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Superior Court of California
County of Los Angeles

MAY 27 2026

David W. Slayton, Executive Officer/Clerk of Court

11 SUPERIOR COURT OF STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF LOS ANGELES

13 PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 v.

16 CLIFFORD PROCTOR,

17 Defendant.

Case No. 24CJCF05841

18 PEOPLE'S OPPOSITION TO
19 DEFENDANT'S MOTION TO SET
20 ASIDE INDICTMENT
21 PURSUANT TO PENAL CODE
22 SECTION 995, MEMORANDUM
23 OF POINTS AND AUTHORITIES,
24 EXHIBITS, DECLARATION OF
25 LAWRENCE MIDDLETON

Time: June 1, 2026

Date: 8:30 A.M.

Dept: 101

26 **TO THE HONORABLE RONALD S. COEN, TO DEFENDANT CLIFFORD PROCTOR,**
27 **AND TO HIS COUNSEL:**

28 **PLEASE TAKE NOTICE** that People file this motion in opposition to Defendant Clifford
Proctor's motion for dismissal pursuant to Penal Code 995. This Opposition is based on the
Memorandum of Points and Authorities served and filed herewith, the transcript of the grand

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jury proceeding, the exhibits admitted by the grand jury and incorporated by reference herein, the Declaration of Lawrence Middleton, and on such oral argument as may be presented at the hearing on this motion.

Dated: May 27, 2026

NATHAN HOCHMAN
DISTRICT ATTORNEY

By: *Daniel W. Baker for*

Michael J. Gennaco
Special Prosecutor

Daniel W. Baker

Daniel W. Baker
Deputy District Attorney

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2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 On or about September 18, 2024, a grand jury was impaneled to hear evidence presented
5 by Special Prosecutor Lawrence Middleton. On September 20, 2204, the grand jury returned an
6 indictment of one count of second-degree murder, in violation of Penal Code Section 187(a),
7 against Defendant Clifford Proctor.

8 In a motion filed May 14, 2026, Defendant argues that the extant indictment should be set
9 aside because the evidence presented to the grand jury did not constitute probable cause to
10 support the charge. Specifically, Defendant avers that no evidence of “malice” was presented to
11 the grand jury, a required element of a second-degree murder charge. Defendant further argues
12 that the indictment should be dismissed because the People failed to disclose material
13 exculpatory evidence to the grand jury. Because, as set out in the attached papers, the People
14 presented ample evidence of each of the elements of second-degree murder, including the
15 element of malice, to support the grand jury’s probable cause finding, Defendant’s motion
16 should fail. Moreover, because the People did honor its obligation to present exculpatory
17 evidence to the grand jury, Defendant’s alternative argument to set aside the indictment on that
18 basis should similarly fail.

19 **II. TESTIMONY AND EVIDENCE PRESENTED TO THE GRAND JURY**

20 **A. Testimony**

21 The grand jury was advised of the underlying officer-involved shooting investigation by
22 Christopher Linscomb, Detective, Los Angeles Police Department’s (“LAPD”) Force
23 Investigation Division. Grand Jury Reporter’s Transcript at 23. Detective Linscomb testified he
24 was assigned as part of a team to criminally investigate an officer-involved shooting that
25 occurred in May 2015. Id. Detective Linscomb testified that the officer-involved shooting
26 occurred at the Townhouse Bar on Windward Avenue in the Venice Beach area, approximately
27 one block east of the beach. Id. at 26-27. Detective Linscomb identified the Defendant as being
28 involved in an officer-involved shooting and Brendon Glenn who died as a result of that
shooting. Id.

1 Detective Linscomb testified that the shooting occurred on the sidewalk in front of the
2 Townhouse Bar and that he was able to recover a video recording of the incident from a
3 surveillance camera that was trained on the area where the incident occurred. Id. at 27. The
4 grand jury was then presented with the surveillance video with narration from Detective
5 Linscomb.¹ Id. at 27-40. This surveillance video was admitted by the grand jury as Exhibit 5
6 (included on the accompanying digital media as “GJ Ex 5 – Townhouse Bar Video – East
7 Camera.wmv”).

8 Detective Linscomb testified that the call for police service was initiated by an employee
9 of another bar down the street from the Townhouse Bar in which it was reported that an
10 individual later identified as Mr. Glenn was creating a disturbance. Id. at 31. Detective
11 Linscomb then pointed out to the grand jury the video frames showing Mr. Glenn having an
12 encounter with the police and then traveling in the direction of the Townhouse Bar. Id. at 35-38.

13 Detective Linscomb pointed out the video footage where Mr. Glenn approached a
14 security employee from the Townhouse Bar who then put Glenn on the ground. Id. at 38.
15 Detective Linscomb then identified the footage showing two police officers, identified by the
16 Detective as Defendant and his partner Officer Johnathan Kawahara come onto the location. Id.
17 Detective Linscomb pointed out video footage showing Officer Kawahara appearing to control
18 Mr. Glenn’s right arm with Defendant standing directly in front of Mr. Glenn. Id. at 50.
19 Detective Linscomb then identified the video footage showing Defendant pull Mr. Glenn to the
20 ground. Id. Detective Linscomb testified that the footage then showed Officer Kawahara
21 physically engage with Mr. Glenn along with Defendant, who then reached for his waistband in
22 the holster area while his left hand was on Mr. Glenn’s back. Id. at 51. Detective Linscomb then
23 identified video footage showing Defendant unholster his firearm and the subsequent two muzzle
24 flashes corresponding with Defendant’s firing his weapon twice. Id. at 51-52. Detective
25 Linscomb identified the footage of Mr. Glenn then falling to the ground with Defendant standing
26 over him. Id. at 52-53. Detective Linscomb testified that the video then showed that at some

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¹ The surveillance video did not capture audio of the incident. Reporter’s Transcript at 29.

1 point after the shooting, Defendant entered the Townhouse Bar and had an apparent conversation
2 with the doorman who had put Glenn on the ground prior to the shooting. Id. at 40.

