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THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

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September 6, 2024

Chief Christie Calderwood
Carlsbad Police Department
2560 Orion Way
Carlsbad, CA 92010

Chief Scott Wahl
San Diego Police Department
1401 Broadway
San Diego, CA 92101

Re: Non-fatal shooting of Patrick Doherty by Carlsbad Police Officer Vincent Abbate on October 20, 2023; Carlsbad Police Department Case No. 2306740; San Diego Police Department Case No. 23-045874; DA Special Operations Case 23-104PS; Deputy District Attorney assigned: Christy Bowles

Dear Chief Calderwood and Chief Wahl,

We have reviewed the reports and materials compiled by the San Diego Police Department Homicide Unit concerning the non-fatal shooting of Patrick Doherty. A District Attorney Investigator responded to the scene and was briefed by investigators. This case was submitted to the District Attorney's Office for review on April 2, 2024.

Summary

On Friday, October 20, 2023, at approximately 10:53 p.m., Officer Abbate was on patrol driving a marked Carlsbad Police Department vehicle when he saw a white van traveling eastbound at a high rate of speed on Carlsbad Village Drive. Abbate followed the van for several blocks and observed the driver, later identified as Patrick Doherty, commit several vehicle code violations, including excessive speed (VC 22350), failure to stop at a red light (VC 21453), and failure to stop at a stop sign (VC 22450). Abbate decided to perform an enforcement stop.

Abbate aired his location and the van's license plate number and initiated the stop at 3000 Madison Street. Doherty immediately pulled to the right into the bike lane and stopped the van. Doherty placed the van in reverse as though he was going to parallel park in an empty spot on the street. Abbate stopped his vehicle directly behind the van and activated his overhead red and blue emergency lights. Officer Abbate got out of his car and walked around the rear of his patrol vehicle to contact Doherty on the passenger side of the van.

Abbate approached the front passenger door of the van while holding his flashlight in his left hand. As he approached, he heard Doherty say something along the lines of, "What do you want me to do?" Abbate looked in the passenger window of the van and saw Doherty sitting in the driver's seat looking out of the driver side window. Doherty's left forearm was leaning on the driver side door and his right arm was not fully visible. Abbate knocked on the passenger door of the van to get Doherty's attention. Doherty turned and looked at Abbate, then raised his right arm up and pointed a handgun at Abbate. As Doherty raised his arm, Abbate recognized what he believed to be a firearm in Doherty's hand. Abbate immediately turned and tucked his shoulder to retreat. Doherty fired one shot toward Abbate. Abbate heard the shot and drew his firearm as he ran to his patrol vehicle.

Abbate fired several rounds through the rear windows of Doherty's van fearing Doherty would continue shooting at him. After Abbate stopped firing, Doherty placed the van in drive and attempted to drive away from the scene. The van stopped several houses away from the initial shooting location. Abbate aired "shots fired" over the radio and pulled his car closer to the van to close the distance between his vehicle and the van. Doherty then placed both of his hands out of the driver side window. Abbate took a position of cover behind his driver side door and pointed his firearm toward Doherty while giving him commands not to move and informing Doherty if he reached for the firearm again, he would be shot. Additional officers, including a canine officer, arrived to assist. Doherty was taken into custody. Doherty made a spontaneous statement that the shot he had fired was only a "scare tactic." Neither Abbate nor Doherty were injured during this incident.

Officers found a loaded Glock-type 9mm handgun on the driver side floorboard of Doherty's van. There was a bullet hole in the passenger side door of the van next to the window where Abbate had been standing just before Doherty raised his arm and pointed the handgun. There were also several bullet impacts to the van attributed to the shots fired by Abbate.

On October 21, 2023, at 6:28 a.m., a phlebotomist drew a vial of blood from Doherty's right arm. Bio-Tox Laboratories analyzed the blood sample and reported a result of .071% ethyl alcohol.

