



**Stephen M. Wagstaffe, District Attorney**  
**COUNTY OF SAN MATEO**

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August 14, 2025

Chief Scott Campbell  
South San Francisco Police Department  
1 Chestnut Avenue  
South San Francisco, CA 94080

RE: San Mateo County District Attorney's Office  
Bureau of Investigation Case # 25-0428-03

Dear Chief Campbell,

The San Mateo County District Attorney's Office has completed our investigation and legal review of the facts surrounding the officer involved shooting that resulted in fatal injuries to Mr. Brian Montana on April 28, 2025. The officer directly involved in the incident is Officer Jeffrey Lee. It is my conclusion that the use of force by Officer Lee under the circumstances encountered by him on that date was lawful under California Penal Code section 196.

The investigation conducted by the District Attorney's Office included:

- interviews of the involved officer, other responding officers, paramedics, firefighters and civilian witnesses;
- review of audio and video recordings, including the 911 dispatch calls, body worn camera and drone footage; and
- review of medical and lab reports.

**Factual Summary**

In the afternoon of April 28, 2025, Mr. Brian Montana revved the engine of his Mustang in his driveway at 302 Arroyo Drive for 30 minutes. He was upset because he believed his next-door neighbors, Mary and Michael Firpo, allowed their lawn trimmings to blow onto his yard. When Mr. Firpo went outside to talk, Mr. Montana pointed a handgun at him. At 5:52 p.m. Mrs. Firpo called 911 from her home at 304 Arroyo Drive. Dispatch broadcast a weapons call. As Mr. Firpo retreated to his house, Mr. Montana said, "I am going to kill you and your family, you piece of shit." Mr. Montana walked toward the Firpos' house with a rifle in his hand and two handguns tucked inside his waistband and tried unsuccessfully to open the locked front door. At 5:55 p.m. Mr. Firpo updated dispatch with this information. Seconds later, Mr. Montana started shooting through the front door while Mr. and Mrs. Firpo ran for cover.

Corporal Daniel Zhang was the first to arrive on scene at 5:55 p.m. He and all the other responding officers were in police uniform and driving marked patrol vehicles. Corporal Zhang parked on the 200 block of Arroyo to wait for additional units. He immediately heard gunshots and requested Code 3 cover. He also requested an armored van to get the Firpos to safety. Corporal Zhang drove uphill toward the 300 block of Arroyo with Officer Jonathan Yoshida following directly behind him. This route took them right past Mr. Montana, who was standing in his driveway holding a rifle. Corporal Zhang and Officer Yoshida parked at Arroyo Drive and Jacinto Lane.

Twelve seconds later, Mr. Montana fired three rounds at Corporal Zhang and Officer Yoshida. The officers took cover behind Officer Yoshida's patrol vehicle. Since Corporal Zhang could not see Mr. Montana, he asked Officer Yoshida to launch a drone to get an aerial view of the shooter. Corporal Zhang provided cover for Officer Yoshida to retrieve the drone from the trunk. Corporal Zhang warned other responding officers not to drive in front of the 300 block of Arroyo to avoid being in the line of fire.

Officer Jeffrey Lee was the next to arrive at 5:56 p.m. He parked at Arroyo Drive and Capay Circle. Mr. Montana fired another round at 5:58 p.m. Around 6:00 p.m. Corporal Jason Fukushima and Master Sergeant Michael Toscano arrived and joined Corporal Zhang. Mr. Montana continued firing at the officers. The officers heard the sound of bullets whizzing by, striking patrol vehicles and skipping off the ground. Corporal Fukushima, Corporal Zhang, and Sergeant Toscano were pinned down at their location.

By 6:04 p.m. Officer Yoshida had retreated up Arroyo Drive and launched the drone. Three minutes later Mr. Montana fired another round. At 6:07 p.m. Corporal Zhang and Sergeant Toscano saw Mr. Montana standing in his driveway with a shotgun. They commanded him to drop his weapon. Thirteen seconds later, Mr. Montana fired eight rounds at the officers. Corporal Zhang fired seven rounds back at Mr. Montana. During the brief break in gunfire, he and Sergeant Toscano retreated and took cover behind a civilian vehicle. Mr. Montana fired fourteen more rounds at the officers at 6:09 p.m.