3 In response to grand jury questions about LAPD training, Detective Linscomb testified
4 that officers were trained both at the academy and during continuous in-service training how to
5 communicate between officers, and officer safety concepts such as crossfire, background, and
6 foreground. Id. at 54-55.

7 DiMario Thomas testified before the grand jury that on the date of the officer-involved
8 shooting incident he was working at the Townhouse Bar as a doorman. Id. at 62. Mr. Thomas
9 testified that he was outside the front of the bar when he observed several homeless people down
10 the street approached by LAPD police officers. Id. at 66. Mr. Thomas testified that he observed
11 one of those individuals walk in the direction of the Townhouse Bar. Id. at 67. Mr. Thomas
12 testified that the man was intoxicated and had been “messaging with people”. Id.² At the grand
13 jury, Mr. Thomas was shown a portion of the surveillance video and identified himself in the
14 footage. Id. at 71. Mr. Thomas confirmed that in an effort to have the man, later identified as
15 Mr. Glenn, move on he put him on the ground. Id. at 72.

16 Mr. Thomas testified that two LAPD officers then approached him and Mr. Glenn, and
17 another Townhouse Bar employee advised him to allow LAPD to handle the situation. Id. at 73.
18 Mr. Thomas testified that the LAPD officers tried to take Mr. Glenn to the ground and he gave a
19 little resistance. Id. at 74. Mr. Thomas testified that the LAPD officers tried to put Mr. Glenn’s
20 hand behind his back at which time Glenn was able to get his hands loose and push up with his
21 knee. Id. Mr. Thomas testified that Glenn reached around one of the legs of the Asian officer
22 (later identified as LAPD Officer Kawahara), around the lower leg or calf area in an effort to
23 grab something for stability to get to his feet. Id. Mr. Thomas testified that the black LAPD
24 officer (later identified as Defendant) stumbled off of Glenn and said something to the effect of
25 “so this is how we going to do this?” Id. at 75.

26 Mr. Thomas testified that he then observed Defendant unholster what he believed was a
27 Taser. Id. Mr. Thomas explained that he mistakenly initially thought the weapon used by
28

² Mr. Thomas later described Mr. Glenn’s conduct as “annoying” and “bothering” people. Id. at 85.

1 Defendant was a Taser because he did not see Mr. Glenn do anything worth him being shot for.
2 Id. Mr. Thomas further explained his confusion: “That was my mind because I was thinking
3 there was no way they’re going to shoot this dude.” Id. at 81. Mr. Thomas testified that while
4 Officer Kawahara was still engaged with Mr. Glenn, the Defendant shot Glenn in the back. Id
5 at 75.

6 Mr. Thomas testified that after the shooting, he went inside the bar and that the
7 Defendant followed him in and said “Mario, you seen him, you saw him, you saw him reach for
8 my gun” and that Thomas looked the Defendant in the face and said, “I didn’t see shit.” Id. at 76.
9 Mr. Thomas explained to the grand jury that he replied in that manner because he had not seen
10 Mr. Glenn reach for a gun and that he did not want to be involved. Id. Mr. Thomas advised the
11 grand jury that when he was initially interviewed, he did not tell LAPD detectives all of what he
12 observed because he was fearful of retaliation by police. Id. Mr. Thomas also explained that he
13 was aware of the surveillance cameras that would show the incident. Id. at 76-77. Mr. Thomas
14 advised the grand jury that when he was interviewed a second time by LAPD detectives, he told
15 them all that he had observed. Id. at 77.

16 Mr. Thomas testified before the grand jury that he recalled the incident well because, in
17 his opinion, he watched Mr. Glenn “get killed for nothing”. Id. Mr. Thomas testified that during
18 the incident, he did not see Mr. Glenn do anything that placed the two officers in jeopardy of
19 serious bodily injury or death and noted that Mr. Glenn was outnumbered two to one. Id. at 78.
20 Mr. Thomas testified that during the incident, he did not see Mr. Glenn throw any punches at the
21 officers nor display any weapon. Id. at 78-79. Mr. Thomas testified that during the incident, he
22 did not observe at any time Mr. Glenn reach for either Defendant’s or Officer Kawahara’s
23 service weapon. Id. at 83. In response to a grand jury question, Mr. Thomas testified that during
24 the incident, Mr. Glenn did not present a danger to the officers or others in the vicinity of the bar.
25 Id.

26 Officer Kawahara testified before the grand jury that on the date of the incident, he was
27 working as an LAPD patrol officer assigned to the Venice district. Id. at 94. Officer Kawahara
28 testified that while on duty, he and his partner (Defendant) received a call of a man disturbing the

1 peace. Id. at 94-95. Officer Kawahara testified that when they arrived at the location, he saw
2 four individuals sitting on the south sidewalk of Windward Avenue. Id. at 95. Officer Kawahara
3 testified that there was a dog with them and that the individuals were blocking the sidewalk from
4 pedestrian traffic. Id. Office Kawahara testified that during the encounter, the dog was not
5 aggressive in any way. Id. Officer Kawahara testified that he asked the individuals to leave and
6 two of them immediately did so, with a male and female remaining. Id. Officer Kawahara
7 testified that when asked to leave, the man (later identified as Brendan Glenn) became angry and
8 confrontational and appeared to be intoxicated. Id. at 96.

9 Officer Kawahara testified that during the initial encounter, he activated his body worn camera.
10 Id. Officer Kawahara was shown the footage from his body worn camera and confirmed that
11 when they first encountered Mr. Glenn, Defendant told Glenn words to the effect of: “Don’t
12 bring your fucking dog over here, I will shoot your dog.” Id. at 114, Officer Kawahara’s body
13 worn camera video at 45 seconds (admitted by the grand jury as Exhibit 7 and included on the
14 accompanying digital media as “GJ Ex 7 - Kawahara BWV.wmv”). Officer Kawahara said that
15 before Defendant threatened to shoot Mr. Glenn’s dog, Glenn had not been aggressive or
16 belligerent to the officers. Id. at 118.

