



OFFICE OF THE
DISTRICT ATTORNEY
COUNTY OF SHASTA



Stephanie A. Bridgett
District Attorney

Benjamin L. Hanna
Chief Deputy District Attorney

November 18, 2019

Chief William Schueller
Redding Police Department
777 Cypress Ave.
Redding, CA 96001

Re: February 11, 2019 Officer Involved Shooting
Redding Police Department case 19R009362
Shasta County Sheriff case 19S005627
Involved Officers: Officer Russell Veilleaux, #135
Officer Brian Berg #141
Involved Person: Phayvanh Inthavong (DOB 10/5/86)

Chief Schueller:

The Shasta County District Attorney's Office has completed an independent review of the above-referenced officer involved shooting incident. For purposes of this review, the district attorney's responsibility is to review the evidence and make a determination as to whether there is sufficient evidence to support the filing of criminal charges. Issues of policy, training, tactics, or civil liability were not considered. For the reasons set forth below, we conclude that the shooting was lawful.

Consistent with countywide officer involved shooting protocol, the lead agency in this investigation was the Shasta County Sheriff's Office with the assistance of the Shasta County District Attorney's Office, the California Highway Patrol, the Anderson Police Department, and the Redding Police Department. In conducting the investigation, sheriff's personnel and officers from allied agencies interviewed witnesses and collected physical evidence in an effort to gain a full and complete picture of the events that resulted in the fatal shooting of Phayvanh Inthavong. The findings of the district attorney are based upon a review of the totality of the materials compiled in the multi-agency investigation.

FACTUAL SUMMARY

At approximately 3:07 pm on February 11, 2019, SHASCOM dispatch received a call of a suspicious male armed with a handgun in the area of Churn Creek Road in Redding. The person was described as pushing a baby stroller and acting irrationally. Civilian witnesses were later interviewed and described the male as having brandished a handgun at them.

Redding Police Officers Labbe and Braud were initially dispatched to the call for service. Once they arrived in the area, they began looking for the reported suspicious person. At around 3:15 pm, Officer Labbe notified dispatch that he had located a person matching the description of the involved individual near the intersection of Churn Creek Road and Arizona Street. The officer observed the male subject, later identified as Phayvanh Inthavong, walking southbound on Churn Creek Road on the west side of the street. Inthavong was pushing a baby stroller and matched the physical and clothing description of the reported suspicious person. Officer Labbe, who was driving northbound on Churn Creek Road made a U turn in an attempt to contact Inthavong. As Officer Labbe pulled in behind Inthavong to initiate contact, Inthavong looked at the officer, and crossed the street moving away from Officer Labbe's vehicle.

Through his open vehicle window, Officer Labbe called out to Inthavong, telling him to stop and that he wanted to talk to him. Inthavong ignored the officer's directions, and continued east across Churn Creek Road to the area at the intersection of Churn Creek Road and Arizona Street. Inthavong abandoned the stroller he was pushing and jumped over a fence, losing his shoes in the process. Officer Labbe observed Inthavong continuing to jump over fences as he fled. Officer Labbe informed other responding officers of Inthavong's movements, planning on setting up a perimeter to surround and contain Inthavong's escape. Officer Labbe checked the stroller and determined that it did not contain a child.

By this time, Redding Police Officer Leonard had also arrived in the area. He drove down Arizona Street in an attempt to locate Inthavong. As Officer Leonard drove down Arizona Street, he observed Inthavong running eastbound adjacent to the property located at 1134 Arizona Street. Officer Leonard exited his patrol vehicle, drew his weapon and ordered Inthavong to the ground. Inthavong did not comply with Officer Leonard's commands. Instead, he ran into the back yard of 1134 Arizona Street, out of Officer Leonard's sight.

Around this time, a California Highway Patrol helicopter also responded to the area to assist in the search. From the air, the CHP officers were able to observe Inthavong running eastbound in a field behind the houses on Arizona Street. As Inthavong approached the back yard area of 1230 Arizona Street, a Redding Police vehicle was also driving east on Arizona Street. Over the radio, the CHP officer directed RPD units to pull into the dirt driveway of the house at 1230 Arizona Street. Inthavong, likely observing the approaching police vehicle, changed direction, approaching the rear of the house located at 1230 Arizona Street. From the air, an officer observed Inthavong enter the house through the back door.

