



Stephen M. Wagstaffe, District Attorney COUNTY OF SAN MATEO

SEAN F. GALLAGHER
CHIEF DEPUTY

REBECCA L. BAUM | SHIN-MEE CHANG | MORRIS MAYA
ASSISTANT DISTRICT ATTORNEYS

400 COUNTY CENTER, 3RD FLOOR | REDWOOD CITY, CA 94063 | TEL: (650) 363-4636 | FAX: (650) 363-4873

August 20, 2021

Acting Chief of Police John Gamez
Daly City Police Department
333 90th Street
Daly City, CA. 94015

RE: Officer Involved Shooting on April 7, 2021
Officers Involved - Lieutenant Michael Brennan and Detective Cameron Newton

Dear Acting Chief Gamez:

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 the death of Roger Cornelious Allen on April 7, 2021 in the city of Daly City. I have concluded that the use of lethal force by Detective Cameron Newton under the circumstances that confronted all of the involved officers that day was lawful pursuant to California Penal Code Section 196.

The investigation conducted by my office, led by Inspector Eric Suzuki with the assistance of other members of my Bureau of Investigation, included extensive interviews of the involved officers, the two civilian witnesses who were in the truck with Mr. Allen, officers who responded to the scene, emergency responders and other civilians related to the case. We reviewed reports completed by employees of the San Mateo County Sheriff's Office Forensic Laboratory who processed the scene and collected and examined evidence, the pathology report, including a toxicology report for Mr. Allen, video evidence recovered from neighboring houses and records documenting the response to the scene on Niantic Avenue. It should be noted that neither the officers nor their vehicles were equipped with recording devices.

Factual Summary

On April 7, 2021, Daly City Police Officer Nicholas McCarthy was working patrol duties, in full uniform and in a marked patrol car. At approximately 1345 hours, he drove away from the front entrance to the Daly City Corporation Yard and pulled onto Niantic Avenue.

After driving a half block on Niantic Avenue, Officer McCarthy saw a white GMC four door truck parked at an angle, partially blocking a driveway and with a damaged left rear tire. The windows were tinted but the front driver's door was ajar and Officer McCarthy saw the driver, later identified as James Colangelo, slumped over in the seat. Officer McCarthy completed a U-turn in order to do a welfare check on the driver, pulled up behind the truck and parked. He used no lights or siren nor any emergency equipment.

When he approached the driver's door, Officer McCarthy knocked on the door and Mr. Colangelo opened it. As Officer McCarthy asked Mr. Colangelo if he was okay, he noticed a male, Mr. Allen, sitting in the right front passenger seat holding a methamphetamine pipe in his right hand while attempting to hide it under his thigh. At the time, Mr. Allen was a parolee-at-large, having absconded from supervision and having provided his Parole Agent with a false address and contact information.

Officer McCarthy asked Mr. Colangelo for identification which he said he did not have but verbally identified himself. As Officer McCarthy was writing down the information Mr. Colangelo was providing, he noticed Mr. Allen seemed very nervous and was saying 'Fuck, fuck, fuck.' At the same time, Officer McCarthy heard and saw that Daly City Officer Rosa Brenes pulled up behind his unit and he asked her to stay. She then exited her patrol car and moved to stand behind and to the left of Officer McCarthy. Officer McCarthy then asked Mr. Allen for his identification and Mr. Allen said he did not have any.

At that moment, Officer McCarthy saw an unmarked police vehicle, a gold Ford SUV, slowly drive by his location, pull over and park ahead of the white truck. Officer McCarthy then saw Lieutenant Michael Brennan and Detective Cameron Newton exit the SUV and walk to the passenger side of the truck. Based on his observations of Mr. Colangelo and of Mr. Allen's movements attempting to hide the pipe, Officer McCarthy asked Mr. Colangelo if he would be willing to exit the truck. Mr. Colangelo agreed, exited the truck and stood next to the open driver's door.

As Mr. Colangelo exited the truck, Officer McCarthy saw that Mr. Allen now had a gun in his right hand laying on his right thigh. Officer McCarthy quickly unholstered his gun, pointed it at Mr. Allen and yelled 'Gun, gun, gun' to alert the other officers. Mr. Allen then raised the gun into a shooting position, yelled something and turned toward Officer McCarthy approximately one foot away from the open driver's door. Officer McCarthy then saw Mr. Allen leaning over the center console toward the driver's side pointing a gun at him. In fear for his safety, Officer McCarthy was going to discharge his firearm when he felt what he described as a 'pinch' on his forehead, which surprised and startled him. Due to possible cross-fire with other officers, Officer McCarthy crouched down and retreated to the rear of the truck.