17 Officer Kawahara testified that eventually Mr. Glenn left the area and the officers
18 continued to observe him as he walked away. Id. at 98. Officer Kawahara testified that he
19 observed Mr. Glenn walk toward the Townhouse Bar and appeared to get in an argument with a
20 person there which became physical. Id. at 99. Officer Kawahara testified that he then decided
21 to intervene and arrest Mr. Glenn for being drunk in public. Id. at 100.

22 Officer Kawahara testified that he grabbed Mr. Glenn’s arms and told him to turn around.
23 Id. Officer Kawahara testified that Mr. Glenn resisted and did not immediately comply with his
24 instructions, whereby Officer Proctor told Glenn: “I told you – he said turn around, so turn
25 around”. Id. at 101. Officer Kawahara testified that he and Defendant were able to get Mr.
26 Glenn on the ground, at which time he had his left leg on top of Glenn’s lower back but that
27 Glenn was then able to push himself up off the ground. Id. at 101-102.

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1 Officer Kawahara testified that he wore his duty service revolver on the left side of his
2 belt since he is left-handed. Id. at 102. Officer Kawahara testified that during his efforts to
3 detain Mr. Glenn, he never felt Glenn pull on or tug on his weapon. Id. Officer Kawahara
4 further testified that he never saw Mr. Glenn reach for his service weapon in any way. Id.
5 Officer Kawahara testified that as he was attempting to arrest Mr. Glenn, he did not observe
6 Glenn swing at him or try to punch him. Id. at 102-103. Officer Kawahara also testified that he
7 did not observe Mr. Glenn swing at or attempt to punch Defendant. Id. at 119. Officer
8 Kawahara testified that he did not observe Mr. Glenn hit the doorman and did not present a threat
9 to him. Id. at 127. In response to a grand jury question, Officer Kawahara testified that on the
10 date of the incident, Defendant was carrying a Taser. Id. at 122.

11 Officer Kawahara testified that he had received training from LAPD in weapon retention.
12 Id. at 103. Officer Kawahara testified that he was advised that if someone is trying to disarm you,
13 you should “cap the gun” which is to use your hand to force down the gun into the holster. Id.
14 Officer Kawahara testified that he was not required to do such during the incident because he
15 never saw or felt Mr. Glenn trying to disarm him. Id. Officer Kawahara testified that on the date
16 of the incident he was wearing a double retention holster which was designed with features to
17 make it more difficult for a person to disarm him. Id. Officer Kawahara testified that similarly,
18 he did not feel anyone try to remove his backup weapon during the scuffle which was holstered
19 on his left ankle. Id. at 106, 110.

20 Officer Kawahara testified that at some point during the struggle, he heard gunshots
21 which surprised him, because he had not seen anything to justify the use of deadly force. Id. at
22 106. Officer Kawahara testified that at no time prior to the shooting did he hear Defendant warn
23 him that Mr. Glenn was trying to reach for his duty weapon or backup weapon. Id. at 126.
24 Officer Kawahara was shown portions of the Townhouse Bar surveillance video (admitted by the
25 grand jury as Exhibit 9 and included on the accompanying digital media as “GJ Ex 9 – Excerpt
26 of Townhouse Bar Surveillance Video.wmv”). Officer Kawahara testified that Glenn was shot
27 twice by Defendant. Id. at 126. Officer Kawahara testified that he did not fire his weapon. Id.
28 In the grand jury, Officer Kawahara was shown the surveillance video depicting Mr. Glenn with

1 his right arm wrapped around Kawahara's right thigh. Id. at 112. Officer Kawahara testified
2 that since his firearm was on his left side, Mr. Glenn's right arm could not have been reaching
3 for his gun. Id. In response to a grand juror question, Officer Kawahara testified that at the
4 moment that Defendant shot Mr. Glenn, he had not witnessed Glenn attacking or threatening to
5 attack any individual and at that moment there were no threats of violence to either himself or
6 Defendant. Id. at 122, 128.

7 Dr. Marc Brown testified before the grand jury as a use of force expert. Id. at 134. Dr.
8 Brown testified about his qualifications and experience. Id. at 134-136. Dr. Brown testified that
9 he reviewed the videos of the officer-involved shooting incident and the use of force manuals of
10 the Los Angeles Police Department. Id. at 136. Dr. Brown testified that nothing in the
11 surveillance video suggested a need to use deadly force. Id. at 137. Dr. Brown testified that
12 based on his review of the video, there was no evidence that Mr. Glenn had tried to reach for
13 either officer's firearm prior to the shooting. Id. Dr. Brown testified that if the Defendant had
14 observed Mr. Glenn trying to take his or his partner's gun, he would have expected, consistent
15 with training, for the officer to communicate that observation to his partner. Id. In response to a
16 grand juror question, Dr. Brown testified that when Defendant shot there was a potential
17 crossfire situation with Officer Kawahara in his backdrop. Id. at 141.

18 Dr. Lawrence Nguyen testified before the grand jury that he had performed the autopsy
19 of Brandon Glenn and had determined that the cause of death was two gunshot wounds. Id. at
20 151. Dr. Nguyen testified that both wounds were immediately life threatening. Id. at 151-153.
21 Dr. Nguyen testified that the manner of death was a homicide, meaning death at the hands of
22 another. Id. at 155. Dr. Nguyen testified that the toxicology report of Mr. Glenn showed a level
23 of alcohol as .027, which is a high level of impairment and measurable levels of THC, the active
24 ingredient in marijuana. Id. at 158.

25 **B. Exculpatory Exhibits**

26 The grand jury was also presented with potentially exculpatory material including the
27 following:
28

- 1 • Exhibit 10: Criminal History of Mr. Glenn (included on the accompanying digital media as
- 2 “GJ Ex 10 – Brendon Glenn Rap Sheet.pdf”)
- 3 • Exhibit 14: DNA Forensic Report - Glenn (included on the accompanying digital media as
- 4 “Grand Jury Exhibit 14 – Forensic Report – Redacted.pdf”)
- 5 • Exhibit 15: Declination Letter from the District Attorney who previously reviewed the case
- 6 (included on the accompanying digital media as “Proctor Grand Jury Exhibit 15 –
- 7 Declination – redacted.pdf”).

