

STATE OF NEW MEXICO  
OFFICE OF THE ATTORNEY GENERAL



RAÚL TORREZ  
ATTORNEY GENERAL

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November 1, 2023

**Sent via Electronic Mail Only**

Honorable Gerald M. Byers  
District Attorney  
Third Judicial District Attorney's Office  
Email: [gbyers@da.state.nm.us](mailto:gbyers@da.state.nm.us)

RE: Prosecutorial Review of March 11, 2021, shooting of Mr. Jonathan Strickland by Las Cruces Police Department officers

Dear District Attorney Byers:

The New Mexico Office of the Attorney General has concluded our review of the discovery provided in this matter, to include all reports and lapel video of this incident. In addition, we requested, received and reviewed a full report and analysis of this incident by use of force expert, Damon Fay. Upon review of all these materials, our office has determined that criminal charges cannot be sustained against law enforcement agents in this case. This review is limited to any criminal liability and does not address any potential disciplinary or civil liability issues.

In the report provided by Mr. Fay, he details specific facts from this incident that explain the officers' actions and reactions during their encounter with Mr. Strickland. Mr. Strickland's domestic partner presented herself to law enforcement to report a domestic violence incident involving her and Mr. Strickland in which he allegedly became violent with her and threatened her with a firearm. During the course of the investigation, and with knowledge that Mr. Strickland was threatening his domestic partner with a firearm and had committed violence against her, Las Cruces Police took steps to employ SWAT/tactical resources. Their plan was to locate Mr. Strickland, and create an enclosed perimeter around him to restrict his movements and peacefully take him into custody. Mr. Strickland presented himself to law enforcement by driving his pickup truck to a Las Cruces Police station where he waited in his vehicle.

Shortly after presenting himself to police, Mr. Strickland fled in his pickup truck, which resulted in a police pursuit. During the course of the pursuit, Mr. Strickland drove into oncoming police vehicles and forced one police vehicle to veer and crash into a fixed object on the side of the road. Las Cruces Police Sergeant Savage was able to halt Mr. Strickland's vehicle with his own, which placed him in a compromised position, in which Mr. Strickland could easily shoot

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Sergeant Savage at close range. At that point, Sergeant Savage deployed defensive gunfire from his vehicle allowing him to move to a better location for his safety. Simultaneously, Las Cruces Police Officer Krause deployed gunfire from the left side of Sergeant Savage further allowing him the opportunity to move to a safer location. Additionally, Las Cruces Police Officer Lucero also approached from the right side of Sergeant Savage and fired through the windshield of his vehicle. As a result, Mr. Strickland was struck by gunfire, fell from his vehicle, and advised that he was unarmed. He was then taken into custody while simultaneously being treated for his injuries. Upon Mr. Strickland's interview at the hospital, he disclosed that he acted as though he had a firearm during the encounter.

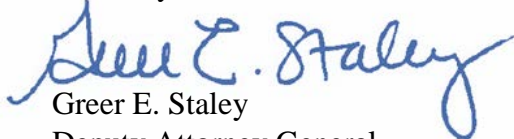
New Mexico evaluates whether an officer's use of deadly force is excessive under the standard articulated by the United States Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989). *See State v. Ellis*, 2008-NMSC-032, ¶ 25; *see also* NMSA, 1978, § 30-2-6 (1989) (Justifiable homicide by a public officer or public employee).

The facts in this case suggest that there was not an unreasonable creation of risk by the Las Cruces Police Department to justify deadly force. This shooting was the result of multiple attempts to peaceably take Mr. Strickland into custody following the serious allegations of violence and threatened use of a firearm. Based on a totality of the circumstances, Mr. Strickland's actions toward Las Cruces Police before and during his encounter, which included creating a perceived deadly threat by pretending to wield a firearm, justified the need for use of deadly force.

Based upon the review of this matter, we are declining criminal prosecution of officers involved in this shooting. For these reasons, this matter will be closed in this office.

Thank you for contacting the New Mexico Office of the Attorney General.

