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6 **BEFORE THE VICTIM COMPENSATION BOARD**  
7 **OF THE STATE OF CALIFORNIA**  
8

9 In the Matter of:

10 **Charles Honest**

11 PC 4900 Claim No. 16-ECO-08

**Proposed Decision Upon Reconsideration**

**(Penal Code § 4900 et seq.)**

12  
13 **I. INTRODUCTION**

14 On September 29, 2016, Charles Honest (Honest) submitted a claim for compensation as an  
15 erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to  
16 Penal Code section 4900. Honest requests \$197,960 for serving 1,414 days imprisonment based  
17 upon his conviction for second-degree murder as an accomplice, which was reversed on appeal for  
18 insufficient evidence of the requisite specific intent to kill.

19 An administrative proceeding on the claim was conducted on August 1, 2017, by CalVCB  
20 Hearing Officer Dena Coggins. Honest appeared and testified, while represented by counsel Thomas  
21 I. Graham of Ahrony, Graham & Zucker LLP. Deputy Attorneys General (DAG) Barton Bowers and  
22 Clifford Zall appeared on behalf of the Attorney General. The record closed on September 8, 2017,  
23 after the timely submission of closing briefs from both parties.

24 The Hearing Officer issued a Proposed Decision on December 5, 2017, recommending  
25 compensation be denied for insufficient evidence of actual innocence. At the Board meeting on  
26 March 21, 2018, both parties raised new issues not explicitly addressed in the proposed decision.  
27 The Board remanded for further consideration and assigned the matter to CalVCB Senior Attorney  
28 Laura Simpton. Following additional briefing by both parties, the record closed on July 11, 2018.



1           Meanwhile, Smith's jury was unable to reach a verdict and a mistrial was declared. Smith  
2 was subsequently retried for Ponce's murder in 2015, along with three new murder charges for the  
3 1999 double killing of brothers Ricky and Kevin Nettles, and the 2001 death of Dennis Henderson.  
4 The jury convicted Smith of the three new murder charges, along with special circumstances for  
5 kidnapping and torture, but deadlocked again on Ponce's murder. Thus, Smith remains unconvicted  
6 of Ponce's murder. Smith is nevertheless serving three, consecutive life terms without the possibility of  
7 parole for the murder of both Nettle brothers and Henderson.<sup>1</sup>

8           White was separately tried for Ponce's death, and, on August 9, 2012, he was convicted of  
9 Ponce's first-degree murder as an aider and abettor. White received an indeterminate prison  
10 sentence of 25 years to life.

11           Honest and White separately appealed their convictions. Both claimed that insufficient  
12 evidence supported the jury's requisite finding of specific intent to kill for accomplice liability as an  
13 aider and abettor to murder. The California Court of Appeal agreed in separate decisions issued on  
14 September 30, 2014, as to Honest, and May 11, 2015, as to White. In both decisions, the appellate  
15 court acknowledged that a jury could have reasonably inferred that Honest and White were present at  
16 the scene of Ponce's murder.<sup>2</sup> Based upon the appellate court's decision, Honest was released from  
17 prison on January 13, 2015, after having served a total of 1,414 days for Ponce's murder (i.e., March  
18 2, 2011, through and including January 13, 2015).<sup>3</sup>

19           On September 29, 2016, Honest submitted a claim for compensation to CalVCB based  
20 upon his erroneous conviction for Ponce's murder. One month earlier on August 11, 2016, White  
21 similarly submitted a claim for compensation to CalVCB based upon Ponce's murder. Counsel  
22 Graham represents both White and Honest in these CalVCB administrative proceedings.

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24 <sup>1</sup> AG Exs. 34-36; see also Rocha, *Former Raiders Player Anthony Wayne Smith Convicted in 3*  
25 *Murders*, LA Times (Nov. 5, 2015) < [http://www.latimes.com/local/lanow/la-me-ln--raiders-anthony-  
26 wayne-smith-convicted-20151105-story.html](http://www.latimes.com/local/lanow/la-me-ln--raiders-anthony-wayne-smith-convicted-20151105-story.html) > (as of Aug. 20, 2018).

26 <sup>2</sup> Honest Ex. 1 (*People v. Honest* (B242979), 2014 WL 4827119 (Sept. 30, 2014)); AG Ex. 28 (*People*  
27 *v. White* (B249633), 2015 WL 2238677 (May 11, 2015)).

27 <sup>3</sup> As noted by the AG, Honest mistakenly double counted a period of presentencing confinement to  
28 claim compensation for 1,518 days. (Honest App; AG Response Letter, p. 48.) Honest conceded the  
error in his closing argument brief. (Honest Closing, p. 17) CalVCB adopts the parties' calculation.



1 Honest was Smith's long-time friend.<sup>7</sup> In 2008, Honest lived in South Los Angeles.<sup>8</sup> He  
2 worked as a longshoreman loading and unloading ships.<sup>9</sup> Honest previously worked as a bar  
3 bouncer and bodyguard and was "trained in the [martial] arts."<sup>10</sup> Honest was also a killer, having  
4 fatally shot a romantic rival nine times in 1995, for which he served a 10 year prison sentence after  
5 pleading guilty to voluntary manslaughter.<sup>11</sup>

6 White lived in Bloomington in San Bernardino County, located approximately 70 miles due  
7 east of Marina del Rey.<sup>12</sup> White worked with Honest as a longshoreman.<sup>13</sup> Previously, White  
8 provided armed security.<sup>14</sup> White also had a commercial truck driving license and occasionally  
9 hauled a load for extra money.<sup>15</sup> White's cousin worked at an auto-repair shop located near Sixth  
10 Avenue and Slauson Avenue in Los Angeles, which was owned by a mechanic friend of Honest.<sup>16</sup>  
11 White had no prior felony convictions, but he was convicted of misdemeanor offenses involving moral  
12 turpitude. Specifically, he was convicted in 2003 of petty theft of property and in 1997 of forgery and  
13 appropriating lost property.<sup>17</sup>

14 Meanwhile, Ponce was self-employed as a truck mechanic and owned a tire yard in  
15 Littlerock, located approximately 30 miles southeast of Lancaster.<sup>18</sup> In September 2008, Ponce  
16 moved from Palmdale to Lancaster.<sup>19</sup> Smith knew Ponce, though the circumstances of their  
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18 <sup>7</sup> Honest Ex. 1 at p. 7; AG Ex. 5 at p. 889.

19 <sup>8</sup> Honest Ex. 1 at pp. 6, 12.

20 <sup>9</sup> Honest Ex. 1 at p. 7; AG Ex. 5 at p. 893.

21 <sup>10</sup> AG Ex. 5 at p. 893.

22 <sup>11</sup> AG Ex. 3 at pp. 306-307, 520-541.

23 <sup>12</sup> Honest Ex. 1 at p. 12; AG Ex. 1 at 107.

24 <sup>13</sup> AG Exs. 1 at p. 73; 5 at p. 926; 20 at p. 613.

25 <sup>14</sup> AG Ex. 28 at p. 6 (White opn).

26 <sup>15</sup> AG Ex. 20 at p. 625.

27 <sup>16</sup> Honest Ex. 1 at p. 7; AG Ex. 20 at pp. 686-689. It is unclear from the record whether Honest's friend  
28 is also White's cousin.

<sup>17</sup> AG Ex. 20 at pp. 857-858. See *People v. Wheeler* (1992) 4 Cal.4th 284, 300 (permitting  
impeachment by misdemeanor conduct involving moral turpitude).

<sup>18</sup> Honest Ex. 1 at p. 2; AG Ex. 28 at p. 2 (White opn).

<sup>19</sup> Honest Ex. 1 at p. 4; AG Exs. 1 at pp. 39, 42, 176 (DMV registering address change on Sept. 10,  
2008); 4 at pp. 578-682.

1 acquaintance are not clear. According to Smith, he met Ponce years earlier at his warehouse in  
2 Lancaster, where Smith sold “stuff.”<sup>20</sup> Smith claimed to have an ongoing business arrangement with  
3 Ponce, whereby Ponce located a cargo load and paid Smith to unload a portion of the contents,  
4 which sometimes involved attaching the load to a commercial semi-trailer truck to relocate it.<sup>21</sup> Smith  
5 denied that the cargo was ever forcibly hijacked from the truck driver.<sup>22</sup>

6 Two other persons familiar with Ponce confirmed that some type of business relationship  
7 existed between Smith and Ponce. First, an employee of Ponce recalled that, during the summer of  
8 2008, a large African-American man possibly resembling Smith had visited Ponce’s tire yard, while  
9 driving Smith’s green pickup truck.<sup>23</sup> Afterwards, the employee spotted the same man, with another  
10 large African-American man possibly resembling Honest, seated inside the green pickup, while  
11 parked in front of a nearby fast food restaurant. The employee saw Ponce arrive separately, join the  
12 two African-American men, and all three drove off together in Smith’s pickup. Second, an  
13 acquaintance of Ponce told police that Ponce was involved in multiple schemes to receive loads of  
14 stolen goods from cargo laden trucks. As a result, Ponce often carried between \$10,000 and \$12,000  
15 in cash as payment for the stolen goods. In early October 2008, Ponce supposedly told this  
16 acquaintance that he was working with some African-American men on a plan to steal a large  
17 quantity of computers. The acquaintance tried to buy one of the computers from Ponce, but Ponce  
18 claimed that he had not yet received them. However, the acquaintance was told by one of Ponce’s  
19 employees that Ponce had already received and sold the computers.<sup>24</sup>

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20 AG Ex. 4 at p. 678.

21 AG Exs. 4 at p. 817; 5 at pp. 824-827, 845-862.

22 AG Ex. 5 at p. 852.

23 Honest Ex. 1 at p. 16; AG Ex. 11 at pp. 2705-2719. At the time of their arrests, Smith was six feet  
24 four inches tall and weighed 330 pounds. Honest was six feet three inches tall and weighed 260  
25 pounds. White was five feet ten inches tall and weighed 220 pounds. All three are African-American.  
26 (AG Ex. 1 at pp. 180, 189, 199).

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28 <sup>24</sup> AG Ex. 1 at pp. 78-79.

1           **A. Ponce's Murder**

2           At approximately 1:30 a.m. on the morning of October 7, 2008, Ponce was brutally beaten  
3 and fatally shot multiple times.<sup>25</sup> The beating left bruises on Ponce's cheek, back, thigh, arm,  
4 abdomen, and head.<sup>26</sup> The shape of the bruises were consistent with foot stomping, inflicted while  
5 Ponce was still alive.<sup>27</sup> The bullets struck Ponce's head twice, chest once, back twice, and arm once,  
6 for a total of six gunshot injuries. The bullets to Ponce's head were likely fired while Ponce was on  
7 the ground kneeling and the shooter was standing up, from a distance of approximately three feet.<sup>28</sup>  
8 The two bullets to Ponce's back were likely fired last, after Ponce was already lying on the ground.<sup>29</sup>  
9 All of the bullets were fired from the same, nine-millimeter semi-automatic firearm.<sup>30</sup> The shooting  
10 occurred on the side of a rural road, located near the intersection of West Avenue I and 110<sup>th</sup> Street  
11 West, in Lancaster.<sup>31</sup>

12           Ten minutes later, at about 1:40 a.m., a large white SUV, immediately followed by a dark  
13 four-door sedan, drove past bystander David Szandzik, who was driving home after a late shift at  
14 work. The encounter occurred along West Avenue I near 60<sup>th</sup> Street, with the SUV and sedan both  
15 headed east, and Szandzik headed west. No other vehicles were around. Szandzik continued  
16 driving along West Avenue I toward the 110<sup>th</sup> Street West intersection when he spotted a body along  
17 the side of the road. Szandzik immediately called police at 1:58 a.m., and then he drove home.<sup>32</sup>

18           At 2:09 a.m., police arrived at the intersection of West Avenue I and 110<sup>th</sup> Street West and  
19 discovered Ponce's lifeless body, lying face down, in a pool of blood. Multiple expended shell  
20 casings were located nearby. However, no cars or people were present, not even Ponce's white  
21 Lincoln Navigator. Police contacted the nearest neighbors, but they did not hear or see anything

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23 <sup>25</sup> Honest Ex. 1 at p. 2; AG Exs. 1 at pp. 213-228; 10 at pp. 1804-1805, 1824-1830; 28 at p. 3 (White  
opn).

24 <sup>26</sup> AG Ex. 10 at pp. 1823-1829.

25 <sup>27</sup> AG Ex. 10 at pp. 1824-1826.

26 <sup>28</sup> AG Ex. 10 at pp. 1831-1832.

27 <sup>29</sup> AG Ex. 10 at p. 1833.

28 <sup>30</sup> Honest Ex. 1 at pp. 3-4; AG Ex. 13 at p. 3640.

<sup>31</sup> Honest Ex. 1 at p. 3.

<sup>32</sup> AG Ex. 13 at pp. 3661-3669.

1 unusual. Over a mile away, security guards recalled hearing gunshots around 1:30 a.m., but they did  
2 not see anything else.<sup>33</sup>

3 Police identified Ponce from his driver's license, which was still in his wallet in his rear  
4 pants pocket.<sup>34</sup> The police determined, either from the license or DMV records, that Ponce's home  
5 address was in the 46000 block of 70<sup>th</sup> Street West in Lancaster, just six miles away from the crime  
6 scene.<sup>35</sup> Around 3:00 a.m., police arrived at Ponce's residence and spoke to his wife Evangelina  
7 Flores (Flores).<sup>36</sup> Flores had been trying to reach Ponce on his cell phone, calling him at 12:30 a.m.,  
8 then 1:00 a.m., and finally at 2:00 a.m., but no one answered.<sup>37</sup> Flores told police that, while driving,  
9 Ponce always placed his cell phone in the car's cup holder.<sup>38</sup>

10 According to Flores, Ponce left their home around 11:00 p.m. to meet someone named  
11 "Tony" in Santa Clarita or possibly Visalia, after "Tony" had called Ponce's cell phone around 10:30  
12 p.m. This late meeting did not seem unusual to Flores, given Ponce's business as a 24-hour truck  
13 mechanic. However, Flores did think it was unusual that, after the call, Ponce changed out of his  
14 work clothes into jeans and a sweater. It was also unusual that Ponce drove their white Lincoln  
15 Navigator, instead of his work truck. Typically, Flores drove the Navigator, which contained their  
16 son's child car seat. On his way out the door, Ponce told Flores to wait up for him. Ponce never  
17 returned.<sup>39</sup>

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23 <sup>33</sup> Honest Ex. 1 at pp. 2-4, 15-16.

24 <sup>34</sup> AG Ex. 1 at pp. 29, 32.

25 <sup>35</sup> Honest Ex. 1 at p. 2; AG Ex. 1 at p.32. It is unknown whether the driver's license in Ponce's wallet  
had been recently received from the DMV to reflect his new Lancaster address.

26 <sup>36</sup> AG Exs. 1 at pp. 9-10, 32; 6 at p. 1322.

27 <sup>37</sup> Honest Ex. 1 at p. 3.

28 <sup>38</sup> Honest Ex. 1 at p. 3.

<sup>39</sup> Honest Ex. 1 at p. 1; AG Ex. 1 at p. 44.

1           **B. Stolen Navigator**

2           Since the Navigator was missing, Flores filed a stolen car report with the police. The  
3 Navigator was on a lease. Flores and Ponce were behind several months paying the Navigator's  
4 lease, which had a payoff balance of \$22,994, plus they owed an additional \$4,800 in mileage fees.<sup>40</sup>

5           One month later, on November 5, 2008, at 8:05 a.m., the Navigator was ticketed for illegally  
6 parking near Sixth Avenue and Slauson Avenue in Los Angeles. Hours later at 1:15 p.m., Smith  
7 drove the Navigator into the parking garage of his Marina del Rey condominium and parked it in one  
8 of his assigned parking spaces. Honest drove Smith's green pickup truck into the same parking  
9 garage, following immediately behind the Navigator.<sup>41</sup>

10           The next day on November 6, 2008, police entered the parking garage and seized the  
11 Navigator.<sup>42</sup> By then, Smith had switched the rear license plate from a different stolen vehicle.<sup>43</sup>  
12 Nonetheless, the child safety car seat was still inside.<sup>44</sup> Smith also had the keys to the Navigator in  
13 his possession.<sup>45</sup> Police also searched Smith's condominium, where they located bullets for a nine  
14 millimeter firearm, but no nine millimeter weapon was found.<sup>46</sup> Instead, police found a .38 handgun,  
15 an empty handgun magazine, and brass knuckles. Police also found shirts and hats displaying  
16 police-type badges, even though Smith was not in law enforcement. Significantly, police discovered  
17 Ponce's cell phone inside Smith's condominium.<sup>47</sup>

18           **C. Phone Contacts Between Ponce and Smith**

19           Cell phone records revealed that, on the night of Ponce's death, five calls occurred between  
20 Ponce's cell phone (661-816-8212) and a cell phone belonging to Smith (424-219-2502), which was  
21 registered under a false name. Ponce's phone called Smith's phone at 10:04 p.m. and a second time  
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23 <sup>40</sup> Honest Ex. 1 at p. 3; AG Ex. 15 at pp. 4598-4599.