8 **III. THE GRAND JURY RECEIVED SUFFICIENT EVIDENCE OF MALICE TO**

9 **SUPPORT A FINDING OF PROBABLE CAUSE**

10 Following the presentation of testimonial, video, and documentary evidence before the grand
11 jury, the grand jury advisor instructed on the elements of second degree-murder. Defendant’s
12 instant 995 motion does not dispute that the correct jury instructions were read to the grand
13 jurors. Nor does Defendant’s motion dispute that there was sufficient evidence to support the
14 elements of second-degree murder save for one, the malice requirement. Because there was
15 ample (and now uncontested) evidence presented to the grand jury to support a probable cause
16 finding for all of the other elements of second-degree murder, the People will focus its attention
17 on the only disputed element, that of malice.

18 In this case, the grand jury was instructed on the malice element as follows:

19 THE TARGET IS CHARGED IN COUNT 1 WITH MURDER, IN VIOLATION OF
20 PENAL CODE SECTION 187. TO PROVE THAT THE TARGET COMMITTED THIS
21 CRIME, THE PEOPLE MUST PROVE THAT:

22 1. THE TARGET COMMITTED AN ACT THAT CAUSED THE DEATH OF
23 ANOTHER PERSON;

24 2. WHEN THE TARGET ACTED, HE HAD A STATE OF MIND CALLED MALICE
25 AFORETHOUGHT; AND

26 3. HE KILLED WITHOUT LAWFUL EXCUSE OR JUSTIFICATION.

27 THERE ARE TWO KINDS OF MALICE AFORETHOUGHT: EXPRESS MALICE
28 AND IMPLIED MALICE. PROOF OF EITHER IS SUFFICIENT TO ESTABLISH

1 THE STATE OF MIND REQUIRED FOR MURDER. THE TARGET HAS EXPRESS
2 MALICE IF HE UNLAWFULLY INTENDED TO KILL. THE TARGET HAS
3 IMPLIED MALICE IF:

- 4 1. HE INTENTIONALLY COMMITTED THE ACT;
- 5 2. THE NATURAL AND PROBABLE CONSEQUENCES OF THE ACT WERE
6 DANGEROUS TO HUMAN LIFE;
- 7 3. AT THE TIME HE ACTED, HE KNEW HIS ACT WAS DANGEROUS TO
8 HUMAN LIFE; AND
- 9 4. HE DELIBERATELY ACTED WITH CONSCIOUS DISREGARD FOR HUMAN
10 LIFE.

11 MALICE AFORETHOUGHT DOES NOT REQUIRE HATRED OR ILL WILL
12 TOWARD THE VICTIM. IT IS A MENTAL STATE THAT MUST BE FORMED
13 BEFORE THE ACT THAT CAUSES DEATH IS COMMITTED. IT DOES NOT
14 REQUIRE DELIBERATION OR THE PASSAGE OF ANY PARTICULAR PERIOD
15 OF TIME.

16 Reporter's Transcript at 176.

17 Defendant argues that there was no evidence whatsoever presented to the grand jury that
18 would establish probable cause that his acts were conducted with malice. Yet, there was ample
19 evidence for a grand jury to conclude that Defendant's killing of Mr. Glenn was with malice
20 either express or implied. As set out in detail above, the grand jury heard and saw evidence that
21 Defendant unlawfully intended to kill which is what is required for a finding of express malice.
22 The videos of the initial engagement between Defendant and Mr. Glenn and the ensuing physical
23 struggle present a homeless and intoxicated person, with no evidence of physical aggression on
24 behalf of Mr. Glenn. At most, the video evidence shows Mr. Glenn attempting to avoid being
25 taken into custody by tensing his limbs and attempting to get back up off the ground after he was
26 initially taken down. There was no concern expressed by responding officers that Mr. Glenn was
27 armed with a weapon and, in fact, he was not in possession of any weapon. When Defendant
28 fired his two rounds, it was apparent that the rounds were intended to kill Mr. Glenn and in fact

1 did kill him. In short, probable cause of actual malice was established by the fact that Defendant
2 intended to kill Glenn and there was no justification for Defendant's use of deadly force meaning
3 that he unlawfully intended to kill.

4 The grand jury was also presented ample evidence of implied malice. The surveillance
5 video of the incident showed Defendant intentionally firing two rounds at a man who was
6 presenting no threat to either Defendant or his partner. Clearly, consistent with the second
7 element of implied malice, the natural and probable consequences of Defendant's use of force
8 were dangerous, and in this case fatal, to human life. As a seasoned police officer, Defendant
9 knew that his two uses of deadly force were dangerous to human life. And finally, Defendant's
10 decision to shoot and kill Mr. Glenn without any justification was evidence that he acted with
11 conscious disregard for human life, the final element for a finding of implied malice.

12 In further defining malice, the grand jury was advised of the following:

13 MALICE AFORETHOUGHT DOES NOT REQUIRE HATRED OR ILL WILL
14 TOWARD THE VICTIM. IT IS A MENTAL STATE THAT MUST BE FORMED
15 BEFORE THE ACT THAT CAUSES DEATH IS COMMITTED. IT DOES NOT
16 REQUIRE DELIBERATION OR THE PASSAGE OF ANY PARTICULAR PERIOD
17 OF TIME.

18 Id. at 177.

19 The state of mind requirement for malice does not require that Defendant hated or
20 harbored ill will towards Mr. Glenn. However, there was evidence introduced that Defendant
21 killed Mr. Glenn out of anger, frustration, and impatience, all unlawful reasons supporting a
22 second-degree murder charge. From the onset of the encounter with Mr. Glenn, Defendant
23 unnecessarily escalated the situation when he communicated a profanity-laced threat to shoot
24 defendant's dog, already demonstrating anger even as the encounter was just beginning. See
25 Grand Jury Exhibit 7. Unfortunately, Mr. Glenn, likely due to his state of inebriation, responded
26 with some racial epithets directed toward Defendant (Defendant and Glenn are both black),
27 likely further angering Defendant. Id.

