

**REPORT REGARDING THE FATAL SHOOTING OF MR. NENGMY VANG
IN MARATHON COUNTY, WISCONSIN, ON MARCH 22, 2017.**

SUMMARY

On March 22, 2017, Nengmy Vang was shot by a law enforcement officer following his actions in killing four individuals in the cities of Rothschild and Schofield, Marathon County, Wisconsin. Mr. Vang died from those wounds on April 1, 2017.

After consideration of all the available evidence, I have concluded that there is no basis to believe that any law enforcement officer who shot at Mr. Vang, whether or not they fired the fatal shot, committed any crime. The summary and analysis of the facts discovered during the course of the investigation, which formed the basis for this opinion, are set forth below.

INVESTIGATION AND REVIEW

An independent police investigation was conducted by the Wisconsin Department of Criminal Investigation (DCI) at the request of the Marathon County Sheriff immediately after the shooting. Marathon County District Attorney Theresa Wetzsteon requested that the Wisconsin Department of Justice assign an assistant attorney general to review the matter based on a conflict of interest. One of the victims killed by Mr. Vang was the spouse of an employee of the district attorney's office. I was subsequently assigned to review the matter.

PURPOSE

The purpose of my review of this incident was to determine if there is evidence that would support a conclusion that the shooting of Nengmy Vang involved criminal conduct by any law enforcement officer.

Wisconsin Stat. § 939.45(3) and (4) provide police officers with a defense to criminal charges when the conduct "is in good faith and is an apparently authorized and reasonable fulfillment of any duties of a public officer" or when the conduct "is a reasonable accomplishment of a lawful arrest." In addition, an officer has the right to use force in defense of themselves or others in appropriate circumstances pursuant to Wis. Stat. § 939.48.

MATERIALS REVIEWED

All of the interviews, records, and investigative reports prepared by DCI and multiple assisting agencies were reviewed. Also reviewed were: photographs and diagrams of the scene; body cam and squad dash cam videos; photographs of the scene and autopsy; the findings/conclusions of the final autopsy report; the toxicology report for the deceased; statements from all direct witnesses and many secondary witnesses; and State Crime Laboratory reports.

FACTUAL SUMMARY

Recorded calls show that on March 22, 2017, Naly Vang contacted law enforcement by telephone. Naly Vang stated that her husband, Nengmy Vang, had contacted her at approximately 12:24 p.m. that day to say that he wanted her to sign divorce papers within the next 24 hours, or he would come and kill her. Naly Vang stated that she was calling from her place of work at the Marathon Savings Bank in Rothschild. Two Rothschild police officers quickly responded to the call and spoke with Mrs. Vang. Mr. Vang was not present at the location. The officers were repeatedly asked by Mrs. Vang not to contact Mr. Vang as she was concerned it would anger him, that she did not believe he would come to the bank and did not believe he would follow through on his threat but wanted the matter documented for their divorce. The officers were also told that Mr. Vang started work at 2 p.m. The officers discussed Mrs. Vang's safety and agreed to keep an eye out for Mr. Vang. The officers discussed options including advising the Everest Metro Police Department of the issue as Mr. Vang resided in their jurisdiction. One officer responded to another call, and the other returned to his station to complete reports.

A 911 call was received at approximately 1:00 p.m. on March 22, 2017, from the Subway Restaurant in Rothschild, which is near the Marathon Savings Bank. This 911 call was from an unnamed employee of Subway, who informed the 911 dispatcher that a woman, later identified as Naly Vang, had run into Subway and said that her husband was trying to kill her. The woman also told the Subway employee that her husband was currently at the bank. The Subway employee stated that the woman was hiding in the back, and asked the dispatcher if she wanted to speak with the woman who ran into Subway.

On the same recording, the 911 dispatcher spoke with the woman, who identified herself as Naly Vang, and confirmed that she had called police earlier in the day. Naly Vang's voice sounded upset and showed obvious stress. Naly Vang stated that her husband had come into the bank and wanted her to sign divorce papers right away. He asked her if she wanted to die now. Naly Vang stated that her husband went back out to his car and she ran out the back to Subway. She stated that her husband was still at the bank but she did not know if anyone was hurt.

Another 911 call was received at approximately 1:00 p.m. on March 22, 2017. That recording contains the sound of gunshots, and briefly, the sound of a woman's screams. The 911 dispatcher repeatedly asked if anyone was there, but the only subsequent sounds were of soft moaning and labored breathing. Shortly thereafter, sounds of law enforcement responders are heard on the recorded 911 call, which investigators learned was placed from the Marathon Savings Bank, located at 1133 East Grand Avenue, Rothschild.