24 <sup>41</sup> Honest Ex. 1 at pp. 4-5; AG Ex. 5 at p. 908.

25 <sup>42</sup> Honest Ex. 1 at p. 5; AG Ex. 1 at p. 36.

26 <sup>43</sup> Honest Ex. 1 at p. 5; AG Ex. 1 at pp. 40-41, 44.

27 <sup>44</sup> Honest Ex. 1 at p. 5; AG Ex. 1 at pp. 40-41, 44.

28 <sup>45</sup> AG Ex. 1 at p. 49.

<sup>46</sup> AG Ex. 1 at p. 44.

<sup>47</sup> Honest Ex. 1 at p. 5; AG Exs. 1 at pp. 35-36, 51; 28 at p. 5 (White opn).

1 at 10:20 p.m., when Smith's phone was located near his condominium in Marina del Rey.<sup>48</sup> Ponce's  
2 phone called Smith's phone a third time at 10:56 p.m., when Smith's phone had moved north along  
3 the 405 Freeway to Granada Hills. A few minutes later, Smith's phone called Ponce's phone at 11:07  
4 p.m., when Smith's phone was located farther north along the 14 Freeway in Santa Clarita near the  
5 Sand Canyon exit, and Ponce's phone was still located in the Lancaster area.<sup>49</sup>

6 Half an hour later, at 11:43 p.m., Smith's phone called Ponce's phone again. By then, Smith's  
7 phone was still in the same area of Santa Clarita near the Sand Canyon exit, but Ponce's phone had  
8 travelled south along the 14 Freeway near Acton. Thus, Ponce was headed towards Smith. Smith's  
9 phone did not make or receive any more calls for the rest of the night until after 3:00 a.m. the next  
10 morning.<sup>50</sup>

11 An hour later at 12:53 a.m., Ponce's phone had travelled north again and communicated with  
12 a cell tower located near the 14 Freeway in Palmdale.<sup>51</sup> At approximately 1:30 p.m., Ponce was  
13 killed just north of Palmdale in Lancaster. But by 2:02 a.m., Ponce's phone had traveled south again  
14 and was located, once more, near the 14 Freeway in Acton.<sup>52</sup>

15 Later that morning, between 8:00 a.m. and 8:14 a.m., Smith called Ponce's phone four times  
16 in quick succession, as if trying to locate it. Thereafter, Smith never called Ponce again.<sup>53</sup>

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19 <sup>48</sup> As explained by the Court of Appeal, "Cell phone towers work on two-way radio frequencies and  
20 communicate with the closet tower bearing the strongest signal (this does not necessarily mean the  
21 closest tower geographically). The tower then confirms that the cell phone is part of their networks,  
22 records the phone's location, and sends the information. The cell phone is a homing device for the  
23 cellular network. This communication occurs whenever the cell phone is on, regardless of whether  
24 calls are made or received. ...*In general, cell phones communicate with towers within a three-mile  
25 radius.* ...When a phone communicates with different towers, one explanation for the different towers is  
26 that the phone is moving. Another reasonable explanation ... is that the phone is stationary but is  
27 interrupted by a tower with a better connection based on the terrain and the type of equipment used on  
28 the towers and open area as opposed to concentrated areas." (Honest Ex. 1 at p. 11 fn. 5, italics  
added.)

<sup>49</sup> Honest Ex. 1 at pp. 10-15; AG Exs. 1 at pp. 33, 37; 14 at pp. 3963-3971.

<sup>50</sup> Honest Ex. 1 at p. 14; AG Exs. 14 at pp. 3969-3970; 28 at p. 11 (White opn).

<sup>51</sup> Honest Ex. 1 at p. 14; AG Ex. 14 at pp. 3970-3971.

<sup>52</sup> Honest Ex. 1 at p. 14; AG Ex. 14 at pp. 3970-3971, 3975.

<sup>53</sup> AG Exs. 15 at p. 4220; 16 at pp. 5119-5120.

1           **D. Phone Activity for Smith, Honest, and White**

2           In addition to his (424) cell phone, Smith had a second cell phone (310-350-9557) that was  
3 registered in his own name.<sup>54</sup> Honest had two cell phones, and neither was registered in his own  
4 name. Specifically, one was registered to “Chucky Brown” (310-483-1688), and the other was  
5 registered to “Boost” (424-219-3527).<sup>55</sup> Smith gave Honest the (424) cell phone.<sup>56</sup> White had a cell  
6 phone (909-419-9094), registered in the name of his business Ontario Motor Sports, which he  
7 reluctantly provided to police.<sup>57</sup> These phones were in frequent communication on the night of  
8 Ponce’s death, during which they traveled from Marina del Rey to Lancaster and back to Los  
9 Angeles.

10           **1. Traveling to Lancaster**

11           At 8:40 p.m. on October 6, 2006, White’s cell phone communicated with Honest’s cell phone.  
12 At that time, White’s cell phone was in the vicinity of Honest’s home in south Los Angeles, even  
13 though White lived roughly 50 miles due east in Bloomington. By 9:14 p.m., White’s cell phone was  
14 still in the area of Honest’s home when it connected with a cell tower located in Inglewood. At 9:19  
15 p.m., Smith’s (424) cell phone was also located near Honest’s home.<sup>58</sup> Thus, CalVCB infers that  
16 White, Smith, and Honest were together at Honest’s home.

17           Half an hour later at 9:48 p.m., White’s cell phone had moved west and was near Smith’s  
18 condominium in Marina del Rey. By 10:04 p.m., Smith’s (424) cell phone had likewise moved west  
19 and was also near his condominium in Marina del Rey. Smith’s (424) cell phone remained in that  
20 vicinity until at least 10:20 p.m., when Ponce called. Then Smith’s (424) cell phone traveled north to  
21 Santa Clarita, arriving around 11:00 p.m.<sup>59</sup> When Smith called Ponce at 11:07 p.m., his phone  
22 connected with a tower near Sand Canyon in Santa Clarita; the same tower that Honest’s phone  
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25 <sup>54</sup> Honest Ex. 1 at pp. 10-11; AG Ex. 1 at pp. 37-38.

26 <sup>55</sup> Honest Ex. 1 at p. 7; AG Ex. 1 at pp. 52-53.

27 <sup>56</sup> Honest Ex. 1 at pp. 7, 11; AG Exs. 1 at p. 60; 5 at pp. 897-899.

28 <sup>57</sup> Honest Ex. 1 at p. 11; AG Ex. 1 at pp. 69, 72.

<sup>58</sup> Honest Ex. 1 at p. 12; AG Exs. 17 at p. 12; 25 at pp. 3616-3618; 28 at pp. 9-11 (White opn).

<sup>59</sup> Honest Ex. 1 at pp. 12-13.

1 connected to just three minutes later at 11:10 p.m.<sup>60</sup> Thus, CalVCB infers that White, Smith, and  
2 Honest had been together at Smith's condominium until around 10:30 p.m., when at least Smith and  
3 Honest left together to drive to Santa Clarita.

4 White's precise whereabouts during the two and a half-hour window between 10:30 pm. on  
5 October 6, 2008, and 1:04 a.m. on October 7, 2008, are unknown. But at 1:04 a.m., White and  
6 Honest were both in the Lancaster area when White called Honest.<sup>61</sup> Thus, CalVCB infers that White  
7 followed Smith and Honest from Marina del Rey to Santa Clarita, and then eventually from Santa  
8 Clarita to Lancaster. In that case, Smith, Honest, and White were together in Santa Clarita, with  
9 Ponce, until they all headed north to Lancaster by 12:30 a.m.<sup>62</sup>

## 10 **2. Presence in Lancaster Area**

11 At 1:04 a.m., White called Honest, and both of their cell phones were serviced by the same  
12 cell tower located at the intersection of Avenue I and Division Street, near the 14 Freeway, in the  
13 Lancaster area.<sup>63</sup> This cell tower was located "a little more than eight miles" due east from where  
14 Ponce's body was discovered.<sup>64</sup> A minute later at 1:05 a.m., White's cell phone called Honest's (424)  
15 cell phone a second time. White's cell phone was serviced by the same cell tower, but Honest's  
16 (424) cell phone was serviced by a different cell tower located at Avenue M and 50<sup>th</sup> Street West in  
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19 <sup>60</sup> Honest Ex. 1 at pp. 13-14.

20 <sup>61</sup> Honest Ex. 1 at p. 14 (referring to cell tower located at "Avenue I and Division Street, near the 14  
21 Freeway in Palmdale"); cf. AG Exs. 14 at pp. 3971-3974 (cell phone expert testimony describing cell  
22 tower located at "Division and I"); 28 at p. 11 (White opn) (referring to "cell tower located near Avenue I  
23 ... in Lancaster"). According to Google Maps, the intersection of Avenue I and Division Street is  
located in Lancaster, not Palmdale. For clarity and consistency, the Proposed Decision refers to this  
intersection as being located in the Lancaster area.

24 <sup>62</sup> According to Google Maps, the shortest distance between Marina del Rey and Lancaster is  
approximately 70 miles, with Santa Clarita located at the midpoint. The shortest route follows the 405  
25 Freeway north to Santa Clarita and then turns northeast along the 14 Freeway.

26 <sup>63</sup> Honest Ex. 1 at p. 14; AG Exs. 14 at pp. 3971-3975; 28 at p. 11 (White opn.). Incidentally, the  
appellate decision for Honest refers to this call occurring at 1:03 a.m., whereas the decision for White  
refers to this call occurring at 1:04 a.m. This one-minute discrepancy is inconsequential.

27 <sup>64</sup> AG Ex. 28 at p. 11 (White opn) (noting distance of "a little more than eight miles"). CalVCB relies  
28 upon this calculation by the appellate court in White's opinion due to the absence of such a calculation  
in Honest's opinion.

1 Quartz Hills.<sup>65</sup> This cell tower in Quartz Hills was located southwest of the intersection where  
2 Ponce's body was discovered by approximately seven miles.<sup>66</sup> Thus, Honest, followed by White, was  
3 headed towards the area where Ponce's body was later discovered during these two calls. For the  
4 next hour between 1:05 a.m. and 2:05 a.m., no calls were made or received from any of the cell  
5 phones belonging to Smith, Honest, or White.

6           Meanwhile, at 1:30 a.m., Ponce was brutally beaten and fatally shot at West Avenue I and  
7 110<sup>th</sup> Street West in Lancaster. Thus, "about 25 minutes before Ponce was killed, White's cell phone  
8 made two calls to Honest from an area eight miles from where Ponce was found."<sup>67</sup> Roughly 10  
9 minutes after the killing at 1:40 a.m., a large white SUV similar to Ponce's, followed by a dark four-  
10 door sedan, were spotted driving along West Avenue I, at the 60<sup>th</sup> Street intersection, headed east  
11 toward the 14 Freeway.<sup>68</sup>

### 12           **3. Return to Los Angeles**

13           By 2:05 a.m., despite the absence of any communication between these men for the past  
14 hour, Ponce's cell phone, as well as both of Honest's cell phones, had left Lancaster and traveled  
15 south along the 14 Freeway to Acton.<sup>69</sup> Ten minutes later, at 2:16 a.m., both of Honest's cell phones  
16 communicated with each other for the first time that evening, and both phones were located again  
17 near the Sand Canyon exit on the 14 Freeway in Santa Clarita. Eleven minutes later, at 2:27 a.m.,  
18 White's cell phone was also in Santa Clarita near the 14 Freeway, but located farther north by several  
19 miles near the exit for Soledad Canyon Road.<sup>70</sup> As one expert opined, Smith and Honest used both  
20 of Honest's phones to talk to each other, while one drove Ponce's Navigator with Ponce's cell phone  
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22 <sup>65</sup> Honest Ex. 1 at p. 14; AG Exs. 14 at pp. 3972-3975; 28 at p. 11 (White opn). The appellate court in  
23 Honest refers to this call at 1:04 a.m., whereas the appellate court in White refers to this call at 1:05  
24 a.m. This one-minute difference is inconsequential.

25 <sup>66</sup> AG Ex. 28 at p. 11 (White opn). Again, CalVCB relies upon this calculation by the appellate court in  
26 White's opinion due to the absence of such a calculation in Honest's opinion.

27 <sup>67</sup> *Ibid.*

28 <sup>68</sup> AG Exs. 13 at pp. 3661-3669; 22 at pp. 635-643.

<sup>69</sup> Honest Ex. 1 at pp. 13-14; AG Ex. 14 at pp. 3975-3976.

<sup>70</sup> Honest Ex. 1 at p. 14; AG Exs. 14 at pp. 3975-3976; 28 at pp. 11-12 (White opn); 25 at pp. 3629-  
3630.

1 inside, and the other drove a different car.<sup>71</sup> Moreover, White traveled separate from, and slightly  
2 behind, Smith and Honest.<sup>72</sup>

3 Then at 2:30 a.m., White's phone called Honest's (310) phone. At that time, Honest's phone  
4 was still near the Sand Canyon exit, but White's phone had travelled farther south by several miles.  
5 Thus, White had passed by Honest. Significantly, after calling Honest while in Lancaster at 1:05 a.m.,  
6 the "next calls from White's cell phone – one to Honest's phone – were approximately one hour after  
7 the fatal shooting, from Canyon Country and Santa Clarita, some 25 miles from the murder scene."<sup>73</sup>

8 Between 2:38 a.m. and 2:49 a.m., both of Honest's cell phones communicated with each other  
9 three separate times. For all three calls, a different cell tower serviced each of Honest's phones,  
10 meaning that the phones were not likely traveling together.<sup>74</sup> During this 11-minute timespan, both of  
11 Honest's cell phones, as well as White's cell phone, were located in the same general vicinity off the  
12 405 Freeway in Sherman Oaks near two large bodies of water (i.e., Lake Balboa and Sepulveda  
13 Basin Wildlife Reserve).<sup>75</sup> This location was approximately 50 miles south of where Ponce was  
14 murdered.<sup>76</sup>

15 Ten minutes later at 3:02 a.m., White's cell phone called Honest's (310) cell phone. By then,  
16 both phones had traveled farther south, with White in Inglewood and Honest near the 405 Freeway  
17 and 10 Freeway intersection in Los Angeles.<sup>77</sup> Between 3:10 a.m. and 3:19 a.m., Honest's (424) cell  
18 made or received three calls while connecting with a tower on Washington Boulevard in Culver City.<sup>78</sup>

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22 <sup>71</sup> Honest Ex. 1 at p. 14; AG Ex. 28 at p. 11. Honest's contrary testimony at the CalVCB administrative  
23 proceeding that he was using both of these phones to check his messages while driving is not credible,  
24 as discussed *infra*.

25 <sup>72</sup> AG Ex. 28 at p. 12 (White opn).

26 <sup>73</sup> AG Ex. 28 at pp. 12, 14 (White opn).

27 <sup>74</sup> Honest Ex. 1 at pp. 14-15; AG Exs. 14 at pp. 3977-3978; 28 at pp. 12-13 (White opn).

28 <sup>75</sup> AG Exs. 14 at pp. 3977-3978; 28 at pp. 12-13 (White opn).

<sup>76</sup> This distance was calculated using Google Maps.

<sup>77</sup> AG Ex. 28 at p. 13 (White opn).

<sup>78</sup> Honest Ex. 1 at p. 15; AG Ex. 14 at p. 3980.