1 While Mr. Glenn eventually complied with responding officers' instructions to leave the
2 sidewalk, Defendant remained on scene and was able to observe Mr. Glenn continue to interact
3 with bar patrons and pedestrians, first hugging one man and then getting into a physical
4 confrontation with the doorman. See Grand Jury Exhibit 5. Defendant was apparently upset that
5 Mr. Glenn continued to present a bother to patrons and when Glenn did not immediately comply
6 with his partner's instructions, grabbed Glenn's hair and yanked him to the ground. Id. As
7 detailed above, as the struggle continued, Defendant stated out of frustration and anger, ""so this
8 is how we going to do this?" Reporter's Transcript at 75.

9 After the incident, Defendant claimed injury to his knee as a result of the physical
10 encounter. See Defendant's Motion at 6. Any injury and resulting pain also contributed to
11 Defendant's state of mind and frustration and anger against Mr. Glenn for his actions. Finally,
12 after Defendant fired two rounds that resulted in the death of Mr. Glenn, he went to an
13 eyewitness and implored that witness to support a false narrative of what had just happened,
14 namely, that Mr. Glenn had reached for his holstered weapon. Reporter's Transcript at 76. In
15 short, there was ample evidence presented to the grand jury that Defendant's actions were not
16 fueled by either reasonable or unreasonable fear but by anger, frustration, pain, and annoyance,
17 clearly constituting malice.

18 The jury instructions read to the grand jury further advised that:

19 THE TARGET IS NOT INDICTABLE FOR MURDER IF THE TARGET WAS
20 JUSTIFIED IN KILLING SOMEONE IN SELF-DEFENSE OR DEFENSE OF
21 ANOTHER. THE TARGET ACTED IN LAWFUL SELF-DEFENSE OR DEFENSE OF
22 ANOTHER IF:

23 1. THE TARGET REASONABLY BELIEVED THAT HE OR SOMEONE ELSE WAS
24 IN IMMINENT DANGER OF BEING KILLED OR SUFFERING GREAT BODILY
25 INJURY;

26 2. THE TARGET REASONABLY BELIEVED THAT THE IMMEDIATE USE OF
27 DEADLY FORCE WAS NECESSARY TO DEFEND AGAINST THAT DANGER;

28 AND

1 3. THE TARGET USED NO MORE FORCE THAN WAS REASONABLY
2 NECESSARY TO DEFEND AGAINST THAT DANGER.
3 BELIEF IN FUTURE HARM IS NOT SUFFICIENT NO MATTER HOW GREAT OR
4 HOW LIKELY THE HARM IS BELIEVED TO BE. THE TARGET MUST HAVE
5 BELIEVED THERE WAS IMMINENT DANGER OF DEATH OR GREAT BODILY
6 INJURY TO THEMSELF OR SOMEONE ELSE. THE TARGET'S BELIEF MUST
7 HAVE BEEN REASONABLE, AND HE MUST HAVE ACTED ONLY BECAUSE OF
8 THAT BELIEF. THE TARGET IS ONLY ENTITLED TO USE THAT AMOUNT OF
9 FORCE THAT A REASONABLE PERSON WOULD BELIEVE IS NECESSARY IN
10 THE SAME SITUATION. IF THE TARGET USED MORE FORCE THAN WAS
11 REASONABLE, THE KILLING WAS NOT JUSTIFIED. WHEN DECIDING
12 WHETHER THE TARGET'S BELIEFS WERE REASONABLE, CONSIDER ALL
13 THE CIRCUMSTANCES AS THEY WERE KNOWN TO AND APPEARED TO THE
14 TARGET AND CONSIDER WHAT A REASONABLE PERSON IN A SIMILAR
15 SITUATION WITH SIMILAR KNOWLEDGE WOULD HAVE BELIEVED. IF THE
16 TARGET'S BELIEFS WERE REASONABLE, THE DANGER DOES NOT NEED TO
17 HAVE ACTUALLY EXISTED. THE TARGET'S BELIEF THAT HE OR SOMEONE
18 ELSE WAS THREATENED MAY BE REASONABLY -- MAY BE REASONABLE
19 EVEN IF HE RELIED ON INFORMATION THAT WAS NOT TRUE. HOWEVER,
20 THE TARGET MUST ACTUALLY AND REASONABLY HAVE BELIEVED THAT
21 THE INFORMATION WAS TRUE.

22 Reporter's Transcript at 174-175.

23 In his papers, defendant conflates a possible defense of the indictment with the "malice"
24 element. While the quoted jury instruction properly instructs that a reasonable fear of a threat
25 provides a defense to the charge, Defendant argues that even if his fear was unreasonable, if it
26 was an honestly held belief, he cannot be found guilty of second-degree murder. However, as
27 detailed above, the evidence presented to the grand jury was that Defendant's actions were not
28 motivated by either reasonable or unreasonable fear as there was no evidence that Defendant had

1 either a genuine reasonable fear or even unreasonable fear as to Mr. Glenn's actions. Rather the
2 evidence presented to the grand jury was that Defendant's actions were unlawful and not driven
3 by fear but rather by anger, frustration, and pain.

4 Finally, the jury instructions read to the grand jury advised that it need only find that
5 there was sufficient probable cause to support an indictment:

6 YOU MUST DETERMINE WHETHER SUFFICIENT EVIDENCE HAS BEEN
7 PRESENTED TO SUPPORT HOLDING THE TARGET TO ANSWER ON A
8 CRIMINAL COMPLAINT. THE STANDARD OF PROOF FOR GRAND JURY
9 PROCEEDINGS IS PROBABLE CAUSE. PROBABLE CAUSE MEANS SUCH A
10 STATE OF FACTS AS WOULD LEAD A PERSON OF ORDINARY CAUTION OR
11 PRUDENCE TO BELIEVE AND CONSCIENTIOUSLY ENTERTAIN A STRONG
12 SUSPICION THAT A CRIME HAS BEEN COMMITTED AND THAT THE PERSON
13 ACCUSED HAS COMMITTED A CRIME. REASONABLE AND PROBABLE
14 CAUSE MAY EXIST ALTHOUGH THERE MAY BE SOME ROOM FOR DOUBT.