Around 6:10 p.m. Officer Yoshida was able to provide visual updates of Mr. Montana via drone footage. Mr. Montana was positioned behind cars in his driveway with multiple firearms. Mr. Montana fired eight more rounds at the officers.

At 6:13 p.m. Officer Lee drove an armored van in front of 310 Arroyo Drive. Mr. Montana fired fourteen more rounds at 6:15 p.m. At 6:16 p.m. Corporal Zhang joined Officers Fukushima and Lee behind the armored van as they continued to take fire from Mr. Montana, who fired eight more rounds.

Captain Ken Chetcuti had established a command post at Pacific Supermarket. At 6:18 p.m. he broadcast, "If you have a clear shot, take him." Mr. Montana fired one more round at 6:19 pm. At 6:20 p.m. Officer Lee had a clear shot of Mr. Montana from 75 yards away. He fired three rounds from his rifle. Through drone footage, Officer Yoshida saw that Mr. Montana had dropped to the ground and leaned against his Mustang.

Mr. Montana placed his shotgun on the ground and rolled over onto his back. As he was trying to get back up, Mr. Montana tried to aim his shotgun toward the officers and racked the

pump action several times. He also pulled out a handgun from his waistband and tried to get himself into a seated position. He got on his hands and knees with the handgun and shotgun on the ground next to his right hand. He tried unsuccessfully to load his shotgun and ended up on his back.

Over the next thirty minutes various non-lethal diversionary devices, such as bean bags and pepper balls, were deployed but failed to elicit a response from Mr. Montana. Officers approached and initiated life-saving measures. Mr. Montana was pronounced deceased at the scene.

Based on the number of cartridge cases and the number of shots captured on various body worn cameras, it was determined that Mr. Montana fired 63 rounds from multiple weapons. The rounds struck various homes as well as patrol vehicles and civilian cars. No officers or civilians were struck except for Mr. Firpo, who suffered a graze wound to his buttocks.

### **Evidence at the Scene**

The firearms recovered from Mr. Montana's immediate vicinity were an unloaded Colt Combat Commander .45 caliber semi-automatic handgun and a loaded Winchester Model 1300 Defender 12-gauge shotgun. Inside the hood of Mr. Montana's Mustang was a loaded Ruger P89 9mm semi-automatic handgun; a loaded Kimber TLE II .45 caliber semi-automatic handgun with an extended magazine; and an unloaded Springfield Armory M1A 308 caliber rifle. All the firearms were fully functional.

Officer Lee's duty rifle was a fully functional Daniel Defense DDM4V7 AR-15. It was determined to be the firearm that discharged three of the ten expended .223 caliber cartridges recovered from the location where he and Corporal Zhang were standing. One of the bullets from Officer Lee's rifle was lodged in Mr. Montana's torso.

### **Medical and Toxicology Reports**

Records from the San Mateo County Coroner show that Mr. Montana's cause of death was a gunshot wound to the torso. A bullet entered the right superior area of the torso, fractured two ribs, lacerated the right lung and lodged itself beneath the skin of the lateral right upper mid back. At the time of his death, Mr. Montana had in his system prescription drugs and alcohol (0.153 g/dL).

### **Law Relating to Use of Force**

Penal Code § 196, as amended effective January 1, 2020, provides that a homicide committed by a peace officer is justified "When the homicide results from a peace officer's use of force that is in compliance with § 835a." Penal Code § 835a(c)(1), also amended effective January 1, 2020, 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 the circumstances, that such force is necessary ... (A) To defend against an imminent threat of death or serious bodily injury to the officer or another person."

Penal Code § 835a(e) defines a threat as “imminent” when “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.” The “totality of the circumstances” refers to “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.”

In amending section 835a, the Legislature made the following findings and declarations bearing on the use of deadly force:

(1) That the authority to use physical force, conferred on peace officers by this section, is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. The Legislature further finds and declares that every person has a right to be free from excessive use of force by officers acting under color of law.

(2) As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. 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.

(3) That the decision by a peace officer to use force shall be evaluated carefully and thoroughly, in a manner that reflects the gravity of that authority and the serious consequences of the use of force by peace officers, in order to ensure that officers use force consistent with law and agency policies.

(4) That the 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, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force.