From the passenger side, Lieutenant Brennan had started to open the front passenger door when he saw Mr. Allen moving his arms as if he was hiding something. When he opened the door, Lieutenant Brennan saw the gun in Mr. Allen's hand, heard Officer McCarthy yell "Gun, gun, gun" and immediately began struggling with Mr. Allen in order to gain control of the gun, yelling at him to 'Drop the gun, drop the gun.' During the struggle, Lieutenant Brennan felt Mr. Allen pull away from him, attempting to back further into the cab of the truck. Detective Newton tried to move into a position next to Lieutenant Brennan and, as he did so, saw that the gun was coming

down towards him. The gun was also pointed directly at Lieutenant Brennan while he was trying to gain control of it.

Fearing that Mr. Allen could regain control of the gun, or that he would be able to fire the gun during the struggle with Lieutenant Brennan, Detective Newton reached around Lieutenant Brennan and fired two shots at Mr. Allen from a close distance. One shot struck Mr. Allen in the chest and the second entered the driver's front door. Mr. Allen then ceased struggling for control of the gun, officers removed the gun from his hand and immediately provided medical assistance as they waited for paramedics and an ambulance to arrive.

Summary of Dispatch Records

Dispatch records show that Officer McCarthy was in his patrol car and ran a check on the white GMC truck parked on Niantic Avenue at 1353 hours. Three minutes later, at 1356 hours, Officer McCarthy notified San Mateo County Communications that he was out with an occupied suspicious vehicle and that Officer Brenes was with him. About one minute later, at 1357 hours, radio traffic from an unknown officer declared, 'Shots fired,' followed seconds later by Lieutenant Brennan who broadcasted, 'Shots fired on Niantic.' County Communication acknowledged 'Shots fired' and confirmed medics were being sent. An AMR Medic Unit arrived at the scene at 1406 hours, departed with Mr. Allen to San Francisco General Hospital at 1410 hours and Mr. Allen was pronounced deceased at the hospital at 1536 hours.

Witness Statements

As noted, all involved officers and civilian witnesses were interviewed after this incident. All interviews were recorded.

1. Amal Salama

Ms. Salama said she was an acquaintance of Mr. Colangelo's and saw him for the first time in six years the day before the incident in Daly City. She told investigators she spent the previous night with Mr. Colangelo in his RV that was parked near 3rd and Evans Streets, an industrial section in the southern part of San Francisco. That morning, she asked Mr. Colangelo to buy her coffee and after he left the RV, she saw that Mr. Allen was outside of the RV waiting for Mr. Colangelo. She had seen Mr. Allen twice before that day, describing him as "not friendly" and "scary."

Once Mr. Colangelo returned, all three drove in the truck to Daly City so that Mr. Colangelo could cash a check to pay Mr. Allen money he owed him. Ms. Salama said that morning Mr. Allen had said something threatening to Mr. Colangelo about the money he was owed, and Mr. Colangelo responded that Mr. Allen should not threaten him because they were friends. She said she and Mr. Allen waited in the truck while Mr. Colangelo went into the business, but he returned after being unable to cash the check. She noted Mr. Colangelo drove away from the area but then had a problem with his tire that required him to stop driving, which was how they ended up on Niantic Avenue.

Once they stopped on Niantic Avenue, Mr. Colangelo was calling a friend who could help them with a spare tire. She saw a police car drive by and then a male officer made contact with them, with Mr. Colangelo in the driver's seat, Mr. Allen in the front passenger seat and she in the rear driver's side passenger seat. She recalled the officer telling them he did not care if they were holding any crystal methamphetamine and that if they were holding anything, they would just have to dump it. The officer also asked all three, if anyone was on probation or parole and everyone told him, "No." The officer then asked for everyone's dates of birth and then asked Mr. Colangelo to exit the car.

Ms. Salama noticed a female officer arrive at the scene and heard the male officer ask her to 'just park.' Ms. Salama saw Mr. Colangelo exit the car and place his hands behind his back. She said she then saw Mr. Allen "get scared" and believed it was because "...he have parole or he have something." Right after Mr. Colangelo was out of the car, Mr. Allen "pulled the gun at the officer." She did not see from where Mr. Allen pulled the gun because he had a "big bag of clothes" on his lap. She saw Mr. Allen pointing the gun at the officer (McCarthy) and Mr. Colangelo who were both standing at the driver's door. She noted Mr. Allen had extended his arm with the gun across his body toward the steering wheel. She described the gun as black and was sure it was a gun.

