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Superior Court of California
County of Los Angeles

NOV 20 2025

David W. Slayton, Executive Officer/Clerk of Court

8 **SUPERIOR COURT OF STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 PEOPLE OF THE STATE OF CALIFORNIA,
11 Plaintiff,

12 v.

13 01 MATTHEW CONCANNON
14 02 ANTHONY CHAVEZ.

15 Defendants.

Case No. BA498475

NOTICE OF APPLICATION TO
DISMISS CHARGES AND
ALLEGATIONS PURSUANT TO
PENAL CODE SECTION 1385

DEPT: 108

TIME: 8:30 A.M.

DATE: November 21, 2025

16 TO MATTHEW CONCANNON and ANTHONY CHAVEZ and counsels;

17 On 21 November, 2025, at 8:30 A.M. or as soon thereafter as the matter may be heard, the
18 People will make application to the Court in the above captioned matter for an order to dismiss
19 the charges contained in the indictment in the above captioned matter in the interests of justice
20 pursuant to Penal Code section 1385. The basis for the application is due to the People's
21 conclusion that the People's admissible evidence is not able to meet the exacting burden of proof
22 beyond a reasonable doubt necessary to prove the extant charges. The application is further
23 based on the attached report of Special Prosecutor Michael John Gennaco ("Exhibit") and any
24 additional argument or evidence adduced at the hearing.

25 Dated: November 20, 2025

NATHAN HOCHMAN
District Attorney

27 By:
28 Michael J. Gennaco
Special Prosecutor

EXHIBIT

1 NATHAN HOCHMAN
2 District Attorney
3 By: MICHAEL J. GENNACO; State Bar No. 112969
4 Special Prosecutor for the District Attorney
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6 LOS ANGELES, CA 90012
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8 **SUPERIOR COURT OF STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10 PEOPLE OF THE STATE OF CALIFORNIA,
11 Plaintiff,

12 v.

13 01 MATTHEW CONCANNON
14 02 ANTHONY CHAVEZ.

15 Defendants.

Case No. BA498475

APPLICATION TO DISMISS
CHARGES AND
ALLEGATIONS PURSUANT TO
PENAL CODE SECTION 1385(a)

DEPT: 108

TIME: 8:30 A.M.

DATE: November 21, 2025

16 TO THE HONONORABLE SAM OHTA, Judge of the Superior Court of the State of California,
17 in and for the County of Los Angeles:

18 The District Attorney of the County of Los Angeles hereby makes application to this Court for
19 an order in the above captioned case to dismiss the charges contained in the indictment, in the
20 furtherance of justice pursuant to Penal Code section 1385. The basis for the application is due
21 to the People's conclusion that the People's admissible evidence is not able to meet the exacting
22 burden of proof beyond a reasonable doubt necessary to prove the extant charges at trial. The
23 application is further based on the attached report of Special Prosecutor Michael J. Gennaco
24 ("Exhibit") and any additional argument or evidence this Court may hear at the hearing in this
25 matter.

26 Dated: November 20, 2025

NATHAN HOCHMAN
District Attorney

By:

Michael J. Gennaco
Special Prosecutor

Michael J. Gennaco
Special Prosecutor
For Office of Los Angeles County District Attorney

To: Nathan Hochman
District Attorney for the County of Los Angeles

From: Michael Gennaco
Special Prosecutor for the Concannon and Chavez Matter

Date: November 14, 2025

Re: People v. Concannon and Chavez, Case No. S289312

On March 24, 2023, approximately twenty-one months after he was appointed Special Prosecutor by then District Attorney George Gascon, Lawrence Middleton (Middleton) asked the grand jury to return an indictment against Torrance Police Department (TPD) Officers Matthew Concannon (Concannon) and Anthony Chavez (Chavez) for their role in a December 9, 2018, fatal officer-involved shooting of Christopher Deandre Mitchell (Mitchell). This shooting transpired over the course of approximately 12 seconds the night of December 9, 2018. The grand jury returned an indictment charging both Concannon and Chavez with one count each of voluntary manslaughter. Middleton did not ask the grand jury to return a charge of involuntary manslaughter because he failed to present that charge to a grand jury before the three-year statute of limitations for involuntary manslaughter expired on December 9, 2021. The voluntary manslaughter charges presented and returned in the indictment remain pending in Superior Court before the Honorable Sam Ohta.

On January 15, 2025, based on my extensive, almost 40 years' experience in prosecuting and reviewing police use of force cases,¹ you engaged me as a Special Prosecutor to replace Middleton and requested me to review the evidence in the case to determine the appropriate course of action for the ongoing criminal proceedings. That review included the following materials:

- TPD's two volume criminal investigation
- All attachments to the TPD report, including photographs, autopsy, and forensic reports
- All audio/video evidence including body-worn camera footage and surveillance video
- All grand jury testimony and exhibits introduced
- All pleadings filed in trial court, including dismissal and discovery motions

¹ My resume is attached herein as an exhibit to this memorandum.

- All writs filed in appellate court, including California Supreme Court
- Internal documents and communications relating to the matter
- TPD's administrative investigation and review of the shooting
- Research of recent case law relating to prosecutive theory
- Review of materials relating to TPD texting scandal
- Review of CAL DOJ pattern and practice investigative report of TPD

In addition, I talked to expert witnesses, DA investigators and prosecutors, TPD authorities, family members of the decedent, and Middleton. Based on that review, and for the below-stated reasons, I recommend that you authorize me to file a motion to dismiss this matter. I also recommend that this memorandum be attached to the motion as an exhibit in the interests of transparency for stakeholders and the community.

Factual Overview

In the evening hours of December 9, 2018, an individual reported to Torrance Police dispatch that he had observed and was following a car that had been stolen from him that was being driven by an unidentified person. The individual then flagged down two TPD police officers and told the officers that his vehicle had been stolen and he had just seen it being driven in the area. The officers broadcast the information received from the individual.

TPD Officers Concannon and Chavez were on duty in their marked patrol car, heard the broadcast, and began searching for the car. The officers saw a car matching the description of the reported stolen vehicle in the corner of a nearby Ralph's grocery store parking lot. Concannon was driving and parked the patrol car directly behind the suspected stolen vehicle. The officers later reported that the heavy window tinting on the car prevented them from being able to see clearly into the car, even after Concannon activated his spotlight.²

Chavez later reported that he attempted to use the patrol car's computer to conduct a license plate check but was unable to do so before they came to a stop. According to Chavez, the plate of the reported stolen vehicle had not yet been provided. According to the officers, as they stopped their car, they observed that the engine of the suspected stolen car was not running and that vehicle's lights were not illuminated. The officers later reported that they were not able initially to determine whether the car was occupied.

The officers got out of their car and Chavez approached the vehicle from the passenger's side while Concannon moved towards the driver's side. The officers later

² Concannon and Chavez provided voluntary statements to TPD criminal detectives several days after the incident.

reported that they observed the front windows rolled up while the two rear windows were partially open, with Chavez reporting that the rear window on the passenger's side was rolled down approximately 6 to 8 inches. Each of the windows and the back window were tinted. Chavez later stated that as he checked for passengers in the car, he noticed that the front passenger seat was either reclined or missing.

Chavez later reported that as he approached, he saw a man in the driver's seat (later identified as Mitchell). Using his flashlight to illuminate the inside of the car, Chavez later reported that Mitchell noticed Chavez and turned in his direction. Chavez reported that he yelled "police" and told Mitchell to put his hands on the steering wheel. Chavez said that initially Mitchell was motionless but then he moved his hands to the steering wheel. Chavez told Concannon that the vehicle was occupied and that Mitchell had tattoos on his face (that Chavez associated as gang tattoos).

Chavez said that when Concannon opened the driver's side door there was increased lighting inside the car. Chavez could see Mitchell's knees pinched together and his hands had moved to the lower portion of the steering wheel. Chavez stated that as Mitchell moved his hands up on the steering wheel in response to Concannon's order to put his hands up, Chavez saw between Mitchell's knees the grip of what appeared to be a rifle or shotgun with a missing butt stock.

Chavez said that the light inside the car went out, but he could still see that Mitchell leaned forward with both of his hands going down towards the gun. Chavez reported that he then heard one gun shot from the area of the driver's side of the vehicle but could not distinguish who had fired. Chavez said that when Mitchell went forward and his hands went down, Chavez' view of the gun was blocked. Perceiving an imminent threat to his and Concannon's lives, Chavez said he then fired two rounds through the front passenger window at Mitchell.

