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OFFICE OF  
**THE DISTRICT ATTORNEY**  
COUNTY OF SAN DIEGO

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November 7, 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: Discharging of Firearm at Mr. Kyle McCord by Carlsbad Police Officer Michael McKinney on March 29, 2024; Carlsbad Police Department Case No. 2402018; San Diego Police Department Case No. 24-012694; DA Special Operations Case 24-028PS; Deputy District Attorney assigned: Mei Owen**

Dear Chief Calderwood and Chief Wahl:

We have reviewed the reports and materials compiled by the San Diego Police Department's Homicide Unit concerning the discharging of a firearm at Kyle McCord by Carlsbad Police Officer Michael McKinney on March 29, 2024. A District Attorney Investigator responded to the scene and was briefed by officers and detectives from the Carlsbad Police Department as well as the San Diego Police Department's Homicide Unit. This case was submitted to the District Attorney's Office for review on July 29, 2024.

***Incident Summary***

On March 29, 2024, shortly before 11:15 p.m., Carlsbad Police Department (CPD) Officer M. McKinney was driving a marked police vehicle westbound on Carlsbad Village Drive under the Interstate 5 overpass when a rock struck the right side of his vehicle's front windshield, fracturing the glass and damaging the passenger side spotlight. McKinney drove to the nearby Smart & Final parking lot within the Village Plaza Shopping Center to inspect the damage to his vehicle. McKinney notified dispatch of the damage to his patrol vehicle and requested a supervisor's assistance.

At 11:19 p.m., a patrol sergeant (LE1) arrived, exited his patrol vehicle, and joined McKinney between their parked vehicles. McKinney explained to LE1 that he believed someone threw a rock at his vehicle. Within one minute of LE1's arrival, and while the officers were inspecting

the damage, Kyle McCord suddenly appeared running directly toward McKinney from the direction of Carlsbad Village Drive. McCord was holding a skateboard in his hands and, as he neared, he swung it forcefully at the back of McKinney's head, striking the officer in the head. McCord immediately fled and LE1 pursued him on foot. McKinney believed he had been shot in the head by McCord.

While McCord was fleeing, he turned and pointed something at LE1. Based on what had just happened, McKinney believed McCord was armed and was going to shoot LE1. McKinney fired three shots from his department-issued 9mm Glock handgun at McCord. LE1 broadcast over dispatch what had occurred while he continued pursuing McCord. Additional officers responded. At 11:21 p.m., officers apprehended and arrested McCord in front of a business on Carlsbad Village Drive. McCord did not have any injuries as he was not struck when McKinney fired.

McKinney had attempted to pursue McCord on foot, but he ended up collapsing at Carlsbad Village Drive and Harding Street due to the head injury he sustained from being hit with the skateboard. A Carlsbad Police officer (LE2) arrived at McKinney's location and transported him to a nearby fire station.

Three spent cartridge casings matching McKinney's firearm were located in the Smart & Final parking lot along with McKinney's department-issued flashlight, McCord's skateboard, and a large rock. Another rock, similar in color and composition to the one found in the parking lot, was found in the westbound lane of Carlsbad Village Drive near several fractured pieces of plastic. The pieces of plastic matched the shape, size, and color of the damaged spotlight on McKinney's patrol vehicle.

McKinney was transported by ambulance to Scripps Hospital in La Jolla to be treated for traumatic head injuries. Medical professionals determined he had a skull fracture and epidural hematoma (brain bleed) and he was transferred to the Intensive Care Unit. Doctors also discovered fragments of his skull were embedded in his brain, which made the injuries life-threatening. McKinney remained under hospital care until he was released on April 2, 2024.

McCord was criminally charged in San Diego Superior Court case CN454083 with premeditated attempted murder of a peace officer, assault with a deadly weapon on a peace officer, and vandalism over \$400. The charging document also alleges that McCord personally inflicted great bodily injury upon McKinney, that he personally used a deadly and dangerous weapon, and that he had been released from custody on bail on an earlier felony offense when he committed these offenses. A preliminary hearing is currently scheduled to be held on December 10, 2024.

### ***Persons Involved***

McCord is a 32-year-old resident of San Diego County. At the time of the incident, McKinney had been employed as a police officer with Carlsbad Police for eight years.

### ***Statement of Officer Michael McKinney***

McKinney was on duty and driving his marked patrol vehicle westbound on Carlsbad Village Drive. As he approached the Interstate 5 overpass, an object struck and shattered the right side of

his vehicle's front windshield. Initially, McKinney believed it was either an object that came off the Interstate 5 overpass or that someone shot at his vehicle. He announced over dispatch that his vehicle had been damaged and requested a supervisor to assist with inspection and documentation. McKinney pulled into the nearby Smart & Final parking lot. Shortly thereafter, LE1 arrived in his patrol vehicle.