1 The tower was located approximately five miles from Marina Del Rey and less than half a mile from  
2 the home of Krystal Crail, the mother of Honest's four-year-old daughter.<sup>79</sup>

3 At 3:19 a.m., Honest's (424) cell called Smith's (424) cell, and both phones connected to the  
4 same cell tower in Culver City.<sup>80</sup> This is the first call received on Smith's (424) cell since Smith had  
5 spoken to Ponce at 11:43 p.m., while in Santa Clarita.

6 At 3:37 a.m., White's cell phone called Honest's (310) cell phone. At that time, White's cell  
7 phone was near the area of Honest's home in South Los Angeles, whereas Honest's (310) cell phone  
8 was still in Culver City.<sup>81</sup> Two hours later at 5:19 a.m., White's cell phone called Honest's (310)  
9 phone again. By then, White's cell phone had finally returned home to Bloomington, but Honest's  
10 (310) cell phone had travelled northeast toward the Hollywood Reservoir in Los Angeles.<sup>82</sup>

11 Throughout the evening and early morning of Ponce's murder, White's cell phone was never  
12 in contact with either of Smith's cell phones. But one day earlier, on the afternoon of October 5,  
13 2008, two calls were exchanged between White's cell phone and Smith's (424) cell phone. The first  
14 call lasted approximately 3 minutes and 20 seconds, the second call lasted approximately 1 minute.<sup>83</sup>  
15 Smith's (424) cell phone had an entry for White's cell phone under the initial of his first name "D."<sup>84</sup>

#### 16 **E. Smith's Police Interviews**

17 On November 6, 2008, shortly after seizing Ponce's Navigator and cell phone from Smith's  
18 condominium, police interrogated Smith. Smith described Ponce as a friend and business associate.  
19 In addition to their supposed business relationship stealing loads of truck cargo, Smith claimed that  
20 Ponce "wanted to [do] an insurance job" on the Navigator because he was behind on payments.  
21 Smith claimed that he took possession of the Navigator from Ponce, during the daytime, at a tire yard  
22 in Compton. Smith purportedly told Ponce to catch up on his payments and then report the Navigator  
23 as stolen, after which Smith would "chop" the Navigator to sell its parts. Smith claimed he was

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24 <sup>79</sup> This distance was calculated using Google Maps.

25 <sup>80</sup> Honest Ex. 1 at p. 15; AG Exs. 14 at pp. 3979-3980; 28 at p. 13 (White opn).

26 <sup>81</sup> AG Ex. 28 at p. 13 (White opn).

27 <sup>82</sup> AG Ex. 28 at p. 13 (White opn).

28 <sup>83</sup> AG Exs. 1 at p. 75; 28 at p. 9 (White opn).

<sup>84</sup> AG Ex. 1 at p. 75.

1 waiting to hear from Ponce before chopping it up. However, Smith could not explain why he had  
2 already switched the license plate for the Navigator, since Ponce had not yet called to confirm that he  
3 had reported the Navigator as stolen. Smith insisted that he was unaware that Ponce had been  
4 murdered. Smith denied killing Ponce and tearfully professed to be afraid of Ponce's business  
5 associates. When asked about the nine-millimeter bullets found in his home, which were the same  
6 caliber used to shoot Ponce, Smith claimed to have possessed the ammunition for years and denied  
7 ever owning a matching nine-millimeter firearm.<sup>85</sup>

8 Later that day, police interrogated Smith again. This time, Smith claimed he did not actually  
9 see Ponce when he took possession of the Navigator in Compton and had merely assumed that  
10 Ponce was present somewhere nearby. The Navigator was supposedly parked in Compton at a  
11 prearranged location with the keys left inside. When pressed by police, Smith could not explain how  
12 Ponce's killer would know to deliver the Navigator from Lancaster to this prearranged location in  
13 Compton.<sup>86</sup> After being confronted with his cell phone records, Smith acknowledged having multiple  
14 discussions with Ponce within a few hours of Ponce's death, supposedly about a business deal.  
15 Smith claimed that he and Ponce had an agreement for Smith to move one or two truckloads of  
16 goods, for which Smith expected to be paid \$10,000. Smith admitted driving to Sand Canyon in  
17 Santa Clarita that night, ostensibly to a Denny's located near the 14 Freeway, but Smith insisted the  
18 deal never happened. However, video surveillance for that particular Denny's did not show anyone  
19 resembling Smith that night. Smith denied meeting Ponce that evening.<sup>87</sup>

20 The next day, on November 7, 2008, Smith was released from custody, but police contacted  
21 him again. This time, Smith mentioned that his "buddy" Honest had driven him to pick up the  
22 Navigator from its parking location at 6<sup>th</sup> Street and Slauson.<sup>88</sup> Smith added that Ponce had once  
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26 <sup>85</sup> AG Exs. 1 at pp. 41-47; 4 at pp. 681-730.

27 <sup>86</sup> AG Ex. 4 at p. 792.

28 <sup>87</sup> AG Exs. 1 at pp. 38, 42-49; 4 at pp. 760-797.

<sup>88</sup> AG Ex. 5 at pp. 863-864.

1 paid him \$17,000 or \$18,000 for a previous job. Smith also claimed that Ponce often carried as much  
2 as \$100,000 or \$200,000 in cash.<sup>89</sup>

3 Years later, on March 3, 2011, Smith was arrested for Ponce's murder while at his home in  
4 Fontana. A search of Smith's home uncovered a book entitled, "Professional Killers, An Inside Look."  
5 Two pages of the book had been dog-eared. Seven of Smith's fingerprints were detected on the  
6 book.<sup>90</sup>

#### 7 **F. Honest's Police Interviews**

8 On October 21, 2009, over a year after Ponce's death, police interviewed Honest. When  
9 shown a picture of Ponce, Honest denied recognizing him. When shown a picture of Ponce's  
10 Navigator, Honest admitted that Smith's "partner used to have a car like that." Honest also admitted  
11 meeting Ponce in the Palmdale area sometime in 2008. At that meeting, Ponce supposedly told  
12 Smith to chop up the Navigator, so Honest agreed to drive Smith's truck, while Smith drove Ponce's  
13 Navigator.

14 Honest claimed that Smith told him, sometime in November 2008, that Ponce had been  
15 murdered by the Mexican Mafia over stolen cargo. Honest denied participating in the murder, but he  
16 had no explanation for why his cell phone was in the Lancaster area when the murder occurred.  
17 Honest added that, in October 2008, Smith owed him \$40,000 for an illegal scheme involving wire  
18 fraud. When police falsely claimed that Smith had implicated Honest in Ponce's murder, Honest  
19 replied that Smith had set him up. Honest claimed to possess information about the murder, but he  
20 refused to divulge it to avoid being a witness against Smith.<sup>91</sup>

21 Years later, on March 2, 2011, police arrested Honest and interviewed him the next day.  
22 Honest insisted that he met Ponce only once in June 2008, and, during that encounter, Honest sat in  
23 the back seat of the Navigator. Honest acknowledged helping Smith move the Navigator in  
24 November 2008, but he believed that Ponce was still alive.

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27 <sup>89</sup> AG Ex. 5 at p. 862.

<sup>90</sup> AG Exs. 12 at pp. 3322-3353; 15 at pp. 4249-4250.

28 <sup>91</sup> Honest Ex. 1 at pp. 7-9; AG Exs. 1 at pp. 59-67; 5 at pp. 833-941.

1 Honest denied seeing Ponce in October 2008, when his cell phone was in the area of Santa  
2 Clarita and Lancaster. As explained by Honest, Smith had orchestrated a deal with Ponce to move  
3 some tires. The job supposedly involved offloading tires into Smith's truck and possibly driving a big  
4 rig truck. Honest and White agreed to perform this "quick gig" in order to make "some money."  
5 Honest claimed that all three drove separately to the Lancaster job. Honest admitted driving Smith's  
6 green pickup truck, but he did not know what vehicle Smith had driven. Honest insisted that he had  
7 waited in an AM/PM parking lot for Smith, where Honest met up with another "dude who was  
8 supposed to do the tires." Honest claimed that, after waiting for hours, Smith finally called him and  
9 told him the deal was off. As related by Honest, Smith said, "it went wrong" and "the shit never  
10 panned out." Honest then called White, who was waiting somewhere else, and told him the deal was  
11 off. Honest maintained that everyone simply went home. Honest made no mention of meeting White  
12 in person along the freeway after the call. Honest told police several times that he felt that he was  
13 "set up."<sup>92</sup>

14 Meanwhile, a search of Honest's home on March 2, 2011 revealed a .40 caliber semi-  
15 automatic.<sup>93</sup> At the time of his initial contact with police in October 2009, Honest still had the (424)  
16 cell phone that Smith had given him.<sup>94</sup> Honest also drove a black Dodge Magnum.<sup>95</sup> Previously on  
17 October 25, 2008, just a couple weeks after Ponce's murder, Honest was arrested for an unrelated  
18 domestic incident involving brandishing a firearm. When police searched Honest's home, two  
19 handguns and a shotgun were located inside.<sup>96</sup>

### 20 **G. White's Police Interviews**

21 On May 5, 2010, police first interviewed White. White had been arrested earlier that morning  
22 at 7:00 a.m., after police forcibly entered his home while his wife was present.<sup>97</sup> Police searched  
23

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25 <sup>92</sup> Honest Ex. 1 at pp. 9-10; AG Exs. 1 at pp. 80-81; 5 at pp. 926-933.

26 <sup>93</sup> Honest Ex. 1 at p. 6.

27 <sup>94</sup> AG Ex. 1 at p. 59.

28 <sup>95</sup> AG Ex. 1 at p. 60.

<sup>96</sup> AG Ex. 1 at p. 55.

<sup>97</sup> AG Ex. 1 at pp. 72-73.

1 White's home and uncovered a loaded .38 caliber revolver, "a large quantity of marijuana," plus  
2 multiple baggies, and two scales.<sup>98</sup>

3 During the interview, White described Honest as a coworker and acquaintance. He denied  
4 performing any other side jobs with Honest. When shown pictures of Smith and Ponce, White denied  
5 recognizing either one. White also denied ever seeing Ponce's Navigator. After being confronted  
6 with his cell phone records showing two calls between White and Smith in October 2008, White  
7 eventually admitted that he knew Smith as "Tony." White insisted that he had never met Smith in  
8 person.<sup>99</sup>

9 Police next confronted White about the calls from his cell phone to Honest while both were in  
10 the Lancaster area around the time of Ponce's murder. White initially claimed he could not remember  
11 what he was doing there so many years ago, and then he suggested they may have been at a bar  
12 looking for ladies or at a friend's house. After further pressing, White claimed, instead, that he was in  
13 Lancaster to drive a commercial truck load of cargo in exchange for \$5,000, which Honest had  
14 arranged. White noted that he was licensed to drive commercial trucks. White agreed that \$5,000 to  
15 drive a single load was suspiciously high, but argued that, if the load was illegal, then Honest would  
16 not have bothered to hire a licensed driver. White stated that, on the night of the job, he left his home  
17 in Bloomington around 9:00 or 10:00 p.m. and drove his Chevy Impala to Lancaster, where he  
18 planned to meet Honest to retrieve the keys to the truck that he was to drive. After arriving in  
19 Lancaster, White waited to hear from Honest, but he could not recall whether he had waited at a gas  
20 station or in a rural desert area. Eventually, Honest called and told White that the job had fallen  
21 through. Thereafter, the two met along the 14 Freeway, when Honest was driving a black Dodge  
22 Magnum. At that time, Honest appeared upset, but he did not provide any further explanation.  
23 Afterwards, White simply drove back home.<sup>100</sup>

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26 <sup>98</sup> Honest Ex. 1 at p. 6; AG Ex. 1 at p. 109.

27 <sup>99</sup> AG Exs. 1 at pp. 73-74; 20 at pp. 612-690; 28 at pp. 6-7 (White opn).

28 <sup>100</sup> AG Exs. 1 at pp. 74-77; 20 at pp. 690-695; 28 at p. 7 (White opn).

1 One year later on March 2, 2011, police arrested White for Ponce's murder and interviewed  
2 him the next day.<sup>101</sup> White reiterated that he had traveled to Lancaster at Honest's request to drive a  
3 load of stolen goods. This time, however, White claimed that Honest was driving a pickup truck when  
4 the two met up along the freeway. White added that Honest told him, "Things went bad. It's down."  
5 White drove home, calling his wife along the way. White denied learning about Ponce's murder until  
6 after investigators first interrogated him in 2010. White specifically denied discussing Ponce's murder  
7 with Honest.<sup>102</sup> Meanwhile, a search of White's home revealed a 12-gauge shotgun and a bullet-  
8 proof vest.<sup>103</sup>

#### 9 **H. White's Call to his Wife**

10 While in jail following his 2010 arrest, White called his wife Martina Perez (Perez), and their  
11 conversation was recorded. Perez asked White, "What are they charging you for?" White replied,  
12 "They, they trying to charge me with the murder but, I don't know, ... he's going to check the DNA and  
13 if the DNA don't match than he's going to cut me loose tomorrow."<sup>104</sup> Significantly, Perez did not ask  
14 for any details about "the murder," such as who the victim was, when it occurred, or why police  
15 suspected White.

16 Instead, Perez and White discussed bail arrangements, which prompted White to remind  
17 Perez that "the guy said ... just wait" because "he'll let me know tomorrow because if, like he said, he  
18 said if it [DNA] doesn't match then he's going to cut me loose tomorrow." At this point, the following  
19 cryptic exchange occurred:

20 Perez: \*\*\* you protect yourself when you eat, correct?

21 White: Yeah. I'm all right. I'm all right.

22 Perez: No. But I know you always clean up after you eat.

23 White: Yeah.

24 Perez: Correct?

25 White: Baby. Yeah.

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26 <sup>101</sup> AG Exs. 1 at pp. 80, 82-83; 20 at pp. 709-710; 28 at pp. 7-8 (White opn).

27 <sup>102</sup> AG Ex. 1 at pp. 80, 82-83.

28 <sup>103</sup> AG Ex. 28 at p. 7 (White opn).

<sup>104</sup> At the CalVCB administrative proceeding, White insisted that he said "a" rather than "the" when referring to the murder. According to the transcript, White invoked the definite article "the," not the indefinite article "a". (AG Ex. 20 at p. 704.) Though somewhat difficult to discern, it appears from the audio recording that White did say "the." (AG Ex. 21)

1 Immediately thereafter, Perez mentioned that White's mother was coming to visit. Perez finally  
2 promised to do "whatever it takes to take you out."<sup>105</sup>

### 3 **I. Trial Proceedings**

4 Honest and White were tried separately. Much of the same evidence detailed above was  
5 presented in both proceedings, excluding their criminal histories. One significant difference  
6 concerned the admissibility of the out-of-court interview statements rendered by the other, as well as  
7 Smith, due to hearsay and Confrontation Clause limitations.<sup>106</sup> Also, Honest did not testify at his trial,  
8 but White testified at his.

#### 9 **1. White's Trial Testimony**

10 When testifying on his own behalf, White denied involvement in Ponce's murder. According to  
11 White, Honest told him about a job to move "cargo loads" and gave him Smith's phone number to call  
12 if he was interested. The promised pay for one-night's work was \$5,000. White called Smith on  
13 October 5, 2008, and Smith confirmed that the job would happen in the Lancaster area at night and to  
14 contact Honest for further details.

15 The next day, on October 6, 2008, White called Honest, who told him to call back once he  
16 reached the Sand Canyon exit along the 14 Freeway in Santa Clarita. White claimed that he missed  
17 this exit, so he continued north to Lancaster. White stopped in Lancaster and called Honest to tell  
18 him he was lost, at which point Honest told White to wait until he called back. White waited an hour,  
19 and then he decided to start driving south back towards Santa Clarita. While driving, White called  
20 Honest, who told him to stop along the 14 Freeway and meet up. When they met, White claimed that  
21 Honest was driving a pickup truck. White continued driving south towards Los Angeles and  
22 eventually stopped in Inglewood to eat. White called Honest again, supposedly to see if he had any  
23 more information about the job. White finally drove back home to Bloomington. White denied killing  
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26 <sup>105</sup> AG Exs. 20 at pp. 702-707; 21 (audio recording).