Concannon reported that as he approached the car, he could see a single occupant in the car sitting in the driver's seat. Concannon said he saw that Mitchell had a shaved head and tattoos on the left side of his neck. Concannon said he heard Chavez give Mitchell commands to keep his hands on the steering wheel. Concannon said that Chavez told him that Mitchell had additional tattoos on the right side of his face. Concannon opened the driver's door to its furthest point causing Mitchell to turn in his direction. Concannon stated that when Mitchell moved, he could see Mitchell's hands on the lower part of the steering wheel. Concannon said that Mitchell's legs were pinched together in an odd position and elevated. Concannon said he also saw a floor mat on Mitchell's legs which further heightened his suspicion. Concannon opined that

he had just retrieved the gun from underneath the floor mat and the floor mat was still on his legs.³

Concannon said he asked Mitchell what he was doing at which time Mitchell's hands came off the steering wheel and towards his lap. Concannon said it was at that point that he saw what appeared to be a long gun and a black bag positioned between Mitchell's legs. Concannon reported that he then told Mitchell not to move. Concannon later reported that Mitchell looked at Concannon and put his hands up on the steering wheel but did not fully extend them. Concannon said that he then put his flashlight away and placed both of his hands on his firearm. Concannon stated that he moved back slightly to a safer position closer to the rear of the car. Concannon said that he then ordered Mitchell to get out of the car to separate Mitchell from the firearm. Concannon reported that Mitchell looked at him, apologized which gave Concannon the belief that Mitchell was apologizing for what was about to happen⁴, then moved his hands back down, causing Concannon to believe that Mitchell was going to retrieve the gun to shoot his partner. Concannon stated that in response, believing he and Chavez as well as individuals in the parking lot were in imminent peril of being shot and killed, Concannon fired one round into Mitchell's upper back area. Concannon said that after he drew his weapon and changed his position, he did not have a clear view of the firearm.

After both officers fired at Mitchell, they moved back to their patrol car but could no longer see into the car. Chavez broadcast over his radio that an officer-involved shooting occurred. Both officers returned to their police car and used the car's doors as cover and concealment while waiting for other officers to arrive. After officers arrived, a drone was used to see into the vehicle and a less lethal munition was used to remove the window but to little effect. Eventually, a metal tool was used to remove the window. A ballistic shield was then deployed to approach Mitchell. Approximately thirty minutes after the shooting, Mitchell was removed from the car and medical assistance was provided but Mitchell had by then succumbed to his wounds and was pronounced deceased at the scene.

An altered air rifle was recovered from the vehicle. As depicted below, the barrel of the weapon possessed by Mitchell is strikingly similar to a sawed-off shotgun.

³In Concannon's body-worn camera footage, an object resembling a floor mat can be observed on Mitchell's legs and was also observed when the car was later processed by forensic examiners.

⁴In a review of the body-worn camera footage, Mitchell is heard first saying, "my bad, I didn't mean no, I didn't mean no harm" and then "all right, all right."



A witness canvass of the scene was conducted by investigators, but no eyewitnesses to the event were identified.

Issues Relating to Middleton's Review of the Incident

The shooting occurred on December 9, 2018.⁵ The Torrance Police Department conducted an investigation into the incident and submitted its report to the Office of District Attorney for review. In October 2019, the District Attorney's Justice System Integrity Division issued a Memorandum finding that the use of deadly force was reasonable. The Memorandum concluded:

Based on Mitchell's failure to follow the officers' directions, his continued efforts to conceal the object in his lap, the physical appearance of the object, and the movement of his hands toward the object, it was reasonable for the officers to believe that the object was a firearm and to respond with deadly force.

⁵Commencing July 1, 2021, as a result of a change in state law, the responsibility for investigating and reviewing this incident involving an officer-involved shooting of an "unarmed suspect" would have rested with the California Attorney General. However, there is no retroactivity with regard to incidents that occurred prior to 2021 so the responsibility for investigating and reviewing this incident fell to the Los Angeles County District Attorney's Office.

Accordingly, both officers' use of deadly force was reasonable under the circumstances.

When candidate George Gascon was running for office for District Attorney in 2020, he requested a retired judge and a former Civil Rights Division civil attorney to review officer-involved shooting memoranda prepared during the tenure of his opponent, incumbent Jackie Lacey. He then prepared and publicly posted a letter on his candidate website pledging to reopen four deadly force incidents that had been declined by the District Attorney Jackie Lacey, including the Concannon and Chavez officer-involved shooting.⁶ Gascon had no access to any of the police or District Attorney Office's investigative files nor had he interviewed any percipient witness at the time he made this pledge.

After Gascon was elected and sworn in as District Attorney on December 7, 2020, he carried out his pledge to reopen the Concannon and Chavez deadly force incident. He retained Middleton as a Special Prosecutor⁷ who began work on June 7, 2021, and requested him to reconsider his predecessor's decision not to prosecute the case. Middleton had to act quickly as the three-year statute of limitations for involuntary manslaughter was set to expire on December 9, 2021. Middleton failed to present an indictment to the grand jury before the expiration of this statute of limitations. Instead, Middleton delayed seeking an indictment from the grand jury until March 2023. At that point, he could not present an involuntary manslaughter charge but could only present a voluntary manslaughter charge (which has a six-year statute of limitations that had not expired yet) or a murder charge (which has no statute of limitations). Left with only with a voluntary manslaughter or murder charge, Middleton presented the voluntary manslaughter charge to the grand jury which returned an indictment.

The history and origins of this prosecution will present significant challenges were the matter to proceed to trial. Defendants have already argued in papers that this prosecution has been highly "political" and was filed not based on a careful review of the facts and the law but only to win support from police reform and advocacy groups such as Black Lives Matter. Since candidate Gascon had already opined about this particular case as needing a second look prior to even having access to the complete file,

⁶This review should not be confused with the Factual Analysis Citizen Consulting Team (FACCT) initiative, through which District Attorney Gascón post-election named an outside panel to reexamine fatal police shootings determined to have been lawful by his predecessor. The FACCT initiative resulted in no further investigative work and no additional prosecutions in part due to the panel's inability to access full investigative materials and additional legal hurdles and was eventually disbanded.

⁷ The very legitimacy of the Special Prosecutor position was challenged by at least one lawsuit against the Office of the District Attorney.

defendants will argue that the return of the indictment was foreordained by the public statements that candidate Gascon had issued about the case.

While any assessment of the indictment should be based on the evidence supporting the charge, the unique run-up to its return would be a focus of the defense strategy at both the pre-trial and trial stages. Those responsible in assisting former District Attorney Gascon in identifying this case will likely be called to testify in future pre-trial motions as might former DA Gascon himself. While these sidebars are a distraction to the facts of the case itself, defendants will assert they were deprived of due process by a candidate seeking elected office and using their case as a political vehicle for doing so. While the People would oppose the introduction of such testimony, it is uncertain as to whether and to what degree defendants' arguments would gain purchase in court proceedings or in the public arena with the resulting possible taint of a future jury pool.

Related to these challenges, defendants continue to seek evidence from those assigned to assist Middleton with his review, investigation and presentation to the grand jury.⁸ While the opinion of investigators and the prosecutor that were assigned to assist the Special Prosecutor should be irrelevant to the current proceedings and arguably protected by the work product privilege, issues regarding discovery of those opinions and their relevance and admissibility will likely complicate future proceedings were this matter to proceed.

Finally, defendants may endeavor to introduce the testimony of the initial prosecutors in the District Attorney's Office and TPD investigators who investigated and reviewed the case and who all determined that the shooting was justified. Again, while the opinion of prosecutors and investigators should not be relevant nor admissible with regard to current proceedings, it is expected that efforts to elicit such testimony will be made pre-trial and during the trial itself.

ANALYSIS OF THE EVIDENCE

Concannon had a good-faith belief that the object in Mitchell's possession was a firearm.

As indicated above, the object reportedly seen by Concannon was not a firearm but a modified air rifle. However, due to its physical similarity to a shotgun or rifle, Middleton's

⁸ Two DA investigators and one Deputy District Attorney were assigned to assist Middleton with the Concannon and Chavez investigation.

prosecution memorandum⁹ concedes that it was reasonable to conclude that Concannon reasonably believed that the object he saw was an actual firearm.¹⁰

Should this case proceed to trial, defense will likely argue that even an air rifle could cause serious injury or even death should the projectile strike a sensitive part of the body such as an eye or the head area. But such an argument would be unnecessary as the prosecution has already conceded that it was reasonable for Concannon to assume the object possessed by Mitchell was a firearm.¹¹

The Prosecution's Theory of the Case is Speculative and the Voluntary Manslaughter Charge Cannot Be Proven Beyond a Reasonable Doubt.

Middleton opines that even though Concannon and Chavez may have believed in good faith that Mitchell was reaching for the gun and presented an imminent threat of death or serious bodily injury, that belief was not reasonable. Middleton conceded to the grand jury that "maybe" Mitchell dropped his hands off of the steering wheel and they went out of view but argued that such an observation was insufficient to conclude that Mitchell was reaching for the gun since Concannon no longer could see Mitchell's hands. Middleton further opines that while Concannon claimed Mitchell was reaching for the gun, Mitchell's movements were also consistent with those of a person trying to get out of the car.¹² As support, Middleton cites the statement of a responding TPD officer who can be heard on Concannon's body worn camera that he was able to observe Mitchell's left knee protruding from the driver-side door.¹³ Middleton also cites

⁹ The references to Middleton's opinion here and throughout are derived from an internal prosecution memorandum dated May 1, 2025.

¹⁰ As discussed below, Middleton questions whether Chavez even saw the gun prior to the shooting.