The officers stood next to the damaged patrol vehicle as McKinney described the incident and explained that he thought something hit his vehicle. The parking lot where they spoke was dark but was lit with parking lot lights. Suddenly, McKinney heard a loud gunshot-like bang followed immediately with ringing in his ears. The left side of McKinney's face burned as if it was on fire, and he felt pain at the back of his head. McKinney believed he was shot in the head.

McKinney moved around his vehicle, drew his firearm, and continued toward cover at the Smart & Final building. He saw McCord fleeing toward Texas Liquor at 945 Carlsbad Village Drive. McCord was wearing a black hoodie and a balaclava-style ski mask. McKinney believed McCord was the person who had shot him. McCord was running when he turned his torso toward LE1 and pointed something at LE1. McKinney believed McCord was armed and that he was going to shoot and kill LE1 or hurt other people. McKinney did not believe any less lethal options such as Taser or baton would have been a reasonable and effective option to stop what he believed was a deadly threat. McKinney fired what he believed were two shots at McCord.

By this point, McKinney realized he had sustained hearing loss on his left side and could not hear radio traffic or broadcasts from LE1. McKinney continued his pursuit but lost sight of McCord and LE1. However, he ran toward their direction of travel hoping to stop the threat. As he rounded Texas Liquor, McKinney's body began to shut down and his legs became very weak. He looked around to see where he was and tried to broadcast that he had been shot. McKinney began to lose consciousness and believed he only had minutes to live. He crumbled to his knees and his voice gave out.

Just then, LE2 arrived and helped McKinney into LE2's patrol vehicle. LE2 transported McKinney to a nearby fire station, where he was examined by a firefighter paramedic and then immediately taken by ambulance to Scripps Hospital in La Jolla for medical treatment.

***Statement of Law Enforcement Officer One (LE1)***

LE1, a patrol sergeant with Carlsbad Police, responded to McKinney's request for supervisor assistance. Within one to two minutes, LE1 arrived in the Smart & Final parking lot and met with McKinney. LE1 parked his patrol vehicle next to McKinney's patrol vehicle and exited. Together, McKinney and LE1 inspected the damage to the windshield and passenger side spotlight. LE1 estimated that 30 seconds had passed after he arrived when he heard someone sprinting toward them. He saw McCord running full speed at McKinney. McCord was grasping a skateboard with both hands. McCord deliberately swung the skateboard with full force at McKinney's head, striking McKinney in the back of the head one time. LE1 was unsure what portion of the skateboard hit McKinney. McCord did not say anything before, during, or after the attack.

After striking McKinney, McCord fled northwest through the parking lot. LE1 chased after him on foot. McCord tried to escape on his skateboard but lost his balance. The skateboard fell under McCord and he abandoned it. At that same moment, LE1 heard what he thought were gunshots. LE1 drew his firearm because he was unsure who fired the gun. Although LE1 did not see who fired the gun, the sound came from the area where McKinney had retreated. McCord ran west on the south sidewalk of Carlsbad Village Drive. LE1 broadcast over the police radio regarding the assault, the pursuit, and that he needed emergency cover assistance.

LE1 then heard police sirens in the area and saw responding officers intercept and take McCord into custody. LE1 maintained constant watch of McCord from his initial ambush through his arrest. McCord was not injured.

***Statement of Law Enforcement Officer Two (LE2)***

LE2 responded to LE1's emergency cover request. While en route, LE2 saw McKinney standing on the southeast corner of Carlsbad Village Drive and Harding Street. LE2 stopped to assist when he saw McKinney holding his left ear, stumbling, and falling to his knees. McKinney informed LE2 that McKinney fired two rounds and that he could no longer hear. LE2 located a bleeding laceration to the left side of McKinney's head, just above his ear and over his temple. LE2 transported McKinney to Carlsbad Fire Station, and thereafter, followed the ambulance that transported McKinney to Scripps Hospital in La Jolla.

***Statement of Civilian Witness One (CW1)***

CW1 was in his parked vehicle in the Village Plaza Shopping Center parking lot. Just before the incident, CW1 saw McCord running through the parking lot toward McKinney and LE1. The officers were standing in between two patrol vehicles. Then, CW1 believed he heard five to six gunshots and an officer yelling, "Get on the ground," and "Stop." CW1 did not see which officer shot but saw one of the officers holding his head as he pointed his gun north toward McCord.