Law enforcement officers responded to the bank and found Dianne Look and Karen Barclay critically injured from apparent gunshot wounds. Both Dianne Look and Karen Barclay died of their wounds.

Marathon Savings Bank surveillance video recordings from March 22, 2017, show that an Asian male dressed in a dark suit, later identified as Nengmy Vang, entered the bank shortly before 1:00 p.m. and approached Naly Vang at the teller counter. Nengmy Vang left the bank, but walked back in less than a minute later. The videos show Naly Vang leaving toward the back of the bank.

In the surveillance videos, Nengmy Vang is seen placing a bag on a chair in front of the teller counters. He removed a handgun from his bag, racked a round into the chamber, and opened fire. He first shot Dianne Look. He then picked up his bag, turned and shot Karen Barclay, and then walked out the door. At the time of the shootings, no other persons appear on the surveillance videos.

Shortly after receiving the 911 call from the bank, 911 dispatch received a call from the law offices of Tlusty, Kennedy & Dirks. That office is located at 1155 Grand Avenue, Schofield, Wisconsin. The caller reported a man with a gun had entered the law offices and shot Attorney Sara Quirt (Sann). The caller described the shooter as an older Hmong gentleman, driving a Black Honda Civic with license number 317 SEA.

DCI Special Agent Mary Van Schoyck interviewed an employee of the law firm, who reported that a man armed with a handgun entered the law offices and forced her at gunpoint to show him the direction to Attorney Quirt's office. The employee described the man as being shorter than she was, approximately 5' 2" tall, an Asian man in his 40s wearing a dark suit. Attorney Quirt's office was upstairs and down a hallway from the entrance door. The employee stated that the man gave verbal commands to show him to Attorney Quirt's office and followed her up the stairs in close proximity with a gun pointed at her. The man forced her at gunpoint in the direction of Attorney Quirt's office. She heard Attorney Quirt scream and heard two gunshots. The employee heard the sound of running on the stairs, and found Attorney Quirt shot.

Law enforcement officers responded to the Tlusty law office and found Attorney Quirt critically injured from an apparent gunshot wound to her head, and being tended to by an employee of the law office. Attorney Quirt died of her wounds.

Divorce records show that Attorney Quirt represented Naly Vang in a divorce action, in which Nengmy Vang petitioned for divorce from Naly Vang. These records indicated that the Vangs had seven children, some of them adults, while one was aged 10 years old, and one was approximately one year old.

Everest Metropolitan Police Department (Everest Metro) Detective Sergeant Dan Goff reported that on March 22, 2017, he was responding to dispatch reports of an active shooter. He saw a black Honda Civic with a male Asian driver traveling on Ross Street, and followed it. Dispatch reported a possible residence or destination of 4911 Aspen Street in Schofield.

Photographs show a black Honda Civic parked at 4911 Aspen Street, Schofield, which is a multiunit apartment building, located in a series of similar buildings along Aspen Street. The car was not parked in the parking lot, but was driven across grass and sidewalks to a location close to the entrance door to the building at 4911 Aspen Street.

Recordings show that Everest Metro Detective Jason Weiland responded to the scene at the apartment building and parked his unmarked squad in front of 5008 Aspen Street, near a mailbox southwest of 4911 Aspen Street. Numerous law enforcement officers were gathering to set up a perimeter. Detective Weiland and another Everest Metro officer were gearing up near the unmarked squad when a shot was fired from the direction of the building at 4911 Aspen. That shot killed Detective Weiland.

Recordings show that other officer was in the line of fire from 4911 Aspen. That officer was standing on the opposite side of the unmarked squad from Detective Weiland, positioned on the side of the squad closer to the apartment building at 4911 Aspen. She lowered her head and upper torso into Detective Weiland's squad to retrieve equipment an instant before the shot struck Detective Weiland. Detective Sergeant Goff returned fire at the muzzle flash in a window in the lower right set of windows at 4911 Aspen Street. That was later determined to be Apartment B, where Nengmy Vang was arrested.