15 Reporter's Transcript at 178.

16 As with the grand jury, in considering Defendant's motion, this court is only required to
17 determine whether there was sufficient evidence to support a probable cause finding, a much
18 lesser quantum of proof than required at trial. For the reasons set out above, the People
19 introduced sufficient evidence on all required elements to support the grand jury's finding that
20 probable cause existed to charge Defendant with second-degree murder.

21 The cases cited in Defendant's papers do not support a different result. For example, in
22 *People v. Blakeley* (2000) 23 Cal. 4th 82, the Supreme Court found that a defendant lacks malice
23 and is guilty of voluntary manslaughter in "limited, explicitly defined circumstances: either when
24 the defendant acts in a 'sudden quarrel or heat of passion' (§ 192, subd. (a)), or when the
25 defendant kills in 'unreasonable self-defense,' the unreasonable but good faith belief in having to
26 act in self-defense. *Id.* at 88 (citations omitted). See also, *People v. Flannel* (1979) 25 Cal. 3d
27 668 (Manslaughter is the appropriate penalty for one who kills because he honestly but
28 unreasonably believes he must do so.) Defendant does not argue that he killed Mr. Glenn in a

1 sudden quarrel or heat of passion but suggests that he may have killed in an unreasonable but
2 good faith belief in having to act in self-defense, sufficient to support a voluntary manslaughter
3 indictment but insufficient to support a second-degree murder charge.³ However, as stated
4 above, the grand jury heard evidence of both express and implied malice and heard no evidence
5 that Defendant acted either reasonably or with an honest belief but unreasonable self-defense.
6 The egregiousness of Defendant's unholstering his weapon in the middle of a physical struggle
7 and firing two fatal shots without warning to Mr. Glenn (or his partner) undermines any assertion
8 that Defendant had an "honest" belief he or his partner was in any dire situation. Witnesses who
9 appeared before the grand jury whether, they be Defendant's partner, a civilian eyewitness, or a
10 use of force expert, all testified that at the time of the shooting Mr. Glenn did not pose a serious
11 threat to either Defendant or his partner. While Defendant remains free to argue this point at
12 trial, the evidence heard by the grand jury of both express and implied malice was sufficient to
13 support its probable cause finding of second-degree murder.

14 Defendant argues that because the statute of limitations had expired for a charge of voluntary
15 manslaughter, it was somehow improper to proceed with a request of the grand jury to return a
16 charge of second-degree murder which was not time barred. While Defendant is correct that at
17 the time of the grand jury presentation, the statute of limitations for voluntary manslaughter had
18 expired, there is no evidence that the prosecutor wrongfully "shoehorned" a second-degree
19 murder charge in place of the time barred voluntary manslaughter. Defendant has no standing
20 either pre or post-indictment to instruct the prosecutor of the appropriate charge to bring. If the
21 elements of second-degree murder were properly pled to the grand jury and if there was
22 sufficient evidence of each element to support a probable cause finding, the current indictment
23 should not be dismissed on a theory that a different (but no longer available) charge better fit the
24 Defendant's actions.

25
26 ³ The "sudden quarrel or heat of passion" circumstance requires that the killer's reason was actually
27 obscured as the result of a strong passion aroused by a 'provocation' sufficient to cause an 'ordinary
28 [person] of average disposition ... to act rashly or without due deliberation and reflection, and from this
passion rather than judgment.' " *People v. Breverman* (1998) 19 Cal. 4th 142, 163. Defendant does not
argue, and the facts do not support any assertion that in this case his passion was aroused by a provocation
sufficient to cause him to act rashly or without due deliberation and reflection.

1 **IV. The People Properly Provided Exculpatory Evidence to the Grand Jury**

2 Defendant notes that when a district attorney seeking an indictment is aware of evidence
3 reasonably tending to negate guilt, he is obligated under Penal Code Section 939.7 to inform the
4 grand jury of its nature and existence. Defendant argues that the failure of the Special Prosecutor
5 to present an 83-page Declination Letter authored when the incident was first evaluated (referred
6 to hereinafter as Grand Jury Exhibit 15) to the grand jury resulted in exculpatory evidence being
7 improperly kept from that deliberative body.

8 However, Defendant's protestations notwithstanding, the Special Prosecutor did provide
9 the 83-page Declination Letter to the grand jury. While due to an inaccurate transcription of the
10 grand jury proceedings -- the Court Reporter's description of the nature of the document
11 presented to the grand jury was initially unclear -- it is now apparent that the Letter was, in fact,
12 presented to the grand jury for consideration. Specifically, the Grand Jury transcript referred to a
13 **3 page "Declaration Letter"** being presented when in fact the Exhibit presented to the grand
14 jury was the **83 page "Declination Letter."**

15 **SPECIAL PROSECUTOR MIDDLETON: AND EXHIBIT 15 SHOULD BE A**
16 **DECLARATION LETTER FROM THE DISTRICT ATTORNEY'S OFFICE FROM**
17 **PREVIOUSLY LOOKING AT THIS PARTICULAR CASE.**

18 Reporter's Transcript at 161.

19 **GRAND JURY LEGAL ADVISOR AENLLE-ROCHA: AND 15 IS THE DISTRICT**
20 **ATTORNEY'S OFFICE DECLARATION LETTER WHERE THERE WAS A**
21 **REVIEW AND THE DISTRICT ATTORNEY'S OFFICE DECLINED TO FILE**
22 **CHARGES AGAINST OFFICER PROCTOR, PROCTOR AS THE TARGET**
23 **PREVIOUSLY, A THREE-PAGE REPORT OF SUCH.**

24 Reporter's Transcript at 162.

25 The transcript correctly describes the document as the District Attorney's Office's review
26 and decision declining to file charges. Unfortunately, the transcript incorrectly referenced the 83
27 page "Declination Letter" as a three-page "Declaration Letter". More significantly, Special
28 Prosecutor Middleton, who presented the matter to the Grand Jury, has provided a Declaration

1 attached to this Opposition which determinatively clarifies what was presented. See **Addendum**
2 **II**, Declaration of Lawrence Middleton. As a result of the confusion from the transcript, initial
3 confusion by Defendant about what was presented to the Grand Jury is understandable.