¹¹ Middleton suggests that evidence about the limited lethality of the air rifle is important to show that it would have been irrational for Mitchell to reach for the weapon since it would have had little ability to neutralize the two officers. However, such argument would only distract from the uncontroverted evidence that Concannon believed in the moment that he was dealing with a subject who had a modified shotgun between his legs. And the defense would likely be able to elicit testimony about how despite its seeming irrationality, there are times a subject will aggress the police with a nonfunctioning or replica firearm.

¹² In his memorandum, Middleton concedes that "one of the most crucial issues in the case, that is, what Mitchell was doing with his hands when he was shot, is still open to argument."

¹³ Middleton concedes that Mitchell could have moved after he was shot, undermining the probity of this observation. Moreover, this officer asserted the Fifth Amendment right not to incriminate himself when called before the grand jury. While the statement may be admissible as a hearsay exception, the probative value of the statement is minimal.

bullet-path evidence as supporting the view that Mitchell's head was turned towards the driver's side of the car suggesting an intent to get out of the car.

While Middleton offers a plausible alternative explanation for Mitchell's actions, the law does not require officers to consider all possible reasons for the movements being observed. While Concannon could have concluded that Mitchell was hesitatingly complying with his instructions to get out of the car, it was also plausible for him to conclude that Mitchell's movements were an effort to reach for the gun and attempt to use it against the officers. Offering another explanation for Mitchell's movements is insufficient to prove beyond a reasonable doubt that Concannon unreasonably perceived Mitchell's actions as reaching for a gun in his lap to shoot his partner.

Middleton criticizes Concannon for failing to tell Mitchell exactly how he wanted him to get out of the car, including where he should place his hands. Middleton further criticizes the officers for not taking enough time to evaluate whether Mitchell was complying with the order to get out of the car. Middleton criticizes Concannon for failing to provide Mitchell with specific commands on what he wanted him to do and how he wanted him to exit the vehicle. Middleton speculates that had Concannon done so, the shooting likely would have been avoided. Middleton argues that Concannon instead chose to shoot into the darkness through the back driver side window, striking Mitchell in the back. Finally, Middleton opines that since Mitchell was only in possession of an air rifle, the only logical conclusion was to assume that he was not intending to aggress the police officers with that type of weapon and was trying to comply with Concannon's instructions and exit the car.

Middleton's critique of Concannon for failing to provide more precise commands to Mitchell in successfully extracting him from the car is valid; a set of carefully scripted and unambiguous instructions to Mitchell could have reduced the likelihood of a deadly force encounter. Because of how the officers had moved up to the car, it placed them in precarious positions once the gun was observed between Mitchell's legs and compromised their ability to wait to ascertain whether Mitchell was being compliant or about to aggress them. However, as explained below, these suboptimal tactical decisions have been found by the assigned trial court to be irrelevant to the guilt or innocence of the officers. And, with regard to the perceived irrationality for Mitchell to point an air rifle at officers, it is not unprecedented for subjects to point objects that appear to be firearms when encountered by police.

Middleton opines that Mitchell's final movements prior to the use of deadly force were only in response to Concannon's instructions to get out of the car. Middleton concedes that the video of the event shows that, as Concannon had asserted, Mitchell moved slightly forward. However, Middleton opines that such movement alone did not appear to justify the use of deadly force. Middleton further opines that when Mitchell's hands

“went away” from the steering wheel area and disappeared from view, Concannon had no observable basis for concluding that Mitchell was reaching for the gun and made such an assumption because he had seen the gun resting near Mitchell’s lap.

Middleton suggests that unless Concannon was more certain about Mitchell’s intent, that he should not have used deadly force in the situation presented. Yet the law speaks to reasonableness; it does not require an officer to be absolutely certain that he is being presented with a legitimate threat, it only requires that a “reasonable” officer faced with similar facts would undertake the same course of action. For that reason, officers are routinely absolved of criminal liability when an observed firearm turns out to be a replica gun or when a bulge in the waistband believed to be a gun turns out to be a cell phone. Here the question would be whether it was reasonable for Concannon (and Chavez) to conclude that when Mitchell’s arms dropped towards the gun that he was attempting to procure the gun and turn it on the officers.

Middleton criticizes Concannon for his decision to put his flashlight away and for his decision not to turn on the light mounted on his gun once he had it unholstered. Middleton opines that as a result, Concannon is compromised in his ability to discern what Mitchell is doing in response to the officer’s commands. Again, while these critiques are valid, the court’s prior rulings have indicated that alleged tactical shortcomings before the shooting will not be admissible at trial.

Middleton opines that his review of the body worn camera footage caused him to conclude that except for a brief moment after Concannon opened the door and when Mitchell moved his hands down from the steering wheel in an attempt to conceal the gun, he believed that Mitchell was “not non-compliant.” Yet that action of non-compliance arguably caused Concannon to conclude that he was dealing with an armed subject, seriously increasing the threat level presented to the responding officers, especially after his hands were seen dropping towards where the gun had been observed.

Middleton asserts that because of where Chavez was positioned and the window tint on the car, that he was not able to see the gun nor Mitchell reach for the gun. Middleton notes that Chavez shot Mitchell through the heavily tinted front passenger-side window. Middleton further notes that the gap in the back window which Chavez asserted allowed him to see Mitchell and the gun was not 6-8 inches as estimated by Chavez but only two inches.¹⁴ Middleton opines that the video of the evidence shows that when Chavez

¹⁴ Defendants will dispute this allegation, noting correctly that the gap was not measured at the time of the shooting by investigators. They will further allege that because the measurement was taken years after the incident while the car had been sitting unsupervised in a tow yard, there is no assurance that the gap was the same as it was at the time of the incident. The defense will argue that the TPD’s actions resulted in negligent spoliation of evidence.

fired, he was not in a position to see Mitchell through the crack in the window. Middleton further believes that while Chavez could have seen through the tinted front window that Mitchell was moving, the tint would have made it very difficult to see what Mitchell was doing.

Middleton's challenge to Chavez' account is that he was not truthful when he said he saw a gun between Mitchell's knees and that he saw Mitchell reach for the gun. However, it is very difficult to reconstruct the scene with any certainty about where the officer was standing and what he could see through the open back window or through the tint on the window. Moreover, it is not certain whether measurements relied upon for Middleton's conclusion obtained years after the incident (most significantly, the gap in the back window) accurately represented how large the window opening was at the time of the incident.

Middleton suggests that Chavez shot Mitchell not because he could see him reaching for the gun, but in reaction to a shot being fired by his partner. As noted above, Chavez said that when he heard the shots, he did not know who was firing. Yet Middleton opined that Chavez "appeared" to have engaged in "contagious fire." Contagious fire is defined as when officers fire in response to what they perceive to be gunfire, including gunfire known to originate from another officer, rather than in response to an independently perceived threat. Middleton asserts that contagious fire is, "in most situations," an insufficient justification for intentionally using deadly force and that the law requires that each round fired must be justified by circumstances that observably exist at the time.

Middleton opines that in addition to the fact that he engaged in questionable tactics leading up to the shooting, there is evidence that Chavez' conduct was unlawful even if limited to the time of the shooting. Middleton believes that the video evidence shows that Chavez was standing in a place that would make it very difficult to discern what Mitchell was doing. Middleton surmises that the video evidence rebuts Chavez' assertion that he saw Mitchell through the gap in the back passenger window.

Middleton concedes that after Concannon opened the door of the vehicle, it "almost certainly" allowed additional light inside the car, but maintains that it was still "unlikely" that Chavez could see inside the car well enough to say Mitchell was reaching for the gun. Middleton also concludes that if it was true that Chavez shot Mitchell without having eyes on him, that fact alone makes the shooting unreasonable, although he concedes that "others, including experts, may disagree."

While Middleton's theory that Chavez' use of deadly force consisted of contagious fire is conceivable, it will be unequivocally denied by Chavez and his experts. It is unlikely that the scant and uncertain forensic evidence can prove beyond a reasonable doubt that Chavez could not and therefore did not see the gun between Mitchell's legs and

Mitchell's subsequent reach down towards the gun shortly before Concannon fired his one round. Chavez will argue that the short time gap between Concannon's firing and Chavez' firing is too close together for it to be a "contagious fire" situation. Finally, Chavez may argue that the concept of contagious fire supports, at best, a reckless act or involuntary manslaughter which (as explained below) is not and cannot be charged at the present time.

The trial court has already determined that pre-shooting conduct has questionable applicability in this criminal prosecution of police officers.

Middleton argued in the grand jury that Concannon and Chavez' use of deadly force could not be justified because it was their own unreasonable conduct that created the need to use deadly force. The argument was buttressed by the testimony of a use of force expert who testified in the grand jury to mistakes that were made by the officers in their approach to the suspected stolen car. Those errors included the following:

- Failure to timely advise dispatch of their location when they positioned their car directly behind the suspected stolen vehicle
- Failure to call for backup when they identified the suspected stolen car
- Failure to confirm that the observed car was the reported stolen car
- Failure to execute a high-risk felony stop whereby the officers would use their car as cover and call out the subject instead of going up to the car
- Failure to advise each other when the officers observed a gun between Mitchell's legs
- Failure to warn Mitchell prior to the use of deadly force
- Failure to back away from the car once the officers recognized that the car was occupied¹⁵ and that the driver had a weapon between his legs

The theory argued by Middleton is that the officers' tactical mistakes placed them in such a precarious position that when Mitchell lowered his hands, they interpreted that arguably ambiguous move as an act of aggression resulting in the use of deadly force.