Sincerely,



Greer E. Staley  
Deputy Attorney General  
Criminal Affairs

Enclosure: As Referenced Above

cc: Interim Chief Jeremy Story, Las Cruces Police Department, [jstory@lascruces.gov](mailto:jstory@lascruces.gov)  
Sheriff Kim Stewart, Doña Ana County Sheriff's Department, [kims@donaanacounty.org](mailto:kims@donaanacounty.org)  
File# N MAGO-202107-00390

STATEMENT ON THE POLICE SHOOTING DURING THE ENCOUNTER  
WITH JONATHAN LAMAR STRICKLAND

On March 10-11, 2021, Officers of the Las Cruces Police Department became involved in the use of deadly force in the capture of Jonathan Strickland.

Strickland's domestic partner presented herself to the police station to report the string of crimes that had begun the day before with Strickland holding a gun to her head endangering her and a small child. She was held against her will and threatened with violence and she was told by him that if she went to the police he would come after her. He took and smashed her cellphone. This was a protracted event that had no indicia of Strickland stopping or surrendering.

The crime amounted to felonies and violent ones at that. The crimes had firearm enhancement. While there was no formalization of charges, LCPD continued a methodical and detail-oriented investigation by way of extended interview with the reporting party; the domestic partner of Strickland. The results of the continuing investigation were radioed to all of the area police units responding.

With knowledge he would seek her and he had firearms, police began a plan for a negotiated resolution with the wide show of force. Verifying from her that he was likely armed and to what level, she said that he had both pistol and rifle.

Told of his armament, they took steps to employ SWAT/Tactical resources. They had a plan to enclose a perimeter around him and prevent the situation from growing or moving. For reasons known to Strickland, he went to the police station and waited in his vehicle, a Toyota Tacoma pickup truck. He did however, accomplish what he said he would if she went to the police. Strickland showed a willingness to go to the police department for reasons other than self-reporting or surrender. He exhibited no indicia of surrender until after the fusillade ending his criminal flight.

Strickland sat in his pickup truck for a while. Police had a ministerial duty to continue the investigation of the domestic violence and all of its necessarily related crimes. And, they had the duty to contact Strickland and continue the investigation. Police performed a stand-off but watchful position as they formulated a plan to use minimal force for the contact and control of Strickland.

He then reversed out of the parking lot and began eluding and evading the police. He was a fleeing suspect from felony crimes he was reasonably believed to have committed over the course of the preceding hours and day. Team policing began in the pursuit to stop him and take him into custody.

LCPD attempted a warrantless arrest with the domestic violence charges initiating the cascade of crimes. The crime amounted to violent felonies and Strickland was evading capture. He was not in custody as he was not submitting to the actions of the police to stop and give up. He was actively fleeing the custodial situation of the police.



A pursuit followed with numerous police vehicles and their extensive use of sirens and flashing emergency lights. Strickland maneuvered his vehicle, during the pursuit, to cross a double-yellow center line roadway and head toward the police cars in a vehicular assaultive manner. One police vehicle was forced off of the road and collided with a fixed object that deployed the vehicle's airbag.

The closest police vehicle to Strickland was within feet of the front of Strickland's truck. While this was a maneuver to stop the Tacoma's advance into other police vehicles, this placed Sergeant Savage in a position very close to the effective range of both pistol and rifle fire from Strickland.

The driver, Sergeant Savage, the closest vehicle, used defensive gunfire from his urban rifle, from inside of his car, through the windshield to the driver's side windshield of the Tacoma. With the knowledge and belief of Strickland's dangerousness, Sgt. Savage was able to defeat Strickland's ability to fire back, move to a better position or escape further. This course of fire was also contemporaneously suppressive. Suppression fire is allowed, and not forbidden as trained to police.

Simultaneously, Officer Krause arrived in his vehicle to the left of Sergeant Savage and began a course of fire from his pistol into the cab of the Tacoma through its passenger side window. This allowed suppressive fire as well that gave Savage the ability to vacate his police unit and get to a safer position.

