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April 15, 2022

Chief Michael Moulton
El Cajon Police Department
100 Civic Center Way
El Cajon, CA 92020

Re: Fatal shooting of Mr. Setha Phangdy by El Cajon Police Sergeant Kevin Reilly on August 19, 2021; El Cajon Police Case No. 21034370; DA Special Operations Case No. 21-105PS; Deputy District Attorney assigned: Samira Seidu

Dear Chief Moulton,

We have reviewed the materials compiled by the El Cajon Police Department Crimes of Violence Unit concerning the shooting of Setha Phangdy. A District Attorney Investigator responded to the scene and was briefed by your investigators. This case was submitted to the District Attorney's Office for review on December 6, 2021, and additional materials were received after January 3, 2022.

Summary

On August 19, 2021 the El Cajon Police Department received an emergency call from a person reporting a shooting at a business in El Cajon. Setha Phangdy shot one of the employees with a handgun and fled on foot. A witness provided a suspect description which was broadcast to officers. Sergeant Kevin Reilly encountered Phangdy a short distance away. Phangdy stood in the middle of the road and pointed a firearm at Reilly. Phangdy began shooting at Reilly. Reilly stopped his vehicle and ducked below the dashboard. Reilly looked over the dashboard just enough to see Phangdy still in front of him firing his weapon, so he accelerated his vehicle and drove directly at Phangdy. Reilly's vehicle struck Phangdy and knocked him to the ground. Reilly got out of his vehicle. He saw Phangdy sit up and try to reload his gun. Reilly pointed his gun at Phangdy and ordered him to drop his weapon. Phangdy ignored Reilly's commands and continued trying to load his gun. Reilly fired his weapon at Phangdy striking him four times. Additional officers arrived to assist Reilly and began providing medical aid to Phangdy until paramedics arrived. Phangdy was transported by ambulance to the hospital where he was pronounced dead. The cause of death was multiple gunshot wounds, and the manner of death was homicide. Toxicology results were positive for methamphetamine and amphetamine.

Persons Involved

Setha Phangdy was a 38-year-old resident of El Cajon, CA. Sergeant Reilly has been employed by the El Cajon Police Department for sixteen years and was in full uniform and driving a marked patrol car on the date of the incident.

Statement of Civilian Witness One (CW1)

CW1 and her co-worker, CW3, were in offices on the first floor of their building. As CW1 walked upstairs to the second floor she encountered Phangdy who was smoking a marijuana cigarette. CW1 asked Phangdy what he was doing, and he told her he was waiting for a ride. CW1 told Phangdy it was private property and asked him to leave. Phangdy began walking downstairs. Phangdy paused and CW1 again asked him to leave. Phangdy went down the stairs. CW1 called down to CW3 and asked him to make sure Phangdy left the property. CW1 went into her office. Seconds later CW1 heard a gunshot. She and CW2 ran out of the office and called out to CW3. CW2 ran downstairs and Phangdy pointed a gun at her. CW2 ran back up to the office. They locked themselves inside and called the police. About one minute later CW3 came to the office. CW1 realized CW3 had been shot so they rendered first aid to him until the police arrived.

Statement of Civilian Witness Two (CW2)

CW2 was in an office on the second floor. She overheard CW1 outside telling a man he needed to leave because it was private property. The man told CW1 he was waiting for a ride. CW1 told him that he needed to leave because it was a business, and he was not a customer or guest. CW2 heard footsteps and believed the person was leaving. CW2 overheard CW1 ask CW3 to make sure the person left the property. CW1 walked into the office and was telling CW2 about the person she told to leave the property when they heard a gunshot. CW2 ran outside and was going downstairs when she encountered Phangdy. Phangdy pointed a gun at CW2. CW2 put her hands up and told Phangdy she did not do anything. Phangdy walked toward another office door. CW2 ran back upstairs to the office. CW1 was on the phone reporting the gunshot when CW3 walked into the office. CW3 had been shot. CW2 began providing first aid. CW2 described the gun that Phangdy pointed at her as an "uzi," all black, square with a "tiny nub" in front and a long clip on the back.