***Investigation***

The crime scenes at the parking lot and at the freeway overpass were secured, photographed, and investigated by the San Diego Police Department's Homicide Unit. All materials, including detective reports, crime scene investigator reports, audio-recorded witness interviews, body worn camera footage, and surveillance video footage were submitted to and reviewed by the District Attorney's Office. These items were found to provide corroboration to the officer and witness statements summarized above.

At the scene of the Interstate 5 overpass, several fractured pieces of the spotlight from McKinney's police vehicle were located and collected. A reddish-brown rock was also located. The rock is believed to have caused the damage to McKinney's police vehicle. At the scene of the parking lot, three spent cartridge casings, McKinney's flashlight, McCord's skateboard, and another reddish-brown rock were located and collected. LE1's body worn camera shows McCord discarding this rock in the parking lot. The rock appears consistent in size, color, and composition as the one found at the Interstate 5 overpass scene. McCord is seen carrying a skateboard that is consistent with the skateboard located where McCord abandoned his skateboard in the parking lot.

During the incident, McKinney fired his department-issued Glock 17 Gen 5, 9mm semiautomatic handgun. The firearm was received and inspected by a crime scene specialist and homicide detectives. When it was received, it was loaded with one live 9mm cartridge in the chamber and one 17-round capacity 9mm magazine with 13 rounds seated in the firearm. McKinney had two spare 17-round capacity 9mm magazines. One was partially loaded with 15 rounds and the other was fully loaded with 17 rounds. A total of 46 "Hornady 20 9mm Luger+P" brand cartridges were collected. The spent cartridge casings found on scene matched the headstamp markings on the live rounds collected from McKinney's firearm. Based on the number of rounds loaded in McKinney's magazine and the spent cartridge casings recovered at the scene, it was determined McKinney had fired three rounds from his handgun.

### ***Toxicology***

A post-incident blood sample was obtained from McCord. A comprehensive drug panel toxicology test was performed on the sample. The presence of drugs was not detected.

### ***Dashboard Camera Evidence***

LE1's patrol vehicle was equipped with a front dashboard camera. Relevant video footage shows that at 11:19 p.m., LE1 arrives at the Smart & Final parking lot. McKinney is seen standing outside his vehicle as LE1 arrives. LE1 parks, exits, and walks around the front of LE1's patrol vehicle and out of camera view. Due to the direction and position of the camera, no other portion of the related incident was captured.

### ***Body Worn Camera Evidence***

McKinney's body worn camera was activated during the incident. The footage shows LE1 speaking with McKinney while they stand between their patrol vehicles in the Smart & Final parking lot. The officers appear to be inspecting the damage to McKinney's vehicle. They speak for about 20 seconds when McKinney's camera suddenly shakes. McKinney moves to the rear of his patrol vehicle and then toward the Smart & Final. McKinney draws his handgun, moves to the northeast corner of Smart & Final, and toward Carlsbad Village Drive. McKinney is at Carlsbad Village Drive and Harding Street when responding officers arrive. McKinney directs responding officers to go west on Carlsbad Village Drive. McKinney then collapses to the ground as LE2 arrives. McKinney advises LE2 to inspect his head and arms because he was "hit." McKinney says his head is in pain and states that he fired two rounds. LE2 assists him into LE2's patrol vehicle and McKinney asks to be taken to the fire station. McKinney tells LE2 he sustained a loss of hearing. Once at the fire station, LE2 informs McKinney there is a graze to his head. As a paramedic responds, McKinney says he got shot. McKinney is loaded into an ambulance and transported to Scripps Hospital in La Jolla.

LE1's body worn camera was also activated during the incident. The footage from his camera shows LE1 speaking to McKinney while the two of them are in the parking lot. LE1 is facing north toward Carlsbad Village Drive and McKinney is facing south. McKinney is seen physically inspecting his damaged front spotlight when McCord suddenly strikes him from behind with a skateboard. The wheels and "trucks" (metal portion) of the skateboard are visible. This underside of the skateboard is what appears to make contact with McKinney's head.

McCord immediately flees northwest through the parking lot toward Carlsbad Village Drive. LE1 pursues. McCord is hunched over as he runs with the skateboard in his left hand. He places it on the ground to mount it while his right arm extends out away from his body. McCord briefly mounts the skateboard but is unable to maintain his balance. He stumbles from the skateboard, abandons it, and continues to run away.

