was drunk and described him to dispatchers as “scary.” [REDACTED] also reported hearing glass breaking outside her apartment and was worried that Mr. Strickland, Jr. might be damaging her car.

Arriving at [REDACTED] apartment complex approximately 12 minutes after her call for assistance, Officers Morse and Lyman found Mr. Strickland sitting in his car in the parking lot outside [REDACTED] apartment. Officer Morse stayed with Mr. Strickland, Jr. as Officer Lyman contacted [REDACTED]. Officer Lyman determined that while Mr. Strickland, Jr. had not committed any crime, it was clear from [REDACTED] that she wanted him to leave her alone. While Officer Lyman was speaking with [REDACTED] Officer Morse was speaking with Mr. Strickland, Jr. Through that interaction with Mr. Strickland, Jr.,

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Officer Morse determined that he was likely intoxicated. As a result, once Officer Lyman had finished speaking with [REDACTED] the officers' shifted their focus to figuring out how to get Mr. Strickland, Jr. home safely as it was clear to them that he was in no condition to operate a motor vehicle. To facilitate Mr. Strickland, Jr.'s safe and lawful return to his home, Officer Morse allowed Mr. Strickland, Jr. to use his cellular telephone to call his mother for a ride. The officers decided to wait with Mr. Strickland, Jr. to make sure he did not try to drive away on his own.

As the three of them stood outside Mr. Strickland, Jr.'s vehicle waiting for his mother to arrive, they talked. At this point in the encounter, Mr. Strickland, Jr. was pleasant and relaxed. [REDACTED] reported that she could hear some of the conversation through an open window. She recalled Mr. Strickland, Jr. saying something about how he respected the officers, corroborating the officers' account that the interaction was casual and non-confrontational up to that point.

Mr. Strickland, Jr.'s demeanor and mood soured during a second phone call to his mother, K [REDACTED] Strickland. Ms. [REDACTED] Strickland would later tell investigators that her son sounded upset and was swearing about having to deal with the police. It was similarly apparent to Officers Lyman and Morse that a sudden shift had occurred in Mr. Strickland, Jr.'s attitude and behavior. For example, he started pacing around in the parking lot near his car, swearing at the officers, and making veiled threats toward them. [REDACTED] verified the sudden shift in Mr. Strickland, Jr.'s interaction with the officers. She later told investigators that she remembered hearing him say something like, "you remind me of little white boys I used to tackle in high school" and "I could take both of you." [REDACTED] who continued to listen, surmised from what she heard that Mr. Strickland, Jr. sounded like he had had a "burst of confidence."

Officer Lyman made similar observations as those provided by [REDACTED]. For example, he told investigators that it seemed to him like Mr. Strickland, Jr. was "pumping himself up." At one point, Mr. Strickland, Jr. began making quick and erratic movements toward Officer Lyman, described by the officers as "jab-steps" or "shoulder-checking." Officer Lyman attempted to de-escalate Mr. Strickland, Jr.'s behavior by, among other things, calmly trying to reason with him by asking him what his mother would think of his behavior when she arrived. Officer Lyman's efforts ultimately failed and Mr. Strickland, Jr. grew more animated, agitated, physically and verbally erratic, and confrontational.

As Mr. Strickland, Jr.'s behavior escalated and he became more aggressive, he again quickly approached Officer Lyman—this time coming within an arm's length and bringing his right hand up toward the officer. Fearing that he was about to be assaulted, Officer Lyman struck Mr. Strickland, Jr. in the face and then tackled him to the ground. Officer Morse, who was standing nearby, quickly moved to assist Officer Lyman. As he did so, Officer Morse was struck in the side of the head by Mr. Strickland, Jr., knocking his radio earpiece out. The three men ended up on the ground with Mr. Strickland, Jr. on his stomach, Officer Lyman up toward his shoulders, and Officer Morse on his back. (Both officers later described Mr. Strickland, Jr. as muscular and heavier than both of them).