27 <sup>106</sup> These statutory and constitutional limitations do not apply in this informal administrative proceeding  
28 before CalVCB. In any event, White and Honest both testified in this CalVCB proceeding and,  
therefore, each was able to cross-examine the other. Both also offer a declaration from Smith in this  
proceeding, thereby waiving any objection to consideration of Smith's prior statements to police.

1 Ponce or even meeting him that night. As for his jail conversation with his wife, White claimed that it  
2 referred to the fact that they had oral sex on the morning before his arrest.<sup>107</sup>

3 Following the jury's verdict, the trial court remarked that White "did not do well when he  
4 testified." The court noted, "His demeanor, his tone, the way he answered the questions, in many  
5 ways, that was a factor in the reason why the jury came out with the verdict that they did."<sup>108</sup> The  
6 court added, "There were certain points he testified unbelievably, and it seems that the jury did not  
7 believe him."<sup>109</sup>

## 8 **2. Honest's Defense**

9 In lieu of Honest's testimony, defense counsel presented evidence tending to show that  
10 someone else may have murdered Ponce. Specifically, multiple witnesses observed a white Toyota  
11 Tacoma pickup driving on 40<sup>th</sup> Street in Lancaster shortly before midnight on October 7, 2008. The  
12 Tacoma sped away from a parked Ford pickup truck just as the Ford caught fire. The Ford, which  
13 had been reported stolen, had a bullet hole on the driver's side rear door. A rope soaked in gasoline  
14 was also located near the driver's side door.<sup>110</sup> A couple hours later, around 2:00 a.m., bystander  
15 Joseph Hampton spotted a white Tacoma run a red light, while speeding 100 miles per hour, at the  
16 intersection of Avenue I and 50<sup>th</sup> Street. Three White or Hispanic men were seated inside the  
17 Tacoma.<sup>111</sup>

18 White's attorney did not present evidence about the Tacoma to White's jury, which led to a  
19 motion for new trial for ineffective counsel. When denying the motion, the trial judge noted that, had  
20 White's counsel sought to introduce the Tacoma evidence, it would have been excluded under  
21 Evidence Code section 352 due to its limited probative value.<sup>112</sup>

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24 <sup>107</sup> AG Ex. 25 at pp. 4237-4531.

25 <sup>108</sup> AG Ex. 26 at p. 6014.

26 <sup>109</sup> AG Ex. 26 at p. 6016.

27 <sup>110</sup> AG Ex. 15 at pp. 4547-4564.

28 <sup>111</sup> AG Ex. 15 at pp. 4567-4570.

<sup>112</sup> See AG Ex. 26 at pp. 6012-6014.

1           **J. CalVCB Administrative Proceedings**

2           Both parties submitted additional evidence to CalVCB, beyond what was admitted in Honest’s  
3 trial. To support his claim of actual innocence, Honest proffered his own declaration, which  
4 summarily claimed that he “did not commit, and played no role in, the horrible crime for which [he]  
5 was convicted and incarcerated.”<sup>113</sup> Honest also included a police report confirming that none of  
6 Honest’s DNA was detected on Ponce’s body or in his Navigator, as well as multiple character letters  
7 from family and friends.<sup>114</sup> In addition, Honest provided a one-page declaration from Smith, who is  
8 currently serving three, consecutive life terms without the possibility of parole for three separate  
9 murders, not including Ponce’s.<sup>115</sup>

10                           **1. Smith’s Declaration**

11           In his declaration, Smith admitted that he “drove from the Los Angeles area to the Lancaster  
12 area” on the evening October 6, 2008, “with the intention of moving a load of cargo (tires) for Maurillio  
13 Ponce.” Smith further admitted that White and Honest also drove to Lancaster, at “roughly the same  
14 time”, but in separate vehicles, and only “for the purpose of assisting with the cargo.” However, the  
15 cargo deal “did not go through,” and so Smith “telephoned Charles Honest, who was waiting for word  
16 from me at a separate location, to inform him that the deal was off and that he should return home.”  
17 Smith insisted that he “never met up in person with Charles Honest or De’Wann White on the night of  
18 October 6, 2008 or the early morning hours of October 7, 2008,” when Ponce was murdered in  
19 Lancaster. Smith added, “To the best of my knowledge, neither Charles Honest nor De’Wann White  
20 had anything to do with the death of Maurillio Ponce.” Smith concluded, “I believe unequivocally that  
21 De’Wann White and Charles Honest are in fact innocent of the crimes for which they were convicted  
22 in the death of Maurillio Ponce.”

23           However, Smith’s declaration is silent on several issues. First, it does not address whether  
24 Smith met up with Ponce or how Smith ended up with Ponce’s vehicle. Second, the declaration does  
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26 <sup>113</sup> Honest Ex. 2.

27 <sup>114</sup> Honest Exs. 3-4.

28 <sup>115</sup> Honest Ex. 5.

1 not address who ultimately murdered Ponce. Finally, the declaration offers no explanation as to why  
2 the deal, for which three individuals had separately driven over 80 miles, was suddenly off.

3 In opposition to Honest's application, the Attorney General submitted a response letter  
4 supported by 36 "joint exhibits." The exhibits included the appellate court record for both Honest and  
5 White's separate trials, as well as the "murder book" containing all investigative reports for Ponce's  
6 death, in addition to court records related to Smith's multiple convictions for murder. The exhibits  
7 also included the Attorney General's recent interviews with Honest and White.

## 8 **2. Honest's 2016 AG Interview**

9 In Honest's interview with the Attorney General on December 9, 2016, he generally repeated  
10 the same version of events he told police but added new details. On the night of Ponce's murder,  
11 Honest, Smith, and White each drove separately to the Santa Clarita area for the sole purpose of  
12 stealing tires. Honest drove Smith's pickup truck, rather than his own car, so that he could fit 12 to 16  
13 tires in it. White was supposed to drive another truckload of tires "if there was a truckload for him to  
14 drive...." Honest denied being promised any specific amount as compensation, but he hoped he  
15 would receive "maybe several thousand dollars" because Smith owed him a lot of money from an  
16 unsuccessful wire fraud scheme.<sup>116</sup> Honest suspected that their planned activities may be illegal.  
17 Ultimately, Smith called and said the job was off. Honest next called White to tell him the news.

18 Thereafter, Honest drove back towards Los Angeles and stayed at Crail's home in Culver City.  
19 Significantly, Honest admitted that Smith followed behind him on the drive back from Santa Clarita to  
20 Culver City. Honest insisted that Smith was driving the same car he (Smith) had driven to Santa  
21 Clarita earlier that night. Honest further insisted that Smith was not driving Ponce's Navigator. Smith  
22 stopped in Culver City, where Smith "took his truck back" from Honest, and then Honest "got my car  
23 and left." Honest did not explain how Smith could have taken back his truck from Honest if Smith was  
24 already driving another car. Honest also did not explain why his own car would have been left in  
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26 <sup>116</sup> As described by Honest, the wire fraud scheme involved someone transferring funds from one bank  
27 account to another without permission. Honest claimed he was unable to recall any names of the  
28 individuals involved in this scheme. Smith owed money to a "middle man" who did not receive his  
share of the transfer.

1 Culver City, instead of Smith's condominium in Marina del Rey, since Honest had driven there earlier  
2 that night to pick up Smith's truck.

3 Honest continued to deny knowing how Smith came in possession of the Navigator, despite  
4 his prior statements to police claiming that he had agreed to drive Smith's truck after Smith agreed to  
5 chop Ponce's Navigator at Ponce's request. Honest insisted that Smith was waiting to hear from  
6 Ponce before chopping up the Navigator when police seized it. Honest claimed that, on a different  
7 occasion, Ponce had once offered him \$5,000 to drive a truck load of goods, but Honest declined  
8 after Ponce refused to reveal the contents. Honest also claimed that Smith had once told him that  
9 Ponce was connected with the Mexican Mafia and used those connections to move truckloads of  
10 stolen freight. After Smith discovered from police that Ponce had been murdered, Smith worried for  
11 his own safety and disappeared, despite owing money to Honest.<sup>117</sup>

### 12 **3. White's 2016 AG Interview**

13 During his interview with the Attorney General on December 9, 2016, White repeated much of  
14 the same account he told the jury when testifying on his own behalf. According to White, he had  
15 agreed to drive a truck load of goods in exchange for \$5,000. White knew the arrangement likely  
16 involved something illegal, but he refused to drive anything with guns, explosives, or drugs. White  
17 denied meeting Smith in person and further denied agreeing to any plan to kill Ponce. White declined  
18 to speculate who had killed Ponce and insisted he did not know.

19 White claimed that he had driven alone from his home in Bloomington, through Los Angeles,  
20 to Santa Clarita and then Lancaster, and never stopped by Honest's home or Smith's condominium  
21 along the way. Although this route significantly lengthened the distance travelled by White from  
22 Bloomington to Lancaster (i.e., approximately 120 miles one-way), he claimed to be unaware of a  
23 shorter route that would have bypassed Los Angeles entirely (i.e., 80 miles one-way), despite being a  
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28 <sup>117</sup> AG Exs. 31 (Honest audio recording); 32 (transcript).

1 licensed truck driver.<sup>118</sup> White insisted he ended up in Lancaster after missing his exit. White noted  
2 that he had declined a deal from the District Attorney to testify against Smith because he “didn’t know  
3 anything.” White acknowledged that he was still friends with Honest.<sup>119</sup>

#### 4 **4. Honest’s CalVCB Testimony**

5 At the CalVCB administrative proceeding on August 1, 2017, Honest generally repeated the  
6 same version of events as in his 2016 interview, but with a few new details and significant  
7 contradictions. Honest claimed that, sometime before October 2008, he lost \$12,000 as a result of  
8 Smith’s unsuccessful wire fraud scene. Honest hoped to recuperate some of those losses when, in  
9 October 2008, Smith called him and told him of a scheme to move some tires. The scheme required  
10 Honest to drive Smith’s pickup truck to a disclosed location in the area of Palmdale, where an  
11 unidentified person would transfer up to 10 sets of tires (i.e., 40 tires) from a large commercial truck  
12 into the bed of Smith’s pickup truck. Once the tires were loaded onto Smith’s pickup truck, Honest  
13 would drive it back to Smith’s condominium, where Smith already had a buyer lined up to purchase  
14 the tires.<sup>120</sup>

15 After speaking to Smith, Honest called White to ask him to help carry out the plan by driving a  
16 commercial truck if needed, and White agreed. Honest offered some money to White in exchange for  
17 his services, but Honest denied the amount was \$5,000. Honest maintained, instead, that Ponce had  
18 previously offered him that specific amount to transport stolen electronics. This offer occurred during  
19 a meeting with Ponce in the Palmdale area that had been arranged by Smith. Honest hoped to be  
20 paid for assisting Smith’s latest plan but denied being promised a specific amount.

21 Pursuant to the plan, Honest drove his own car to Smith’s secured condominium parking  
22 garage on the evening of October 6, 2008, left it parked there, and then drove Smith’s green pickup  
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24 <sup>118</sup> According to Google Maps, the shortest route between Bloomington and Lancaster is approximately  
25 80 miles and follows I-15 north, Freeway 138 west, and finally Freeway 14 north. This route entirely  
26 bypasses Los Angeles, Marina del Rey, and Santa Clarita. By comparison, the route reflected by  
27 White’s cell from data from Bloomington through Los Angeles, Marina del Rey, Santa Clarita, and  
28 Lancaster is approximately 150 miles.

<sup>119</sup> AG Exs. 29 (White audio recording); 30 (transcript).

<sup>120</sup> Honest estimated the street value of a tire with a large rim to be \$400, such that a load of 40 tires  
would be worth up to \$16,000.

1 instead to the Palmdale area. Honest denied seeing Smith when transferring vehicles, claiming that  
2 Smith had left the keys to the pickup hidden in the bumper. Honest drove for approximately an hour,  
3 headed north along the 14 Freeway, and eventually stopped in the Palmdale area. Honest waited  
4 there for another hour. Honest maintained that he, Smith, and White each drove separately to the  
5 same general area. The threesome did not carpool or caravan together because the plan was  
6 devised at the last minute.

7 Smith eventually called Honest and informed him the deal was off. Thereafter, Honest spoke  
8 to White over the phone and told him the deal was off. During their conversation, Honest asked  
9 White where he was, and after realizing they were near each other, they decided to meet in person at  
10 an off-ramp along the 14 Freeway. Honest claimed that the police report in which he denied meeting  
11 up with White was inaccurate. Honest insisted that, after stopping, he had walked over to White's car  
12 and told White the deal was off because something went bad. Honest then drove back towards Los  
13 Angeles in Smith's pickup, but he went to Crail's home in Culver City and stayed there for an  
14 unspecified period of time.<sup>121</sup> Later, Honest drove to Smith's condominium, where he returned  
15 Smith's pickup truck and left in his own car. Contrary to his earlier interview with the Attorney  
16 General, Honest denied seeing Smith any time that night, not even near Crail's home where he had  
17 previously claimed to have swapped cars. Honest attributed this significant difference in his version  
18 of events to his shaky memory.

19 Honest admitted having two phones in 2008, one of which was given to him by Smith. When  
20 asked why the two phones were communicating with each other on the night of Ponce's murder,  
21 Honest insisted he had both phones in his possession and was merely using one phone to check the  
22 messages for the other phone. Honest also admitted that, in November 2008, he had helped Smith  
23 move the Navigator, ostensibly to chop it up at Ponce's request. Honest denied knowing that Ponce  
24 was dead at that time.

25 Honest claimed that, of the three guns police seized in his home in October 2008, one  
26 belonged to his then-girlfriend and the other two belonged to Smith. Honest was storing Smith's guns

27  
28 <sup>121</sup> At Honest's criminal trial, Crail testified that she did not recall whether Honest stayed overnight on  
October 7, 2008, but she doubted it. (Honest Ex. 1 at p. 17)

1 as a favor to Smith, even though Honest was not allowed to possess a firearm as an ex-felon.  
2 Honest maintained that he had only spoken to Smith one time after Smith was arrested for Ponce's  
3 murder in 2008. Honest asked Smith if he had killed Ponce, and Smith replied that he did not.

#### 4 **5. White's CalVCB Testimony**

5 White also testified at the CalVCB administrative proceeding on August 1, 2017. White  
6 claimed that Honest had approached him about a job to drive a commercial truck, carrying an  
7 unspecified load, from one point to another, somewhere in the Lancaster area. The job would pay  
8 \$5,000. Honest did not reveal the type of load to be transported but assured White it did not involve  
9 guns, explosives, or drugs. White did not own a commercial truck and assumed one would be  
10 provided for him for the job. White admitted speaking to Smith over the phone a couple days before  
11 the job was supposed to happen, but did not recall what they had discussed. White maintained that  
12 Smith never mentioned Ponce, robbery, or murder.

13 On the evening of October 6, 2008, White drove by himself, in his own car, from his home in  
14 Bloomington to the Lancaster area. White did not know where he was supposed to pick up the  
15 commercial truck or drop off the load. White was only told to meet Honest at a particular street,  
16 possibly Soledad Canyon Road in Santa Clarita. However, White missed his freeway exit. White  
17 eventually stopped in Lancaster on "one of the letter streets" and called Honest, who told him to wait  
18 there. After an hour with no communication from Honest, White decided to leave and "jumped back  
19 on the freeway." White then called Honest and told him that he was driving home. White denied that  
20 Honest told him over the phone that the plan was off. Instead, while talking over the phone, the two  
21 decided to meet in person along the side of the 14 Freeway. At that meeting, Honest disclosed for  
22 the first time that the deal was off. White continued home, although he drove a much longer route  
23 through Los Angeles, to get a burrito, before finally returning to Bloomington. White denied meeting  
24 Smith or Ponce. White also denied seeing Ponce's Navigator. After this night, White never spoke to  
25 Smith again.

26 As for the recorded conversation with his wife, White insisted he referred to "a" murder, not  
27 "the" murder, despite the contrary transcript. He also insisted that his wife's questions about  
28 "protecting yourself when you eat" and "always clean up after you eat" referred to their act of oral sex

1 shortly before White's arrest. When asked why his wife would be asking White about his post-sex  
2 cleaning habits when his wife had been present to observe those habits, White claimed she was  
3 merely concerned that his DNA sample would be contaminated. White denied the comments were a  
4 code about White's involvement in Ponce's murder. White admitted being aware that all jail phone  
5 calls were monitored.