Statement of Civilian Witness Three (CW3)

CW3 was working outside on the property and saw Phangdy go upstairs. He did not question it because there are people coming and going all the time. CW3 heard CW1 ask Phangdy what he was doing there. Phangdy said he was waiting for a ride. CW1 told Phangdy it was private property and he should leave. About 30 seconds later Phangdy had not left so CW1 told him again to leave. Phangdy appeared to become angry and started walking downstairs. CW3 was on the ground floor and CW1 told him to make sure Phangdy left the property. As CW3 was waiting to unlock an office door, Phangdy approached him and pulled out a gun. Phangdy looked at CW3 and fired one round at him. The gun was a 9mm with a long clip. CW3 ran in the office and realized he had been shot so he locked the door. CW3 heard Phangdy pounding on the door trying to open it. CW3 waited until he thought Phangdy left and looked outside. Phangdy was gone so CW3 ran upstairs to CW1's office. The police arrived soon afterward and began rendering aid to CW3. CW3 had no previous contact with Phangdy and did not know him. CW3 said earlier the same day he had a verbal altercation with a homeless man who was standing in the driveway of the business. CW1 asked the man to move but he refused. CW3 and the man had a brief verbal exchange, but it did not go any further than that. CW3 believed the two incidents were related because he was the only person shot even though CW3 didn't say anything to Phangdy. The man CW3 argued with was not present during the shooting and nor had he ever seen that man before.

Statement of Civilian Witness Four (CW4)

CW4 was driving out of his driveway and stopped before turning onto the street. CW4 noticed Phangdy hiding behind a tree. He had something in his right hand. Phangdy was looking up and down the street. CW4 thought Phangdy may have a hammer in his hand and was going to break into some cars. CW4 saw a police car driving down the street. Phangdy quickly walked out into the middle of the street. Phangdy began shooting at the police car as he walked toward it. CW4 believes the police car stopped but was not sure if it stopped when Phangdy walked out into the street or when he started shooting. Phangdy fired five times at the police car from about one car length away. CW4 was about twenty meters away and could see the shell casings and smoke coming out of Phangdy's gun. CW4 reversed his vehicle and went back up the driveway when he heard more gunshots, which were louder and in rapid succession. CW4 believed the second set of shots came from the officer because they sounded different than Phangdy's gun. CW4 did not hear any words spoken by the officer or Phangdy, nor did he see the officer fire his gun. After the shooting stopped CW4 parked his car and walked to the street and saw officers administering first aid to Phangdy.

Statement of Civilian Witness Five (CW5)

CW5 is ten years old and was a passenger in CW4's vehicle. CW5 initially saw Phangdy hiding behind a tree. CW5 then saw Phangdy walk into the street and start shooting at an approaching police car. Phangdy was in the middle of the street while he was shooting at the police officer. CW5 described seeing the shell casings from Phangdy's gun falling to the ground and smoke coming from the gun. CW5 did not see the police car hit Phangdy nor did he see Reilly shoot Phangdy.

Statement of Civilian Witness Six (CW6)

CW6 was visiting a friend on the street when he heard one "pop" sound. He thought it may have been a firecracker. CW6 started to walk out towards the street. He saw Phangdy with his hands up locked on a gun. Phangdy started to shoot "straight." Phangdy had his back to CW6 and was walking away from him. CW6 saw a white van driving towards Phangdy. CW6 initially believed Phangdy was shooting at the van. The van began to reverse and back away. CW6 then saw a police car arrive and drive onto the embankment and stop. CW6 could not see everything taking place at this point but heard the officer saying "get your hand off the gun" ten to twenty times. The police officer then began shooting. Several other officers arrived soon afterward and began shutting down the street.

Statement of Civilian Witness Seven (CW7)

CW7 was in his house when he heard two to three "pops." He ran out to the street and saw a police car hit a tree. The officer got out of the car and began saying "show me your hands" over and over again. CW7 could not see who the officer was addressing. After repeating the command many times, the officer began shooting. CW6 did not see the person the officer shot.

