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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
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9 In the Matter of
10 **De'Wann White**
11 PC 4900 Claim No. 16-ECO-06

Proposed Decision Upon Reconsideration
(Penal Code § 4900 et seq.)

12
13 **I. INTRODUCTION**

14 On August 11, 2016, De'Wann White (White) 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. White requests \$226,240 for serving 1,616 days imprisonment based
17 upon his conviction for first-degree murder as an accomplice, which was reversed on appeal for
18 insufficient evidence of the requisite specific intent to kill.

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

24 The hearing officer issued a Proposed Decision on January 12, 2018, 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 After having considered the entire administrative record, along with the parties' new
2 arguments, it is recommended that compensation be denied. As detailed below, White has failed to
3 satisfy his burden of proving he is more likely innocent, than guilty, of murder. The incriminating
4 evidence notably includes White's presence during the brutal murder and his repeated false
5 statements that he was not there. This evidence is not outweighed by White's unbelievable
6 proclamation of innocence or the inconsistent and demonstrably false version of events offered by his
7 codefendants. Overall, the proffered evidence of innocence is so lacking in strength and credibility
8 that it fails to demonstrate, by a preponderance, that White did not murder the victim.

9 II. PROCEDURAL HISTORY

10 White was arrested on March 3, 2011, and subsequently charged with a single count of
11 murder, in violation of Penal Code section 187, for the death of Maurillio Ponce (Ponce), which
12 occurred years earlier on October 7, 2008. Anthony Wayne Smith (Smith) and Charles Honest
13 (Honest) were both charged as codefendants for this same offense. Honest and Smith were tried
14 together before separate juries, while White was separately tried shortly thereafter.

15 According to the prosecution's theory of the case, Smith was the perpetrator who fatally
16 shot Ponce, and Howard and White were both accomplices who aided and abetted Smith's
17 premediated murder of Ponce. No other theory of guilt, such as felony-murder during a robbery or a
18 natural and probable consequence of assault, was presented to the jury.

19 Smith's jury deadlocked and a mistrial was declared. Smith was subsequently retried for
20 Ponce's murder in 2015, along with three new murder charges for the 1991 double killing of brothers
21 Ricky and Kevin Nettles, and the 2001 death of Dennis Henderson. The jury convicted Smith of the
22 three new murder charges, along with special circumstances for kidnapping and torture, but
23 deadlocked again on Ponce's murder. Thus, Smith remains unconvicted of Ponce's murder. Smith is
24 nevertheless serving three, consecutive life terms without the possibility of parole for the murder of both
25 Nettle brothers and Henderson.¹

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

1 Honest's jury acquitted him of first-degree murder, but convicted him of second-degree
2 murder as a lesser-included offense. On July 24, 2012, the trial court sentenced Honest to a total
3 prison term of 35 years to life, representing a base term of 15 years, doubled under the Three Strikes
4 law, plus a five-year enhancement for Honest's prior manslaughter conviction.

5 On August 9, 2012, White's jury convicted him of Ponce's first-degree murder as an
6 accomplice. At the close of the prosecution's case-in-chief, White moved for an acquittal on the basis
7 of insufficient evidence to support a conviction, which was denied.² White received an indeterminate
8 prison sentence of 25 years to life.

9 White and Honest separately appealed their convictions. Both claimed that insufficient
10 evidence supported the jury's requisite finding of specific intent to kill for accomplice liability as an
11 aider and abettor to murder. The California Court of Appeal agreed in separate decisions issued on
12 September 30, 2014, as to Honest, and May 11, 2015, as to White. Because White's motion for
13 acquittal was denied, the appellate court's review of the sufficiency of evidence to support his
14 conviction was necessarily confined to the prosecution's case-in-chief. Nonetheless, in both
15 decisions, the appellate court acknowledged that a jury could have reasonably inferred that Honest
16 and White were present at the scene of Ponce's murder.³ Based upon the appellate court's decision,
17 White was released from prison on August 6, 2015, after having served a total of 1,616 days for
18 Ponce's murder (i.e., March 3, 2011, to August 6, 2015).