6 White stated that, when he was arrested again in March 2011, he was offered a plea deal of  
7 five years for manslaughter if he agreed to testify against Honest and Smith, but he did not take the  
8 deal because he did not have any information to provide. White denied killing Ponce or aiding and  
9 assisting Ponce's murder.

#### 10 **IV. DETERMINATION OF ISSUES**

11 Penal Code section 4900 allows a person, who claims to have been erroneously convicted and  
12 imprisoned for a felony offense, to apply for compensation from CalVCB.<sup>122</sup> By regulation, the  
13 application must include a completed claim form and supporting documentation.<sup>123</sup> Once the  
14 application is properly filed, CalVCB typically requests a written response from the Attorney General  
15 pursuant to Penal Code section 4902, and then an informal administrative hearing ensues in  
16 accordance with Penal Code section 4903.<sup>124</sup>

17 Throughout these proceedings, the claimant bears the burden to prove, by a preponderance of  
18 the evidence, that (1) the crime with which he was charged and convicted was either not committed at  
19 all, or, if committed, was not committed by him, and (2) he sustained injury through his erroneous  
20 conviction and imprisonment.<sup>125</sup> "Preponderance of the evidence" means evidence that has more  
21 convincing force than that opposed to it.<sup>126</sup> If the claimant satisfies this burden of persuasion for both  
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25 <sup>122</sup> Pen. Code, § 4900.

26 <sup>123</sup> Cal. Code Regs., tit. 2, § 640, subds. (a)(1)-(2).

27 <sup>124</sup> Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

28 <sup>125</sup> Pen. Code, §§ 4903, subd. (a), 4904.

<sup>126</sup> *People v. Miller* (1916) 171 Cal. 649, 652.

1 elements of innocence and injury, then CalVCB shall recommend to the Legislature an award of  
2 compensation equal to \$140 per day for every day of time spent in custody.<sup>127</sup>

3 CalVCB proceedings are informal and the traditional rules of evidence do not apply.<sup>128</sup> When  
4 determining whether the applicant has satisfied his burden of proof, CalVCB may consider the  
5 “claimant’s denial of the commission of the crime; reversal of the judgment of conviction; acquittal of  
6 claimant on retrial; or, the decision of the prosecuting authority not to retry claimant of the crime....”  
7 However, none of these circumstances may be deemed sufficient evidence to warrant a  
8 recommendation for compensation “in the absence of substantial independent corroborating evidence  
9 that claimant is innocent of the crime charged.” CalVCB may also “consider as substantive evidence  
10 the prior testimony of witnesses [that] claimant had an opportunity to cross-examine, and evidence  
11 admitted in prior proceedings for which claimant had an opportunity to object.”<sup>129</sup>

12 Ultimately, all relevant evidence is admissible “if it is the sort of evidence on which reasonable  
13 persons are accustomed to rely in the conduct of serious affairs,” even if a common law or statutory  
14 rule “might make its admission improper over objection in any other proceeding.” CalVCB “may also  
15 consider any other information that it deems relevant to the issue before it.”<sup>130</sup>

#### 16 **A. Binding Court Determinations by Statute**

17 CalVCB’s broad authority to consider all relevant evidence when deciding a claimant’s  
18 application for compensation is expressly limited by Penal Code section 4903. Specifically, subdivision  
19 (b) of section 4903 provides:

20 “In a hearing before the board, the factual findings and credibility determinations  
21 establishing the court’s basis for granting a writ of habeas corpus, a motion for new trial  
22 pursuant to Section 1473.6, or an application for a certificate of factual innocence as  
23 described in Section 1485.5 shall be binding on the Attorney General, the factfinder, and  
24 the board.”

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25  
26 <sup>127</sup> Pen. Code, § 4904.

27 <sup>128</sup> See Cal. Code Regs., tit. 2, § 615.1, subd. (a).

28 <sup>129</sup> Cal. Code Regs., tit. 2, § 641, subds. (a)-(b).

<sup>130</sup> Cal. Code Regs., tit. 2, § 641, subds. (c)-(f).

1 Plainly understood, section 4903 binds CalVCB to any factual finding rendered by a court when  
2 granting habeas relief, or a motion for new trial, or a certificate of factual innocence.<sup>131</sup> Significantly,  
3 this enumerated list omits any findings rendered by an appellate court on direct appeal.

4 Based upon this omission, the Attorney General insists that an appellate court's findings on  
5 appeal are not binding upon CalVCB. The Attorney General bolsters this plain reading of Penal Code  
6 section 4903 by noting similar omissions in Penal Code sections 1485.5 and 1485.55, which list the  
7 types of court findings that bind CalVCB, as well as the legislative history for all of these statutes. The  
8 Attorney General argues that the omission was intentional because appellate courts do not render  
9 factual findings or credibility determinations on appeal; rather, appellate courts review the sufficiency of  
10 evidence to support such findings by trial courts. The Attorney General, therefore, concludes that "no  
11 determinations made by a court on direct appeal can bind the Board."<sup>132</sup>

12 Honest counters that the Attorney General's "overly technical reading" of the statutory language  
13 is refuted by *Madrigal v. California Victim's Comp. & Gov. Claims Bd.* (2016) 6 Cal.App.5th 1108.<sup>133</sup> In  
14 *Madrigal*, the Second District Court of Appeal construed an earlier version of Penal Code section  
15 1485.5 to conclude that CalVCB was bound by all findings and credibility determinations rendered by a  
16 court when granting habeas relief, even if the habeas proceeding was contested, and even if the  
17 findings did not amount to a determination of innocence.<sup>134</sup> As emphasized by Honest, the *Madrigal*  
18 court quoted from a legislative digest for the proposition that section 1485.5 required CalVCB "to  
19 incorporate and be consistent with the factual findings, including credibility determinations, of the court  
20 granting the writ *or reversing the conviction*, and ... those factual findings, including credibility  
21 determinations, [are] binding upon the [B]oard."<sup>135</sup> Honest cites this italicized language as proof that  
22 the Legislature and *Madrigal* court must have intended appellate court determinations that result in a

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24 <sup>131</sup> See *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1045 (explaining process of statutory interpretation  
25 "begin[s] with the statutory language, which is usually the most reliable indicator of legislative intent").

<sup>132</sup> AG Brief (6/1/18) at p. 13.

26 <sup>133</sup> Honest's Response (7/10/18) (incorporating separate White Response); see also White's Response  
27 (7/10/18) at pp. 5-7.

<sup>134</sup> *Madrigal, supra*, 6 Cal.App.5th at pp. 1118-1119.

28 <sup>135</sup> *Id.* at p. 1119 (ellipses and brackets in original, italics added).

1 conviction's reversal to be binding upon CalVCB, at least in the context of a finding of insufficient  
2 evidence to support the conviction.<sup>136</sup>

3       Ultimately, Honest's invocation of case law and legislative analysis is unconvincing. The  
4 statutory language in Penal Code section 4903 is plain and unequivocal. The enumerated list of  
5 binding factual determinations does not include appellate court decisions. This plain meaning is not  
6 undermined by *Madrigal*, which involved a different statute in the context of an entirely different legal  
7 issue. Moreover, it appears that the *Madrigal* court used the terms "granting the writ" and "reversing  
8 the conviction" interchangeably, as it characterized Madrigal's conviction as a reversal, even though it  
9 was vacated during a habeas proceeding and not on direct appeal.<sup>137</sup> This conclusion is not altered by  
10 Honest's argument that an appellate court may issue factual findings when conducting an original writ  
11 proceeding,<sup>138</sup> as those findings by the appellate court would indeed be binding under section 4903 as  
12 a habeas proceeding, not an appellate proceeding. Finally, this construction is consistent with the  
13 legislative intent behind 4903, which emphasized that "[t]rial courts are trained jurists with substantial  
14 trial experience...."<sup>139</sup>

#### 15       **B. Binding Court Determinations by Res Judicata**

16       While no statute binds CalVCB to an appellate court's determinations on direct appeal, the  
17 doctrine of res judicata does. Under this doctrine, a judgment is conclusive on the parties and their  
18 privies. Res judicata therefore bars relitigation of claims that were, or could have been, raised in a prior  
19 proceeding.<sup>140</sup> The related doctrine of collateral estoppel similarly precludes relitigation of the same  
20 issues and arguments that were already decided in the prior proceeding.<sup>141</sup> Thus, an appellate court's  
21 determination of an issue or claim between a claimant and the Attorney General is binding in a  
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24 <sup>136</sup> White's Response (7/10/18) at pp. 7-12.

25 <sup>137</sup> *Id.* at p. 1118 ("Madrigal's conviction was reversed for legal error").

26 <sup>138</sup> White's Response (7/10/18) at p. 11.

27 <sup>139</sup> Sen. Com. On Public Safety, Analysis of Sen. Bill No. 618 (2013-2014 Reg. Sess., as amended April  
15, 2013, p. 14.

28 <sup>140</sup> *Noble v. Draper* (2008) 160 Cal.App.4th 1, 10-12.

<sup>141</sup> *Ibid.*; see also 7 Witkin, Cal. Proc. 5th, Judgement: Res Judicata, § 413 (Supp. 2008).

1 subsequent CalVCB proceeding and may not be reconsidered on the same or different grounds that  
2 were, or could have been, previously presented on appeal.

3 Admittedly, the First District Court of Appeal declined to apply collateral estoppel in a CalVCB  
4 proceeding in *Tennison v. California Victim Compensation and Government Claims Board* (2007) 152  
5 Cal.App.4th 1164, 1174-1180. In *Tennison*, the claimant had received a finding of factual innocence  
6 based upon the District Attorney's stipulation and applied for compensation from CalVCB. Since no  
7 statutory provision bound CalVCB to the court's findings at that time, the claimant invoked collateral  
8 estoppel to compel CalVCB to grant his application. The *Tennison* court found collateral estoppel did  
9 not apply to CalVCB for two reasons. First, the court reasoned the issue of innocence had not actually  
10 been previously litigated by the parties, given the District Attorney's stipulation. Second, the court  
11 concluded that public policy would be undermined by applying collateral estoppel because the  
12 underlying evidence did not support a finding of factual innocence and, at that time, the statutory  
13 provisions governing factual findings of innocence and compensation for erroneously convicted felons  
14 were entirely separate with no overlap.<sup>142</sup>

15 Neither rationale in *Tennison* for avoiding collateral estoppel currently applies to Honest's case.  
16 First, the sufficiency of evidence supporting his second-degree murder conviction was thoroughly  
17 litigated before the Court of Appeal. Second, recent statutory changes render a court's finding of  
18 factual innocence binding upon CalVCB and may even, in certain circumstances, automatically compel  
19 recommendation of a compensation.<sup>143</sup> Accordingly, *Tennison* is entirely distinguishable.

20 Applying res judicata and collateral estoppel here, numerous aspects of the Court of Appeal's  
21 decision are binding upon CalVCB. Most significantly, CalVCB is bound to conclude, as the Court of  
22 Appeal did, that "*there was insufficient evidence to support [Honest's] conviction of second-degree*  
23 *murder based on the prosecution's 'shared intent' theory of aiding and abetting urged at trial.*"  
24 Nonetheless, CalVCB is also bound to conclude, as the Court of Appeal did, that "*based on the cell*  
25 *phone evidence, a jury could have reasonably inferred that [Honest] was present at the scene of the*  
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27 <sup>142</sup> *Tennison, supra*, 152 Cal.App.4th at pp. 1176, 1179-1180.

28 <sup>143</sup> Pen. Code, §§ 851.865 (enacted 2016), 1485.55, subd. (d) (amended 2016); 4902, subd. (a) (amended 2016).

1 *murder.*” However, CalVCB must recognize, as the Court of Appeal did, that Honest’s mere presence  
2 at the scene of the murder “*is insufficient evidence to prove that [Honest] had knowledge of Smith’s*  
3 *criminal purpose, much less shared Smith’s murderous intent.*”<sup>144</sup>

4 In addition, CalVCB may assume, as the Court of Appeal did, that “*the jury reasonably inferred*  
5 *that [Honest] assisted in the aggravated assault*” of Ponce, given Ponce’s multiple bruises and Honest’s  
6 training “in the arts.” However, CalVCB must determine, as the Court of Appeal did, that “*the fact that*  
7 *[Honest] assisted in the assault does not demonstrate [he] had the requisite, specific shared intent to*  
8 *support his second-degree murder conviction.*”<sup>145</sup>

9 Finally, CalVCB must conclude, as the Court of Appeal did, that Honest “*was an accessory after*  
10 *the fact to the crime*” of Ponce’s murder.” As the appellate court explained,

11 “*the cell phone evidence and [Honest’s] conduct after the murder including his*  
12 *admissions that he followed Smith to 6<sup>th</sup> Street and Slauson to pick up the Lincoln*  
13 *Navigator and that he followed Smith back to his residence in his truck show that*  
14 *appellant was an accessory after the fact to the crime.*”

15 Nonetheless, CalVCB must recognize, as the Court of Appeal did, that Honest’s guilt as an accessory  
16 after the fact to Ponce’s murder “*is insufficient to show that [Honest] acted with personal knowledge of*  
17 *Smith’s murderous purpose, shared that purpose or that he formed the specific intent to commit or*  
18 *encourage the murder of the victim.*”<sup>146</sup>

19 CalVCB recognizes that all of the italicized determinations by the Court of Appeal are binding in  
20 this proceeding. Distilled to their core, CalVCB may conclude, solely based upon the evidence  
21 presented at trial, that Honest was present when Smith fatally shot Ponce, that Honest assaulted Ponce  
22 before the shooting by stomping on him, and that Honest is guilty as an accomplice after the fact to  
23 Ponce’s murder. CalVCB may not find, solely based upon the evidence presented at trial, that Honest  
24 knew in advance of Smith’s plan to murder Ponce, specifically intended to aid Smith to commit that  
25 murder, and actually aided or encouraged Smith to commit that murder.

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27 <sup>144</sup> Honest Ex. 1 at pp. 20-21.

28 <sup>145</sup> Honest Ex. 1 at p. 21.

<sup>146</sup> Honest Ex. 1 at p. 21.

1 The limits to these binding determinations are readily apparent in this CalVCB proceeding,  
2 which involves different evidence, different legal issues, and different burdens of proof. The Court of  
3 Appeal solely determined that the evidence presented at Honest's trial was insufficient to support his  
4 second-degree murder conviction, upon proof beyond a reasonable doubt, under an aider and abettor  
5 theory. As acknowledged by Honest,<sup>147</sup> this determination alone does not establish that he is actually  
6 innocent of murder. Moreover, the appellate court necessarily confined its review to the limited  
7 evidence presented at Honest's trial. That evidence did not include any hearsay statements from  
8 Honest's codefendants Smith and White, nor did that evidence include Honest and White's most recent  
9 interviews and testimony at the CalVCB proceeding. Thus, Honest's insistence that the appellate court  
10 considered "the exact same evidence as presented in this compensation proceeding" is simply  
11 incorrect.<sup>148</sup>

12 In sum, the appellate court's binding determination that the evidence at trial cannot support a  
13 rational inference that Honest aided and abetted Ponce's murder does not preclude CalVCB from  
14 finding that Honest has failed to demonstrate by a preponderance his actual innocence of Ponce's  
15 murder, given the strength of the evidence against him in this proceeding.

### 16 **C. New Theories of Murder Culpability**

17 The parties disagree whether CalVCB may consider a new theory of guilt, which was not  
18 presented at to the jury during Honest's criminal trial, when determining whether Honest has proven his  
19 innocence in this proceeding. Penal Code section 187, subdivision (a), generally defines the crime of  
20 murder as "the unlawful killing of a human being, or a fetus, with malice aforethought." Prior to 2019,  
21 Penal Code section 189 classified murder as "first degree" if, inter alia, the killing was "willful,  
22 deliberate, and premediated," or if it was "committed in the perpetration of, or attempt to perpetrate," an  
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27 <sup>147</sup> White Response (7/10/18) at p. 11.

28 <sup>148</sup> White Response (7/110/18) at pp. 11-12.