Ms. Salama described Mr. Allen saying things she described as "suicidal voices" and noted he appeared "angry" and his voice sounded "shaky, scary" and "not normal." She said that Mr. Allen appeared scared and she was afraid he was going to shoot everyone there, saying he had a "devil face" and was "very scary" to her. She said she heard officers tell Mr. Allen to "put the gun down" two or three times and also heard Mr. Colangelo repeatedly say to Mr. Allen, "don't do this man, why are you doing this, just put the gun down."

She then heard a series of gunshots, which she described as "...a lot, like seven or so..." She was unable to say who shot first but, from her position inside the truck, could only see Mr. Allen pointing the gun at Officer McCarthy. She assumed the officer at the door was pointing a gun at Mr. Allen and also assumed they shot at each other based on what she heard. As soon as gunfire erupted, Ms. Salama opened the rear passenger door, jumped out of the truck, and ran to the rear to shelter.

Ms. Salama said she only saw the initial male officer (McCarthy) and the second female officer (Brenes), could not see outside due to the darkened windows. She did not see a struggle within the truck and said everything happened in a "flash." After the shooting, Ms. Salama said officers checked on her and she could see a partial view of Mr. Allen, now out of the truck, as the officers handcuffed him and started to provide aid.

2. James Colangelo

Mr. Colangelo told investigators he knew Mr. Allen for over eight years and knew him only as "Cutty." Mr. Colangelo said they met in 2013 while both were participants in the Walden House Program in San Francisco, a drug addiction recovery facility. After the program, he said they went their separate ways but would see each other infrequently in San Francisco.

Mr. Colangelo said that Mr. Allen had “popped up” in the Bayview section of San Francisco over the last six months but that he would try to avoid Mr. Allen due to the fact that Mr. Colangelo believed “trouble followed him everywhere he went.” He said that Mr. Allen always seemed to have issues with others, did not get along with people and described him as “aggressive” and always in a bad mood. For these reasons, and because he knew Mr. Allen needed money, Mr. Colangelo had avoided Mr. Allen and did not want to engage with him. But, he said, he felt badly for Mr. Allen and, two months prior, invited him to work with him selling cobblestones in Oakland. When the job did not make as much money as Mr. Colangelo had hoped, he ended up owing Mr. Allen fifty dollars and still owed him this money on the day of the incident when Mr. Allen showed up at his RV.

That morning, Mr. Allen asked Mr. Colangelo for the money and Mr. Colangelo told him he had a check to cash from which he could pay Mr. Allen but that he needed to cash it at the Money Mart in Daly City. Mr. Colangelo told Mr. Allen that once he cashed the check, he would pay him the fifty dollars and could drop him off wherever he wanted. All three then drove to Daly City.

Mr. Colangelo drove to the Money Mart on Mission Street but was unable to cash the check. He returned to the truck intending to search for another check cashing business and to return to San Francisco. However, upon merging onto the 280 freeway, Mr. Colangelo immediately heard one of the steel belts from his tire hitting the rear of the truck, which caused him to exit at John Daly Boulevard and stopped in a nearby neighborhood where he ended up parking on Niantic Avenue. He parked on the street and was looking down at his phone, trying to sort out how to fix his tire, when Ms. Salama alerted him to a police unit that drove by. Mr. Colangelo told her he was not doing anything wrong, just attempting to call for help for his tire and was not worried nor scared about it.

However, Mr. Allen then told them that they should get out of the area soon since he had a warrant for absconding from parole for failing to report to his parole officer. A police officer (McCarthy) then knocked on the driver’s window and Mr. Colangelo assumed it was the officer who had just driven by them. Mr. Allen had no reaction to the knocking and Mr. Colangelo described him as ‘dozing off.’ Mr. Colangelo rolled down his window and the officer asked what he was doing there and requested identification. Mr. Colangelo explained about the tire and said that he did not have a physical identification to which the officer told him it was not a problem and “no worries.” When Officer McCarthy was speaking with him, Mr. Colangelo noticed the gold, unmarked SUV (with Lieutenant Brennan and Detective Newton) arrive and park in front of the truck. He had also been aware of Officer Brenes’s presence somewhere behind the truck. At some point, Officer McCarthy left the truck and walked over to his patrol unit.