4 However, because the detailed Declination Letter was, in fact, presented to the grand
5 jury, Defendant’s argument regarding exculpatory evidence being “suppressed” is vitiated.
6 Defendant’s characterization of exculpatory evidence relating to DNA and an expert use of force
7 report that was discussed in detail in the Declination Letter was presented to the grand jury for its
8 consideration. While the People take exception to the characterization of both the DNA
9 evidence and the use of force expert report as either exculpatory or admissible, any inferences of
10 such as they appeared in the Declination Letter was presented to the grand jury. Moreover, as
11 defendant concedes, the actual DNA report was also introduced to the grand jury. See Grand
12 Jury Exhibit 14.

13 Defendant argues that the indictment should fail because the Special Prosecutor was
14 required to provide evidence to the grand jury regarding Defendant’s police training. Yet
15 Defendant can cite to no authority requiring that evidence regarding a police officer’s training
16 must be presented to the grand jury. While Defendant asserts in his papers that there is evidence
17 that he acted in accordance with training provided to him consistent with LAPD and POST
18 standards, Defendant provides no evidence of this assertion and the People dispute this
19 characterization. Moreover, as set out above, there was evidence presented to the grand jury by
20 Detective Linscomb of LAPD training precepts such as crossfire, backdrop, and communication.
21 Reporter’s Transcript at 54-55. And Dr. Brown testified about universal training concepts such
22 as communication between partners and his observations that Defendant did not communicate
23 effectively with his partner during the struggle. Reporter’s Transcript at 147. In sum, there is no
24 evidence of which the People are aware or that has been produced by Defendant that indicates
25 any finding that he acted consistent with training when he shot and killed Mr. Glenn on May 5,
26 2015.⁴

28 ⁴ The People have not accessed material relating to the LAPD administrative review of the
incident because it is likely that the review relied on Defendant’s compelled statement of the

1 Nor does *Breceda v. Superior Court* (2013) Cal. App. 4th 934, advance Defendant's
2 argument. In *Breceda*, the court found that petitioners were substantially prejudiced by the
3 failure of the prosecution to provide two significant documents that arguably demonstrated that
4 the petitioners acted in compliance with city policy. Id. The *Breceda* court found that the Office
5 of the District Attorney had knowledge of the documents yet failed to present them to the grand
6 jury. Id. In, contrast, in the instant case, there is no evidence that the Special Prosecutor had any
7 knowledge of any document or materials that indicate that Defendant acted in conformance with
8 either LAPD policy, City of Los Angeles policy, or POST standards when he shot and killed Mr.
9 Glenn on May 5, 2015. Accordingly, since the Special Prosecutor lacked knowledge of any such
10 findings, he cannot be held to account for failing to present such information, if in fact such
11 information exists.

12 Moreover, Penal Code Section 939.71 expressly requires a showing of "substantial
13 prejudice" to support a dismissal. In *Berardi v. Superior Court* (2007) 149 Cal. App 4th 476, 481,
14 the court stated that:

15 [W]e conclude "substantial prejudice" under section 939.71 should be evaluated based on the
16 traditional test for state law error; i.e., whether it is reasonably probable the outcome would
17 have been more favorable to the defendant absent the failure to disclose. When applying this
18 test, the court should evaluate the record as a whole, taking into consideration such factors as
19 the extent to which the lack of disclosure interfered with the grand jury's independence, and
20 the strength and nature of the undisclosed exculpatory evidence as compared to the evidence
21 supporting the grand jury's finding of probable cause to indict. If the accused shows it is
22 reasonably probable that the grand jury would not have found probable cause to indict absent
23 the disclosure error, the accused is entitled to dismissal of the indictment at the pretrial stage.

24 In the instant case, Defendant has produced no evidence of prejudice as a result of the grand
25 jury not being presented with exculpatory evidence. The document cited by Defendant as
26 containing exculpatory evidence was presented to the grand jury and additional evidence that

27
28 _____
incident in order to administratively adjudicate the shooting. That compelled statement cannot be
used in a criminal prosecution. *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822.

1 could be considered exculpatory was also presented. In sum, the Special Prosecutor fulfilled his
2 obligation pursuant to Penal Code Section 939.71.

3 **V. The People Did Not Have an Obligation to Canvass for Additional Exculpatory**
4 **Information From an Unrepresented Target**

5 The reception and consideration of exculpatory evidence by the grand jury is governed by
6 section 939.7 of the Penal Code: (a) “If the prosecutor is aware of exculpatory evidence, the
7 prosecutor shall inform the grand jury of its nature and existence.” Section 939.7(b) further
8 states: “It is the intent of the Legislature by enacting this section to codify the holding in *Johnson*
9 *v. Superior Court*, 15 Cal. 3d 248, and to affirm the duties of the grand jury pursuant to Section
10 939.7.” In *Johnson v. Superior Court* (1975) 15 Cal. 3d 248, 255, the California Supreme Court
11 held that when a district attorney seeking an indictment is aware of evidence reasonably tending
12 to negate guilt, he is obligated under section 939.7 to inform the grand jury of its nature and
13 existence. As detailed above, in this case, the Special Prosecutor fulfilled his obligation to
14 present potential exculpatory evidence to the grand jury by presenting a lengthy memorandum
15 prepared during the initial criminal review which concluded that the officer-involved shooting
16 was justified as well as additional arguably exculpatory information such as Mr. Glenn’s
17 criminal history and the complete DNA analysis.