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

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26 ² Pen. Code, § 1118.1 ("In a case tried before a jury, the court on motion of the defendant..., at the
27 close of the evidence on either side and before the case is submitted to the jury for decision, shall order
the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if
the evidence then before the court is insufficient to sustain a conviction").

28 ³ White Ex. 1 (*People v. White* (B249633), 2015 WL 2238677 (May 11, 2015); see also AG Ex. 17
(*People v. Honest* (B242979), 2014 WL 4827119 (Sept. 30, 2014)).

1 Honest was Smith's long-time friend.⁸ In 2008, Honest lived in South Los Angeles.⁹ He
2 worked as a longshoreman loading and unloading ships.¹⁰ Honest previously worked as a bar
3 bouncer and bodyguard and was "trained in the [martial] arts."¹¹ 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.¹²

6 White lived in Bloomington in San Bernardino County, located approximately 70 miles due
7 east of Marina del Rey.¹³ White worked with Honest as a longshoreman, and the two were close
8 friends.¹⁴ Previously, White provided armed security.¹⁵ White also had a commercial truck driving
9 license and occasionally hauled a load for extra money.¹⁶ White's cousin worked at an auto-repair
10 shop located near Sixth Avenue and Slauson Avenue in Los Angeles, which was owned by a
11 mechanic friend of Honest.¹⁷ White had no prior felony convictions, but he was convicted of
12 misdemeanor offenses involving moral turpitude. Specifically, he was convicted in 2003 of petty theft
13 of property and in 1997 of forgery and appropriating lost property.¹⁸

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.¹⁹ In September 2008, Ponce
16 moved from Palmdale to Lancaster.²⁰ Smith knew Ponce, though the circumstances of their
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18 ⁸ AG Exs. 5 at p. 889; 17 at p. 7 (Honest opn).

19 ⁹ AG Ex. 17 at pp. 6, 12 (Honest opn).

20 ¹⁰ AG Exs. 5 at p. 893; 17 at p. 7 (Honest opn).

21 ¹¹ AG Ex. 5 at p. 893.

22 ¹² AG Ex. 3 at pp. 306-307, 520-541.

23 ¹³ White Ex 1 at p. 12; AG Ex. 1 at 107. The distance was calculated using Google Maps.

24 ¹⁴ White Ex. 1 at pp. 6-7; AG Exs. 1 at p. 73; 5 at p. 926; 20 at p. 613.

25 ¹⁵ White Ex. 1 at p. 6.

26 ¹⁶ White Ex. 1 at p. 6; AG Ex. 20 at p. 625.

27 ¹⁷ White Ex. 1 at p. 6; AG Exs. 17 at p. 7 (Honest opn), 20 at pp. 686-689. It is unclear from the record
whether Honest's friend is also White's cousin.

28 ¹⁸ 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).

¹⁹ White Ex. 1 at p. 2.

²⁰ White Ex. 1 at pp. 3-4; AG Exs. 1 at pp. 39, 42, 176 (DMV registering address change on Sept. 10,
2008); 4 at pp. 578-682; 17 at p. 4 (Honest opn).

1 acquaintance are not clear. According to Smith, he met Ponce years earlier at his warehouse in
2 Lancaster, where Smith sold “stuff.”²¹ Smith claimed to have an ongoing business arrangement with
3 Ponce, whereby Ponce would locate a truck cargo load and pay Smith to unload a portion of the
4 contents, which sometimes involved attaching the load to a commercial truck to relocate it.²² Smith
5 denied that the stolen cargo was ever forcibly hijacked from the truck driver.²³

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. 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.²⁴ 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.²⁵

24 ²¹ AG Ex. 4 at p. 678.

25 ²² AG Exs. 4 at pp. 817; 5 at pp. 824-827, 845-862.

26 ²³ AG Ex. 5 at p. 852.

27 ²⁴ White Ex. 1 at p. 14; AG Exs. 11 at pp. 2705-2719; 17 at p. 16 (Honest opn); 23 at pp. 2120-2138. At
28 the time of their arrests, Smith was six feet four inches tall and weighed 330 pounds. Honest was six
feet three inches tall and weighed 260 pounds. White was five feet 10 inches tall and weighed 220
pounds. All three are African-American. (AG Ex. 1 at pp. 180, 189, 199.)