When Officer McCarthy returned, he told Mr. Colangelo he was not there to “play games” and asked if anyone had any meth pipes or if anyone had ingested any drugs. Officer McCarthy then asked everyone in the car for identification. During this, Officer McCarthy asked Mr. Allen, “What’s wrong?” and Mr. Allen replied, “I’m a little nervous.” Officer McCarthy then told Mr. Allen there was nothing to be nervous about, that if he had a meth pipe, he just had to show it to him, throw it on the ground or “crush it out” and all would be on their way. Officer McCarthy

then asked Mr. Colangelo to exit the car, which he did, and then as soon as he was out, Officer McCarthy asked him to turn around, presumably to handcuff him.

At this point, Mr. Colangelo had a partial view into the cab and saw Mr. Allen's arms, knees and the backpack that was resting on his lap. Mr. Colangelo was in the process of turning around when Officer McCarthy drew his gun and pointed it at Mr. Allen, so close to Mr. Colangelo that Officer McCarthy had to reach around him to point it at Mr. Allen. Officer McCarthy told Mr. Allen, "Don't move" and then said, "He's moving, he's moving" and told Mr. Colangelo to "Back up, back up," which he did. During this time, he heard Mr. Allen say to Officer McCarthy something like, "Hey, look man, check this out, look, you're not going to point a gun at me." Mr. Colangelo described Mr. Allen's tone as "aggressive." Mr. Colangelo said while he was retreating from the truck, "All of a sudden" Mr. Allen pulled out a gun from his lap. He did not know if Mr. Allen pointed the gun at Officer McCarthy initially, since Mr. Colangelo could see the side of the gun and the grip, but believes once Mr. Allen made the statement to Officer McCarthy, Mr. Allen appeared to turn the gun and point it in the direction of Officer McCarthy, who was still standing at the driver's door.

Once Mr. Allen pulled the gun out, Officer McCarthy alerted "He's got a gun, he's got a gun." Mr. Colangelo said he then saw the 'primary officer' (Officer McCarthy) jump in the driver's side and wrestle with Mr. Allen over the gun. Mr. Colangelo watched the struggle and at some point, could see "hands came up" in which he could see the struggle for the gun between Mr. Allen and the three officers. He estimated the struggle continued for thirty to forty seconds and saw the gun pointed up towards the roof of the truck. He said he was not sure if the two officers from the passenger side were struggling with Mr. Allen through an opened door or through the window. Mr. Colangelo heard two shots and saw a silver casing bounce around within the truck and assumed the shots came from Mr. Allen's gun, which he described as a small, grey, kind of rectangular pistol.

3. Officer Nicholas McCarthy

Officer McCarthy was in full uniform driving a marked patrol car on this day. He had just driven away from the Daly City Corporation Yard when he turned onto Niantic Avenue. Mid-block, he saw Mr. Colangelo's white Chevy, parked at an angle, partially blocking a driveway, with a partially open driver's door and a flat tire. He saw only the driver, apparently slumped behind the wheel and made a U-turn to check on his welfare. Officer McCarthy pulled up behind the truck, one car length back, without using any type of lights or siren.

Officer McCarthy contacted Mr. Colangelo, inquired if he was okay and explained why he had contacted him. During this conversation, Officer McCarthy noticed Mr. Allen sitting in the front passenger seat holding a meth pipe. Officer McCarthy then noticed Ms. Salama sitting in the rear seat, and saw Mr. Allen was attempting to conceal the pipe under his right thigh. Officer McCarthy asked all occupants to stop moving inside the truck and told them that if they were upfront and honest about any narcotics or paraphernalia, he would try to work with them.

Officer McCarthy asked Mr. Colangelo for identification, which he said he did not have, and was writing down his information when he saw that Mr. Allen was extremely nervous, saying,

“Fuck, fuck, fuck,” grabbing his forehead and pulling his left hand down across his face. Officer McCarthy then saw Officer Brenes drive up and park and he asked her to remain. Officer McCarthy then asked Mr. Allen for his identification, which Mr. Allen said he did not have, and then proceeded to give Officer McCarthy inconsistent dates for his birthday.