Persons Involved

At the time of the incident, Patrick Doherty was a 25-year-old resident of Oceanside, California. Officer Abbate had been employed by the Carlsbad Police Department for one year and two months.

Statement of Civilian Witness One (CW1)

CW1 was inside his residence when he heard approximately five to eight "pops" which he believed to be gunshots. He described the "pops" as one pop followed by a sequence of pops. The time between the first pop and the additional pops was not long. CW1 did not hear anything before or after the pops. CW1 looked out of his window after the pops and saw police officers calling a male out of a white van on the street.

Statement of Civilian Witness Two (CW2)

CW2 was inside a bedroom in the back of her residence with her baby. She heard approximately six to seven gunshots. The gunshots sounded all together and went very fast.

Statement of Civilian Witness Three (CW3)

CW3 was with CW2 in their residence. CW3 let the dog outside, went back inside, and then heard a very loud, repeated, popping noise like someone clapping. CW3 initially thought the noise was fireworks because fireworks had been set off earlier at a local football game. CW3 initially ignored the noise, but then realized the noise was gunfire. He described the noise as "back to back to back."

Statement of Law Enforcement Officer One (LE1)

LE1 responded to Abbate's location. LE1 saw Abbate conducting a high-risk stop with his firearm pointed toward a white van. LE1 parked her car next to Abbate's, took a position of cover at the driver's door of her car, and pointed her rifle at the driver of the van. The driver's hands were raised outside of the driver side window. Abbate advised LE1 that Doherty had shot at him with a pistol that was still in Doherty's vehicle.

LE1 told Doherty to keep his hands outside of the window. Doherty responded each time by saying "okay" or wiggling his hands outside of the window. LE2 arrived at the location and moved LE1's car closer to the van to close the distance with the suspect as LE1 held lethal cover. LE2 took command and ordered Doherty out of his van. Doherty was taken into custody without incident. LE1 cleared the van and confirmed there were no other occupants inside the van.

Statement of Law Enforcement Officer Two (LE2)

LE2 arrived at Abbate's location where LE1 and a canine officer were communicating with Doherty. LE2 moved LE1's patrol car closer for ease of a canine deployment and for pistol coverage. LE2 turned on the patrol car's takedown lights to illuminate Doherty. LE2 spoke with Doherty in a loud firm voice, instructing Doherty to open his door with his left hand. Doherty stated his door was locked and he would have to put his hand inside the vehicle to unlock it. Doherty told LE2 he could climb out of his driver side window so LE2 could see his empty hands. LE2 asked Doherty if he was injured, and Doherty responded he was not. LE2 noticed Doherty's speech was slurred.

LE2 allowed Doherty to climb out the driver's door window. LE2 drew his pistol and pointed it at Doherty as he climbed out. Once out, Doherty immediately got face-down on the ground. LE2 ordered Doherty to stand up and lift his shirt collar and turn around to expose his midsection so LE2 could check Doherty's waistband for weapons. Doherty lifted his collar and raised his sweatshirt over his head and dropped it beside the van.

LE2 ordered Doherty to walk backward toward the sound of LE2's voice. LE2 instructed Doherty to get on his knees and Doherty spontaneously stated, "It was just a scare tactic." LE2 handcuffed Doherty and took him into custody. LE2 asked Doherty if there were any weapons in the car and Doherty responded there was a "19 on the bottom by the seatbelt." LE2 confirmed

with Doherty he was referring to a Glock model 19 handgun. LE2 conducted a pat down of Doherty for weapons and then placed him in his patrol vehicle.

Statement of Officer Abbate

On October 20, 2023, Abbate was working as a patrol officer in the City of Carlsbad. His beat of jurisdiction was the northwestern portion of the city, focused around the Carlsbad Village area. Abbate drove southbound on Carlsbad Boulevard and made a left turn on Carlsbad Village Drive when he saw a white van accelerating at a high rate of speed, enough to catch Abbate's attention. Abbate moved behind the van to follow it.