A standoff ensued that lasted over three hours. During that time, a man who identified himself as Nengmy Vang placed two calls to 911 dispatch. During the first call, Nengmy Vang hung up after approximately 38 minutes. He called back approximately an hour and a half later. The second call lasted for approximately 90 additional minutes. The statements that follow are relevant summaries of statements made by Nengmy Vang during these calls. At times, the 911 dispatcher

would pause to relay the information provided by Nengmy Vang to officers in the field. Mr. Vang indicated during these conversations that he had been shot in the shoulder.

In the 911 calls, Nengmy Vang identified himself as the person who killed the bank tellers, his wife's attorney, and a police officer. Nengmy Vang stated that he killed the bank tellers because they called 911 to report him. Nengmy Vang specifically identified one of the tellers as "Dianne."

In these calls, Nengmy Vang expressed a great deal of anger at his wife, Attorney Quirt, his divorce proceedings, the bank tellers, the law, and law enforcement. Nengmy Vang repeatedly requested news media be brought to his location so he could talk with them and explain his reasons for committing these murders.

Nengmy Vang stated that the victims left him no choice, and that it was unfair he should have to pay child support from his second job. In summary, Nengmy Vang said that he was not being treated fairly in the divorce and wanted to change the law so that income from a second job could not be counted in setting child support. At one point, Nengmy Vang stated that the reason why he killed was because he wanted to change the law in the state of Wisconsin. He also offered other reasons for killing his victims.

Nengmy Vang expressed his understanding that he was wrong in committing the murders. He stated that he was sorry for killing innocent people, and stated that he made a big mistake. He pointed out that he did not shoot two other females at the law office, which appears to be a reference to the law firm where two employees were present and had contact with him before he shot Sara Quirt. At times, Nengmy Vang stated that he did not want to go to jail. He stated he would rather take a pill to die than go to jail, but did not want to hang or shoot himself. At other times, Nengmy Vang stated that he was willing to go to jail, but that he preferred it to be in Laos.

Law enforcement negotiators, including one Hmong-speaking officer, spoke with Nengmy Vang and attempted to persuade him to surrender his guns and leave the apartment. Law enforcement officers repeatedly assured Nengmy Vang during the 911 calls that if he surrendered his guns and exited the apartment, there did not need to be any more shooting or anyone else getting hurt, including Vang. Mr. Vang ignored these orders.

Despite repeated requests to exit the apartment, Nengmy Vang refused to leave. At times he appeared somewhat subdued, but his demeanor became angrier as time went by. His voice became louder, his tone more upset, and he repeatedly used expletives. Nengmy Vang demanded that officers get away from the building,

indicating that if he got mad again, he might begin shooting again. He expressed anger that the power to the apartment had been cut off and could not be re-connected. Nengmy Vang stated that if the power was not turned back on in 30 minutes, he would start shooting again. At times, he threatened suicide, but was told no one wanted that to happen. When informed that the power could not be re-connected, Nengmy Vang became belligerent, and asked the law enforcement negotiator if he wanted another cop to die. The law enforcement negotiator repeated that his information was that the power could not be re-connected, whereupon Nengmy Vang stated: "Too bad for the cop."

Nengmy Vang continued to be agitated and threatening as the discussion progressed. After being informed that he was under arrest and needed to come out, Nengmy Vang responded that he was going to kill a cop and the police would kill him. Further discussion resulted in Nengmy Vang making additional threats to kill police officers if power to the apartment was not restored. Nengmy Vang described the positions of officers that he could see and shoot, stating that he was a good shot, and he had a range finder. Detective Weiland had been shot and killed from approximately 100 yards away.

In an effort to get access to Mr. Vang to end the standoff without further bloodshed, law enforcement officers used armored cars with extension arms to pull down portions of the apartment windows and exterior wall. Nengmy Vang fired a shot, which he stated on the 911 call was fired into the air to show police he was serious. However, officers reported hearing the round go over their heads. Officers did not return fire at that time. Loudspeaker announcements continued to be made advising Mr. Vang that he was under arrest and ordering him to surrender. Mr. Vang did not respond. Other officers observed Mr. Vang in the apartment carrying a long gun. Approximately three minutes later, Marathon County Deputy Matthew Bell, who was in the turret of the armored vehicle, observed Mr. Vang holding what appeared to be a weapon. He was also aware of Mr. Vang's prior statements and that he had fired at the vehicle and in the direction of officers and nearby residents. Believing that Mr. Vang had continued to shoot at others and might continue to shoot which might cause serious bodily harm or death to others, Deputy Bell fired at Mr. Vang with an AR-15 rifle. Deputy Bell emptied his rifle and fired approximately 29 shots. He then observed Mr. Vang appear to move to a position behind some debris in the apartment. Believing that Mr. Vang was taking a position to return fire, Deputy Bell reloaded his rifle with a full magazine, but did not fire, when he was informed that Mr. Vang was down. Deputy Bell was then able to observe Mr. Vang laying on the floor of the apartment with a rifle within arm's reach. Mr. Vang was shot approximately eleven times. Deputy Bell continued to observe Mr. Vang until other officers entered the apartment, secured the scene, provided first aid to Mr. Vang, and took him into custody. No other civilian was in the apartment.