Statement of Civilian Witness Eight (CW8)

CW8 is ten years old and was standing in his front yard when he saw Phangdy begin shooting at a police car. Phangdy shot at the police car four or five times. The officer driving the police car ran into Phangdy and knocked him to the ground. The officer got out of the police car and stood behind the car door and told Phangdy to drop his gun. Phangdy did not listen and kept shooting at the officer. The officer fired back at Phangdy and CW8 ran inside his home. CW8 tried to hide after he heard the shots so he did not see everything.

Statement of Civilian Witness Nine (CW9)

CW9's statement was translated from Arabic by the officer who took her statement. CW9 was at home when she heard shots which she initially believed were fireworks. She looked out the window and saw a person's hand pointing a pistol towards a police car. She could not see the person's full body as it was blocked by a tree. CW9 saw the police car turn right and hit the person holding the pistol. CW9 took her children into another room to hide. She then heard an officer yelling "drop your weapon" and "put your hands up" followed by gun shots.

Statement of Witness Ten (CW10)

CW10 was at home when he heard gunshots. He looked outside and saw a heavy-set male with a firearm. The male was walking in the middle of the street and shooting towards a police car. The officer kept yelling "throw your gun down, throw your gun down, I'm going to shoot." The police officer hit the male with the car and knocked him down. The male was still shooting at the officer. The officer had no choice but to shoot the male.

Statement of Sergeant Kevin Reilly

Reilly participated in a walkthrough at the scene with investigators on the day of the shooting incident. He reviewed audio of the radio traffic prior to the walkthrough. The walkthrough was audio recorded but is difficult to hear because of background noise. Reilly stated he was driving his patrol car. Reilly said there was "nothing there" and the street was "wide open." All of a sudden, Phangdy appeared in the middle of the road, straight ahead of Reilly. Phangdy immediately presented a firearm. Reilly ducked behind his steering wheel. Reilly then heard shots and knew Phangdy was firing at him. Reilly feared for his life and the safety of the public. Reilly had nowhere to go. He made a decision to use his patrol car. He peaked over the dash to see Phangdy. He hit the gas and believes his patrol car collided with Phangdy at the same time it hit the curb. Reilly got out of his patrol car and slowly made his way to Phangdy. Phangdy was laying down at first but started to move. Reilly saw Phangdy's hands come up with the weapon in his right hand. Phangdy started to push himself off the ground and reached down with his left hand and grabbed a magazine. As Phangdy was trying to sit up, he was trying to load the magazine into the gun. Reilly gave Phangdy commands to drop the gun. Phangdy did not drop the gun. Reilly knew if Phangdy got his gun he would shoot and kill Reilly. Reilly said there was nothing he could do other than shoot Phangdy. He fired four rounds at Phangdy from about 10-12 feet away. Reilly radioed shots were fired and gave his location. Phangdy was still moving but did not have the gun in his hand. Reilly was able to kick the firearm away from Phangdy and the other officers moved in at that point.

On August 20, 2021, Reilly provided a more detailed statement regarding the shooting incident. Reilly stated he left the police station just after 2:00 p.m. and responded to an emergency call regarding a man who had been shot in the upper torso at a local business. He was in full uniform and driving a marked patrol car. He was armed with his department issued weapon, a Glock 22, .40 caliber. The firearm was loaded with 16 rounds, 15 in the magazine and one in the chamber.

As he got close to the business, he heard over the radio that another sergeant was on scene with the shooting victim. At that point, Reilly began searching the area for the gunman. An officer located a witness at the scene and broadcast a description of the suspect, which was a heavy-set Hispanic male with a shaved head wearing a black sweatshirt and shorts. The suspect was last seen walking on Main Street.

Reilly drove east on Main Street and turned south on Ballard Street. Initially, Reilly did not see anyone. The street was wide open with no cars or people. As Reilly continued to drive down Ballard Street, he noticed a man in the middle of the street. As he got closer, he realized the man matched the description of the shooting suspect. The man, later identified as Phangdy, immediately took a shooting stance and was pointing a firearm. Phangdy was in the middle of the street, directly in front of and facing Reilly's patrol car. His feet were spread a little wider than shoulder distance and both hands were extended directly in front holding a dark object and pointing it at Reilly. Reilly demonstrated Phangdy's stance for investigators.