The house that Inthavong entered was occupied by five people: an adult male, three adult females, and a 12 year old boy. All of the occupants were interviewed by law enforcement and

provided consistent accounts of Inthavong's actions in the house. None of the occupants were familiar with Inthavong. While in the house, Inthavong acted aggressively and irrationally. When he spoke, he did not make any sense. The occupants described Inthavong as speaking "gibberish". He physically assaulted the 12 year old boy, wrestling him to the ground and causing minor injuries. The house occupants believed Inthavong was attempting to take them as hostages. Eventually, all of the occupants of the house were able to escape out of the house, fleeing through both the front and back doors. Inthavong remained in the house alone.

Redding Police Officer Braud pulled his vehicle up to the 1230 Arizona Street house at about the time Inthavong fled inside. Officer Braud had exited his vehicle with his rifle when he saw the house's occupants fleeing outside. They informed the officer that Inthavong was still inside the house, so Officer Braud began giving loud verbal commands to Inthavong to come outside.

From his vantage point, Officer Braud could see into the house. He took cover behind his police vehicle. From his vantage point, he could see Inthavong running around inside the residence in an "erratic" manner. Inthavong's hands were down near his stomach area. The officer could see that he had an item in his hand, but could not tell what the item was. Several times, Officer Braud believed that Inthavong was about to come outside, only for him to apparently change his mind at the last minute. Inthavong would occasionally stick his head out the front door, only to then retreat back inside. Eventually, on one of the occasions Inthavong was standing in the doorway, Officer Braud was able to see that he had a gun in his hand. He relayed this information to his fellow officers. Officer Braud began giving additional verbal commands to Inthavong, ordering him to drop the gun. Inthavong did not comply with these commands.

While Officer Braud was in front of the house observing Inthavong, Redding Police Officer Berg arrived and took up a position near Officer Braud in front of the house. Numerous other Redding Police officers also arrived on scene to assist. Several of them were able to see Inthavong moving about in the residence. Several officers gave Inthavong commands to come outside.

In addition to the officers positioned in front of the residence, police were able to access the back yard of the house by driving through an open gate. Redding Police Officers Veilleaux and Labbe took up a position in this backyard area. Veilleaux armed himself with an AR-15 patrol rifle and Labbe was armed with a shotgun.

While Officer Braud was watching the front of the house, he saw movement on the side of the house. When he turned his attention to this area, the officer saw Inthavong behind a fence. Inthavong had exited the house through a side window. Officer Braud saw Inthavong pointing a small handgun directly at him from a distance of approximately 15 yards. In reaction, Officer Braud dropped down behind his vehicle for cover. Officer Berg fired a single shot from his handgun at Inthavong. Shortly after the initial shot, Officer Veilleaux fired a single shot at Inthavong from his rifle.

Inthavong was struck by one of the shots and fell to the ground immediately adjacent to the house and fence in the back yard area. For their own safety, officers deployed an armored vehicle to the area and utilized a police canine to ensure that Inthavong was no longer a threat. Once it was determined that the area was safe, officers approached Inthavong and began to perform CPR. They were soon able to determine that he was deceased. As the officers attended to Inthavong, they located a small black semiautomatic handgun next to his body. Further examination of the gun determined it to be a .25 caliber semiautomatic pistol. It was unloaded and did not have a magazine inserted.

Crime scene technicians processed the scene for physical evidence. A single .223 caliber shell casing was recovered from the area where Officer Veilleaux fired his rifle. One .40 caliber shell casing was located near the area where Officer Berg had fired his handgun. These shell casings are consistent with the weapons reportedly fired by the two officers. A single live .22 caliber round was also found on the ground approximately 6 feet from Inthavong's body.