Middleton concludes that as to Concannon, Middleton's decision to pursue criminal charges was based on his belief that the officer's conduct in failing to confirm Mitchell's vehicle was the stolen car before approaching, failing to give Mitchell clear instructions as to how to get out of the car, and failing to mention the gun or warn Mitchell before

¹⁵ Middleton notes that the outside use of force expert stated that after approaching the stolen car and finding it occupied, the reasonable thing for the officers to do would have been to go back to their patrol vehicle and call Mitchell out of the car. However, a Torrance training sergeant testified in the grand jury that while going back to the patrol vehicle would have been an option, another option would have been to maintain their positions near the vehicle and not give up ground. The sergeant opined that TPD would have recommended the second option but agreed that neither option was "absolute."

using deadly force, while at the same time shooting Mitchell even though his view was obstructed by both Mitchell's body and the car seat, rendered Concannon's use of deadly force objectively unreasonable. Middleton significantly concedes, however, that if a jury concluded that Concannon's tactical decisions were questionable but not unreasonable, or if it concluded that while unreasonable, Concannon's tactics were not so "egregiously bad" as to render the ultimate use of force unreasonable, then the prosecution against Concannon will "likely" fail. Middleton further opines that much of Concannon's remaining conduct, such as moving further to the back of the car once he saw the gun, is not inconsistent with police training. Middleton observes that the fact that Concannon only fired one shot clearly suggests that in shooting Mitchell, Concannon was not out of control.

The theory espoused in the grand jury by Middleton was challenged post-indictment by both defendants as part of a Section 995 motion to dismiss the indictment based on inadmissible evidence being presented to the grand jury. The trial court conducted an extensive series of hearings, prepared its own PowerPoint setting out its understanding of the law, and ordered briefing on the issue. As detailed below, the court ultimately ruled that the presentation to the grand jury on certain pre-shooting conduct was "irrelevant"; however, because there was other admissible evidence introduced to the grand jury that satisfied the probable cause requirement, the indictment should not be dismissed. *People v. Concannon and Chavez*, Penal Code Section 995 Ruling Statement of Decision, Case No. BA498475 (August 30, 2024). As you know, at the grand jury level, the requisite level of proof to indict is the low standard of probable cause. At trial, for a trial jury to convict, it would be the highest legal standard, beyond a reasonable doubt, a critical difference.

The trial court's rejection of the motion to dismiss was appealed by both defendants to the appellate court. The Court of Appeal summarily rejected both writs. Chavez sought a writ from the California Supreme Court which was denied. Concannon then sought a writ of habeas corpus from the California Supreme Court. The Supreme Court ordered the People to submit an informal reply to defendant Concannon's pending writ of habeas. In June 2025, the People filed a reply opposing the writ. As a result of the pending writ, there is some chance that further proceedings in the appellate courts may yet result in a dismissal of the indictment.¹⁶

More significantly, the irrelevant pre-shooting conduct found by the trial court in its Order has significant ramifications for the prosecution's theory of the case and its presentation of evidence at trial. Importantly, the trial court found that "unlike a civil rights case under 42 U.S.C. 1983, or a civil negligence case", facts challenging an officer's reasonable perception of a threat must relate:

¹⁶The California Supreme Court has not signaled when it might rule on the pending petition.

to the moments when the officer and the alleged suspect, here, Mr. Mitchell in a stolen car, occurred. Police conduct under the Fourth Amendment analysis unrelated to that proximate time of conduct is not material or relevant to an accurate assessment [of the threat presented to the officer].

Order at 28.

The trial court then specifically determined that the following omissions or conduct prior to the shooting were not relevant (and therefore inadmissible) to that reasonableness analysis:

- That defendants did not call for backup
- That defendants did not turn on red and blue lights or spotlight¹⁷
- That the defendants did not need to approach the vehicle without backup because the stolen vehicle in which Mitchell sat was pinned in front of the police car
- That defendants approached the car in a manner where there was no cover

Order at 30-33.

As a result of the trial court's rulings, while the indictment remains extant, significant evidence that would support the prosecution of the defendants – and, according to the court, was improperly presented to the grand jury -- has been found to be irrelevant and will not be admissible at trial. While further pre-trial motions requesting the trial court to revisit the exclusion of this evidence could be filed, it would be unlikely that any such motions would cause a reversal of those evidentiary rulings.

Despite these pre-trial rulings already made by the trial court, Middleton argues that it would be “highly probable” that use of force expert testimony would be allowed “in some form.”¹⁸ Recently, the U.S. Supreme Court expressly deferred a determination of whether “officer created jeopardy” is relevant to a reasonableness analysis in evaluating a police officer's use of deadly force. In *Barnes v. Felix*, 603 U.S. 73 (2025), in the context of a civil case, the Court rejected an approach in which some federal appellate

¹⁷While it is uncontroverted that the officers did not activate their overhead emergency lights, it is unclear whether either of the outside spotlights were activated during the incident.

¹⁸ The Court's Order did indicate that if the People could show some action or lack of action that negated the officers' reasonable belief that someone posed a threat of death or great bodily injury, whether called “pre-shooting conduct” or not, it may be admissible and that the Court had not determined that the Officer Created Jeopardy argument is “per se invalid in a criminal case involving an officer involved shooting.” However, the Court's Order went on to say that “if the Officer Created Jeopardy” argument is not connected to what the officers may have perceived or not as life threatening, and then to test that belief through the filter of a reasonable police officers, it is not material or relevant. Order at 18.

courts had limited that analysis to what an officer was sensing at the moment of the threat. As recently as October 15, 2025, however, the trial court in this case again opined that any use of an "officer created jeopardy" theory was of questionable applicability to this criminal prosecution, distinguishing *Barnes* as having relevance for civil cases, not criminal ones.

More significantly, the trial court has already expressly noted that recent changes to the California Penal Code that dictate a more stringent standard for justification of deadly force by peace officers are inapplicable to this incident because the amended law was enacted subsequent to the shooting. Those amendments (AB392), which took effect on January 1, 2020, shifted the legal standard for the justifiable use of deadly force by law enforcement officers from "reasonableness" to "necessity." The amended law instructs that deadly force is only permissible when necessary to defend against an imminent threat of death or serious bodily injury to the officer or another person, and only when there are no other reasonably safe and feasible alternatives. The amendments further instruct that officers "shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer." And the amended statute states that: "where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless the officer has objectively reasonable grounds to believe the person is aware of those facts." Finally, the amended statute requires consideration of whether the officer used de-escalation techniques when feasible.

The amended law is only applicable to cases from January 1, 2020 forward, not to this case which occurred on December 9, 2018. Thus, the new standards under this law where officers must consider "other available resources and techniques" such as waiting for backup and not approaching the car or warning a suspect before using deadly force do not expressly govern the officers' actions in this case.

Middleton argues unpersuasively that the amended language was merely a codification of principles that were already part of the totality of the circumstances analysis that previously existed. He makes that argument without evidence or legal support. His interpretation is not the interpretation of the legislature that enacted the more stringent requirements nor the advocates who lobbied for its passage. And the trial court soundly rejected Middleton's flawed argument. Accordingly, the relevance and admissibility of "officer created jeopardy" evidence and tactical mistakes, while likely relevant from January 2020 forward, has been found by the trial court to be significantly irrelevant and would be inadmissible to this December 2018 incident. While Middleton holds out a fleeting hope that some expert testimony would be admissible relating to factors of "time, distance, and cover," the visibility challenges presented to Chavez, and the potential for "contagious fire," the trial court's prior rulings strongly suggest that the

probability of the introduction of such expert testimony on much of the suboptimal, pre-incident decision-making by the officers being admitted is extremely low.¹⁹

Moreover, even if the People were to successfully persuade the trial court to revisit its initial decision to prevent the admission of problematic pre-decisional conduct, the defense has already retained use of force experts that would contest the “mistakes” identified by the People’s expert. Those experts will argue that it was appropriate for the officers to approach the car in the manner they did because they did not know at the time that it was occupied. Defense experts will also opine that once the officers saw an occupant and a long gun between his legs, it would have been unsafe to retreat back to their car.²⁰

Defendants have already argued that the expert used by Middleton in the grand jury was not qualified to opine about the training or policies employed by the Torrance Police Department. They note that all of the expert’s experience was either as a local South Carolina police officer or a federal policing trainer for federal officers. It is unclear why Middleton would rely on such an expert that did not have experience with the TPD’s policies and training or at least California Commission on Peace Officer and Standards Training (CA POST) Domains. Defendants will argue that the expert’s lack of knowledge about California standards and training (specifically that provided by TPD) renders any of his opinions about the Mitchell case inapposite.²¹

As to the training provided by TPD, defendants will maintain that they acted consistent with that training in their decision-making leading up to the shooting. Defendants will further argue that if the training provided to them was²² not aligned with progressive police practices, they should have still been able to rely on how they were trained to govern their tactics. To the degree that TPD’s training was misaligned with universal standards, defendants can gain some support from the California DOJ investigation that recently resulted in an August 2025 settlement agreement with the City of Torrance.