Mr. Strickland, Jr. was repeatedly told by the officers that he was under arrest and to stop fighting. However, he ignored their commands and continued to physically struggle, resisting the officers' best efforts to restrain him. According to Officer Lyman, as he and Officer Morse were trying to gain physical control of Mr. Strickland, Jr., he felt something sharp pressing into his leg. Officer Lyman reacted to the pain by looking at Mr. Strickland, Jr. and saw a knife in his right hand. Officer Lyman recognized the fixed-blade knife as the one he wore in a sheath attached to one of the chest pockets in his vest carrier. Officer Morse later told investigators that he also saw the knife in Mr. Strickland Jr.'s right hand and that it caused him fear and alarm. Specifically, Officer Morse remarked to investigators, "I believed [the knife] was going to stab either Officer Lyman cause he was closer or me and because

he continued to resist us and he had already assaulted us and I just thought he would, now he's got a knife and he's going to continue to assault us."

For his own part, in a written statement, Officer Lyman expressed the fear he felt for his safety, and the safety of Officer Morse when he realized that Mr. Strickland, Jr. had managed to arm himself with Officer Lyman's own knife. Officer Lyman wrote in pertinent part: "My concern at the time was for my immediate safety or Officer Morse's due to how close [Mr. Strickland, Jr.] was to us. [Mr. Strickland, Jr.] clearly had the ability at the moment to stab either myself and/or Officer Morse. As soon as I saw the knife I immediately began yelling commands to repeatedly 'drop the knife!'"

Ignoring Officer Lyman's repeated commands to drop the knife, Mr. Strickland, Jr. continued his physical struggle with the officers while armed with a deadly weapon. Out of fear for his immediate safety, Officer Lyman yelled to Officer Morse, "Shoot him! In the heat of the fight, Officer Morse heard it not as a directive, but as a statement or warning that Officer Lyman was about to respond with deadly force to the risk of death or serious bodily harm they both faced. While Mr. Strickland, Jr. continued his battle with the officers, Officer Lyman let go of Mr. Strickland, Jr.'s right arm and immediately drew his service pistol, while still shouting warnings at Mr. Strickland, Jr. to drop the knife or he would be shot. Mr. Strickland, Jr. refused. His right arm was now free and Officer Lyman believed that Mr. Strickland, Jr. was actively attempting to stab him, so he aimed his pistol at Mr. Strickland, Jr.'s head and pulled the trigger, but his weapon malfunctioned and did not expel a bullet. Officer Lyman quickly cycled the firearm's slide against his uniform in an attempt to correct the malfunction. At no time did Mr. Strickland, Jr. cease being physically combative or respond to warnings to drop the knife or he would be shot, and at all times he presented an immediate threat to the officers. On the second attempt, Officer Lyman's firearm discharged, and Mr. Strickland, Jr. went limp. Mr. Strickland, Jr. was still holding the knife in his right hand so Officer Lyman grabbed it and tossed it out of Mr. Strickland, Jr.'s reach while Officer Morse placed Mr. Strickland, Jr. in handcuffs. Officer Lyman checked Mr. Strickland, Jr.'s pulse but found none.

The fear described by the officers and the concomitant substantial risk of serious bodily harm or death they faced during the confrontation was corroborated in part by [REDACTED]. According to [REDACTED] she heard the officers initial commands to Mr. Strickland, Jr. to stay still and to put his hands behind his back. She also told investigators that she heard the officers repeatedly tell Mr. Strickland, Jr. that he was under arrest. Additionally, [REDACTED] reported that she heard commands to, "drop the knife or I am going to shoot you," and she believes she heard Mr. Strickland, Jr. laughingly reply, "what knife?" She told investigators soon after that she heard something she believed to be metal hitting the ground, after which time—a few seconds by her estimation—she heard a gunshot.

A subsequent search of the scene led to the recovery of Officer Lyman's knife, covered in blood, a short distance from Mr. Strickland, Jr.'s body. The Medical Examiner determined that Mr. Strickland died from a single gunshot to his head (entering the rear of his head just to the right of midline). A toxicology report showed an ethanol concentration of .24g/100ml and a TCH level of 15ng/mL in Mr. Strickland, Jr.'s blood at the time of his death.