1 enumerated felony such as “carjacking, robbery, [or] burglary...”<sup>149</sup> All other murders were “second  
2 degree.”<sup>150</sup> Penal Code section 31 explains that, in general, persons who aid and abet a crime are just  
3 as guilty of that crime as the actual perpetrator. An aider and abettor’s vicarious culpability includes not  
4 only the target crime he intended to assist, but also any non-target crime that is a natural and probable  
5 consequence of the target crime.<sup>151</sup> A consequence is “natural and probable” if it falls within the normal  
6 range of outcomes that may be reasonably expected to occur if nothing unusual has intervened.”<sup>152</sup>

7 Multiple theories will support a murder conviction under Penal Code section 187, subdivision  
8 (a). First, the defendant may be guilty of murder if he personally and intentionally killed another with  
9 premeditation. Second, the defendant may be guilty of murder as an aider and abettor if he knew  
10 another person intended to kill with premeditation, shared that intent, and assisted or encouraged the  
11 killing. Third, prior to 2019, the defendant may be guilty of murder under the felony-murder rule if a  
12 person was killed during the defendant’s commission of an enumerated felony like robbery or  
13 carjacking. Fourth, prior to 2019, the defendant may be guilty of murder if he aided and abetted  
14 another person’s crime for an offense other than first-degree murder, and murder was a natural and  
15 probable consequence of that target crime.<sup>153</sup> The first three theories are classified as first-degree  
16 murder; the latter is deemed second-degree.

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19  
20 <sup>149</sup> Senate Bill (SB) 1437, enacted on September 30, 2018, amended Penal Code sections 188 and 189  
21 to significantly change the requisite elements for felony-murder liability. Under these revised statutes,  
22 which become effective January 1, 2019, felony-murder liability will only apply to a defendant, who was  
23 not the actual killer and lacked a specific intent to kill, if that defendant was a major participant in the  
24 underlying felony and acted with reckless indifference to human life and the victim was not a peace  
25 officer. These statutory changes, however, do not impact CalVCB’s determination as to whether  
26 Honest was erroneously convicted in 2011 of Ponce’s murder under then-existing law. Accordingly,  
27 CalVCB will consider the theories of culpability that were in effect at that time when evaluating whether  
28 Honest has affirmatively demonstrated his innocence.

<sup>150</sup> Pen. Code, § 189.

<sup>151</sup> *People v. Chiu* (2014) 59 Cal.4th 155, 161-162.

<sup>152</sup> *People v. Leon* (2008) 161 Cal.App.4th 149, 158.

<sup>153</sup> *People v. Chiu, supra*, at pp. 161-162; see also SB 1437 (adding Pen. Code, § 1170.95 to permit  
vacating conviction under natural and probable consequence doctrine under revised Pen. Code, §§  
188, 189).

1 As noted by the Attorney General,<sup>154</sup> a “murder charge under Penal Code section 187 places  
2 the defense on notice of, and allows trial and conviction on, all degrees and theories of murder,  
3 including first degree murder under section 189.”<sup>155</sup> “When an accusatory pleading charges ‘murder,  
4 without specifying the degree,’ it will be sufficient to charge murder in any degree.”<sup>156</sup> Thus, “a  
5 defendant may be convicted of felony murder even though the information charged only murder with  
6 malice.”<sup>157</sup> If multiple theories are presented to the jury to support a murder conviction, the jury need  
7 not unanimously agree upon one of those theories. “It is settled that as long as each juror is convinced  
8 beyond a reasonable doubt that the defendant is guilty of murder as that offense is defined by statute, it  
9 need not decide unanimously by which theory he is guilty.”<sup>158</sup> However, if the jury is presented with  
10 only one theory at trial, an appellate court reviewing the sufficiency of evidence to support the murder  
11 conviction may not, as a matter of due process, consider a new and alternative theory to support the  
12 jury’s verdict.<sup>159</sup>

13 Here, Honest was charged with an open count of murder, as a violation of Penal Code section  
14 187 without specification as to degree or theory. Specifically, Honest was charged as follows:

15 “On or about October 7, 2008, in the County of Los Angeles, the crime of MURDER, in  
16 violation of PENAL CODE SECTION 187(a), a Felony, was committed by ANTHONY  
17 WAYNE SMITH, CHARLES ERIC HONEST AND DEWANN WESLEY WHITE, who did  
unlawfully, and with malice aforethought murder MAURILLIO PONCE, a human being.”<sup>160</sup>

18 The jury’s verdict found Honest “GUILTY of the crime of SECOND DEGREE MURDER, victim  
19 MAURILLIO PONCE, in violation of Penal Code Section 187(a), a felony, and a lesser offense to First  
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22 <sup>154</sup> AG Brief (6/1/18) at p. 15.

23 <sup>155</sup> *People v. Contreras* (2013) 58 Cal.4th 123, 149.

24 <sup>156</sup> *People v. Carey* (2007) 41 Cal.4th 109, 132.

25 <sup>157</sup> *People v. Morgan* (2007) 42 Cal.4th 593, 616.

26 <sup>158</sup> *People v. Jenkins* (2000) 22 Cal.4th 900, 1024-1025.

27 <sup>159</sup> *Griffin v. United States* (1991) 502 U.S. 46, 49 (“a general jury verdict was valid so long as it was  
legally supportable on one of the submitted grounds”); *People v. Guiton* (1993) 4 Cal.4th 1116, 1129 (“If  
inadequacy of proof is purely factual, reversal is not required where a valid ground for the verdict  
remains, unless the record affirmatively indicates that the verdict actually rested on the inadequate  
ground”).

28 <sup>160</sup> AG Ex. 3 at p. 300.

1 Degree Murder.”<sup>161</sup> While the charge did not specify the particular theory of Honest’s culpability for  
2 murder, the jury necessarily relied upon the sole theory presented at trial, which was as an aider and  
3 abettor to Ponce’s murder.<sup>162</sup> Consequently, due process precluded the appellate court from affirming  
4 Honest’s murder conviction based upon any other theory of guilt, such as felony-murder or natural and  
5 probable consequence, even if supported by the evidence.<sup>163</sup>

6 This constitutional constraint does not apply in this CalVCB administrative proceeding. Penal  
7 Code section 4900 requires a claimant seeking compensation to demonstrate, by a preponderance,  
8 that he or she is actually innocent of “the crime with which he or she was *charged*...”<sup>164</sup> Compensation  
9 is warranted under Penal Code section 4904 upon a showing that “the crime with which the claimant  
10 was *charged* was either not committed at all, or if committed, was not committed by the claimant...”<sup>165</sup>  
11 Thus, “the question to be answered [by CalVCB] is not whether there is sufficient evidence to establish  
12 culpability, but whether or not claimants can establish they are not culpable.”<sup>166</sup> Plainly, the burden falls  
13 upon the claimant to demonstrate his actual innocence of the charged crime under all conceivable  
14 theories, not merely negate a particular theory advanced at trial.

15 Because Honest was charged with murder as a non-specific violation of Penal Code section  
16 187, subdivision (a), Honest bears the burden to demonstrate his innocence of that murder under any  
17 legal theory that may support such a charge. This includes felony-murder and natural and probable  
18 consequence, even though neither theory was presented at Honest’s jury trial. As noted by the  
19 Attorney General, this conclusion is supported by the plain text of Penal Code section 4900, consistent  
20 with the claimant’s burden of proof in this civil proceeding, and generally promotes public policy by  
21 allowing the Board to consider whatever legal theory best supports the evidence before it, which often  
22 includes new evidence not known by the trial prosecutor.<sup>167</sup>

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24 <sup>161</sup> AG Ex. 5 at p. 1014.

25 <sup>162</sup> Honest Ex. 1 at p. 20.

26 <sup>163</sup> See *Griffin, supra*, 502 U.S. at p. 49; *Guiton, supra*, 4 Cal.4th at p. 1129.

27 <sup>164</sup> Pen. Code, § 4900 (italics added).

28 <sup>165</sup> Pen. Code, § 4904 (italics added).

<sup>166</sup> *Tennison, supra*, 152 Cal.App.4th at p. 1191.

<sup>167</sup> AG Brief (6/1/2018) at pp. 14-20.

1 This result is supported by *People v. Etheridge* (2015) 241 Cal.App.4th 800, 810, a case cited  
2 by Honest for the opposite conclusion.<sup>168</sup> In *Etheridge*, the defendant sought a finding of factual  
3 innocence for a robbery conviction, which had been reduced to a lesser-included petty theft due to  
4 insufficient evidence that the defendant used force or fear when he took another's property. Under  
5 Penal Code section 1485.55, the defendant was entitled to such a finding upon proof that he was  
6 innocent of "*the crime with which he or she was charged.*" The *Etheridge* court noted identical  
7 language in Penal Code section 4900 and, therefore, examined its legislative history for context. The  
8 *Etheridge* court considered "whether '*the crime*' pertains to *the specific charge* or *the underlying acts of*  
9 *criminality.*" The *Etheridge* court ultimately concluded that:

10 "it would seem to be more consistent with the legislative intent of compensating former  
11 inmates for wrongful conviction and unlawful imprisonment to construe 'the crime with  
12 which he or she was charged' as pertaining to *the specific charge*, with the significantly  
limiting requirement that the claimant have been unlawfully imprisoned."<sup>169</sup>

13 The *Etheridge* court ultimately denied the defendant's request for a finding of innocence because, even  
14 though he was factually and legally innocent of robbery, he was still guilty of petty theft with a prior as a  
15 lesser-included charge. Thus, *Etheridge* confirms that it is "the specific charge," rather than the  
16 prosecution's theory of guilt at trial, that governs CalVCB's inquiry.

17 This conclusion is not altered, whatsoever, by the Supreme Court's decision in *United States v.*  
18 *Patterson* (1893) 150 U.S. 65, another case cited by Honest.<sup>170</sup> In *Patterson*, the Supreme Court  
19 interpreted a federal statute that awarded compensation to commissioners "for hearing and deciding on  
20 criminal charges." A commissioner claimed he was entitled to payment under this statute for  
21 conducting hearings to determine whether a warrant should issue. The Supreme Court disagreed. As  
22 the Court explained, the commissioner's probable-cause hearings were necessarily conducted before  
23 "criminal charges" had been filed and, therefore, did not qualify for compensation. The Court reached  
24 this conclusion by defining a "criminal charge" as something that "exists only when a formal written  
25 complaint has been made against the accused, and a prosecution initiated." The Court recognized "the

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27 <sup>168</sup> Honest's Brief (5/3/2018) at pp. 10, 14; White Response (7/10/2018) at pp. 13-14.

<sup>169</sup> *People v. Etheridge, supra*, 241 Cal.App.4th at p. 810 (emphasis added).

28 <sup>170</sup> Honest's Brief (5/3/2018) at pp. 14-15; White Response (7/10/2018) at pp. 13-14.

1 popular understanding of the term is ‘accusation,’ and it is freely used with reference to all accusations,  
2 whether oral, in the newspapers, or otherwise; but, in legal phraseology, it is properly limited to such  
3 accusations as have taken shape in a prosecution.” Although the Supreme Court’s construction of the  
4 term “criminal charges” in a federal statute is not binding, it is entirely consistent with CalVCB’s  
5 interpretation and does not support Honest’s position that a criminal charge must be defined by the  
6 prosecution’s theory at trial.

7 Finally, res judicata principles do not preclude consideration of an alternative theory of guilt in  
8 this proceeding. The Court of Appeal solely considered the sufficiency of evidence to support Honest’s  
9 conviction for second-degree murder as an aider and abettor. The appellate court did not consider  
10 whether Honest’s second-degree murder conviction may have been affirmed on a different theory, such  
11 as felony-murder or natural and probable consequence. As previously explained, the appellate court  
12 was barred by due process from upholding Honest’s criminal conviction based upon either of these  
13 different theories that were not provided to the jury.<sup>171</sup> Accordingly, res judicata does not bar their  
14 consideration in this CalVCB administrative proceeding.

#### 15 **D. Felony-Murder Theory**

16 Honest alternatively argues that, even if new theories may be considered generally, CalVCB  
17 may not consider felony-murder in his particular case because he was never charged with any other  
18 felony besides murder.<sup>172</sup> While the omission of a separate felony charge may preclude a criminal  
19 conviction for felony-murder as a matter of due process, no such constitutional limitation applies in this  
20 CalVCB administrative proceeding, wherein Honest bears the burden to demonstrate his entitlement to  
21 compensation.

22 For all of the reasons detailed above, CalVCB may consider alternate theories of murder when  
23 determining whether a claimant has affirmatively demonstrated his innocence of the crime with which  
24 he was charged under Penal Code section 187, subdivision (a), even if those alternate theories were  
25 not presented to the jury.

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27 <sup>171</sup> See *Griffin, supra*, 502 U.S. at p. 49; *Guiton, supra*, 4 Cal.4th at p. 1129.

28 <sup>172</sup> White Response (7/10/2018) at p. 14; see also Honest Response (7/10/2018) at p. 1 (incorporating White’s Response).

1                   **E. Natural and Probable Consequence Theory of Second-Degree Murder**

2                   Unlike White, Honest does not specifically challenge CalVCB’s consideration of the natural and  
3 probable consequence theory in his specific case, presumably because Honest was convicted of  
4 second-degree murder, which is the same degree of murder supported by this particular theory.<sup>173</sup>  
5 Instead, Honest generally maintains that this new theory is barred from consideration because Honest’s  
6 jury was never so instructed.<sup>174</sup> But as explained above, CalVCB may consider any theory of guilt  
7 supporting the charged offense, even if that theory was not presented to the jury.

8                   **F. Insufficient Proof of Innocence**

9                   After considering the entire administrative record and giving binding effect to the appellate  
10 court’s determinations set forth above, Honest has failed to demonstrate his innocence by a  
11 preponderance of evidence. To be sure, many questions remain unanswered as to what exactly  
12 transpired on the early morning of October 7, 2008. However, after considering the appellate court’s  
13 conclusions as to the permissible inferences from the trial evidence, in addition to the new evidence  
14 presented in this proceeding, Honest has failed to demonstrate that he is more likely innocent, than  
15 guilty, of Ponce’s murder, whether considered under a theory of felony-murder, natural and probable  
16 consequences, or even aider and abettor to murder.

17                   **1. Appellate Court Inferences**

18                   As the Court of Appeal acknowledged, it may be reasonably inferred, solely from the trial  
19 evidence, that Smith fatally shot Ponce at 1:30 a.m. on October 7, 2008, in a rural area of Lancaster,  
20 while Honest and White were both present. Immediately before the shooting, Honest personally  
21 assaulted Ponce by kicking and stomping on him. Thereafter, Honest assisted Smith in hiding Ponce’s  
22 stolen vehicle. In accordance with the appellate court’s decision, CalVCB infers each of these  
23 conclusions.

24                   Admittedly, these inferences are insufficient to prove, beyond a reasonable doubt, Honest’s guilt  
25 as an aider and abettor to Smith’s premediated murder of Ponce. But in this proceeding, the burden of  
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27 <sup>173</sup> Honest Brief (5/3/2018) at pp. 13-14, 16.

28 <sup>174</sup> See White Brief (5/3/2018) at pp. 25-28 (challenging consideration of natural and probable  
consequence theory for second-degree murder given White’s conviction for first-degree murder).

1 proof rests upon Honest to affirmatively demonstrate his innocence. Honest fails to satisfy this burden  
2 with his false denials that he was there and an incredible account of his actions that evening.

### 3 **2. Logical Inferences**

4 Additional inferences from the administrative record circumstantially implicate Honest in Ponce's  
5 murder. First, Smith devised a plan to commit some type of criminal act, with the assistance of Honest  
6 and White, on the night of October 6, 2008, in the vicinity of Santa Clarita, for which all three expected  
7 to receive monetary compensation. Ponce may have been a willing participant initially, or perhaps he  
8 was the intended victim all along. To execute the plan, Smith and Honest drove together from Marina  
9 del Rey to Santa Clarita in Smith's pickup truck, followed by White driving his Chevy Impala. The  
10 threesome eventually met up with Ponce in Santa Clarita. It is unclear whether something went awry  
11 with the plan.