²⁵ 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.²⁶ The beating left bruises on Ponce's cheek, back, thigh, arm,
4 abdomen, and head.²⁷ The shape of the bruises were consistent with foot stomping, inflicted while
5 Ponce was still alive.²⁸ 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.²⁹
8 The two bullets to Ponce's back were likely fired last, after Ponce was already lying on the ground.³⁰
9 All of the bullets were fired from the same, nine-millimeter semi-automatic firearm.³¹ The shooting
10 occurred on the side of a rural road, located near the intersection of West Avenue I and 110th Street
11 West, in Lancaster.³²

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 60th 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 110th Street West intersection, where he spotted a body
17 along the side of the road. Szandzik immediately called police at 1:58 a.m., and then drove home.³³

18 At 2:09 a.m., police arrived at the intersection of West Avenue I and 110th 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 ²⁶ White Ex. 1 at 3; AG Exs. 1 at pp. 213-228; 17 at p. 2 (Honest opn); 23 at pp. 1242-1271.

24 ²⁷ AG Exs. 10 at pp. 1823-29; 23 at pp. 1262-1265.

25 ²⁸ AG Exs. 10 at pp. 1824-1826; 23 at pp. 1263-1272.

26 ²⁹ AG Ex. 10 at pp. 1831-1832; 23 at pp. 1246-1251.

27 ³⁰ AG Exs. 10 at p. 1833; 23 at pp. 1254-1258.

28 ³¹ White Ex. 1 at p. 3; AG Exs. 13 at pp. 3640; 17 at pp. 3-4 (Honest opn).

³² White Ex. 1 at p. 3; AG Ex. 17 at p. 3 (Honest opn).

³³ White Ex. 1 at p. 3; AG Ex. 22 at pp. 635-643.

1 unusual. Over a mile away, security guards recalled hearing gunshots around 1:30 a.m., but they did
2 not see anything else.³⁴

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

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

17 **B. Stolen Navigator**

18 Since the Navigator was missing, Flores filed a stolen car report with the police. The
19 Navigator was on a lease. Flores and Ponce were behind several months on their lease payments.
20 The payoff balance for the Navigator was \$22,994, plus an additional \$4,800 in mileage fees.⁴⁰

23 ³⁴ White Ex. 1 at pp. 3-4; AG Ex. 17 at pp. 2-4, 15-16 (Honest opn).

24 ³⁵ AG Ex. 1 at pp. 29, 32.

25 ³⁶ White Ex. 1 at pp. 3-4; AG Ex. 1 at p. 32. It is unknown whether the driver's license in Ponce's wallet
26 had been recently received from the DMV to reflect his new Lancaster address.

27 ³⁷ AG Exs. 1 at pp. 9-10, 32; 6 at p. 1322.

28 ³⁸ White Ex. 1 at p. 3.

³⁹ White Ex. 1 at p. 2; AG Ex. 1 at p. 44.

⁴⁰ White Ex. 1 at p. 2; AG Exs. 15 at pp. 4598-4599; 17 at p. 3 (Honest opn); 22 at pp. 967-975.

1 One month later, on November 5, 2008, at 8:05 a.m., the Navigator received a parking ticket
2 while parked near Sixth Avenue and Slauson Avenue in Los Angeles. Hours later at 1:15 p.m., Smith
3 drove the Navigator into the parking garage of his Marina del Rey condominium and parked it in one
4 of his assigned parking spaces. Honest drove Smith's green pickup truck into the same parking
5 garage, following immediately behind the Navigator.⁴¹