¹⁹Curiously, Middleton indicates that he didn’t disagree with the trial court’s analysis and its decision not to find relevant much of the defendants’ pre-incident tactical decision-making, evidence that he presented to the grand jury. Middleton conceded that his argument to the grand jury should have been more “precise.”

²⁰ Defense experts will be hard pressed to explain, however, that after the application of deadly force, Concannon and Chavez were able to safely reposition to their patrol car without incident.

²¹ There were other suboptimal decision making that was not specifically addressed by the use of force expert retained by Middleton such as the inadvisability of firing through windows at a target. However, any effort to admit such evidence will be likely treated with the same skepticism by the trial court.

²² Buttressing this argument will be the finding by TPD’s internal use of deadly force process that the Mitchell shooting was consistent with the Department’s use of force policies and training.

The California DOJ investigation found issues with the way in which TPD officers have been trained on principles of use of deadly force and the agreement will require reforms on such instruction and training. Ironically, the deficiencies in training, policy, and instruction related to use of force found by the DOJ investigation will likely be used by defendants as a shield to argue that in the Mitchell shooting, they were performing consistent with how they had been trained by the TPD (even if that training, policy, and instruction was later found deficient).

In sum, while defendants may have made mistakes in their approach to the car that increased their jeopardy and contributed to the decision to use deadly force, the trial court's rejection of the admissibility of such evidence seriously undermines Middleton's initial theory of the case and would prevent the jury from hearing evidence supporting that theory. Without that evidence, as noted above, even Middleton concedes that the prosecution against the officers "will likely fail." Moreover, even if some of these tactical mistakes were admitted, defendants have already identified use of force experts that will disagree with this critique of the officers' pre-shooting conduct. Finally, the officers will rely on their training at TPD (even if constitutionally defective) in their efforts to absolve themselves of any culpability.

Failure to Consider Involuntary Manslaughter

As detailed above, Middleton presented the March 2023 grand jury a proposed indictment for voluntary manslaughter. Because of his not presenting the case to the grand jury until well after the three-year statute of limitations for involuntary manslaughter expired on December 9, 2021, he was barred from presenting this involuntary manslaughter charge to the March 2023 grand jury. Unlike voluntary manslaughter, which has an "intent to kill" requirement, involuntary manslaughter does not have this element of the crime; instead, it only requires a killing as a result of criminal negligence or recklessness. As noted above, Middleton theorized that Chavez' use of deadly force was a result of contagious fire, suggesting that he was instinctively (and recklessly or negligently) responding to the shot fired by Concannon. There are also some indicia that Concannon's one round may have been an accidental discharge as he was transitioning from one light source (his flashlight) as opposed to another light source (a light mounted on the rail of his firearm). While involuntary manslaughter carries a lesser penalty, the elements for conviction are easier to prove; Middleton's failure to timely present the grand jury with this case by December 9, 2021, removed the option of the grand jury considering an involuntary manslaughter charge. This failure has also resulted in the trial jury not being able to consider the crime of involuntary manslaughter as it is not a lesser included offense of voluntary manslaughter, again due to the expiration of the statute of limitations.

Torrance PD Texting Scandal

In evaluating this case, a review was conducted on the impact the TPD texting scandal may have on the evidence presented at trial. In late 2021, TPD learned that a number of its officers had been involved in texting each other racist, homophobic, violent and other inappropriate comments and pictures. The resulting investigation found that Chavez had sent three problematic texts.²³ Following that investigation, Chavez was advised of the City's intent to separate him from the Department. Chavez' appeal of that decision remains pending.

Concannon was also implicated in the scandal to a much lesser degree. The most significant text uncovered during the investigation involving Concannon is when another officer sent him a message: "They believed our lies. Good job sticking to the script." Concannon replied by stating: "LMAO" and "That's what you call a W." Initially Middleton believed that this communication was in reference to the Mitchell officer-involved shooting. However, it was later learned that the text exchange referenced an unrelated civil lawsuit involving a vehicle pursuit that resulted in a fatality. The communication to Concannon occurred after the case was dismissed pursuant to a summary judgment ruling. In the depositions, plaintiffs' attorney had accused Concannon and other officers of not telling the truth, and the message was apparently an ill-advised sarcastic comment on how the allegations that the officers had fabricated testimony had been rejected by the court. Concannon's involvement in the texting scandal led to a determination by the City of Torrance to demote him from his sergeant position;²⁴ that appeal remains pending.

It is apparent that the texting scandal influenced the decision to seek an indictment in this case. Interestingly, no evidence of the defendants' involvement in the texting scandal was presented to the grand jury that returned the indictment.²⁵ Certainly, the

²³ One of those texts used the term "n***a", the other was derogatory toward gays and Muslims, and the third text derogated Asians as poor drivers.

²⁴ After the 2018 shooting and prior to the discovery of the texting scandal, Concannon had been promoted to sergeant.

²⁵ Middleton noted that in an unrelated vandalism prosecution, TPD officers involved in the texting scandal filed motions to suppress the evidence based on an alleged violation of the Fourth Amendment and improprieties relating to how the text messages were obtained. That motion was not decided as the vandalism prosecution was resolved. It can be expected that such a motion will be renewed should this case proceed.

Middleton explained that while he considered presenting evidence of the text messages to the grand jury, he decided against doing so because of the motions challenging the propriety of the search warrants.

nature of the scandal raised concerns about the culture and actions of the Torrance Police Department, eventually resulting in a pattern and practice investigation by the California Department of Justice leading to a consent decree requiring significant changes to the policies and training of the TPD.

For purposes of the instant case, the prosecution could seek to admit Chavez' involvement in the texting scandal as evidence of bias against black persons (Mitchell's race was black), although a court could find that the probative value would be outweighed by the prejudice to Chavez. Should Chavez take the stand in his own defense, his involvement in the creation and sharing of racist texts could potentially be used to cross-examine him to show bias against black persons, although any prosecution attempts to cross-examine the defendant on the texts would be hotly contested by the defense. Predicting evidentiary rulings are always uncertain, but one upshot would be that Chavez' episodes of racist texting might make it problematic for him to testify in his own defense.

Middleton notes that in response to the Mitchell officer-involved shooting, Chavez wrote: "heard [Black Lives Matter] showed up at the mayor's house tonight. Gun cleaning party at my house when they release my name???" For context, the involved officers and the city had filed papers with the Court seeking to prevent the District Attorney from identifying Concannon and Chavez. The comment implies a very inappropriate response should the court have decided to allow the release of Chavez' name. While other Torrance officers also texted inappropriately and negatively to circumstances surrounding the officer-involved shooting, the above-quoted comment is the only one attributable directly to Chavez.²⁶

As noted above, Concannon's involvement in the texting scandal did not involve any racist or homophobic tropes. The prosecution could seek to admit Concannon's text messages about the vehicle pursuit as an admission that the defendant has "lied" in other judicial settings. But a review of Concannon's deposition testimony in the pursuit litigation shows that the involved officers were accused of lying during the deposition. While responding to an inappropriate sarcastic comment from a fellow officer about how the officers' "lies" were believed was certainly inappropriate and worthy of disciplinary sanctions, it does not prove that Concannon perjured himself in the deposition. Accordingly, it is uncertain whether Concannon's messaging would be admissible during

²⁶ Middleton concedes that Concannon did not respond to Chavez' message about a "gun cleaning" party. Chavez may argue that this comment was not related to the Mitchell shooting but a shooting involving other TPD officers undermining its relevance to this prosecution.

the prosecution's case-in-chief or be available to cross-examine him should he decide to testify.²⁷

Middleton notes that after the discovery of racist and other disturbing texts, he conducted additional investigation to determine how, if at all, the conduct and the attitudes reflected in the messages relate to the Mitchell shooting. Middleton concedes that the additional investigation did not show the officers acted as part of an ongoing conspiracy.²⁸ Yet Middleton speculates that both defendants were involved in the larger exchange of racist inappropriate message related to the Mitchell shooting. Middleton opines that these communications are indicative of both dishonesty and racial bias and bear directly on their credibility.

It will be difficult for the prosecution to establish which messages either Concannon or Chavez read or were even aware of since there is scant proof that they looked at any of the more concerning messages. In fact, the evidence suggests that as to Concannon, he regularly muted the texting streams when they were occurring.

Middleton opines that the degree to which, "if at all," the text messages would be admissible against Concannon and/or Chavez is not clear. However, Middleton concludes that the text messages "will likely serve to ensure Concannon and Chavez do not testify in their own defense and that other involved officers do not testify on their behalf." Middleton's beliefs on the impact these text messages will have on the defendants' decisions to testify are simply that.