(5) That individuals with physical, mental health, developmental, or intellectual disabilities are significantly more likely to experience greater levels of physical force during police interactions, as their disability may affect their ability to understand or comply with commands from peace officers. It is estimated that individuals with disabilities are involved in between one-third and one-half of all fatal encounters with law enforcement.

Precedent of the United States Supreme Court defines the use of deadly force by the police. In *Tennessee v. Garner* (1985) 471 U.S. 1, 3, the High Court made clear that a police officer is entitled to use deadly force when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”

The Court makes clear that the “‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Connor* (1989) 490 U.S. 386 “With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: ‘Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers,’ violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.” *Id.* at 396-7. An objective standard is applied: “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Ibid.*

California law is in accord. As noted above, Penal Code § 835a(a)(1) requires evaluation from the perspective of the reasonable officer in the same situation with the information known to or perceived by the officer at that time rather than with the benefit of hindsight and with a recognition that officers may be forced to make quick judgments about using force.

### **Conclusion**

Applying these principles to the facts as determined by the investigation, I find that Officer Jeffrey Lee was justified in his use of lethal force against Mr. Montana on April 28, 2025 under California law. Further, I find that Officer Lee’s belief in the need for the immediate use of lethal force to defend against an imminent threat of death or great bodily injury by Mr. Montana reasonable based on the totality of the circumstances within the meaning of Penal Code Section 835a(c)(1)(A).

The call for service was for a suspect pointing a gun at his neighbor in a residential area. This quickly escalated to a “shots fired” call when Corporal Zhang arrived on scene to hear Mr. Montana firing into the Firpos’ home. He and Officer Yoshida drove past Mr. Montana, who was standing in his driveway holding a rifle. Within moments Mr. Montana was firing at the officers. At this point the officers had confirmation that Mr. Montana had the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to civilians and police officers.

The threat was heightened by the fact that almost none of the officers could see Mr. Montana from their vantage point. Any information about the shooter came indirectly via drone surveillance. By the time Officer Lee arrived, multiple officers were pinned down by gunfire. To make matters worse, Mr. Montana ignored commands to drop his weapons and fired an additional 52 rounds. When Captain Chetcuti issued his command to take a shot at Mr. Montana, Officer Lee was aware of the threat Mr. Montana posed to himself, his colleagues, and the community at large.

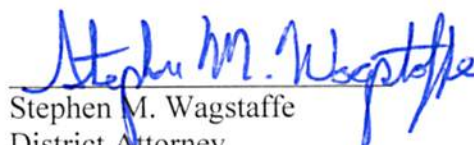
It should be noted that during the 28-minute ordeal, only two officers fired back at Mr. Montana. This shows great restraint on the part of the officers in the face of extreme danger. I find that Officer Lee reacted to the imminent threat posed by Mr. Montana, who had the present ability and apparent intent to cause death or to inflict great bodily injury by firing at multiple civilians and officers. Based on the totality of the circumstances that were then known to Officer Lee, this threatening conduct caused him to reasonably believe he must instantly confront and address this threat and he reasonably used deadly force to protect himself and others. I believe his actions to have been objectively reasonable based on the facts and circumstances known to him at the time.

The conduct of Officer Lee is worthy of special recognition. The lives of citizens living in the area of the shooting and the lives of your officers were all put at great risk by the conduct of Mr. Montana. Officer Lee's willingness to expose himself to repeated gunshots and his expert marksmanship put an end to the danger and may have saved lives of innocent victims. I offer my praise for Officer Lee and all of your officers in the superb manner they dealt with this crisis.

In conclusion, I note that all the South San Francisco Police Department officers involved in this event fully cooperated with the investigation and provided complete and detailed answers narrating what they saw, did, heard and said during this dangerous, traumatic event. They answered all questions posed to them by my investigators and the Department complied fully with the County-wide Involved Officer Protocol, which greatly contributes to our and the public's ability to have a comprehensive understanding of these events.

Continuing the practice of this District Attorney's Office to provide transparency, our complete investigative report, other than materials which are legally protected and not subject to disclosure, will be made available to the public after you have received this letter. If you have any questions regarding our investigation or my conclusions, please do not hesitate to call me.

Very truly yours,

  
Stephen M. Wagstaffe  
District Attorney