6 The next day on November 6, 2008, police entered the parking garage and seized the
7 Navigator.⁴² By then, Smith had switched the rear license plate from a different stolen vehicle.⁴³ The
8 child safety car seat for Ponce's son was still inside.⁴⁴ Smith also had the keys to the Navigator in his
9 possession.⁴⁵ Police searched Smith's condominium, where they located bullets for a nine millimeter
10 firearm, but no nine millimeter weapon was found.⁴⁶ Instead, police found a .38 handgun, an empty
11 handgun magazine, and brass knuckles. Police also found shirts and hats displaying police-type
12 badges, even though Smith was not in law enforcement.⁴⁷ Significantly, police discovered Ponce's
13 cell phone inside Smith's condominium, which Smith admitted retrieving from the center console of
14 the Navigator.⁴⁸

15 None of White's belongings or fingerprints were located inside Smith's condominium. White's
16 DNA and fingerprints were not found in Ponce's Navigator. Ultimately, no physical evidence linking
17 White to Ponce's murder was recovered.⁴⁹

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 ⁴¹ White Ex. 1 at p. 4; AG Exs. 5 at p. 908; 17 at pp. 4-5 (Honest opn).

24 ⁴² White Ex. 1 at p. 4; AG Ex. 1 at p. 36.

25 ⁴³ White Ex. 1 at p. 4; AG Ex. 1 at pp. 40-41, 44.

26 ⁴⁴ AG Ex. 1 at pp. 40-41, 44.

27 ⁴⁵ White Ex. 1 at p. 5; AG Ex. 1 at p. 49.

28 ⁴⁶ White Ex. 1 at p. 5; AG Ex. 1 at p. 44.

⁴⁷ White Ex. 1 at p. 5 & fn.4.

⁴⁸ White Ex. 1 at p. 5; AG Exs. 1 at pp. 35-36, 51; 25 at p. 3945.

⁴⁹ White Ex. 1 at p. 14.

1 at 10:20 p.m., when Smith's phone was located near his condominium in Marina Del Rey.⁵⁰ 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.⁵¹

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 in Santa
9 Clarita, just as he had told his wife before leaving home. At the time of the call, he was approximately
10 15 miles away.⁵² Smith's phone did not make or receive any more calls for the rest of the night until
11 after 3:00 a.m. the next morning.⁵³

12 An hour later at 12:53 a.m., Ponce's phone had travelled north again and communicated with
13 a cell tower located near the 14 Freeway in Palmdale.⁵⁴ At approximately 1:30 p.m., Ponce was
14 killed just north of Palmdale in Lancaster. But by 2:02 a.m., Ponce's phone had traveled south again
15 and was located, once more, near the 14 Freeway in Acton.⁵⁵

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19 ⁵⁰ As summarized by the Court of Appeal, "When making or receiving a call on a Sprint or Nextel
20 network, the user's phone will connect to the cell tower that is emitting the strongest signal. The
21 strength of a cell tower's signal with respect to a user's phone is influenced by a number of factors,
22 including: the proximity of the phone to the tower; the clarity of the line of sight between the phone and
23 the tower; the intensity of other radio-frequency traffic near the phone and the tower; and the inherent
24 strength of the tower. *The maximum range within which a cell phone is capable of connecting with a
25 cell tower varies between two miles in an urban setting and 10 miles in a rural setting.* A cell phone may
26 connect with more than one cell tower throughout the duration of a single call, depending on the
27 movement of the phone and the strength of the cell towers within the phone's range. Accordingly, if a
28 phone is being used inside a moving car, it is likely to connect with more than one cell tower throughout
a single call, especially if the car is on a freeway or highway." (White Ex. 1 at p. 9, italics added.)

⁵¹ White Ex. 1 at pp. 8-10; AG Exs. 1 at pp. 33, 37; 17 at p. 10-15 (Honest opn); 23 at pp. 1275-1282;
25 at pp. 3605-3619.

⁵² This distance was calculated using Google Maps.

⁵³ White Ex. 1 at p. 11; AG Exs. 14 at pp. 3969-3970; 17 at p. 14 (Honest opn); 25 at pp. 3619-3632.

⁵⁴ White Ex. 1 at p. 11; AG Exs. 14 at pp. 3970-3971; 17 at p. 14 (Honest opn.); 25 at p. 3620.

⁵⁵ White Ex. 1 at p. 11; AG Exs. 14 at pp. 3970-3971, 3975; 17 at p. 14 (Honest); 25 at p. 3628.