A Browning 7 mm rifle, with an unfired cartridge in the chamber was recovered from the floor of the apartment living room at 4911 B Aspen Street. Several fired 7 mm cartridge casings, as well as unfired cartridges (both loose and boxed), were recovered from the apartment. A second rifle was in a plastic case in a closet. A handgun fell out of Nengmy Vang's pocket at 4911 Aspen Street as he was being loaded onto a gurney for transport to a hospital. This handgun had a 15 round magazine containing three unfired cartridges. The safety was off.

Nengmy Vang was transported to a local hospital for treatment. Mr. Vang had multiple gunshot wounds. There was no evidence that Mr. Vang was impaired by drugs or alcohol. On April 1, 2017, Mr. Vang died as a result of his wounds.

FACTUAL ANALYSIS

The statements of the law enforcement officers involved in the incident and citizen witnesses are consistent. The physical evidence recovered from the scene is consistent with those statements. Additionally, those statements are supported by the other evidence obtained during the investigation.

Both Deputy Matthew Bell and Detective Sergeant Dan Goff acted lawfully when they used deadly force and shot at Mr. Vang.

The incident began when Mr. Vang started a homicide spree to kill those he disliked, angered him, or whom he perceived were in his way. He brutally shot three people merely because they had assisted his wife. He then decided to deliberately shoot at and kill a law enforcement officer who had responded to Mr. Vang's location in order to protect the community. He admitted to these crimes on several occasions and the facts clearly demonstrate that he was the only person responsible for the senseless murders.

Mr. Vang committed a series of cold-blooded murders which demonstrated he was a serious danger to the public. He ignored repeated requests to surrender or disarm. His willingness to shoot and kill a law enforcement officer and shoot at others later demonstrated an even increased risk and threat. Mr. Vang was not deterred by law enforcement and made threats against officers at the scene. Mr. Vang expressed suicidal thoughts and anger during a lengthy standoff. Law enforcement officers were aware of Mr. Vang's statements and threats.

Detective Sergeant Goff acted reasonably, based on all the known facts and circumstances, when he fired at Mr. Vang after Mr. Vang shot and killed Detective Jason Weiland. While not knowing who the exact intended target was, it was reasonable to assume that Mr. Vang was targeting a member of the public or a law enforcement officer. Under either belief, the decision to shoot was reasonable.

The decision to remove portions of the apartment building to access Mr. Vang and hopefully force a surrender was also reasonable. Mr. Vang had refused repeated demands to surrender. Shortly before the removal was started, Mr. Vang shot at law enforcement officers. He claimed he was an excellent shot and had a range finder. His killing of Detective Weiland from 100 yards away demonstrated he was a skilled shooter. He was also located in a residential area where officers also were at substantial risk of death or serious injury.

Deputy Matthew Bell acted reasonably when he shot Mr. Vang, who was holding a long gun and had ignored orders to disarm or surrender. Mr. Vang presented a real and immediate danger to law enforcement and the public. Under the circumstances including timing and distance, and in light of his prior use of force against an officer, there was no opportunity to attempt any non-lethal alternatives. Any lesser means of force, such as a baton, physical force, taser, or pepper spray, would have been unreasonable in the exercise of self-defense. To do so would have placed an officer in an even more dangerous situation. Such options would have required the officers to move closer to Mr. Vang, thus increasing the level of risk. It may also have required an officer to holster their firearm, which would also place them in a situation where they would have been unable to protect themselves from an armed assault. Attempts at verbal persuasion and physical presence, two key components of controlling a situation, had failed. There is no requirement that an officer actually attempt all other use of force options. Some situations develop so quickly that no use of alternatives is feasible without substantial risk to the officer.

As noted above, Mr. Vang expressed an intent not to go to jail and indicated he wanted to die. He did not indicate any interest in surrender.