Reilly stopped his vehicle approximately one hundred feet in front of Phangdy. Reilly ducked below the dashboard to take cover. Reilly heard popping sounds and knew Phangdy was shooting a semi-automatic firearm at him. He got on the radio and advised shots were being fired at him. Reilly realized his vehicle was still in drive and knew if he did not take some type of action Phangdy would kill him or someone else in the immediate area. Reilly began rapidly driving his vehicle directly at Phangdy who had begun walking toward Reilly's vehicle. Reilly could not estimate how fast he was driving but knew it was not slow.

Reilly was trying to stay as low as possible but raised his head just enough to see over his dashboard. He saw Phangdy walk towards him before moving to the west side of the street towards the sidewalk and a parked Toyota Tacoma. His gun was still raised. Reilly steered the car toward Phangdy with the intention of hitting him as he believed this was the safest way to address the immediate threat Phangdy presented to Reilly and the public. Reilly kept his head down but could see over the dashboard and was tracking Phangdy. Phangdy had passed the Tacoma and reached the curb at the same time Reilly reached the curb. Reilly hit Phangdy with his car just as he was starting to drive off the road and onto the sidewalk. Reilly's vehicle continued over the sidewalk after striking Phangdy, hit a tree and stopped. Reilly later clarified that he stepped on his brakes and does not know if he hit the tree or if he came to a stop before hitting the tree.

Reilly quickly got out of his vehicle with his gun in his hand. Phangdy was lying on the ground approximately 10 feet away. Reilly told Phangdy to show him his hands. Phangdy began to sit up. As Phangdy sat up Reilly could see a black semi-automatic handgun in his right hand. Phangdy lifted it up. Reilly yelled "drop the gun." Phangdy looked at Reilly and reached down and produced a magazine with ammunition in it. Reilly could see the gold bullets in the magazine. Phangdy was moving, trying to sit up, and attempting to reload the magazine into his gun. Reilly believed Phangdy was going to try to kill him, so he fired his weapon four times at Phangdy.

Phangdy laid back down and was still moving. Reilly told him to show him his hands again. Reilly activated his Body Worn Camera (BWC) after realizing he forgot to turn it on. Other officers arrived to assist. Reilly began moving toward Phangdy. Phangdy no longer had the gun in his hand and had rolled over away from it. Phangdy's gun was lying on the ground about an arms-length away from his body. Reilly moved in and kicked the gun away from Phangdy. Officers arrived and began providing medical aid to Phangdy.

Reilly was asked about his BWC. Reilly explained there is a device on his holster that automatically activates the BWC once an officer draws his weapon. However, when the BWC is in "standby" mode, it will not automatically activate when an officer draws their firearm. Reilly is a supervisor and is in

and out of the office frequently. While most field officers will have their BWC in “ready” mode, it is common for supervisors to have their BWC in “standby” mode to avoid accidentally activating it while in the office. Reilly still had his BWC in standby mode when he left the station and did not think to turn it on at the time of the shooting. Reilly stated he was being shot at and feared for his life, so he did not think to turn on his BWC.

Investigation

Ballard Street is a residential street in El Cajon. The crime scene was secured, photographed, and investigated by the El Cajon Police Crimes of Violence Unit. All officers’ and detectives’ reports, audio and video recorded interviews, along with the medical examiner’s report, dispatch recordings, BWC footage and surveillance video were reviewed.

The shooting of Phangdy by Reilly was not captured on BWC. Sergeant Reilly stated in his interview he had no time or opportunity to activate his BWC because he was addressing the threat when Phangdy was shooting at him. Reilly activated his BWC after he shot Phangdy. The responding officers who arrived at the scene all had their BWC recording. Thus, the events captured were the officers making commands to Phangdy, approaching Phangdy, the efforts by officers to provide medical aid, locating witnesses, and the preservation of the scene for investigators.