1 Later that morning, between 8:00 a.m. and 8:14 a.m., Smith called Ponce's phone four times
2 in quick succession, as if trying to locate it. Thereafter, Smith never called Ponce again.⁵⁶

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

4 In addition to his (424) cell phone, Smith had a second cell phone (310-350-9557) that was
5 registered in his own name.⁵⁷ Honest had two cell phones, and neither was registered in his own
6 name. Specifically, one was registered to "Chucky Brown" (310-483-1688), and the other was
7 registered to "Boost" (424-219-3527).⁵⁸ Smith gave Honest the (424) cell phone.⁵⁹ White had a cell
8 phone (909-419-9094), registered in the name of his business Ontario Motor Sports, which he
9 reluctantly provided to police.⁶⁰ These phones were in frequent communication on the night of
10 Ponce's death, during which they traveled from Marina del Rey to Lancaster and back to Los
11 Angeles.

12 **1. Traveling to Lancaster**

13 At 8:40 p.m. on October 6, 2006, White's cell phone communicated with Honest's cell phone.
14 At that time, White's cell phone was in the vicinity of Honest's home in south Los Angeles, even
15 though White lived roughly 50 miles due east in Bloomington. By 9:14 p.m., White's cell phone was
16 still in the area of Honest's home when it connected with a cell tower located in Inglewood. At 9:19
17 p.m., Smith's (424) cell phone was also located near Honest's home.⁶¹ Thus, CalVCB infers that
18 White, Smith, and Honest met at Honest's home.

19 Half an hour later at 9:48 p.m., White's cell phone had moved west and was near Smith's
20 condominium in Marina del Rey.⁶² By 10:04 p.m., Smith's (424) cell phone had likewise moved west
21 and was also near his condominium in Marina del Rey.⁶³ Smith's (424) cell phone remained in that
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23 ⁵⁶ AG Exs. 15 at p. 4220, 16 at pp. 5119-5120; 25 at pp. 3636-3637.

24 ⁵⁷ AG Exs. 1 at p. 37-38; 17 at pp. 10-11 (Honest opn).

25 ⁵⁸ White Ex. 1 at p. 8; AG Exs. 1 at pp. 52-53; 17 at p. 7 (Honest opn).

26 ⁵⁹ AG Exs. 1 at p. 60; 5 at pp. 897-899; 17 at pp. 7, 11 (Honest opn).

27 ⁶⁰ White Ex. 1 at p. 8; AG Exs. 1 at pp. 69, 72; 17 at p. 11 (Honest opn).

28 ⁶¹ White Ex. 1 at pp. 9-11; AG Exs. 17 at p. 12; 25 at pp. 3616-3618.

⁶² White Ex. 1 at p. 10; AG Ex. 25 at p. 3617.

⁶³ White Ex. 1 at p. 10; AG Ex. 25 at pp. 3617-3618.

1 vicinity until at least 10:20 p.m., when Ponce called. Then Smith's (424) cell phone traveled north to
2 Santa Clarita, arriving around 11:00 p.m.⁶⁴ Then Smith called Ponce at 11:07 p.m., his phone
3 connected with a tower near Sand Canyon in Santa Clarita, which was the same tower that Honest's
4 phone connected to just three minutes later at 11:10 p.m.⁶⁵ Thus, CalVCB infers that White, Smith,
5 and Honest had been together at Smith's condominium until around 10:30 p.m., when at least Smith
6 and Honest left together and drove to Santa Clarita.