The van did not come to a complete stop at a red light when it made a right turn from Carlsbad Village Drive onto Roosevelt Street. Then the van did not come to a complete stop at a stop sign when it turned left from Roosevelt Street onto Oak Avenue. Abbate communicated to dispatch that he was going to make a traffic stop of the van. Abbate intended to make a traffic stop of the van for running the red light and running through the stop sign.

The van made a right turn onto Madison Street. Abbate followed the van and activated his flashing red and blue emergency lights. The van pulled into the bike lane and the driver put the van into reverse. Abbate believed the driver was preparing to back into a parking spot along the curb, however, due to Abbate's vehicle's position, the driver was not able to back up. Abbate waited to see if the driver would pull forward to the side of the curb, but the driver did not move the van.

Abbate activated his body worn camera and got out of his car. He walked around the back of his patrol car and approached the passenger side of the van. As Abbate approached, he saw a lone driver in the van who appeared to be looking out of the driver's window. Abbate heard the driver make a statement along the lines of, "What do you want me to do?" Abbate pointed his flashlight into the van and noticed the driver's back was facing him as the driver was looking out the driver side window. The driver's left forearm was on the driver door and his right arm was "locked out" hidden underneath the driver's seat. Abbate knocked on the passenger door of the vehicle to get the driver's attention. Abbate recognized the driver's position as one that had been shown during academy scenarios and believed the driver was possibly concealing something in his right hand.

The driver turned and looked at him, and Abbate saw the driver's eyes widen as the driver's right arm began to pull up. Abbate saw what he recognized and believed to be the pistol grip and backslide of a handgun. Abbate believed the driver was going to pull a firearm and try to shoot him. Abbate immediately turned, tucked a shoulder, and started to run back to his car when he heard one gun shot. Abbate ran back to his car and drew his firearm.

Once he got back to what he believed was his front passenger side fender, Abbate turned around to face the van. He was still slightly back-pedaling, and out of fear the suspect was going to continue firing at him, Abbate discharged his firearm through the back windows of the suspect's van. Abbate continued to fire until there was a lull in the gunfight. He then saw the van start to accelerate away from him.

Abbate turned and started to run again behind his patrol car. He put out over his radio that shots were fired. Abbate ran to his driver's door, opened his door, and raised his firearm toward the van which he estimated was now about five to six houses from him. The van was slowly rolling away as if someone took their foot off the brake and let it just kind of roll to a stop. Abbate got in his car to again close the distance. The driver put both hands out of the driver side window.

Abbate placed his vehicle in park, drew his firearm on the suspect's van, and began giving the driver orders not to move and advised him that if he reached for the firearm again, he may be shot. Other officers arrived and began to take over commands and control of the scene. At that point, the driver climbed out of the window and was taken into police custody. Abbate's lieutenant then removed him from the scene.

Abbate did not believe the use of any less lethal tool would have saved his life or stopped the threat, given the suspect was inside the van and had presented him with a life-threatening attack. When he saw the suspect raise the gun, Abbate flashed back to academy training scenarios involving officer ambushes and stories of officers not making it out of traffic stops. Abbate recognized the action of the suspect pulling his arm up, and after locking eyes with him and seeing the gun, Abbate described he went into muscle memory. Specifically, Abbate described the need to get off the "X" to avoid being shot. Abbate feared he was not going to make it home. After he heard the shot, Abbate realized he was faced with a suspect who was willing and actively trying to take his life. He went into a defensive mindset to make sure he was not going to lose the fight.

During a walkthrough of the scene with detectives, Abbate stated he reloaded his firearm either during or after the shooting.

Statement of Patrick Doherty

Doherty waived his Miranda rights and agreed to speak with detectives. He stated that on the day of the incident, he went to work until about 3:00. He met his cousin at a bar called the Pour House. Doherty stayed at the bar for a short while then went back home, took a shower, and changed clothes. He returned to the bar and ate. Doherty stayed at the Pour House with his cousin until approximately 30 minutes before this incident. When Doherty left the Pour House, he headed to a bar in Carlsbad called the Golden Tee. He noted it was weird because he passed the bar, so he guessed he did not know where he was going. Doherty was then pulled over unexpectedly.