While pursuing McCord on foot, LE1 draws his handgun. McCord runs west on Carlsbad Village Drive past Jefferson Street and LE1 follows. As LE1 is in the intersection of Carlsbad Village Drive and Jefferson Street, a patrol vehicle with activated emergency lights approaches. LE1 points toward McCord. As officers approach McCord, McCord lies down in a prone position on the sidewalk in front of the business at 755 Carlsbad Village Drive. An officer commands McCord to put his hands to his side. Other officers arrive and McCord is handcuffed. LE1 advises officers that McKinney was hit with a skateboard and that the skateboard is at the Smart & Final parking lot. LE1 tells officers McKinney may have fired his weapon and the officers inspect McCord for injuries. McCord tells them he was not shot.

#### ***Video Surveillance from 7-Eleven***

Surveillance video from two exterior cameras at the 7-Eleven located at 1089 Carlsbad Village Drive were obtained and reviewed. McKinney's patrol vehicle can be seen traveling westbound on Carlsbad Village Drive before stopping along the north curblane across the street from the 7-Eleven. After stopping, the police vehicle's emergency overhead lights activate. The vehicle remains stopped for about two minutes before driving westbound toward the entrance of the Village Plaza Shopping Center parking lot.

About four minutes later, an individual identified as McCord is seen walking eastward from the crosswalk of Carlsbad Village Drive and Interstate 5. After McCord walks past the front of 7-Eleven, he steps away from the sidewalk to cut through the 7-Eleven parking lot. He then walks through the parking lot toward the Village Plaza Shopping Center parking lot and off camera.

#### ***Video Surveillance from Smart & Final***

Surveillance video from the exterior cameras at the Smart & Final were reviewed. At 11:17 p.m., McKinney's patrol vehicle pulls into the Smart & Final lot and parks. McKinney gets out and inspects his vehicle. Two minutes later, LE1 arrives and parks next to McKinney. About 15 seconds later, McCord is seen walking around the southeast corner of the permanently closed Mikko Sushi restaurant.

McCord charges from a poorly lit area toward McKinney and LE1 while the officers are focusing on the damaged vehicle. McCord attacks McKinney and then flees. He crouches as he runs northwest through the parking lot. LE1 pursues McCord. McKinney moves away from his vehicle and toward the Smart & Final building. McKinney then fires his handgun with one hand while holding the back of his head with his other hand.

At that same time, LE1 is seen pursuing McCord through the Smart & Final parking lot and then along Carlsbad Village Drive. McKinney attempts to pursue McCord through the lot and then along Carlsbad Village Drive.

### ***Injuries Sustained***

McKinney sustained a skull fracture, epidural hematoma (brain bleed), and a concussion as a result of McCord's assault. Doctors discovered that fragments of McKinney's skull were embedded in his brain. McKinney was admitted to Scripps Hospital in La Jolla where he received treatment and remained until being discharged on April 2, 2024.

McCord sustained no injuries.

### ***Legal Standard of Criminal Liability***

Penal Code section 835a(c) sets forth the standard to evaluate a peace officer's use of deadly force and the circumstances upon which an officer may use such force. The law provides, in part, 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... [t]o 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. 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." 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 further states, "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(2). "[T]he 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).

Additionally, "a peace officer who makes or attempts to make an arrest need not retreat or desist from their efforts because of resistance or threatened resistance of the person being arrested. A peace officer shall not be deemed an aggressor or lose the right of self-defense by the use of objectively reasonable force in compliance with subdivisions (b) and (c) to effect the arrest or prevent escape or overcome resistance. For purposes of this section 'retreat' does not mean tactical repositioning or other de-escalation tactics." Penal Code section 835a(d).

***Conclusion***

Officer McKinney pulled his marked patrol vehicle into the Village Plaza Shopping Center parking lot after it was struck by an object. LE1 responded to McKinney's location to document the damage. While the two officers were inspecting the damage, McCord suddenly and violently attacked McKinney from behind, slamming the underside of a skateboard into the back of McKinney's head. As a result of the assault, McKinney's skull was fractured and pieces of his skull were embedded in his brain. He reasonably believed he had been shot. He was able to identify McCord as his assailant as he saw McCord fleeing. When McCord turned his torso and pointed something toward LE1, McKinney reasonably believed McCord was going to shoot and kill LE1. Believing he had been shot and that his fellow officer was about to be shot, McKinney did not have time to consider any less-than-lethal option that would effectively stop the perceived imminent threat.

Officer McKinney reasonably believed, based on the totality of circumstances, that deadly force was necessary to defend against the imminent threat of death or serious bodily injury that McCord presented. As a result, McKinney 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