Shasta County Coroner personnel performed an autopsy on Mr. Inthavong in order to determine the cause and manner of his death. According to the forensic pathologist, the cause of death was a single gunshot wound to the upper left chest. This gunshot wound caused extensive internal bleeding which resulted in Inthavong's death. A toxicological analysis of Inthavong's blood also indicated the presence of methamphetamine and marijuana.

Inthavong had a local criminal history in Shasta County which included adult convictions for resisting arrest and disturbing the peace in 2011 and sexual battery in 2019. Inthavong's conviction for sexual battery (which occurred on February 4, 2019) prohibited him from legally possessing a firearm. Inthavong's family members reported that near the time of his death he had been living on the streets and using methamphetamine.

LEGAL ANALYSIS

California law allows a peace officer to use reasonable force in order to detain or arrest a person, prevent the person's escape, or overcome the person's resistance if the force used is reasonable and if the officer has reasonable cause to believe that the person has committed a public offense or is a danger to others. (California Penal Code §835a, CALCRIM 2670.)

Under certain circumstances, reasonable force includes deadly force. Use of deadly force by a police officer is appropriate when the officer *honestly and reasonably* believes he or she is in danger of death or great bodily injury. (CALCRIM 505, 507, 3470.) A police officer has the same right of self-defense as any other person. A police officer may also use deadly force in situations where other officers or members of the public are at risk of great bodily injury or death.

Whether force is reasonable is judged from the perspective of a reasonable officer on the scene. The concept of reasonableness should allow for the often split-second decisions that officers are forced to make in rapidly evolving situations. (*Graham v. Connor* (1989) 490 U.S. 386.)

In this case, officers responding to the initial call for service had received information that Inthavong was armed with a gun. Indeed, it was later determined that Inthavong had brandished the gun at a group of civilians. When officers arrived on scene and attempted to contact Inthavong, instead of complying, he fled. Given his behavior and the reported circumstances, officers had no choice but to pursue him.

Based upon his behavior, it is apparent that Inthavong desperately wished to evade police contact. Likely realizing that the pursuing officers were likely going to succeed in apprehending him, Inthavong chose to enter the home of strangers without permission.

Inthavong's choice to enter the house significantly escalated the danger to police and civilians. Inthavong, armed with a gun, now had hostages. He was in a building with them, which provided him with additional avenues for cover and concealment. Further, Inthavong's actions once inside the building showed his intentions were not merely to hide and wait for the police to leave. He chose to grab a child and wrestle him to the ground, causing him injury in the process. It was only due to the intervention of the adults in the home that the child was able to escape the house along with the other occupants.

Once the civilians had fled the house, Inthavong could have chosen to comply with the officers. He had multiple opportunities to surrender and was given numerous verbal commands to do so. During this time, Officer Braud was able to confirm that Inthavong had a gun. This fact was relayed to other officers. The officer's observation of a gun confirmed the earlier reports from dispatch and escalated the intensity of an already dangerous situation. Officers were now confronted with an armed, barricaded man in a residential neighborhood. Both police officers and members of the public were at risk.

At this point, consistent with his actions up to this point, Inthavong again escalated the danger level of the situation. Rather than complying, he left the house through a side window. He then pointed his gun directly at Officer Braud from a distance of merely 15 yards. This action was a clear escalation of an already dangerous situation. Inthavong's actions posed a clear threat of serious injury or death to Officer Braud and others in the area. Faced with this scenario, Officers Berg and Veilleaux chose to use deadly force to protect themselves, their fellow officers, and the public. Tragically, Inthavong died as a result.

Under the totality of the circumstances of this case, the officers' use of deadly force was not unreasonable. Inthavong posed a clear threat to the safety of the officers and the public. The officers acted appropriately under the circumstances.

CONCLUSION

Given the circumstances, the officers were justified in their actions. I find the shooting to be lawful and will take no further action in this matter.

Sincerely,



STEPHANIE A. BRIDGETT
DISTRICT ATTORNEY

cc: Tom Bosenko, Shasta County Sheriff
cc: Officer Russell Veilleaux, Redding Police Department
cc: Officer Brian Berg, Redding Police Department