Officer McCarthy then saw the unmarked gold Ford SUV drive past his location and park in front of the truck. He saw Lieutenant Brennan and Detective Newton exit and walk to the passenger side of the truck. All windows on the truck were tinted and dark. When Lieutenant Brennan opened the rear passenger side door, Lieutenant Brennan explained to Ms. Salama that he opened it for officer safety reasons since he could not see inside.

Based on the movements and the meth pipe inside the truck, Officer McCarthy asked Mr. Colangelo to step out of the truck, which he did. As Mr. Colangelo exited, Officer McCarthy saw Mr. Allen continue to move his hand toward his right thigh. Even after Officer McCarthy told Mr. Allen to stop moving and put his hands on his lap so he could see them, Mr. Allen did not say anything but continued moving his torso from front to back. Officer McCarthy told Mr. Allen to relax and said that if he was worried about the meth pipe, “To not worry about it, we can work it out.”

After Mr. Colangelo exited the truck, Officer McCarthy started to move him to his left when he then saw Mr. Allen holding a gun on his lap, in his right hand, with the gun left side down on top of his right thigh. Officer McCarthy could see that it was a black, semi-automatic pistol, with an older grip and a newer looking slide. Officer McCarthy said Mr. Allen was staring straight at him. Officer McCarthy immediately took his gun out of his holster and pointed it at Mr. Allen, yelling to alert the other officers, “Gun, gun, gun!” At that moment, Mr. Allen pulled his gun up and let out a yell that Officer McCarthy described as “AAhhhh!” Mr. Allen then turned his body towards him, pulled the gun up and pointed it at Officer McCarthy’s face; from his vantagepoint, he was looking directly at the barrel of the gun. Officer McCarthy estimated being about one foot from the open driver’s door and he saw that Mr. Allen was leaning over the center console while pointing the gun at Officer McCarthy. He made the decision he was going to shoot Mr. Allen when he felt a ‘pinch’ on his forehead, which took him by surprise and distracted him momentarily.

At the same time, Lieutenant Brennan and Detective Newton had opened the front passenger door and he believed that if he fired his weapon, they might be in the line of fire. Officer McCarthy let go of Mr. Colangelo and crouched down to avoid Mr. Allen’s gun, then went to the rear of the truck and heard either Lieutenant Brennan or Detective Newton, or both, yelling for Mr. Allen to “Drop the gun, drop the gun!” When Officer McCarthy came around the rear of the truck, he saw Lieutenant Brennan and Detective Newton leaning into the front passenger seat area onto their tiptoes, then heard a single shot without knowing who had fired it nor who was hit. He called in a ‘shots fired, code 3 cover’ over the radio, then saw Lieutenant Brennan step back from the truck and say he had Mr. Allen’s gun. Detective Newton and Officer McCarthy then removed Mr. Allen from the truck, placed him on the ground, handcuffed him as he was struggling with the officers and aid was started.

4. Lieutenant Michael Brennan

Lieutenant Brennan has been with the Daly City Police Department since 2003 and a police officer since 2000. He currently holds his Basic, Intermediate, Supervisory and Management certificates from the California Commission on Peace Officer Standards and Training (POST); has attended numerous POST courses including Special Weapons and Tactics (S.W.A.T), S.W.A.T Supervisor, S.W.A.T Commander, Officer Safety, Critical Incident Management, Defensive Tactics, Officer Survival and De-escalation training. In April 2021, he was the Investigation Division Commander tasked with supplementing the Patrol Division by placing additional personnel on patrol duties to address an increasing number of violent street robberies that were occurring in Daly City. He was out on patrol supervising this operation with Detective Newton at the time of this incident.

Lieutenant Brennan was wearing distinctively marked 'Police' clothing including patches and a sewn-on badge, a vest with 'Police' markings and a duty belt. Lieutenant Brennan was driving the unmarked gold Ford SUV when he heard Officer McCarthy call out his contact with Mr. Colangelo's truck on Niantic Avenue and also heard Officer Brenes announce she was a cover officer. Lieutenant Brennan and Detective Newton continued on to Niantic Avenue to confirm if there was need for additional cover. When they arrived, he saw Officer McCarthy and Officer Brenes on the driver's side and he and Detective Newton approached the passenger's side. He could see all three passengers as he approached the car and asked Mr. Colangelo if he could open the right rear passenger door so he could see inside for their safety, to which Mr. Colangelo said, "No problem."