Additional "Other Acts" Evidence Against Defendants

Middleton notes that approximately one year prior to the Mitchell shooting, Chavez was involved in another fatal officer-involved shooting. In that case, Chavez said he shot as he observed a Hispanic subject reaching for a gun, even though no gun was located. Middleton noted that Chavez and other involved officers were "cleared of wrongdoing" and that though there may have been substantial provocation for the police intervention, "it is not clear that there was a need for the use of deadly force."²⁹

²⁷ Middleton admits that any effort to introduce Concannon's comments will be subject to a court weighing the probative value of the statement versus the undue prejudice to the defendants. Middleton is much more optimistic about the use of the messaging to cross-examine Concannon should he take the stand in his defense than the evidence and law suggest.

²⁸ Middleton admits that he did not have sufficient time to conduct a more thorough investigation necessary to establish a possible conspiracy. It is unclear from Middleton's memorandum the constraints that prevented these investigative leads from being pursued as Middleton had almost two years before he presented the case to the grand jury.

²⁹ In actuality, Chavez has been involved in two prior officer-involved shootings (OISs) in 2013 and 2017 and Concannon was involved in one prior shooting in 2010. Curiously, Middleton

Middleton also reports that Chavez had a history of using the carotid restraint against subjects, even in cases involving minor crimes. Middleton argues that although Chavez' past conduct is not grounds for bringing charges in the Mitchell incident, his use of force history suggests a level of bias that undermines his credibility.

Middleton also notes that in one text message another Torrance officer brags about how Chavez had "carotid some fool after we beat his ass for running." Middleton also avers that three of the four instances in which Chavez used a carotid hold involved "arguably" police escalation of very minor crimes. Middleton implies that these other uses of force could be admitted although it is unclear what the theory for admissibility of these incidents would be and Middleton fails to address the evidentiary basis for such admissibility.

It is further unclear how Chavez' prior use of the carotid restraint is probative of his actions in the Mitchell officer-involved shooting that involved no carotid restraint. At the time the holds were deployed, the carotid restraint was an approved technique as an intermediate level of force for resisting subjects. Chavez' deployments of the carotid were seemingly all reviewed internally and found to be consistent with TPD's use of force policy in effect at the time.³⁰ It is highly unlikely that Chavez' use of this force option would be admitted in the prosecution's case-in-chief or even as material for cross-examination of Chavez. The comments by another TPD officer about Chavez' use of force referenced above are even more problematic regarding admissibility as it is a hearsay statement and not directly attributable to defendant Chavez.³¹

Decedent's Prior History

As noted above, in their voluntary statements, Chavez related that as he approached the car, he observed tattoos on Mitchell's face that he considered "gang tattoos" and communicated that observation to Concannon. Defendants will argue that this real-time observation would be admissible as a circumstance adding to the threat level presented by Mitchell to the officers. While the prosecution could argue to exclude this observation as being more prejudicial than probative, the "totality of circumstances" analysis would likely allow this evidence to be admitted. While the evidence would be

does not discuss the third Chavez' OIS or Concannon's prior OIS (in which the subject turned up not to have a weapon) and whether the additional prior uses of deadly force might be admissible against the officers. It is unclear if Middleton failed to investigate these other OISs or if he determined they were irrelevant.

³⁰ Subsequent to the May 2020 George Floyd murder, the California legislature banned the use of the carotid restraint as a use of force option.

³¹ As with one grand jury witness discussed elsewhere, efforts to have this officer testify would be challenged by a likely assertion of his Fifth Amendment.

considered by the jury as increasing the level of threat presented to responding officers, the allusion to Mitchell as a gang member would also prejudice the jury against Mitchell to some degree because of this alleged association.

In papers already filed, defendants have cast Mitchell in a negative light, focusing on his prior criminal convictions and his alleged affiliation with an active street gang in Torrance. While the People would endeavor to preclude or limit any reference of Mitchell's criminal history or gang affiliation as irrelevant and more prejudicial than probative, it is likely that at least some information about Mitchell's criminal past and his alleged gang membership would be admitted at trial.

The argument would further be that Mitchell's alleged gang affiliation and criminal history were important evidence to show his desperation and interest in avoiding arrest at any cost, including using deadly force against the officers.³² Chavez noted in his statement that there had been a "shoot-out" with gang members just days before the Mitchell encounter, again to bolster the threat presented by Mitchell.

In reality, the strategy of focusing on Mitchell's past would be to elicit arguably probative evidence of the threat faced by the two defendants, but also prejudice the jury against Mitchell and distract the jury away from the acts of the defendants. Such a strategy has been successful in undermining prosecutions in which this writer has been involved. The goal is to cause the jury to have such enmity for the decedent that it will nullify any alleged criminal conduct on behalf of the police officer defendants. Another unsettling outcome relating to the deployment of this strategy is that it will bring disconcert to family members and friends of the decedent who will sit through the trial, trying to understand the focus on the alleged past misdeeds of their loved one instead of the alleged criminal conduct of the defendants.

Additional Grand Jury Issues

In addition to the alleged introduction of inadmissible "officer created jeopardy" evidence before the grand jury, defendants also alleged the following errors in Middleton's grand jury presentation:

- Middleton inappropriately invited the grand jury to view the incident through the eyes of Mitchell
- Relevant exculpatory evidence from a defense expert was presented too late and in illegible form

³² Evidence has already identified a prior arrest and booking of Mitchell by Concannon. However, there is no evidence that on the date of the shooting Concannon or Mitchell recognized each other from that prior encounter.

- Middleton declined to present an enhanced exculpatory video of the shooting that more clearly showed Mitchell's hands lowering from the steering wheel toward his lap where the air rifle was lodged between his knees just prior to the shooting
- Middleton declined to produce surveillance footage of the Ralph's parking lot that may have shown people in the parking lot within range of Mitchell's car
- The grand jury was not properly instructed on the elements for voluntary manslaughter

While some of these allegations remain pending before the California Supreme Court, all of these additional alleged errors have to date been rejected by lower reviewing courts. However, it is likely that these allegations will be revisited in other forms (including a renewed motion to dismiss) were the matter to proceed.

Potential Exculpatory Evidence

Defendants requested that two expert reports be presented to the grand jury. The first was a report prepared by a TPD "gang expert." Middleton explained that, in his view, evidence in the report supporting that Mitchell was a gang member did not negate guilt and therefore did not present the gang expert report to the grand jury.³³ Instead, Middleton presented evidence of Mitchell's gang affiliation through other means, such as the community briefing video of the incident in which the then TPD Chief stated that Mitchell was a documented gang member. Middleton further notes that he presented the grand jury with Mitchell's "rap sheet" which showed multiple incidents of car theft and his "Cowboy" gang moniker.

The second item not presented to the grand jury was a report by a use of force expert finding that the defendants' conduct was reasonable and necessary. Middleton declined to present the report to the grand jury, concluding that it improperly instructed the jury on the expert's ultimate opinion of the defendants' innocence. Middleton also concluded that the report was also "replete" with the expert's explanations of the law related to police use of force. These findings by the use of force expert caused Middleton to conclude that the expert's use of force report was inadmissible.

As Middleton concedes, the trial court concluded that he was wrong in finding that the use of force report was not exculpatory. However, the court found that failure to present the report did not prejudice the defendants because its admission would not have changed the grand jury's probable cause finding. However, it is apparent that Middleton's views on the admissibility of the report notwithstanding, the law of the case is that the defense report is exculpatory (and potentially admissible). Based on the

³³The trial court agreed that the information in the gang report was not exculpatory and did not support a dismissal of the indictment.

court's ruling, it appears that the defendants will be able to solicit evidence from use of force experts about the propriety of defendants' actions in shooting Mitchell.

Additional Potential Evidentiary Issues

Defendants have already signaled their intention to undermine the TPD investigation of the incident. As noted above, one issue that has already been previewed is whether TPD failed to obtain all potential surveillance camera footage of the parking lot. While some surveillance camera evidence has been produced to the defendants, they assert that there were more cameras and either that footage has not been produced, was destroyed, or was never obtained by TPD investigators.³⁴

As noted above, another issue that would be hotly litigated is whether the condition of the car Mitchell was found in was appropriately preserved as evidence. One critical piece of evidence for Middleton's theory of the case is how far the back passenger window was down. Middleton argues that the space did not allow Chavez to view the gun between Mitchell's legs; Chavez will contend that the window was rolled down sufficiently for him to view the gun between Mitchell's legs. Defendants will argue that TPD's failure to maintain and preserve the condition of the car over the past six years will make any current or subsequent measurements of that window gap unreliable and will seek to exclude any such testimony at trial.³⁵

Middleton concedes that the hostility expressed by TPD investigators over the reopened investigation into this case will create challenges in identifying witnesses to introduce even the most mundane evidence such as photographs of the car, the body camera video, or the defendants' voluntary statements. Middleton speaks of the extreme defensiveness of TPD investigators and the fact that many of the officers who responded to the shooting were members of the texting scandal. Middleton notes how one of the investigators tried to assist the subject officers by engaging in a non-responsive narrative in the grand jury regarding the propriety of the shooting.