LEGAL ANALYSIS

The undisputed facts surrounding the shooting support the conclusion that in shooting at Mr. Vang, Deputy Matthew Bell and Detective Sergeant Dan Goff did so to protect themselves or other law enforcement officers, or members of the public, who were in danger of death or great bodily injury by a person operating a dangerous weapon. Under Wisconsin law, a law enforcement officer has a legal privilege to use deadly force to protect themselves or others where the officer reasonably believes that there is an actual or imminent unlawful interference directed at themselves or another person and actually and reasonably believe that such force is necessary to prevent imminent death or great bodily harm to themselves or the other person. Wis. Stat. § 939.48(4); Wisconsin Jury Instructions-Criminal 830. Under this privilege, the reasonableness of the officer's actions is to be judged from the standpoint of an ordinary, prudent, and reasonably intelligent person in the officer's position, having the knowledge and training that the officer possessed, and acting under the circumstances that existed at the time.

In this case, Mr. Vang was in possession of firearms, had murdered four people, and indicated a continued willingness to kill or injure others. A person who has previously killed others can reasonably be assumed to be more likely to do so again and presents a greater risk. Under the legal privilege of defense of self or others, the officers who fired at Mr. Vang had an actual and reasonable belief that the force used was necessary to prevent imminent death or great bodily harm to themselves or another person, and were therefore privileged to fire their weapons at Mr. Vang. Finally, the officers had to make their decisions in split seconds. This decision was reasonable and appropriate under the circumstances. Therefore, I conclude that the conduct of the officers who fired at Mr. Vang was lawful.

Nor was any conduct of the officers criminally reckless or negligent. Wisconsin Stat. § 939.25(1) defines criminal negligence as “ordinary negligence to a high degree, consisting of conduct that the actor should realize creates a substantial and unreasonable risk of death or great bodily harm to another.” Similarly, Wis. Stat. § 939.24(1) defines reckless as creating “an unreasonable and substantial risk of death or great bodily harm to another human being and the actor is aware of that risk.” The officers were not acting in a criminally negligent or reckless manner. They were trained and experienced law enforcement officers performing their sworn duty and in so doing had the lawful right to carry a weapon and use it in justified circumstances.

The officers had no reasonable opportunity to use other alternatives. They were faced with an armed man who was a demonstrated threat. It is a misconception and misunderstanding that officers in such situations can simply shoot to disable or disarm someone. These incidents are not movies or television. They are real-life stressful events involving real people. Even the regular firearms training by law enforcement cannot fully reflect the realities of being faced with the threat of death or serious injury when confronted with someone armed with a firearm or who shoots at you. As in every real-life situation, various factors such as distance, obstacles, stress, etc., impact how weapons are fired. Officers are trained to shoot to terminate the threat to themselves or others. Being able to shoot the gun out of a person’s hand under these or virtually any real-life stressful situation is unrealistic. The officers responded as they were trained to do and did so reasonably.

Officers are also not required to wait to be fired upon or to be shot before taking action. The law, rightfully and reasonably, allows them to preempt the risk of death or serious injury in appropriate circumstances and act to protect themselves and others. Were it otherwise, there would likely be few people willing to serve in such a dangerous profession.

I also conclude that the officers acted in a calm and restrained manner. The conduct of the officers was professional and clearly intended to try and resolve the

incident without injury or loss of life. They tried to engage Mr. Vang in conversation and reminded him of his family in an effort to get him to surrender. They were as calm as possible under the circumstances and exercised patience. Officers repeatedly stated that they did not want to harm Mr. Vang. It was only the decisions and conduct of Mr. Vang that escalated the matter in a way that allowed or even required the use of deadly force. The decision in ultimately shooting at Mr. Vang to protect other officers was reasonable under the facts and circumstances that existed, and hence not criminal in any way. Such actions were a reasonable fulfillment of the lawful duties of the officers under the situation that existed at the time.

CONCLUSION

Law enforcement officers are lawfully allowed to use force, including deadly force, when they have an objectively reasonable belief that such force is reasonably necessary to protect themselves or others from the risk of serious bodily injury or death. Police officers are provided continuing training regarding the use of force. The issue is whether the officers in this case acted appropriately and consistently with legal principles governing the use of deadly force by law enforcement officers.

Based on the total facts and circumstances, it is my legal conclusion that the conduct of the officers on March 22, 2017, were in the performance of their duties and there is no basis to conclude that any of their conduct was criminal.

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