12 The precise nature of Smith's illegal plan remains unknown. Honest insists that the agreed-  
13 upon plan merely consisted of stealing tires from a commercial truck.<sup>175</sup> By comparison, the Attorney  
14 General posits that the plan was to rob Ponce of his money, which they believed would amount to  
15 thousands of dollars, and they met in Santa Clarita based upon a mistaken belief that Ponce still lived  
16 in nearby Palmdale.<sup>176</sup> Alternatively, the District Attorney argued at trial that the plan all along was to  
17 kill Ponce, although the appellate court found insufficient evidence to support a conviction on this basis.  
18 Given the independent confirmation of Ponce's business dealings with Smith, it is possible that the  
19 original plan involved some type of cargo heist in Santa Clarita. However, Honest's version of this plan  
20 is not plausible. Regardless, the precise objective of this original plan need not be resolved in order to  
21 determine whether Honest has satisfied his burden of proving his innocence.

22 Second, CalVCB infers, based upon their coordinated travel, that Smith, Honest, and White  
23 arrived in Santa Clarita around 11:00 p.m., and then they met up with Ponce an hour later, around  
24 midnight. Afterwards, all four men travelled north to Lancaster, arriving around 1:00 a.m. The four men  
25 likely rode in three separate vehicles, which included Ponce and his Navigator, Honest in Smith's  
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27 <sup>175</sup> White Response (7/10/2018) at pp. 18-19.

28 <sup>176</sup> AG Brief (6/1/2018) at pp. 20-26.

1 pickup, and White in his Impala. It remains unknown, but ultimately inconsequential, whether Smith  
2 rode this portion of the trip in the pickup or the Navigator.

3 Third, it was not likely coincidental that all four men eventually met up at the remote intersection  
4 of West Avenue I and 110<sup>th</sup> Street West, near Ponce's home in Lancaster. Either the men agreed in  
5 advance to rendezvous there, or the three cars followed each other to that location from Santa  
6 Clarita.<sup>177</sup> A prearranged meeting at this particular intersection seems less likely, given its seemingly  
7 random location in a rural area without any identifiable landmarks nearby, as well as Honest and  
8 White's apparent lack of familiarity with the city of Lancaster. Accordingly, a caravan of sorts among  
9 the three vehicles appears to be the most plausible explanation.

10 Fourth, the precise purpose of the Lancaster meeting remains unknown, although it was  
11 certainly criminal in nature. It is suspicious that these four men travelled such a long distance to a  
12 remote location in the middle of the night. The suspicions increase after considering that this meeting  
13 required Smith, Honest, and White to travel even farther away from their homes in Marina del Rey,  
14 south Los Angeles, and Bloomington, respectively, and to reassemble from Santa Clarita to Lancaster  
15 just a few miles from Ponce's home. Most significantly, the meeting lasted less than 30 minutes and  
16 ended with Ponce being brutally beaten and fatally shot. All of these circumstances are consistent with  
17 an intended purpose to rob Ponce, or to assault Ponce, or to outright kill Ponce, possibly as retribution  
18 for whatever had just occurred in Santa Clarita. These circumstances are not consistent with an  
19 intended purpose to steal some tires off a commercial truck, as claimed by Honest. Accordingly, even  
20 assuming all four men initially planned to steal some tires in Santa Clarita, that initial plan does not  
21 explain their presence, hours later, at a dark and remote area of Lancaster that ended with Ponce's  
22 brutal murder.

23 Fifth, CalVCB infers that, at some point during this mysterious meeting in Lancaster, Ponce was  
24 assaulted by Honest, possibly with assistance from White. A combined assault is suggested by the  
25 multiple bruises on Ponce's head, stomach, back, thigh, and arm, which may have been inflicted by  
26 \_\_\_\_\_

27 <sup>177</sup> This inference is supported by the absence of any phone calls between the four men while driving  
28 from Santa Clarita to Lancaster, with the sole exception of two brief phone calls between White and  
Honest after they were already in the vicinity of the crime scene.

1 both Honest and White simultaneously kicking Ponce, minutes before Smith fatally shot Ponce. This  
2 scenario seems more plausible than if either Honest or White had merely stood by watching these  
3 violent events unfold. Honest nevertheless insists “there is no credible evidence that Honest  
4 participated in any assault of Ponce.”<sup>178</sup> However, the appellate court assumed otherwise, after  
5 explicitly recognizing that a jury could have reasonably inferred that Honest was present at the scene of  
6 the murder.<sup>179</sup> The appellate court’s conclusion is binding. Regardless, Honest bears the burden in  
7 this proceeding to demonstrate that he did not murder Ponce. Thus, Honest’s failure to produce  
8 credible evidence demonstrating that he did not assault Ponce immediately before the fatal shooting is  
9 ultimately fatal to his claim of innocence. Though far from certain, the most plausible version of events,  
10 based upon all of the evidence before CalVCB, is that Honest, possibly with White, assaulted Ponce by  
11 kicking him.

12 Sixth, CalVCB infers that Ponce lost possession of his Navigator to Smith, most likely as a result  
13 of a robbery, during the Lancaster meeting.<sup>180</sup> This inference is supported by Ponce’s initial possession  
14 of his Navigator; Ponce’s assault and murder during the Lancaster meeting with Smith, Honest, and  
15 White; and Smith’s continued possession of the Navigator one month later. A robbery would explain  
16 the reason for Honest and possibly White’s decision to assault Ponce, as it would enable Smith to  
17 forcibly take Ponce’s Navigator from his immediate presence. This inference is further bolstered by the  
18 absence of Ponce’s Navigator at the scene of his death, even though he had been driving it earlier that  
19 night, in addition to Smith’s possession of the Navigator over a month later, as well as Honest’s  
20 assistance to hide the Navigator in Smith’s garage. Though far from certain, the most plausible  
21 explanation of these events is that Ponce was robbed of his Navigator by Smith, during which Honest  
22 was present and actively assisted Smith by assaulting Ponce.

23 Admittedly, Smith and Honest both claimed that Ponce had voluntarily offered Smith the  
24 Navigator as part of an insurance scam. Honest even supposedly agreed to drive Smith’s pickup so

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26 <sup>178</sup> Honest Post-Hearing Brief (5/3/2018) at p. 13.

27 <sup>179</sup> Honest Ex. 1 at p. 21 (“Even assuming the jury reasonably inferred that appellate assisted in the  
28 aggravating assault...”).

<sup>180</sup> CALCRIM No. 1600 (defining robbery as taking the victim’s property by use of force or fear from the  
victim’s immediate presence).

1 that Smith could drive Ponce's Navigator to the chop shop. However, neither Smith nor Honest claims  
2 that Ponce extended this offer at the Lancaster meeting, moments before his death. Indeed, both deny  
3 ever encountering Ponce that night. Their claims are not credible given the cell phone data, as well as  
4 Smith's explanation as to how he came to take possession of the Navigator after Ponce's death.

5       Alternatively, it is possible, as the District Attorney argued at trial, that Smith intended all along  
6 to kill Ponce at this remote location and, therefore, only took the Navigator as an afterthought once  
7 Ponce was dead. Under this hypothetical scenario, no robbery occurred, but a premediated murder  
8 did. This hypothetical scenario does not aid Honest's position, as it would implicate him as an  
9 accomplice to premediated murder. Moreover, the likelihood of this scenario is somewhat doubtful  
10 because, if true, Smith could have avoided the entire drive to Lancaster by simply killing Ponce earlier  
11 that evening while they were still in Santa Clarita. Though premediated murder is certainly possible, a  
12 robbery appears to be the most likely scenario of what occurred at the meeting in Lancaster.

13       Seventh, during the robbery, Smith fatally shot Ponce multiple times. Smith fired two of those  
14 shots to Ponce's head, while Ponce was kneeling on the ground. Smith fired the last two shots into  
15 Ponce's back, after Ponce was already lying on the ground. This inference is not negated by the jury's  
16 failure to convict Smith of Ponce's murder in two separate trials. As even Honest admits, the "evidence  
17 is overwhelming that Smith committed Ponce's murder."<sup>181</sup>

18       Eighth, CalVCB infers that, immediately after the shooting, Smith, Honest, and White  
19 simultaneously fled the crime scene. They likely left in three separate vehicles, with Smith driving the  
20 Navigator, Honest driving the pickup, and White driving his Impala. At approximately 1:40 a.m., the  
21 Navigator driven by Smith and the Impala driven by White passed by Szandzik while headed east on  
22 West Avenue I towards the 14 Freeway. It is unknown whether Szandzik overlooked Honest driving the  
23 pickup, or whether Honest simply drove a different route to the freeway.

24       Ninth, between 1:40 a.m. and 3:37 a.m., all three men in three separate cars drove in a caravan  
25 of sorts from Lancaster, through Santa Clarita, and back to Los Angeles, covering approximately 80  
26 miles in two hours. For at least 11 minutes between 2:38 a.m. and 2:49 a.m., all three stopped near the

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28 <sup>181</sup> Honest Post-Hearing Brief (5/3/2018) at p. 11.

1 Lake Balboa and the Sepulveda Basin Wildlife Reserve in Sherman Oaks, possibly to clean up and/or  
2 dispose of the murder weapon. Thereafter, the men eventually went their separate ways to return  
3 home.

4 Considered overall, these circumstantial inferences from the administrative record strongly  
5 suggest that Honest is guilty of Ponce's murder, either as a natural and probable consequence of  
6 assault, or felony-murder during a robbery, or even as an aider and abettor to premeditated murder.  
7 While these circumstances do not rise to the level of demonstrating Honest's guilt beyond a reasonable  
8 doubt, the burden remains upon Honest to demonstrate, by a preponderance, that he did *not* murder  
9 Ponce under any of these plausible theories.

10 **a. Murder as Natural and Probable Consequence to Assault**

11 For liability as a natural and probable consequence, Honest must have specifically and  
12 intentionally aided an assault upon Ponce that naturally and probably resulted in Ponce's murder.<sup>182</sup>  
13 Here, Honest knew of, and intended to assist in, the commission of an assault upon Ponce, given  
14 CalVCB's determination that Honest personally assaulted Ponce. The assault, which was committed  
15 against Ponce while outnumbered and in a remote location, naturally and probably resulted in Smith's  
16 fatal shooting of Ponce.<sup>183</sup> A murder committed under these circumstances is classified as second-  
17 degree, which is the same charge for which Honest was convicted by the jury.<sup>184</sup> Whatever inculcating  
18 weight this evidence may carry in this administrative proceeding, the burden remains upon Honest to  
19 demonstrate, by a preponderance, either that he did *not* assault Ponce, or that the assault did *not*  
20 naturally and probably result in Ponce's murder by Smith.

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25 <sup>182</sup> CALCRIM No. 540 (defining natural and probable theory of murder pre-2019).

26 <sup>183</sup> See *People v. Guillen* (2014) 227 Cal.App.4th 934, 992 (finding murder to be natural and probable  
27 consequence of vicious and prolonged beating); *People v. Ayala* (2010) 181 Cal.App.4th 1440, 1450  
(finding murder caused by fatal shooting to be natural and probable consequence of planned assault  
with a bat).

28 <sup>184</sup> See *supra* § IV, (D) (discussing CalVCB's consideration of natural and proximate cause theory).



1 to shoot Ponce or that he attempted to summon medical aid for Ponce after the shooting. Under these  
2 circumstances, it remains possible that Honest shared Smith's murderous intent, as required for guilt as  
3 an accomplice to premediated murder.

4 None of the appellate court's binding determinations preclude this possibility.<sup>188</sup> The appellate  
5 court's determination was based upon limited information that excluded recent and incredible  
6 statements from Honest, White, and Smith. Moreover, the absence of sufficient evidence to support an  
7 inference of murderous intent, beyond a reasonable doubt, is not at all equivalent to a determination  
8 that such intent was actually lacking. Thus, it remains possible that Honest aided Smith's premediated  
9 murder of Ponce.

10 CalVCB assumes that the mere possibility of an agreement to kill carries no incriminating weight  
11 in this proceeding. However, to qualify for compensation, Honest still bears the burden to prove, by a  
12 preponderance, that he did *not* specifically intend to aid Smith's premediated murder.

### 13 **3. White Is Not Credible**

14 As evidence of his innocence, Honest notes that White has never implicated him in Ponce's  
15 murder.<sup>189</sup> White testified at the CalVCB administrative proceeding and at his own criminal trial for  
16 Ponce's murder. White's testimony, as well as his previous statements to police, do not actually  
17 exonerate Honest. White testified at the CalVCB administrative proceeding that he does not know  
18 whether Honest was involved in Ponce's murder. On its face, White's testimony is not exculpatory.

19 White's testimony is viewed with caution. White's prior misdemeanor conduct involving moral  
20 turpitude indicates his willingness to lie. More importantly, White is inherently biased. Like Honest,  
21 White seeks compensation from CalVCB in the amount of \$226,240 based upon his own claim of  
22 innocence for Ponce's murder. White cannot admit Honest's guilt without implicating himself too.  
23 White would also risk prosecution for perjury if he testified to a different version of events than at his  
24 criminal trial. In addition, White still considers himself to be Honest's friend, a friendship that has  
25 endured at least nine years. White revealed his willingness to lie on Honest's behalf when he initially  
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27 <sup>188</sup> Honest Ex. 1 at pp. 20-21.

28 <sup>189</sup> Honest App. at p. 14.

1 told police that Honest drove his (Honest) black Dodge Magnum on the night of Ponce's murder,  
2 evidently seeking to distance Honest from Smith. Accordingly, White's claim that he does not know  
3 whether Honest was involved in Ponce's killing is suspect.

4 Moreover, aspects of White's testimony directly contradict Honest's version of events. For  
5 example, White claimed that, days beforehand, Honest had approached him about joining a criminal  
6 scheme for which White would receive the precise sum of \$5,000 cash. Honest, however, denied  
7 telling White a particular amount of compensation and further insisted that the criminal scheme was  
8 devised at the last minute by Smith. White also claimed that, on the early morning of October 7, 2008,  
9 he and Honest met along the side of the 14 Freeway, at which point Honest informed him for the first  
10 time that the deal was off. By comparison, Honest initially told police that he did not meet in person  
11 with White that night, and, at the CalVCB administrative proceeding, Honest continued to insist that he  
12 first told White over the phone that the deal was off before meeting in person. Though none of White's  
13 statements directly implicate Honest in Ponce's murder, the inconsistencies between their benign  
14 versions of events undermine their credibility.

#### 15 **4. Smith Is Not Credible**

16 Honest relies extensively upon Smith's declaration as affirmative evidence of his innocence.<sup>190</sup>  
17 However, Smith is not credible. As a general concern, Smith is a convicted three-time murderer, with  
18 special circumstances for torture and kidnapping. These convictions reveal the depth of Smith's  
19 willingness "to do evil."<sup>191</sup> As such, it is difficult to trust any representation by Smith.

20 Also, Smith has a motivation to lie about the events surrounding Ponce's death. Smith has  
21 been tried twice for murdering Ponce, both of which resulted in a mistrial. Thus, Smith may still be  
22 prosecuted. True, Smith is already serving three concurrent terms of life without possibility of parole,  
23 such that an additional life sentence for Ponce's murder may appear superfluous. However, Smith  
24 would be eligible for the death penalty if retried for Ponce's premeditated murder, given the special  
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27 <sup>190</sup> Honest App. at pp. 13-14; Honest's Post-Hearing Brief (5/3/2018) at pp. 8-12.

28 <sup>191</sup> *People v. Castro* (1985) 38 Cal.3d 301, 315 (defining "moral turpitude" in context of felony impeachment to include "general readiness to do evil").

1 circumstance of his prior murder convictions.<sup>192</sup> And even if Smith avoided the death penalty, a fourth  
2 murder sentence may adversely impact the terms of his confinement while in prison.<sup>193</sup>

3 Furthermore, Smith's version of events, which have dramatically changed over time, are simply  
4 not plausible. In his first statement to police on November 6, 2008, Smith claimed to have met up with  
5 Ponce, in person at a tire yard in Compton, where he took possession of the Navigator to "chop" it, but  
6 only after Ponce caught up on his late payments and then reported it as stolen. Smith was waiting for  
7 Ponce before moving forward with this insurance scheme. However, Ponce drove the Navigator on the  
8 night of his murder, and his cell phone records confirm that he was not in Compton. Thus, Smith could  
9 not have met Ponce in Compton, as Smith claimed. Moreover, it is unlikely that Ponce would have  
10 given the Navigator to Smith, with his son's child seat still inside, before catching up on his lease  
11 payments, rather than continuing to use it in the meantime. Finally, Smith would have no reason to  
12 replace the license plate on the Navigator if, as he claimed, he was still waiting for Ponce to confirm  
13 that he had reported it stolen after catching up on his payments.