Lieutenant Brennan opened the rear door and could see Mr. Allen repeatedly looking over his right shoulder at where Lieutenant Brennan was standing. Lieutenant Brennan described him as "super nervous and fidgety." Lieutenant Brennan heard Officer McCarthy ask Mr. Colangelo to exit the car and then saw Mr. Allen appear to be moving his hands towards his waist as if he was reaching or hiding something, either narcotics or a weapon. Since he could not see Mr. Allen's hands, he moved to the front passenger door and opened it. When he did so, he heard Officer McCarthy yell "Gun, gun, gun." At that moment, the door was open and he saw Mr. Allen holding a firearm and now pointing it at him (Lieutenant Brennan). Lieutenant Brennan noted, "At that point, I am committed, I do not have time to get my gun out, so I get both my hands and I grab onto that gun for dear life."

Lieutenant Brennan tried to push the gun towards the roof of the truck and kept yelling at Mr. Allen to drop the gun, but Mr. Allen kept fighting him and trying to pull the gun down toward Lieutenant Brennan's head. Lieutenant Brennan fought to keep both of his hands on the gun, the right on the barrel and slide and his left underneath the trigger guard, thinking that if Mr. Allen shot him, it might malfunction and then he would not be able to shoot anyone else. While holding the gun, he heard two gunshots, felt the percussion of the shots on the right side of his vest, felt Mr. Allen go limp and finally pulled the gun from Mr. Allen's hands. As he backed out of the truck with the gun, Detective Newton told him, "I shot him."

Lieutenant Brennan saw Officer Brenes and Detective Newton remove Mr. Allen from the truck, called for medics and saw the officers begin life-saving measures. He told County

Communications to have fire and medics respond. Lieutenant Brennan saw Mr. Allen had labored breathing and told the officers to remove the handcuffs so they could render aid.

At the scene, Lieutenant Brennan examined the gun he removed from Mr. Allen's hands and noted it looked like a Glock, felt like a gun and during the struggle with Mr. Allen had been one-hundred percent sure it was real firearm. It was not until he looked inside the barrel and saw a smaller sized barrel for BB's did he determine it was not a real firearm.

5. Detective Cameron Newton

Detective Newton has been a police officer for nine years, seven of them for the Daly City Police Department. He was assigned to the Investigations Division of the Drug Enforcement Agency (DEA) Task Force and is also on the DCPD S.W.A.T. Team, is a member of the County Terrorism Assault Team, a Firearms Instructor, a Patrol Rifle Instructor, a Taser Instructor and an Active Shooter Instructor. He has completed training in Crisis Intervention and De-escalation. On the day of the incident, he worked in the morning at his DEA Task Force assignment and in the afternoon joined Lieutenant Brennan to conduct unmarked surveillance in Daly City due to a recent series of strong-arm street robberies. He wore a uniform similar to Lieutenant Brennan including a vest with a star badge, a shirt with DCPD insignia, 'Police' markings and a utility belt.

Detective Newton heard the radio call from Officer McCarthy about the stop on Niantic Avenue and was also aware Officer Brenes was on scene. Detective Newton noted the tinted windows prevented him from seeing the entire inside of the cab but he did see a person in the right front passenger seat. He stood near Lieutenant Brennan when he opened the rear passenger door and then saw one occupant sitting behind the driver. He could see and partially hear Officer McCarthy's contact with the driver and saw Mr. Colangelo exit the driver's side. At that moment, he saw Lieutenant Brennan open the front passenger door and, simultaneously, heard Officer McCarthy yell, "Gun, he has a gun."

Detective Newton then saw Officer McCarthy draw his firearm and saw Mr. Allen raise a firearm straight up towards the ceiling of the truck. Mr. Allen then turned his body toward the passenger door, facing at him and Lieutenant Brennan and Detective Newton could see Lieutenant Brennan grabbing at Mr. Allen's arms trying to get the gun away from him. Detective Newton initially tried moving to the left of Lieutenant Brennan to assist in the struggle, but he found no space to maneuver into the opening of the door. He saw Mr. Allen pulling away from Lieutenant Brennan by backing further into the cab of the truck. Detective Newton could see Lieutenant Brennan fully extended in trying to grasp for Mr. Allen's hands to try and gain control over the gun and recalls during the struggle seeing the tip of Mr. Allen's gun coming down towards Lieutenant Brennan and him. He noted that both he and Lieutenant Brennan are around 5'6" and that Mr. Allen was a large man who 'filled up the cab.'