Certainly, the hostility to the prosecution exhibited by TPD investigators will complicate any presentation of evidence at trial. Moreover, even though TPD investigators will be considered part of a prosecution team, their opposite alignment to the case will present serious complications with any trial presentation.

Middleton is also critical of how TPD investigated the case, noting that the involved officers were able to review the body worn camera footage of the incident prior to being interviewed, enabling them to tell consistent stories of the event. Middleton also points

³⁴ Defendants argue that the surveillance footage is relevant to show that there were shoppers in the parking lot that were at risk as a result of Mitchell's actions.

³⁵ Since the 2018 incident, the car has been kept in an unsupervised tow yard.

to the fact that the officers were also aided by the fact that they were represented in the criminal investigation by the same attorney and were interviewed on different days. While Middleton's critiques of TPD's process are legitimate, the weaknesses in investigative protocols by TPD do not strengthen the case against the involved officers; they only weaken it.

Prior District Attorney Decisions

As noted above, defendants will likely attack the prosecution as a "political" prosecution intended to win favor with advocacy groups such as Black Lives Matter. While the People would argue that elected District Attorneys have the discretion to determine which cases should be identified for prosecution and revisit decisions by their predecessors, that approach does create uncertainty for those directly and indirectly impacted by any change in course.

In this case, the officer-involved shooting occurred and was reviewed during the tenure of District Attorney Jackie Lacey who had been subject to criticism for her failure to prosecute officers for use of deadly force. Then candidate for District Attorney, George Gascon, challenged her and promised to revisit prior decisions (including the Mitchell shooting) should he be elected. When Gascon prevailed, he then enlisted the assistance of Special Prosecutor Middleton and felony charges were lodged against the defendants. Since that time, a new District Attorney promised a revisit of this case yet again.

For the defendants, the residents of the City of Torrance, Mitchell's family, and local civil rights advocates, this case has careened from one perspective to another on the propriety of criminal charges against the officers. The "whip saw" impact has been to provide uncertainty about whether this case should be charged. While defendants likely have no legal basis upon which to challenge the various changed courses, the narrative will likely be used to attempt to curry sympathy with the jurors.

Conclusion

In the seminal case of *Berger v. United States*, 295 U.S. 78, 88 (1935), the Supreme Court said the following about the role of the prosecutor:

The prosecutor is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

This principle set out in *Berger* of the prosecutor's dual role as advocate and officer of the court is embodied in the California State Bar Rule 3.8: The Rules of Professional Conduct, Special Responsibilities of a Prosecutor, Comment 1:

The prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons.

Based on the extensive factual and legal analysis presented above, I find that the admissible evidence in this case does not meet the exacting burden of proof beyond a reasonable doubt required to convict Concannon and Chavez at trial of voluntary manslaughter. Accordingly, I recommend that the People move to dismiss the charges against the defendants contained in the indictment.

EXHIBIT

Michael J. Gennaco

Principal: OIR Group (www.oirgroup.com)

I have worked for over twenty-five years as a police-practices professional, focusing on police oversight: reviewing, assessing, providing recommendations for reform, and monitoring numerous law enforcement agencies by promoting progressive police practices focusing particularly on accountability and use of force. One key focus has been reviewing force, internal affairs investigations and disciplinary practices for numerous law enforcement agencies. I have provided training to internal investigators assigned to investigate and review allegations of misconduct for those agencies.

I have reviewed scores of officer-involved shootings and other force incidents and developed recommendations designed to improve policy, training, and internal review processes. I have also conducted high profile internal affairs investigations and conducted qualitative audits of internal affairs, uses of force reviews, and other accountability functions, offering systemic recommendations for improvement. I have conducted qualitative reviews of other critical police functions such as officer performance, recruiting and hiring, community policing programs, background investigations, policies, and training. Copies of our public reports can be found at our website: www.oirgroup.com.

OIR Group regularly conducts policy reviews of use of force and other critical components of police departments. I have provided training to police and civilian investigators and to civilian review boards on internal investigations, risk management, civil litigation, and other police practices. I have designed oversight mechanisms and offered recommendations intended to strengthen and improve current models. I speak regularly to oversight groups, police executives, and elected officials. I present regularly to elected bodies on the finding of our public reports.

I have served as an independent police auditor for a number of law enforcement agencies including the Anaheim, Burbank, Palo Alto, Davis, Santa Cruz, Las Cruces, Eureka, Olympia and Santa Rosa Police Departments and the Santa Clara, Santa Cruz and Los Angeles County Sheriff's Departments.

I have been qualified and designated as an expert on use of force and internal investigative practices by federal judges and administrative law judges. I have testified as an expert in several administrative hearings, including for the Chicago Police Commission.

I served as the monitor for the stipulated judgment entered into by the California Department of Justice and the Stockton Unified School District, reporting on the progress of reforms agreed to and involving the Stockton Unified School District Police Department. I have been involved in conducting systemic reviews for a number of college campus police

departments including San Jose State University, Cal State University Bakersfield and Humboldt State University.

I have also served as a hearing examiner for the Los Angeles Police Department's Board of Rights, a post-disciplinary Board that reviews initial disciplinary decisions of the LAPD.

Prior to my current work, I also served as a federal prosecutor for fifteen years investigating and prosecuting criminal allegations of civil rights offenses for the United States Department of Justice, Civil Rights Division and the United States Attorney, Central District of California. As a result, I conducted federal grand jury investigations in numerous states investigating allegations of excessive force and other Fourth Amendment violations by police officers, federal agents, and judges. I led prosecutions of numerous police officers and other public officials stemming from those investigations.

Specific Projects

2025	Review of Workplace Violence Incident at Santa Monica College
2023	Court expert for review of Maricopa County Sheriff's Office internal affairs practices
2023	Provided training for Office of Los Angeles District Attorney relating to reviewing deadly force incidents
2023	Review of Tigard Oregon Officer-involved Shooting.
2022	Inspector General, Seattle, Washington Conducted investigation into alleged misconduct by member of IG's Office
2022	Review of San Jose Police Department's Response to Protest Activity Conducted independent after-action report relating to San Jose's response to the protests in the aftermath of the George Floyd murder
2022	Attorney General, State of Washington Developed use of force best practices for State of Washington
2021	Review of Santa Monica Police Department's Response to Protest Activity Conducted independent review of the Santa Monica Police Department's Response to Protest Activity
2021	Review of Kalamazoo's Department of Public Safety Response to Protest Activity. Conducted independent review of the Kalamazoo's Department of Public Safety response to protest activity
2021	Internal Affairs Investigation into San Leandro Officer-Involved Shooting Conducted administrative investigation into San Leandro Officer-involved shooting.

2021	Review of Springfield Oregon Officer-Involved Shooting Conducted review of a Springfield Oregon Officer-Involved Shooting.
2021	Review of Bellevue Washington Use of Force Policies Conducted review and offered recommendations relating to Bellevue Washington Police Department's use of force policies.
2021	Review of Iowa City Police Department's Response to Protest Activity Conducted review of the Iowa City Police Department's response to protest activity in June 2020.
2020	Review of Vallejo Police Department Conducted review of accountability and other crucial mechanisms of Vallejo's Police Department. Conducted internal affairs investigation of officer-involved shooting
2020	Independent Review of San Francisco Police Department Officer-Involved Shooting Reviewed officer-involved shooting.
2020	Review of West Linn Oregon Police Department Reviewed allegations of false arrest and racially charged communications between investigating detective and complainant and produced public report.
2020	Skelly Officer for City of Oakland Assigned as Skelly Officer for review of officer-involved shooting.
2020-	Monitor: Santa Clara County Sheriff's Office Continual monitoring of law enforcement in Santa Clara County.
2019-2020	King County Sheriff's Office, Seattle, Washington Systemic review of officer-involved shootings.
2019-20	Internal Investigations for Cal State University San Marcos, Cal State University Stanislaus, Cal State University, East Bay and Humboldt State University Conducted internal investigations of misconduct and reviews of accountability practices
2019-22	Court Monitor, Stockton Unified School District Police Department, Stockton, California Monitor for compliance with settlement agreement regarding use of force and other reforms regarding Police Department
2019	Use of Deadly Force Investigation, Portland State University Police Department, Portland Oregon Conducted investigation of deadly force incident involving PSU police officers