14 In his second statement to police later that same day, Smith claimed that he did not see Ponce  
15 in Compton when he took possession of the Navigator and merely assumed he was present  
16 somewhere nearby. Smith insisted that he and Ponce had previously agreed upon the location for this  
17 exchange, but he could not explain how the person who took Ponce's Navigator on the night of his  
18 murder would have known to deliver the Navigator to this prearranged location. Smith eventually  
19 admitted to having multiple discussions with Ponce on the evening before his death, supposedly about  
20 a truck cargo heist, and Smith further admitted driving to Santa Clarita, ostensibly to commit that heist,  
21 yet Smith denied encountering Ponce. Smith was also found in possession of the same caliber bullets  
22 used to fatally shoot Ponce, yet a firearm of that same caliber was not present. Thus, neither of Smith's  
23 exculpatory statements to police is believable.

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26 <sup>192</sup> Pen. Code, § 190.2, subd. (a)(2) (list of enumerated "death penalty" special circumstances include  
"defendant was convicted previously of murder in the first or second degree").

27 <sup>193</sup> See, e.g., Cal. Code Regs., tit. 15, § 3775.2, subd. (a)(7) (barring an inmate identified as a serial  
28 killer from placement in a Security Level I or II housing facility, even if the murder convictions were  
prosecuted separately).

1 In his 2016 declaration, Smith does not address whether he murdered Ponce. Smith also does  
2 not address whether he met Ponce on the night of the murder, or how he came to possess Ponce's  
3 Navigator and cell phone. Smith nevertheless declares that, to the best of his knowledge, Honest and  
4 White had nothing to do with Ponce's death. Smith further declares that he was never in the presence  
5 of Honest or White during the night of October 6, 2008, and early morning of October 7, 2008. These  
6 omissions underscore Smith's lack of candor, considering the cell phone evidence.

7 Ultimately, Smith's declaration is not trustworthy. Contrary to Smith's claim that he was never in  
8 Honest's presence on the night of Ponce's murder, Honest once admitted that Smith had driven behind  
9 him from the Palmdale area to Culver City, where they both stopped, and Honest turned over Smith's  
10 pickup to Smith. Smith's claim is further refuted by the cell phone evidence, which demonstrates that  
11 Smith, Honest, and White were together on the night of October 6, 2008, and the early morning of  
12 October 7, 2008. As previously detailed, the three met at Honest's home in Los Angeles, then traveled  
13 to Smith's condominium in Marina del Rey, before heading north to Santa Clarita, and eventually farther  
14 north to Lancaster, before all three suddenly started driving south back towards Los Angeles, stopping  
15 near Lake Balboa and the Sepulveda Basin Wildlife Reserve on their way home. Logically, White and  
16 Honest could not have known where to find Ponce and Smith in Lancaster unless they had been  
17 together in Santa Clarita, and White, Honest, and Smith could not have known when to leave Lancaster  
18 unless they had been together at the scene of Ponce's murder. Given Smith's untruthfulness on these  
19 key points, CalVCB finds his declaration unbelievable.<sup>194</sup>

## 20 **5. Honest is Not Credible**

21 Honest testified at the CalVCB administrative proceeding that he is innocent of Ponce's murder.  
22 If believed, Honest's testimony would provide affirmative evidence of his actual innocence. However,  
23 Honest's testimony is incredible.

24 At the outset, Honest's credibility is generally impeached by his 1995 manslaughter conviction  
25 for fatally shooting another man nine times. Honest further admits participating in a fraudulent scheme  
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27 <sup>194</sup> CALCRIM No. 226 ("If you decide that a witness deliberately lied about something significant in this  
28 case, you should consider not believing anything that witness says").

1 with Smith involving thousands of dollars. Thus, Honest's demonstrated "willingness to do evil" and to  
2 engage in deceitful behavior warrants caution when considering his claims of innocence.

3 Honest's credibility is further undermined by his inconsistent statements surrounding Ponce's  
4 death. Honest initially told police that he did not recognize Ponce and only later admitted to meeting  
5 Ponce once, sometime in June 2008. Honest also initially told police that he could not recall going to  
6 Lancaster in October 2008, and only later admitted going to the Palmdale area on the night of Ponce's  
7 death to steal a load of truck cargo. In addition, Honest initially denied meeting up in person with White  
8 on the night of Ponce's death, but then he later admitted that he did, though only when both were  
9 already headed back home. At the conclusion of Honest's first police interview, he suggested that he  
10 could incriminate Smith in Ponce's death, yet Honest has since denied any knowledge about Ponce's  
11 death. Honest also admitted that he agreed to drive Smith's truck after Smith agreed to take Ponce's  
12 Navigator to chop up, supposedly at Ponce's request months before his murder.

13 Honest admitted to the Attorney General in 2016 that Smith had followed behind him in a  
14 separate vehicle while driving back to Culver City, where they both stopped, and then Smith took back  
15 his pickup from Honest. Honest even insisted that the vehicle driven by Smith was not Ponce's  
16 Navigator. Honest's admission that Smith drove behind him from Lancaster to Culver City is  
17 inferentially corroborated by the cell phone data, which shows Honest and Smith both in the vicinity of  
18 Culver City at 3:19 a.m. on October 7, 2008. This admission seemingly refutes White's insistence that  
19 he never met Smith, since presumably Smith would have also stopped along the 14 Freeway when  
20 Honest met up with White that night while driving back home. It also refutes Smith's declaration that he  
21 never saw Honest during this period of time. Honest realized the significance of his admission when he  
22 subsequently testified, to the contrary, that he never saw Smith that evening and, instead, dropped off  
23 the pickup at Smith's condominium. Honest's attempt to explain this significant inconsistency as merely  
24 a lapse in memory is not persuasive.

25 Other aspects of Honest's account are refuted by independent evidence. For example, Honest  
26 testified at the CalVCB administrative proceeding that he had both of his cell phones in his possession  
27 all night and had used one phone to check the messages for the other phone. This unlikely explanation  
28 is refuted by the cell phone location data, which demonstrated that Honest's two phones communicated

1 with each other five times between 2:00 and 3:00 a.m., and that both phones were in different locations  
2 during this one-hour window. Similarly, Honest testified that, on the night of Ponce's murder, he  
3 remained parked somewhere in the vicinity of Palmdale and only started driving home after receiving a  
4 call from Smith informing him that the deal was off. However, Honest did not receive any calls from  
5 Smith between 11:10 p.m., when Honest was near Sand Canyon in Santa Clarita, and 1:04 a.m., when  
6 Honest was farther north in the Lancaster area, or 2:05 a.m., when Honest was in Acton, approximately  
7 25 miles south of the crime scene. In fact, Smith's cell phone did not communicate with Honest's cell  
8 phone until 3:19 a.m., when Honest called Smith while both were located in Culver City. Thus,  
9 Honest's testimony on this point is refuted by the absence of any telephone calls between Honest and  
10 Smith while in the area of Palmdale.

11 Finally, Honest's account is incredible. According to Honest, he had one conversation with  
12 Smith about a last-minute plan to steal tires in the Palmdale area. Honest agreed to help, even though  
13 he did not know where he was to pick up the tires, or how many tires he was to take, or how much  
14 money he was to receive as payment for his help. Honest recruited White to help, by driving a  
15 commercial truck just in case one needed to be driven, for which White expected to be paid \$5,000.  
16 Despite knowing so little, all three men then travelled separately, in different vehicles, to the Palmdale  
17 vicinity, even though neither Honest nor White knew the final destination where the tire theft was to  
18 occur, and even though all three would presumably need to work together to pull off the plan. Then,  
19 after traveling so far and waiting alone for hours, Honest suddenly decided to return home, without  
20 encountering Smith or Ponce, and without learning the reason why the plan was called off, not even  
21 years later. Honest's story is not credible.

## 22 **6. Third-Party Culpability**

23 In an attempt to implicate a third-party, Honest emphasizes the trial testimony from bystander  
24 Hampton, who observed a white Tacoma speed through an intersection at Avenue I and 50<sup>th</sup> Street  
25 West, at approximately 2:00 a.m. on the morning of Ponce's murder.<sup>195</sup> Hampton described the three  
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27 <sup>195</sup> According to Google Maps, the distance between this intersection and the location where Ponce's  
28 body was discovered is approximately 18 miles.

1 occupants inside the Tacoma as either White or Hispanic, which would exclude Honest, White, and  
2 Smith.<sup>196</sup>

3           However, Honest ignores the testimony from bystander Szandzik. At 1:40 a.m., Szandzik  
4 passed by a large white SUV and sedan that were both traveling east on West Avenue I near 60<sup>th</sup>  
5 Street. Shortly thereafter, Szandzik spotted Ponce’s lifeless body at West Avenue I and 110<sup>th</sup> Street  
6 West, which he reported to police at 1:58 a.m.<sup>197</sup> Thus, it appears that the Tacoma was unrelated to  
7 Ponce’s death. Indeed, other witnesses spotted the Tacoma in the Lancaster area around midnight,  
8 when Ponce was still in the Santa Clarita area, along with Smith, Honest, and White. And by 2:02 a.m.  
9 when the Tacoma was speeding through a red light in Lancaster, Ponce’s cell phone had already  
10 travelled approximately 30 miles south to Acton, followed shortly thereafter by Honest’s cell phone at  
11 2:05 a.m. Accordingly, Hampton’s testimony fails to exonerate Honest.

#### 12                           **7. Absence of Physical Evidence**

13           Honest finally offers the absence of any physical evidence tying him to the crime scene or  
14 Ponce’s Navigator as proof of his innocence. Specifically, DNA testing was performed on Ponce’s  
15 fingernails for both hands.<sup>198</sup> The results matched Ponce and excluded Honest. DNA testing was also  
16 performed on various areas inside and out of the Navigator, none of which matched Honest.

17           The absence of Honest’s DNA in these particular locations does not exonerate Honest. The  
18 only physical contact between Honest and Ponce likely consisted of Honest kicking or stomping Ponce,  
19 which would not reasonably be expected to leave Honest’s DNA under Ponce’s fingernails or in his  
20 Navigator. Honest admits overwhelming evidence indicates Smith killed Ponce, yet Smith’s DNA was  
21 not detected under Ponce’s fingernails either.<sup>199</sup> Thus, the absence of DNA from either Honest or  
22 Smith under Ponce’s fingernails suggests that Ponce did not fight back while being kicked by Honest or  
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24 <sup>196</sup> Honest App. at p. 14; see also AG Ex. 15 at pp. 4567-4585.

25 <sup>197</sup> AG Ex. 13 at pp. 3661-3669.

26 <sup>198</sup> Honest Ex. 3 (LA Sheriff DNA report). Honest claimed in his Closing Argument that “DNA swabs  
27 were taken from Ponce’s body, including his fingernails...” (Honest Closing Argument, p. 9) However,  
28 it appears that the only DNA testing from Ponce’s body consisted of his fingernails. (Honest Ex. 3 at  
pp. 1-3)

<sup>199</sup> AG Ex. 1 at pp. 153-154.

1 shot by Smith. Ultimately, lack of physical evidence fails to prove that Honest is more likely innocent  
2 than guilty of Ponce's murder.

### 3 **8. Overall Evidence Fails to Prove Innocence**

4 After considering all evidence detailed above, Honest has failed to prove his innocence by a  
5 preponderance. The inculpatory evidence most notably includes Honest's presence when Ponce was  
6 fatally shot by Smith, Honest's own assault of Ponce moments earlier, and Honest's repeated false  
7 denials of these actions. The evidence further includes the cell phone records demonstrating that  
8 Honest, White, and Smith were together before, during, and after Ponce's death.

9 Despite the appellate court's conclusive determination that insufficient evidence proved Honest  
10 aided and abetted Smith's premeditated murder of Ponce, circumstantial inferences from the  
11 administrative record suggest, to varying degrees, that Honest may be guilty. As detailed above, the  
12 plausible theories of Honest's guilt include a natural and probable consequence to Honest's assault of  
13 Ponce, felony-murder during Smith's robbery of Ponce's Navigator, and an aider and abettor to Smith's  
14 premeditated murder. That the trial evidence failed to support a reasonable inference of the latter  
15 theory does not compel a contrary inference in this CalVCB administrative proceeding, wherein Honest  
16 bears the burden of persuasion.

17 Although proffered as exculpatory evidence, the inconsistent statements from Honest, White,  
18 and Smith constitute further incriminating evidence against Honest. As detailed above, Honest, White,  
19 and Smith disagree as to when they formed a plan to steal some tires; where this theft was to occur;  
20 how much money each would receive as compensation for their assistance; and whether they met up in  
21 person at any time that night. A truthful account would not include so many discrepancies over basic  
22 concepts. More importantly, the differing versions of events articulated by Honest, White, and Smith  
23 are refuted by their cell phone data. Contrary to their statements under oath, the data confirm that  
24 Honest, White, and Smith were present together at the scene of Ponce's murder, given their  
25 coordinated movements to and from Lancaster, combined with the absence of any phone calls between  
26 them during the one-hour window when Ponce's murder occurred. Honest's failure to truthfully  
27 describe his actions at the time of Ponce's murder is incriminating and precludes confidence in his  
28 protestations of innocence. The failure of both White and Smith to truthfully describe their actions at

1 the time of Ponce's murder, while they were present with Honest, further arouses suspicions of their  
2 involvement, while simultaneously rendering them incredible witnesses.

3 The remaining exculpatory evidence consists of the absence of any physical evidence directly  
4 linking Honest to Ponce's murder, as well as the white Tacoma with three White or Hispanic men  
5 occupants that was speeding around Lancaster about an hour after Ponce's murder. Neither is  
6 sufficient to demonstrate Honest's innocence. As the trial court noted following White's trial, this  
7 evidence should have been excluded under Evidence Code section 352 due to its limited probative  
8 value.<sup>200</sup>

9 All in all, Honest's exculpatory evidence fails to prove that Honest is more likely innocent, than  
10 guilty, of Ponce's murder. Even assuming, as Honest claims, the "Court of Appeal's findings set the  
11 scales of justice at even,"<sup>201</sup> his proffered evidence is so lacking in credibility that it fails to tip those  
12 scales towards innocence. Stated differently, the evidence fails to demonstrate, by a preponderance,  
13 that Honest did *not* intend to assist Smith commit a robbery of Ponce's Navigator, during which Ponce  
14 was killed, as required for felony-murder liability. Similarly, it fails to demonstrate, by a preponderance,  
15 that Honest did *not* assault Ponce, which naturally and probably resulted in Ponce's murder by Smith,  
16 as required for natural and probable consequence liability. Finally, it fails to demonstrate, by a  
17 preponderance, that Honest did *not* intend to assist Smith's premediated murder of Ponce, as required  
18 for aider and abettor liability. Absent affirmative proof that none of these plausible scenarios occurred,  
19 Honest has not shown that he is more likely innocent, than guilty, of Ponce's murder.

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27 <sup>200</sup> See AG Ex. 26 at pp. 6012-6014.

28 <sup>201</sup> Honest Post-Hearing Brief (5/3/2018) at p. 10.

1 **VII. CONCLUSION**

2 In sum, Honest's claim for compensation must be denied. He failed to demonstrate by a  
3 preponderance of evidence that he is actually innocent of the crime with which he was charged and  
4 convicted. Honest is, therefore, ineligible for compensation under Penal Code section 4900.  
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6 Date: January 29, 2019

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8 Laura Simpton  
9 Senior Attorney  
10 California Victim Compensation Board  
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**BEFORE THE VICTIM COMPENSATION BOARD  
OF THE STATE OF CALIFORNIA**

In the Matter of:

**Charles Honest**

PC 4900 Claim No. 16-ECO-08

**Notice of Decision**

On February 21, 2019, the California Victim Compensation Board adopted the attached Proposed Decision Upon Reconsideration of the Hearing Officer as its Decision in the above-referenced matter.

Date: February 25, 2019

\_\_\_\_\_  
Michelle Greer  
Board Liaison  
California Victim Compensation Board