Doherty saw Abbate before Abbate turned on his lights. Doherty felt like he was going to be pulled over because he sped up a little bit afterward. He did not want to go to jail. He had gotten a DUI about a month earlier and he had a few drinks in him. He believed that because of the previous DUI, he was not allowed to have any alcohol in his system. Doherty had three beers, a shot of Jose Cuervo, and a shot of a drink called Mexican Candy in a period of about three hours. He did not feel drunk, just buzzed.

As Abbate put the lights on him, Doherty pulled over. Abbate walked up and Doherty thought, "Oh fuck." Doherty pointed the gun a little up and pulled the trigger to try to get away. He

thought his car was still in drive and he could pull off, but he was mistaken. He finally got the van in drive, but there were too many holes in the van so it would not drive. Doherty normally keeps the gun in his van, and when Abbate turned on his overhead emergency lights, he took the gun from the floor and put it in his hand. Doherty later clarified he pulled out the gun before Abbate turned on his lights. Doherty also later explained he never keeps the gun chambered, but chambered a round before Abbate turned his lights on.

Doherty was looking out of his window because he did not see anyone get out of the driver's seat. He stuck his head out of the driver side window and Abbate just kind of popped up on the passenger side of his van, which startled him. Approximately three seconds after seeing Abbate at the passenger window, Doherty raised the gun and fired one shot in Abbate's direction. Doherty was not trying to hit Abbate but shot at Abbate as a "scare tactic" to get away. Doherty stated if Abbate had walked up to the driver side, he would have put his gun up and surrendered. After Doherty fired the shot, Abbate ran back and started shooting at his van. Doherty put his van in gear and tried to drive away, but the van rolled forward on its own. Doherty stopped his van and placed his hands outside of the driver side window.

When asked if he thought the officer might return fire, Doherty said he considered that possibility but was thinking he would accept his fate. Doherty further explained, "If I die, I die." Doherty knew he wasn't in the right state of mind. He made decisions he would not have normally made because he was scared. He knew he was dealing with an officer. Doherty was just trying to scare Abbate so he could get away.

Doherty did not consume any drugs the night of the incident. Doherty consumed cocaine "last week" and is currently in recovery. He took a hit of marijuana the day prior to the incident. Doherty was hesitant to provide details about the gun, but said it was a Glock 19 P-80 ghost gun he had purchased for \$900 and had owned for about a year.

Investigation

The scene was secured, photographed, and investigated by San Diego Police Department Homicide Team 6. All detective reports, crime scene investigators' reports, photographs, audio recorded witness statements, body worn camera, dash camera video, and other recordings were reviewed. All these items provided evidence corroborating the statements provided by the officers. The shooting and the events leading up to it were captured on Abbate's body worn camera as well as his dashboard camera. Additional officers responded to the scene, but Abbate was the only officer present during the shooting.

A San Diego Police Department Crime Scene Specialist (CSS) processed the scene and collected items from Abbate and Doherty. Abbate was wearing a duty belt that included a pistol, three magazines, one pepper spray, one expandable asp, an additional set of handcuffs, a tourniquet, one glove pouch, and one .223 round magazine. The CSS collected Abbate's duty firearm and one separate magazine. The firearm was a black Staccato P2011 9mm Luger handgun held one inserted magazine and held one round in the chamber. The magazine removed from the firearm was loaded to capacity, containing 17 cartridges. The second magazine collected was a 20-round magazine and contained three cartridges. This examination of the firearm and magazines is

consistent with Abbate firing 17 rounds during the incident and then reloading. This count is also corroborated by the 17 expended shell casings located at the shooting scene.