7 White's precise whereabouts during the two and a half-hour window between 10:30 pm. on
8 October 6, 2008, and 1:03 a.m. on October 7, 2008, are unknown. But at 1:03 a.m., White and
9 Honest were both in the same Lancaster area when White called Honest.⁶⁶ Thus, CalVCB infers that
10 White followed Smith and Honest from Marina del Rey to Santa Clarita, and then eventually from
11 Santa Clarita to Lancaster. In that case, Smith, Honest, and White were together in Santa Clarita,
12 with Ponce, until they all headed north to Lancaster by 12:30 a.m.⁶⁷

13 **2. Presence in Lancaster Area**

14 At 1:03 a.m., White called Honest, and both of their cell phones were serviced by the same
15 cell tower located at the intersection of Avenue I and Division Street, near the 14 Freeway, in the
16 Lancaster area.⁶⁸ This cell tower was located "a little more than eight miles" due east from where
17 Ponce's body was discovered.⁶⁹ Two minutes later at 1:05 a.m., White's cell phone called Honest's
18 (424) cell phone a second time. White's cell phone was serviced by the same cell tower, but
19

20 ⁶⁴ White Ex. 1 at p. 10; AG Exs. 17 at pp. 12-13 (Honest opn); 25 at pp. 3618-3619.

21 ⁶⁵ White Ex. 1 at p. 10; AG Exs. 17 at pp. 13-14 (Honest opn); 25 at p. 3619.

22 ⁶⁶ White Ex. 1 at p. 11; AG Exs. 17 at p. 17 (Honest opn) (referring to cell tower located at "Avenue I
23 and Division Street, near the 14 Freeway in Palmdale"); cf. AG Ex. 14 at pp. 3971-3974 (cell phone
24 expert testimony describing cell tower located at "Division and I"). According to Google Maps, the
25 intersection of Avenue I and Division Street is located in Lancaster, not Palmdale. For clarity and
26 consistency, the Proposed Decision refers to this intersection as being located in the Lancaster area.

27 ⁶⁷ According to Google Maps, the shortest distance between Marina del Rey and Lancaster is
28 approximately 70 miles, with Santa Clarita located at the midpoint. The shortest route follows the 405
Freeway north to Santa Clarita and then turns northeast along the 14 Freeway.

⁶⁸ White Ex. 1 at p. 11; AG Exs 14 at pp. 3971-3975; 17 at p. 14 (Honest opn); 25 at p. 3621.
Incidentally, the appellate decision for White refers to this call occurring at 1:03 a.m., whereas the
decision for Honest refers to this call occurring at 1:04 a.m. This one-minute discrepancy is
inconsequential.

⁶⁹ White Ex. 1 at p. 11 (noting distance of "a little more than eight miles").

1 Honest's (424) cell phone was serviced by a different cell tower located at Avenue M and 50th Street
2 West in Quartz Hills.⁷⁰ This cell tower in Quartz Hills was located southwest of the intersection where
3 Ponce's body was discovered by approximately seven miles.⁷¹ Thus, Honest, followed by White, was
4 headed towards the area where Ponce's body was later discovered during these two calls. For the
5 next hour, between 1:05 a.m. and 2:05 a.m., no calls were made or received from any of the cell
6 phones belonging to Smith, Honest, or White.

7 Meanwhile, at 1:30 a.m., Ponce was brutally beaten and fatally shot at West Avenue I and
8 110th Street West in Lancaster. Thus, "about 25 minutes before Ponce was killed, White's cell phone
9 made two calls to Honest from an area eight miles from where Ponce was found."⁷² Roughly 10
10 minutes after the killing at 1:40 a.m., a large white SUV similar to Ponce's, followed by a dark four-
11 door sedan, were spotted driving along West Avenue I, at the 60th Street intersection, headed east
12 toward the 14 Freeway.⁷³

13 **3. Return to Los Angeles**

14 By 2:05 a.m., despite the absence of any communication between these men for the past
15 hour, Ponce's cell phone, as well as both of Honest's cell phones, had left Lancaster and traveled
16 south along the 14 Freeway to Acton.⁷⁴ Ten minutes later at 2:16 a.m., both of Honest's cell phones
17 were communicating with each other for the first time that evening, and both phones were located
18 again near the Sand Canyon exit on the 14 Freeway in Santa Clarita. Eleven minutes later at 2:27
19 a.m., White's cell phone was also in Santa Clarita near the 14 Freeway, but located farther north by
20 several miles near the exit for Soledad Canyon Road.⁷⁵ As one expert opined, Smith and Honest
21

22 ⁷⁰ White Ex. 1 at p. 11; AG Exs. 14 at pp. 3972-3975; 17 at p. 14 (Honest opn); 25 at pp. 3621-3623.
23 Both appellate court opinions refer to this second call occurring at 1:05 a.m.