2018-2020	Use of Force Expert Review, Office of Public Accountability, San Francisco, California Performing use of force expert reviews for the Office of Public Accountability relating to Uses of Deadly Force by personnel of the San Francisco Police Department.
2018	Independent Review, San Jose State University Police Department, San Jose, California Performed independent review of the San Jose State University Police Department focusing on use of force and other high risk and accountability functions.
2017-2018	Internal Affairs Investigation, Merced County Sheriff's Office, Merced, California Conducted Internal Affairs investigation into allegations of misconduct involving correctional officers in the Merced County jail.
2018-	Independent Police Auditor, Davis Police Department, Davis, California Currently serving as independent police auditor for the City of Davis, reviewing and auditing complaints and internal investigations.
2018	Review of Clackamas County Sheriff's Office, Oregon City, Oregon Conducted independent review of Sheriff's Office detective unit and provided recommendations for systemic change focusing on accountability.
2015-22	Expert Witness and Independent Review of Officer Involved Shootings, Chicago Police Department, Chicago, Illinois Serve as expert witness in administrative hearing and conducted independent review and analysis of officer-involved shootings.
2018	Independent Review, Lompoc Police Department, Lompoc, California Conducted independent review of the Lompoc Police Department.
2018	Training for Civilian Review Board, Newark, New Jersey Provided training to a newly formed civilian review board on how to review complaints, investigations, and policies.
2018	Training for Internal Affairs and Civilian Investigators, Portland, Oregon Provided training on best practices in internal investigations to investigators from Portland Police Bureau and Independent Police Monitor.
2016-17	Review of Madison Police Department, Madison, Wisconsin Conducted 360-degree review of numerous practices of Department, including use of force, internal investigations, community policing programs, training, hiring, and performance evaluations.
2017	Review of BART Oversight Program, Oakland, California Developed public report designed to improve police oversight over the BART Police Department.
2017	Review of Officer-Involved Shootings: Oxnard Police Department

	Conducted an independent review of an officer-involved shooting and developed systemic recommendations designed to improve Department's response, training and internal review processes.
2017	Use of Force Expert: California Department of Justice: Investigation into Stockton Unified School Police Department Assisted Cal DOJ with investigation into use of force and internal investigations processes of SUSPD.
2017	Internal Affairs Investigation: Ventura County Sheriff's Office. Conducted internal affairs investigation involving allegations of misconduct of Sheriff command staff member
2016	Review of In-Custody Death: Oxnard Police Department Following an in-custody death, reviewed internal practices and provided systemic recommendations designed to improve Department's response, training, and internal review processes.
2016	Review of King County Sheriff's Department (OIM) Conducted review of processes of oversight entity for King County Washington.
2015- 2016	Independent Review of Use of Force and Internal Affairs Functions Denver Sheriff's Department Six-month review of Denver's Sheriff Department focusing on force in the jails and developing recommendations for systemic reform.
2015	Training to Investigators: San Francisco Office of Civilian Complaints Provided training on effective internal investigations of police officers.
2015	Systemic Review Relating to Deadly Force Incidents: Alhambra Police Department Conducted systemic review of a series of officer-involved shootings – provided recommendations for systemic improvements on policy, training, and internal review processes.
2015-	Consultant: NYPD Stop and Frisk Remedial Plan Served as expert to Center for Constitutional Rights by reviewing draft policies and training designed to remediate practices consistent with Court's order.
2015 - 2016	Special Counsel: Orange County Board of Supervisors Evaluated oversight entity and recommended improvements designed to strengthen and broaden independent oversight in the County.
2014	Expert Witness: California State Attorney General Expert witness in an administrative hearing relating to use of force and use of force investigations in a custodial setting.
2014 – 2016	Instructor: Peace Officer Standards and Training

Regular instructor to police supervisors on Civil Liability and Risk Management issues.

- 2001 - 2014 Chief Attorney, LA County Office of Independent Review
Continual oversight and monitoring of LA Sheriff's Department internal affairs functions, including deputy-involved shootings, force, and misconduct allegations. Recommended changes in policy, protocols, and training. Also requested by Board of Supervisors to design oversight mechanism for County Probation Department and Department of Child Family Services.
- 2014 Systemic Review of Westminster Police Department
Following a large adverse verdict against City, performed systemic review of Westminster Police Department's force, performance evaluations, internal investigations, policies, early intervention system, and selection and promotion practices.
- 2014- 2015 Systemic Review of Santa Maria Police Department
Following several controversial shootings, performed systemic review of Santa Maria Police Department's investigation and review of shootings, force, misconduct allegations, force training, and related matters. After initial report, prepared follow up report on implementation and presented to City Council
- 2013, 2017 Audit: Hermosa Beach Police Department
Conducted audit of complaint, internal affairs investigations, and force incidents and offered recommendations designed to improve policies, training, and accountability. In 2017, at request of City revisited processes to gauge the degree of implementation of the recommendations.
- 2012 Auditor for City of Spokane Use of Force Committee
Conducted independent review of Spokane Police Department's use of force investigations and review process.
- 2012 Glendale Police Department
Provided independent review of remedial measures by Glendale Police Department to ensure compliance with terms of settlement.
- 2010 - In Custody Death Review: Fullerton Police Department
Systemic review of the Fullerton Police Department following the in-custody death of a homeless man, conducted an internal affairs investigation, and continual monitoring of implementation of systemic reforms stemming from systemic review.
- 2010- 2012 California Department of Juvenile Justice
Worked with Special Master to audit and develop recommendations for improvement of force policies and review of force incidents in juvenile facilities.
- 2011 Review of Criminal and Internal Investigation: Santa Monica Police Department

	Conducted review and critique of high-profile criminal and internal investigations against a member of the School Board.
2009 -	Force and Misconduct Audits: Burbank Police Department Regular and ongoing monitoring of the quality of investigations and appropriateness of outcomes with respect to force, bias based-policing, misconduct investigations, and vehicle pursuits.
2009 -	Officer Involved Shooting Reviews: Portland Police Bureau Regular and ongoing analysis of the investigation and internal review processes of officer-involved shootings for the City Auditor's Office.
2006	Use of Force Audit for San Diego Sheriff's Department In depth analysis of deputy-involved shootings and jail uses of force resulting in numerous systemic recommendations. Follow up report identifying degree to which recommendations were implemented. Subsequent audit of jail policies relating to force, suicide prevention, and medical delivery.
2006 -	Independent Police Auditor for Palo Alto Police Department Review and monitor all complaints, including bias-based policing complaints, misconduct allegations, and use of Tasers. Prepared special reports on quality of high profile criminal investigation and concerns about bias-based policing. Chaired Taser Task Force convened to determine whether to implement use of Tasers by Department.
2008-09	Force Evaluation and Review for Torrance Police Department Review of officer-involved shootings and other uses of force relating to appropriateness of investigation and robustness of review process.
2008 -	Independent Auditor for Anaheim Police Department Ongoing review of officer-involved shootings, other uses of force, citizen complaints, and internal affairs cases. Liaison to City of Anaheim's Public Safety Board.
2006	Review of Officer Involved Shootings: Inglewood Police Department Conducted review of a series of officer-involved shootings with recommendations designed to improve investigative and review process.
2009-23	Officer Involved Shooting Reviews for Pasadena Police Department Reviews of three officer-involved shootings focusing on internal protocols, investigation, and review processes.
2005- 08	City of Oakland Conducted internal misconduct investigations relating to allegations involving Oakland Police Department supervisors and command staff. Evaluated quality and appropriateness of criminal sexual misconduct investigation.
2003 - 05	City of Oakland

At request of Independent Monitoring Team, reviewed delinquent Internal Affairs cases and made recommendations on how to address them.

- 2003 - 2010 Court Expert in Madrid v. Gomez
Appointed by Judge Thelton Henderson to develop an oversight body for the California Department of Corrections and Rehabilitation as part of the Court's remedial plan. At request of Court and Special Master, worked with parties to completely revise and reform use of force policy. Provided Code of Silence Training at the CDCR Academy.
- 1986- 2001 Federal Civil Rights Prosecutor, U.S. Department of Justice, Civil Rights Division and Office of United States Attorney, Central District of California
- Prosecuted police officer misconduct, hate crimes, and human trafficking cases, first as a Trial Attorney with the Criminal Section of the Civil Rights Division and then as Chief of the Civil Rights Section of the United States Attorney's Office, Central District of California. Prosecuted and oversaw numerous investigations and prosecutions of police officers and law enforcement officials throughout the country. Also prosecuted hate crimes murder of postal carrier and shooting of children at North Valley Jewish Community Center, first federal hate crime prosecution over the Internet, and a modern-day slavery case involving over seventy Thai garment workers.
- 1984- 1986 Trial Attorney, U.S. Department of Justice, Civil Rights Division, Voting Section
Conducted voting discrimination investigations and involved in voting rights litigation.

Expert Testimonial Experience

- 2016-22 Testified before Administrative Hearing Officer in numerous cases involving use of deadly force by Chicago police officers
- 2016 Testified before Arbitrator in case involving use of deadly force relating to Kelly Thomas in custody death: Fullerton, California
- 2014 Testified before Administrative Law Judge involving Internal Affairs investigators of the California Department of Corrections and Rehabilitation: Sacramento, California
- 2006 Testified before Personnel Board in termination case in Springfield, Missouri involving Springfield Police Officer

Education

Stanford Law School, J.D. 1983
Dartmouth College, B.A. 1975

Other Professional Experience

- 1976-1980 Elementary and high school teacher, Glendale and Peoria, Arizona
- 1992-2001 Adjunct Law School Professor Loyola Law School, Chapman Law School, American University School of Law and George Washington School of Law (Civil Rights and Legal Writing)