### Legal Analysis

The facts, as presented in the investigative materials submitted by the VIT, and the law, do not support the filing of criminal charges against Officer Lyman because I do not believe that a reasonable and objective fact finder would find him guilty of murder as it is defined in the law. Mr. Strickland's tragic and untimely death was legally justified given the clear and imminent danger he presented to Officer Lyman and Officer Morse. Specifically, Mr. Strickland, Jr.'s unyielding, immediately life-threatening

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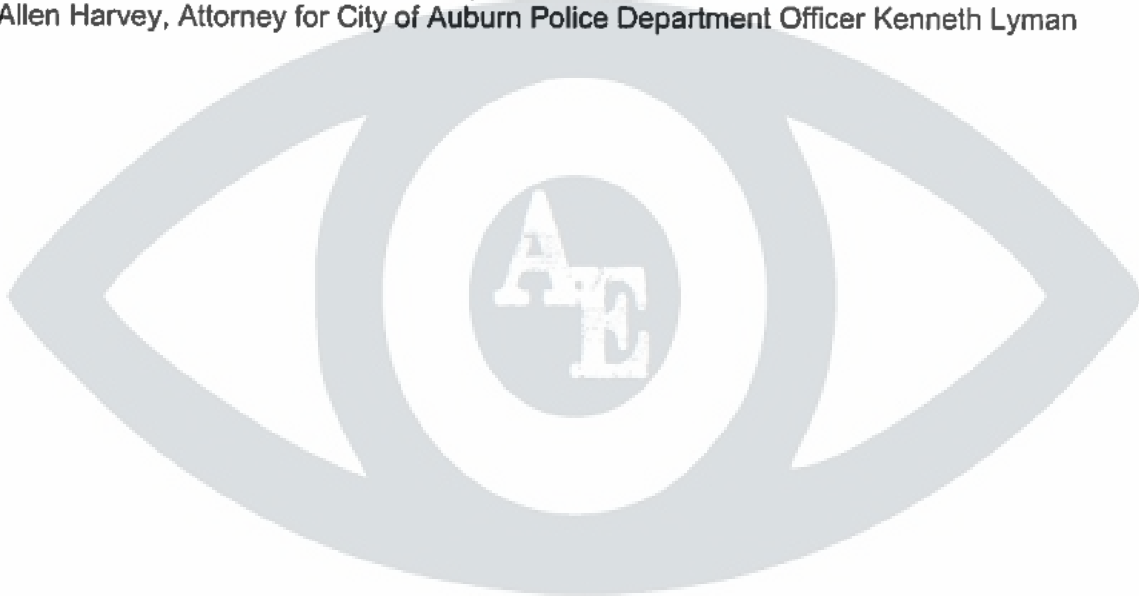
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possession and use of Officer Lyman's knife during a fierce physical struggle—in the face of clear and repeated verbal commands by the officers to drop it or be shot which was accompanied by a reasonable opportunity to comply with the directive, legally justified the use of deadly force. Accordingly, Officer Lyman had a good faith basis in his deadly use of force formed on everything that a reasonable trier of fact would conclude he knew at the time. Furthermore, a jury would conclude that a similarly situated reasonable officer would have believed the use of deadly force was necessary under the circumstances of this case to prevent death or serious physical harm to himself and/or Officer Morse. Accordingly, this matter will be declined for prosecution.

Thank you for your thorough investigation of this matter. Please contact me should you wish to further discuss this Memorandum.

Cc: File  
Mary Robnett, Pierce County Prosecuting Attorney  
John Christiansen, Attorney for Strickland Family  
Chief Daniel O'Neil, City of Auburn Police Department  
Kendra Comeau, Attorney for the City of Auburn  
Allen Harvey, Attorney for City of Auburn Police Department Officer Kenneth Lyman



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