Surveillance Video

Surveillance video from three different cameras at the business where Phangdy shot CW3 were obtained. At 1:58 PM one camera showed Phangdy walk onto the property and begin walking around the parking lot. At 2:02 PM another camera showed Phangdy walking up an exterior staircase to a second-floor landing. At 2:11 PM a third camera showed Phangdy walking back downstairs to the parking lot. Phangdy removed a gun from his waist area with his right hand and began walking quickly to a doorway. Phangdy pointed the gun toward the doorway and fired one shot before running away. The gunshot can be heard on the video and smoke seen from Phangdy’s gun. The person Phangdy shot at was out of camera view. At 2:12 PM a camera captured Phangdy walking away from the property on foot. His hands were underneath his sweatshirt and the gun was no longer visible.

911 Call and Dispatch Audio/CAD

At 2:12 PM, CW1 called 911 to report the shooting. CW1 described the shooter as a heavy-set Asian male, approximately 225-230 pounds, 30-40 years old with a shaved head and wearing a grey t-shirt and black pants carrying a black 9mm with clip. CW2 and CW3 are heard in the background also providing information about the suspect and the gun he was carrying.

The dispatch recording of the radio traffic regarding the incident and the related CAD were reviewed. At 2:19:17, an officer broadcast a description of the suspect they received from a USPS driver who heard a loud bang and saw a male walking away. The driver described the male as heavy-set, Hispanic, wearing all dark clothing and shorts with a shaved head and was last seen walking eastbound on the south sidewalk of East Main Street.

At 2:21:21 PM, Reilly broadcast “shots fired.”

Body Worn Camera

When Reilly activated his BWC he was standing to the left rear of his patrol vehicle, with his firearm pointed at Phangdy. Phangdy can be seen lying on the ground in front of the vehicle. Officers are heard arriving on scene. Reilly and the other officers direct Phangdy to show them his hands. Phangdy appears to be picking something up off the ground. Reilly tells the other officers “he’s trying to load it.” Reilly moves towards Phangdy as the other officers command Phangdy to drop his weapon. Reilly approached Phangdy and a black handgun can be seen lying on the ground to the right of Phangdy. Reilly announced Phangdy no longer had a gun in his hand and kicked the gun away. Another officer and a sergeant approached Phangdy and rolled him over on his stomach and began rendering aid as Reilly backed away. Reilly requested medics and started giving other directions over his radio. Reilly spoke with another officer on scene and gave him a short statement. The statement was consistent with the statement Reilly gave investigators and is summarized above.

Scene

A scene examination revealed Phangdy was armed with a 9-millimeter caliber semi-automatic handgun. There was one round in the chamber. The gun did not have a serial number. There was no magazine in the gun but three loaded magazines were found on the ground near Phangdy. One was a large capacity magazine and the two others were ten round capacity magazines. Three additional loaded ten round capacity magazines were found in Phangdy’s shorts pocket. Those magazines were loaded with 28 cartridges and there were an additional two loose rounds in Phangdy’s pocket. In total, investigators found 80 9mm Luger cartridges at the scene. A glass pipe, commonly used for smoking methamphetamine and a lighter were also found in Phangdy’s shorts.

Five expended shell casings with the headstamp “PMC 9MM Luger” were recovered on the roadway where Phangdy had been standing while shooting at Reilly’s vehicle. One expended “PMC 9mm Luger” shell casing was recovered at 1161 East Main Street, the location where Phangdy shot CW3. These shell casings matched the ammunition found in Phangdy’s gun and in the magazines recovered at the scene of the officer involved shooting.

An examination of Reilly’s police vehicle showed it had been struck four times when Phangdy opened fire on him. One projectile perforated the plastic edge of the driver’s side push bumper. The projectile then perforated the curved edge of the hood. A second projectile struck the front of the hood below the top bar of the push bumper. A third projectile penetrated the lower cross bar of the push bumper. The bullet was recovered from the push bumper. The fourth projectile struck the vehicle’s skid plate, which is located below the front bumper, and bullet fragments were recovered resting on the skid plate. All 4 projectiles were found to be traveling front to back indicating Phangdy was facing the front of the vehicle when he was shooting at it.