Investigators noted acceleration scuffmarks in the southbound lane of 3100 Madison Street. There was black shattered glass just north of the scuffmarks. While processing the scene, the CSS located a black size "L" Dickies zippered hooded jacket on the concrete pavement next to the driver side of the van. From the interior left pocket of the hooded jacket, the CSS removed a ProMag GL9 firearm magazine containing 10 unexpended 9mm cartridges with the headstamp "TRN 22 9x19MM."

The back windows of Doherty's van were dark and shattered on both sides. There was an apparent bullet hole in the front passenger side door and multiple bullet holes in the windows. The bullet hole in the front passenger door frame was a through and through hole, visible on the outside of the van at a height of 5'3" from the ground. Inside Doherty's van, the CSS located a firearm from the driver side doorstep. The firearm was a 9mm Luger caliber Polymer 80 pistol, with no serial number. The firearm had one unexpended 9mm cartridge in the chamber. One 9mm magazine containing 8 unexpended 9mm cartridges was removed from the firearm. The headstamps on the removed rounds were not identified by brand name.

In addition to multiple bullet fragments, the CSS located one gold colored expended cartridge case with the headstamp "TRN 22 9x19MM" inside the van. The cartridge case was located on top of clothing in a white basket behind the driver's seat. The location of this cartridge case is consistent with the ejection of a shell casing from a semi-automatic firearm if the firearm was pointing toward the passenger side of the van.

A San Diego Police Department Firearms Criminalist examined both firearms for condition and functionality. The criminalist determined that Abbate's 9mm handgun to be "operable and functional." The criminalist determined Doherty's 9mm handgun was "operable and functional" and observed no issues during test firing of the firearm. Doherty's firearm qualifies as an assault weapon per California Penal Code 30515(a)(4)(A).

Doherty was subsequently charged with multiple crimes in San Diego Superior Court case CN448888. The charges include attempted murder of a peace officer, assault with a semiautomatic firearm, resisting an officer, and possession of a loaded firearm in a vehicle. The case is scheduled for preliminary hearing on October 22, 2024.

Dashboard Camera Video

Abbate's dashboard camera was activated at the time of the shooting and the video reflected time stamps consistent with the witness statements and other evidence. At 10:52 p.m., Doherty's van turns left onto Carlsbad Village Drive from Carlsbad Boulevard. The van accelerates and passes two cars traveling in the same direction. Doherty's van turns right onto Roosevelt Street from Carlsbad Village Drive. Doherty makes a left turn on Oak Avenue, failing to stop for the stop sign. Doherty makes a right turn onto Madison Street from Oak Avenue and immediately pulls to the right into the bike lane. Although Abbate stated he activated his emergency lights after he turned onto Madison Street while following Doherty, the dashboard camera footage shows

Abbate activating his police vehicle's overhead red and blue lights after Doherty pulls into the bike lane. When Doherty stops, the van's reverse lights activate as though the van is going to back up. After several seconds the van's reverse lights go out. Abbate gets out of his car, walks around the back of his car, and approaches the van on the passenger side. Abbate walks up to the passenger door and shines his flashlight inside. Abbate knocks three times on the door. A loud bang is heard, after which Abbate ducks and yells, "Oh shit." Abbate runs back toward his car. The van's engine revs, and Abbate, who is out of camera view, fires several rounds toward the van, hitting the rear doors and windows. Doherty drives slowly forward and comes to a stop about four houses away as Abbate airs "shots fired" on his radio. Abbate quickly gets back in his patrol car and drives closer to where Doherty has stopped the van. Abbate orders Doherty not to move and airs on his radio that Doherty has both hands out of the window. About a minute later, LE1 arrives, and Abbate requests she provide cover with her rifle. Other officers arrive and Abbate's car inches closer to the van. A cover officer commands Doherty to come out of his vehicle. Doherty exits through the open driver side window and is told to walk backwards toward the sound of the officer's voice. At 11:03 p.m., Doherty walks out of camera view, but voice commands on the video and radio traffic indicate he was taken into custody. Three officers approach the van to confirm Doherty was the sole occupant.