He said, "There was a feeling of being terrified that the subject was going to kill the Lieutenant right in front of me, kill me, whoever else was in that vehicle. But there was an overwhelming feeling of being almost helpless because I couldn't reach further or do anything at that point, I couldn't get around him because of our positioning in the door, I couldn't get around

him (Lieutenant Brennan) on the right side because there's nothing over there, the gun's over here. I couldn't get on top of him and at that point I thought one of us was going to die."

Detective Newton said that he had taken his gun out at some point near the start of the struggle. Fearing for his life, he was able to extend his arm and get his handgun what he hoped was beyond and around Lieutenant Brennan, and right into or near to Mr. Allen's abdomen and fired one or two rounds. He saw an immediate change in Mr. Allen's demeanor and then saw that Lieutenant Brennan was able to squeeze out and tell Detective Newton that he had the gun, he had the gun.

Detective Newton saw Mr. Allen was no longer fighting nor resisting, removed him from the truck and initially handcuffed him. He ran to his unit, retrieved the medical kit and returned to Mr. Allen on the ground. He opened Mr. Allen's shirt and saw one wound in his abdomen, began providing aid and removed the handcuffs from Mr. Allen.

In his interview with investigators, Detective Newton described his threat assessment as, "It was imminent because there was nothing else I could do at that moment because I didn't have access. His threat to us needed to stop and he was actively resisting and fighting the Lieutenant for a gun. That was the force I needed to use to stop that threat." He said before firing his gun, he considered alternative means and noted, "I felt that Lieutenant Brennan's life was in danger and my life was in danger and I have other tools on me that I know have their limitations." He described that a baton would not work in such a confined space nor prevent someone from shooting; pepper spray would be detrimental to the officers in such a confined space; he did not have a clear shot to utilize a taser device which requires a certain distance to be used properly, does not always incapacitate a subject and Mr. Allen might still have been able to use his arms and hands in getting control of the gun from Lieutenant Brennan. He believed those three options would not stop the imminent threat of Mr. Allen gaining possession of the handgun.

Scene Investigation

The scene was processed for evidence by two criminalists employed by the San Mateo County Sheriff's Office Crime Lab, Annie Hoang and Eugene Banga-an. Photographs of the scene, the truck, the involved police vehicles and the personnel involved were taken. Recovered from under the truck and around the front passenger seat were: one casing with a head stamp of "WIN 9MM LUGER;" a black glove; a charger with an attached cord; a lighter; and a glass pipe. A second casing with an identical head stamp was recovered from the driver's side floor of the truck.

Photos of the scene:







Six BB pellets were recovered from under the passenger rear floorboard. No other BB pellets were found outside of the truck.

One spent bullet was recovered from the inside bottom of the driver's door and a trajectory was established that showed, when facing the interior of the driver's door, the shot was from right to left, downward, entered the driver's door panel and created a bulging defect on the exterior panel of the driver's door.

Mr. Allen's gun was recovered, examined at the lab and found to be a Glock replica BB pistol. When received, the CO2 canister was empty and, thus, the gun did not fire. When a new canister was used and new BB steel pellets were loaded, the pistol was able to fire the first pellet but failed to fire the subsequent pellets due to a defective magazine spring. Further examination revealed the Glock replica BB pistol was similar in color, type, shape, size and design as a 9mm Luger caliber Glock mode 19 pistol.

See comparison photos below:



9mm Luger caliber Glock model 19 pistol



Glock replica BB pistol



9mm Luger caliber Glock model 19 pistol



Glock replica BB pistol

Detective Newton's service weapon, a 9 mm Luger caliber Glock Model 17 Gen 5 semi-automatic pistol, was also examined. The two 9 mm casings and one bullet recovered from the scene, and the bullet recovered from Mr. Allen at autopsy, were all determined to have been fired from this firearm.

Investigators also observed and photographed a welt on the right forehead of Officer McCarthy that was consistent with a projectile striking and grazing the area.

Autopsy Report

On April 8, 2021, Dr. Michael Hunter, a forensic pathologist working for the San Mateo County Coroner's Office, completed an autopsy on Mr. Allen. Dr. Hunter's findings were that a

gunshot wound to the torso penetrated through the abdomen and a bullet was recovered from the mid-right back. The cause of death was a gunshot wound of the torso.

The toxicology report for Mr. Allen showed he had methamphetamine and amphetamine in his blood, both at levels higher than a therapeutic concentration range. His blood sample also revealed levels of morphine, midazolam, and THC.