Reilly was armed with a .40 caliber Glock 22 handgun with a Streamlight TLR-1 mounted light. The magazine holds fifteen rounds and one in the chamber. An examination of the firearm after the shooting showed it had one round in the chamber and 11 rounds in the magazine. A total of four .40 caliber cartridge casings with a head stamp “Federal 40 S&W” were located and recovered where Reilly said the shooting took place. Two of the cartridge casings were recovered on the ground next to the police vehicle and two casings were found on the hood of the police vehicle. The examination of Reilly’s handgun, magazines, and the casings found at the scene where the shooting took place were consistent with Reilly’s statement that he fired four rounds.

Injuries and Toxicology

An autopsy completed on August 21, 2021, found Phangdy suffered four gunshot wounds. All the gunshots entered either the left arm or left chest. Phangdy had one penetrating gunshot wound to the upper left chest, two to the left arm and chest, and one to the left chest. All 4 projectiles were recovered from Phangdy's torso. Phangdy's toxicology results showed methamphetamine (0.64 mg/L) and amphetamine (0.04 mg/L). The cause of death was determined to be multiple gunshot wounds and manner of death was homicide.

Legal Standards of Criminal Liability

Penal Code section 835a(c) sets forth the circumstances in which a peace officer may use deadly force and the standard to evaluate the use of such force. The law provides that "a peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person." Penal Code section 835a(c)(1)(A).

The statute defines "deadly force" as any use of force that creates a substantial risk of causing death or serious bodily injury, including, but not limited to, the discharge of a firearm." Penal Code section 835a(e)(1).

An imminent threat of death or serious bodily injury is one where "based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

The statute defines totality of the circumstances as "all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." Penal Code section 835a(e)(3).

The statute further states "In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(2). "[T]he decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force." Penal Code section 835a(4).

Additionally, a peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section "retreat" does not mean tactical repositioning or other de-escalation tactics." Penal Code section 835a(d).

Penal Code section 196 was also amended. The statute provides that homicide is justified when committed by peace officers and those acting by their command in their aid and assistance when the homicide results from a peace officer's use of force that is in compliance with Section 835a.

Conclusion

Reilly was responding to a call regarding a shooting at a local business. As Reilly was driving around attempting to locate the shooting suspect, he encountered Phangdy who matched the description provided. Phangdy began shooting at Reilly and hit the vehicle 4 times. Reilly ducked down beneath his steering wheel. Fearing that he or someone in immediate vicinity would be shot by Phangdy, Reilly decided to use his car to stop Phangdy. Reilly accelerated his vehicle towards Phangdy, striking him and knocking him to the ground. When Reilly got out of his vehicle Phangdy still had his gun in one hand and was attempting to load a magazine into the gun with the other hand. Reilly ordered Phangdy to drop his gun several times. Phangdy ignored those commands and continued to try to reload his weapon. Fearing for his own safety and for the safety of anyone in the immediate area, Reilly fired his weapon and shot Phangdy.

In reviewing the totality of the circumstances, Reilly's actions at the time of the shooting were reasonable based on the circumstances known to him and perceived by him at the time. Phangdy had already shot one person without provocation. He stood in the middle of the street and shot at Reilly as he approached in his patrol car. Even after Reilly confronted the deadly threat Phangdy presented by striking him with his patrol car, Phangdy continued to ignore commands to drop his gun. Instead, Phangdy attempted to reload the weapon. It was reasonable for Reilly to believe Phangdy intended to continue firing at him or anyone he encountered. In viewing the circumstances from the perspective of an objectively reasonable police officer, Phangdy's possession of his firearm, his refusal to obey commands and put down the gun despite multiple warnings, along with his attempt to load the gun providing the potential for him to continue shooting, Reilly had reason to believe Phangdy posed an imminent threat of serious bodily injury or death to himself or the public.

While Reilly was equipped with less lethal force options, the use of any of these less lethal options was not feasible given the immediacy of the threat posed by Phangdy. Even after Phangdy fired his weapon at the officer and had already shot another person, Phangdy was given an opportunity to drop his weapon and put his hands up. Phangdy's refusal to follow those commands and drop his gun eliminated the possibility of using less lethal means. Under the totality of circumstances, Reilly was justified in his actions and bears no state criminal liability. A copy of this letter, along with the materials submitted for our review, will be retained for our files.

Sincerely,


SUMMER STEPHAN
District Attorney