18 Defendant acknowledges in his papers that prosecutors have discretion whether to issue a
19 target letter, but suggests that the Special Prosecutor should have reached out to learn whether he
20 was represented, and if so, whether defense counsel had any exculpatory evidence to provide.
21 Defendant also argues without authority that a prosecutor’s discretion is “significantly
22 constrained” in complex or high-profile cases where the prosecutor is already aware of the
23 existence of a defense theory and supporting evidence. And most significantly, the Special
24 Prosecutor did present to the grand jury the reasoning, analysis, and discussion of supporting
25 evidence for the initial decision not to seek charges against Defendant in the form of an 83 page
26 letter. The Special Prosecutor fulfilled his statutory duty by doing so.

27 Moreover, as acknowledged by Declarant Bill Seki, he had not represented Defendant
28 since March 2018, when the initial review by the District Attorney was concluded, and over six

1 Prosecutor did present to the grand jury the reasoning, analysis, and discussion of supporting
2 evidence for the initial decision not to seek charges against Defendant in the form of an 83 page
3 letter. The Special Prosecutor fulfilled his statutory duty by doing so.

4 Moreover, as acknowledged by Declarant Bill Seki, he had not represented Defendant
5 since March 2018, when the initial review by the District Attorney was concluded, and over six
6 years before the grand jury presentation was initiated by the Special Prosecutor. Neither
7 Defendant nor Declarant Seki offer what additional exculpatory information Mr. Seki would
8 have been able to contribute for the grand jury's consideration. Because the Special Prosecutor
9 dutifully provided exculpatory evidence to the grand jury in the form of the District Attorney's
10 Office 83-page letter explaining the initial decision not to charge Defendant, DNA test results,
11 and Mr. Glenn's criminal history and because Defendant has produced no additional exculpatory
12 evidence that should have been presented to the grand jury, his argument to dismiss the
13 indictment on this basis must fail.

14 **VI. CONCLUSION**

15 For the reasons articulated in this Memorandum in Opposition to Defendant's Motion to
16 Dismiss the Indictment Pursuant to Penal Code section 995, the People request that the Court
17 deny Defendant's Motion.

18
19
20 Dated: May 27, 2026

Respectfully submitted,

21 NATHAN HOCHMAN
22 DISTRICT ATTORNEY

23 By: *Daniel W. Baker for*

24 Michael Gennaco
25 Special Prosecutor

26 *Daniel W. Baker*

27 Daniel Baker
28 Deputy District Attorney
Attorney for Plaintiff

**ADDENDUM I: LIST OF GRAND JURY EXHIBITS ON SUBMITTED DIGITAL
MEDIA**

EXHIBIT	DIGITAL FILE NAME
COVER	GJ Evidence Cover.pdf
1	GJ Ex 1 - List of Exhibits.pdf
2	GJ Ex 2 - DMV Photograph of Officer Clifford Proctor – redacted.pdf
3	GJ Ex 3 - Photograph of Brendon Glenn.pdf
4	<i>No Exhibit Marked</i>
5	GJ Ex 5 - Townhouse Bar Video - East Camera.wmv
6	GJ Ex 6 - West Camera.avi
7	GJ Ex 7 - Kawahara BWV.wmv
7a	GJ Ex 7A - Transcript of Officer Kawahara BWC Video - rough.pdf
8	GJ Ex 8 - Autopsy Report.pdf
9	GJ Ex 9 - Excerpt of Townhouse Bar Surveillance Video.wmv
10	GJ Ex 10 - Brendon Glenn Rap Sheet.pdf
11	GJ Ex 11 Taser and Holster.pdf
12	<i>No Exhibit Marked</i>
13	<i>No Exhibit Marked</i>
14	Grand Jury Exhibit 14 - Forensic Report - Redacted.pdf
15	Proctor Grand Jury Exhibit 15 - Declination - redacted.pdf

ADDENDUM II: DECLARATION OF LAWRENCE S. MIDDLETON

1 5. In the grand jury transcript's master index, Exhibit No. 15 is identified as
2 "declaration letter from the District Attorney's Office." However, having personally marked Exhibit
3 No. 15 for presentation to the grand jury, and having been in the grand jury when it was presented, I
4 am absolutely certain that Exhibit No. 15 was a District Attorney's Office eighty-three-page
5 declination memorandum with a one-page cover letter. As with all of the documentary exhibits,
6 each page of Exhibit No. 15 (that is, each of the total 84 pages including the one-page cover letter)
7 was marked with the exhibit number. I also know with absolute certainty that there was no "three-
8 page declaration letter" presented as Exhibit No. 15 in the grand jury. Nor was there such a
9 document presented by any other exhibit number. To my knowledge, no such document exists.

10 6. At page 161 of the grand jury transcript, I specifically indicate I have two exhibits,
11 nos. 14 and 15, to present to the grand jury as exculpatory evidence. I then describe Exhibit No. 14
12 as "a forensic report that was done, testing for DNA." According to the transcript, I then described
13 Exhibit No. 15 as "a declaration letter from the District Attorney's Office from previously looking
14 at this particular case." I am absolutely sure that the word I used and that is described in the
15 transcript as "**declaration**," was in fact "**declination**." However, it is likely that in describing the
16 declination memorandum, I actually referred to it as a "declination letter."

17 7. Later, on page 162 of the grand jury transcript, the grand jury advisor again refers to
18 Exhibit No. 15 as exculpatory evidence. However, according to the transcript she more fully
19 describes it as "the District Attorney's Office declaration letter where there was a review and the
20 District Attorney's Office declined to file charges against officer Proctor, Proctor as the target
21 previously, a three-page report of such." Again, I am certain that rather than declaration, the word
22 she actually used was declination. Further, her later reference to that same document as a report is a
23 much more accurate description of the eighty-three-page memorandum. Finally, while the transcript
24 indicates she described it as "**a three-page report**," it is much more likely that she said **eighty-**
25 **three-page report**.