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 of law to the facts documented in the investigation, I conclude that Detective Newton's use of deadly force against Mr. Allen was justified under California law. I find that his belief in the need to use lethal force to defend against an imminent threat of death or serious bodily injury to himself and/or to Lieutenant Brennan, based on the totality of the circumstances facing him, was reasonable within the meaning of Penal Code Section 835a(c)(1)(A).

It is clear from the statements by the civilian witnesses and the officers on scene that Mr. Allen escalated what had been a low-key contact by Officer McCarthy into a deadly confrontation when he pointed his replica firearm first at Officer McCarthy and then at both Lieutenant Brennan and Detective Newton during a struggle for control of it. The replica reasonably appeared to everyone at the time, including Lieutenant Brennan, a veteran officer, and Detective Newton, with extensive firearm training as an instructor, to be a real gun: it was of the same size, design, color, material and feel as a real 9 mm Glock handgun and was only discovered to be a replica when Lieutenant Brennan disarmed Mr. Allen and could closely inspect it.

Further, Mr. Allen, a parolee with a warrant for absconding and a possible motive of not wanting to return to custody, began the confrontation by bringing the gun out, pointing it at Officer McCarthy and firing off at least one round of a BB which likely was the cause of the wound on Officer McCarthy's forehead. He continued the escalation, despite repeated admonitions for him to drop the gun, by engaging in a struggle with Lieutenant Brennan and Detective Newton over its control, refusing to relinquish control over it and end this dangerous provocation. During the struggle, both Lieutenant Brennan and Detective Newton saw the gun barrel pointed at them while the gun was still in Mr. Allen's control, a fact which would reasonably lead both of them to conclude that they were in imminent danger of death or great bodily injury if Mr. Allen could squeeze the trigger and fire off a round or gain complete control of the gun.

These events occurred rapidly, within seconds, which required the officers to instinctively react to the perceived threat they faced. Officer McCarthy immediately pointed his firearm at Mr. Allen when he saw Mr. Allen raised the gun at him. Lieutenant Brennan reasonably understood he did not have time to unholster his firearm once he saw Mr. Allen pointing the gun while seated inside the truck. When Lieutenant Brennan grabbed onto the gun, it was the only and most plausible and effective means to prevent Mr. Allen from firing it. Even in the short time frame of the struggle, Detective Newton was able to discern that less lethal force would be ineffective against what he, and all the officers, reasonably believed was a real firearm: batons, tasers and pepper spray, under these circumstances, would not have gained control over Mr. Allen and/or his gun. Thus, I find that Detective Newton did consider and reasonably reject the use of less lethal means against Mr. Allen, within the meaning of Penal Code Section 835a(a)(2) and believe that his judgment would be shared by an objectively reasonable officer.

My role as District Attorney in cases such as this is to evaluate the use of lethal force by an officer from the perspective of a reasonable officer at the scene with the information available in a highly dynamic, stressful encounter. I find that Detective Newton was justified in using lethal force to protect his life, the life of Lieutenant Brennan, and, indeed, others at the scene, as well, within the meaning of Penal Code Section 835a(c)(1)(A). I also believe the totality of the circumstances justified Detective Newton in believing the threat of death or great bodily injury was 'imminent' within the meaning of Section 835a(e)(2) and that any reasonable officer in the same situation would believe that Mr. Allen had the present ability and demonstrated intent to immediately cause such harm.

Lastly, this narrative leads to the conclusion that had Mr. Allen's gun been an actual firearm, Officer McCarthy would have been shot in the head and likely suffered a fatal wound instead of only suffering a graze wound from a BB that Mr. Allen fired when he raised up and pointed the previously concealed gun at him. Lieutenant Brennan and Detective Newton reasonably believed they were in a struggle for their lives over control of a gun that, had it been real, could have been used to shoot both of them.

In conclusion, I note that all Daly City Police Officers involved in this incident fully cooperated with the investigation and all provided complete and detailed statements narrating what they saw, did, heard or said. They answered all questions posed to them by my investigators and the Department complied fully with the County-wide Officer Involved Shooting Protocol, which greatly contributed to our ability to have a comprehensive understanding of these events.

As is the practice of this District Attorney's Office, in an effort 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.

Sincerely,



STEPHEN M. WAGSTAFFE
DISTRICT ATTORNEY, COUNTY OF SAN MATEO