Officer Lucero arrived and moved to the right of Savage's vehicle and began a course of fire with his pistol into the Tacoma's windshield. Lucero, a police canine handler, retreated to his vehicle to launch the police K-9 if necessary in an additional layer of approach. It was not necessary and the dog was returned to the police unit.

With a fusillade, Strickland was effectively stilled in his ability to shoot or escape. He was below the points of direct impact of the projectiles but would sustain glass spalling injury and a laceration across his upper mid back that appeared to be from a projectile track.

Strickland began to shout as he was falling out of the driver's side door and onto the sidewalk that he was unarmed. All shooting had stopped. He was given multiple commands to surrender and he did so.

There was no more apparent threat of violence, hence there was no more gunfire.

He was handcuffed and immediately provided emergency medical care. He was provided blood-stop packing and his clothes were cut away by the attending police to assess and triage. Upon the arrival of EMS, they were provided fast access.

Strickland was treated at an area hospital then tendered for charges. In a hospital interview he said acted like he had a gun.

This shooting was the culmination of the attempts of LCPD to have a negotiated resolution with the suspect of multiple violent felonies. The police were duty-bound to continue the investigation of Violence to a Domestic Partner and seek out the suspect. Jonathan Strickland's actions predicated the need for a use of deadly force capture.



Suppressive (or suppression) fire degrades the performance of a dangerous subject to below the level of force they need to fulfill their mission. It is also used as covering fire to prevent the subject from moving, observing or shooting while those vulnerable are able to move in. It requires enough intensity to the area around the subject to be effective. In this matter, the gunfire from LCPD had its desired effect.

Police are taught that the use of multiple officers to forcefully and quickly take a suspect, who the officers believe to be armed and dangerous, to the ground while others have their guns drawn on the suspect is allowed. (Dean v. City of Worcester, 924 F 2d 364 (1<sup>st</sup> Cir.) cert denied, 502 US 844).

Police are taught that the Fourth Amendment prohibits the officer's use of deadly force against an unarmed, non-dangerous misdemeanor or felony suspect who flees police. (Tennessee v. Garner, 471 US 1 (1985))

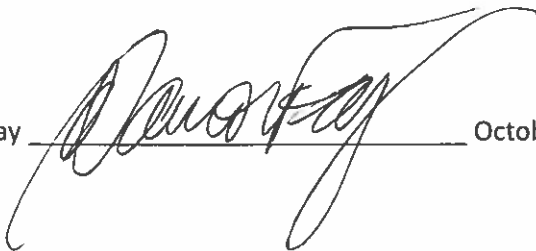
Police are taught that an officer may use deadly force against a fleeing felon so long as there exists a probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious bodily harm deadly force is necessary to prevent escape, and, if feasible, some warning has been given to the suspect before using deadly force. (Forrett v. Richardson 112 F 3d 416 (9<sup>th</sup> Cir 1997))

Police are taught that an officer does not need to actually detect the presence of a weapon in a suspect's hands before firing at a suspect, so long as the officer reasonably believes that the suspect poses an immediate threat of serious bodily harm to the officer and other. (McLenagan v. Karnes 27 F 3d 1002 (4<sup>th</sup> Cir). Cert denied 513 US 1018 (1994))

Police are taught that the Fourth Amendment does not require an officer to wait until a suspect shoots to confirm that a serious threat exists. (Elliot v. Leavitt 99 F 3d 640 (4<sup>th</sup> Cir 1996), rehrg en banc denied by 105 F 3d 174 (1997) cert denied, 521 US 1120 (1997))

This was not an unreasonable creation of a risk to justify deadly force. I found nothing that Officers of the LCPD did that is forbidden by police training or the law as taught to them in the application of deadly force. The officers followed the tenets, as taught to them, by the case law of Graham vs. Connor, et al; severity of crime, dangerousness to the officer or others and whether the suspect is fleeing, evading capture...).

Damon Fay

A handwritten signature in black ink, appearing to read "Damon Fay", written over a horizontal line.

October 21, 2021