Body Worn Camera Evidence

Abbate's body worn camera shows Abbate get out of his patrol vehicle, walk behind it, then up to the passenger side of Doherty's van. Abbate shines his flashlight in the van's passenger window and knocks on the door and inquires, "Hey man." A shot is heard as Abbate ducks and begins running as he is heard saying, "Oh shit." Abbate draws his firearm from his holster and runs back toward his car. Abbate turns toward Doherty's van, which is stopped, and fires several shots toward the van, shattering the glass on the van's rear door. The van begins to move from the area but comes to a stop approximately four houses away. Abbate takes cover behind his car and airs that shots were fired over the radio. Abbate pulls his patrol vehicle closer to Doherty's van and yells for Doherty not to move, ordering that if he reaches for the gun he will be shot. Doherty reaches his arms out the driver's door window. Abbate provides radio updates until officers arrive to assist. Abbate switches the magazine in his handgun and tells another officer on scene that Doherty had a handgun held low in his right hand and shot at Abbate first.

LE2's body worn camera also captured the events. When LE2 arrives, Doherty's van is stopped in the street and Doherty is holding his arms out of the driver's door window. LE2 gives commands to Doherty. To the right of LE2, another officer holds a rifle pointed toward Doherty. Doherty explains to LE2 that his door is locked, and he would like to place his hands on the roof of his van and climb out of the window. Doherty climbs out of the driver's door window and goes to the ground in a prone position. LE2 commands Doherty to stand back up and lift his jacket from his collar. Doherty lifts his jacket and pulls it up over his head and drops it onto the street. LE2 orders Doherty to back up to the sound of his voice. Doherty tells LE2, "I'm cooperative," and states, "It was just a scare tactic." LE2 places handcuffs on Doherty and asks him if there is anyone else in the van and if there are any weapons in the van. Doherty acknowledges there is a firearm in the van near the pedal. While walking Doherty back to his patrol car, LE2 asks Doherty, "What happened? What the heck?" Doherty replies, "Scare tactic. That's the only reason why I did anything. I was just scared. I got a DUI like maybe uh..." LE2

checks Doherty's boots for weapons, then places Doherty into his car. Later, LE2 assists officers with locating cartridge cases.

Toxicology

On October 21, 2023, at 06:28 a.m., a phlebotomist drew a vial of blood from Doherty's right arm. The blood was analyzed by Bio-Tox Laboratories. The toxicology report lists a result of .071% ethyl alcohol.

Legal Standard

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

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

An imminent threat of death or serious bodily injury is one where "based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person." Penal Code section 835a(e)(2).

Imminent harm "is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed." Penal Code section 835a(e)(2).

The statute defines "totality of the circumstances" as "all facts known to the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force." Penal Code section 835a(e)(3). The statute continues that "in determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques, if reasonably safe and feasible to an objectively reasonable officer." Penal Code section 835a(a)(2).

"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. The totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force." Penal Code section 835a(4).

Conclusion

Officer Abbate was on routine patrol when he conducted a traffic stop on Doherty. As Abbate approached Doherty, Doherty pointed a ghost gun and fired at Officer Abbate without provocation. With the immediate prospect of being shot, Abbate returned fire in self-defense.

Chief Christie Calderwood

Chief Scott Wahl

Page 10 of 10

Because of Doherty's sudden and violent actions, Abbate had no opportunity to use less than lethal force options. The officer reasonably believed the only feasible way to defend himself against the imminent threat of death or serious bodily injury was by firing back. Doherty clearly had the present ability, opportunity, and intent to immediately cause death or serious bodily injury to Officer Abbate.

Therefore, Abbate bears no state criminal liability for his actions. A copy of this letter, along with the materials submitted for our review will be retained in our files.

Sincerely,



SUMMER STEPHAN

District Attorney

cc: Captain Jeffery Smith
Carlsbad Police Department

Captain Manuel Del Toro
San Diego Police Department