24 ⁷¹ White Ex. 1 a p. 11 (White opn).

25 ⁷² White Ex. 1 at pp. 13-14. Despite his insistence that CalVCB is bound by the appellate court's
26 opinion, White nevertheless maintains that this aspect of the decision "is incorrect" and that his "cell
27 phone was actually within an 18-mile radius of the crime scene." (White Objections (3/5/18) at p. 4 fns.
28 2 & 3.) CalVCB disagrees that claimants may pick and choose from binding court findings. CalVCB
adopts the appellate court's calculation.

⁷³ AG Exs. 13 at pp. 3661-3669; 22 at pp. 635-643.

⁷⁴ White Ex. 1 at pp. 11-12; AG Exs. 17 at pp. 13-14 (Honest opn); 25 at pp. 3628-3629.

⁷⁵ White Ex. 1 at pp. 11-12; AG Exs. 14 at pp. 3975-3976; 17 at p. 14 (Honest opn); 25 at p. 3629-3630.

1 were using both of Honest's phones to talk to each other, while one drove Ponce's Navigator with
2 Ponce's cell phone inside, and the other drove a different car.⁷⁶ Moreover, White was traveling
3 separate from, and slightly behind, Smith and Honest.⁷⁷

4 Then at 2:30 a.m., White's phone called Honest's (310) phone. At that time, Honest's phone
5 was still near the Sand Canyon exit, but White's phone had travelled farther south by several miles.⁷⁸
6 Thus, White had passed by Honest. Significantly, after calling Honest while in Lancaster at 1:03 and
7 1:05 a.m., the "next calls from White's cell phone – one to Honest's phone – were approximately one
8 hour after the fatal shooting, from Canyon Country and Santa Clarita, some 25 miles from the murder
9 scene."⁷⁹

10 Between 2:38 a.m. and 2:49 a.m., both of Honest's cell phones communicated with each other
11 three separate times. For all three calls, a different cell tower serviced each of Honest's phones,
12 meaning that the phones were not likely traveling together.⁸⁰ During this 11-minute timespan, both of
13 Honest's cell phones, as well as White's cell phone, were located in the same general vicinity off the
14 405 Freeway in Sherman Oaks near two large bodies of water (i.e., Lake Balboa and Sepulveda
15 Basin Wildlife Reserve).⁸¹ This location was approximately 50 miles south of where Ponce was
16 murdered.⁸²

17 Ten minutes later at 3:02 a.m., White's cell phone called Honest's (310) cell phone. By then,
18 both phones had traveled farther south, with White near Inglewood again and Honest near the 405
19 Freeway and 10 Freeway intersection in Los Angeles.⁸³ Between 3:10 a.m. and 3:19 a.m., Honest's
20 (424) cell made or received three calls while connecting with a tower on Washington Boulevard in
21

22
23 ⁷⁶ White Ex. 1 at p. 11; AG Ex. 1 at p. 14. Honest's contrary testimony at the CalVCB hearing that he
24 was using both of these phones to check his messages while driving is not credible, as discussed *infra*.

25 ⁷⁷ White Ex. 1 at p. 12.

26 ⁷⁸ White Ex. 1 at p. 12.

27 ⁷⁹ White Ex. 1 at p. 14.

28 ⁸⁰ White Ex. 1 at pp. 12-13. AG Exs. 17 at pp. 14-15 (Honest opn); 25 at pp. 3631-3634.

⁸¹ White Ex 1 at pp. 12-13.

⁸² This distance was calculated using Google Maps. See also AG Ex. 17 at p. 17 (Honest opn).

⁸³ White Ex. 1 at 13.

1 Culver City.⁸⁴ The tower was located approximately five miles from Marina del Rey and less than half
2 a mile from the home of Krystal Crail, who was the mother of Honest's four-year-old daughter.⁸⁵

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.⁸⁶ This is the first call received on Smith's (424) cell since Smith had
5 spoken to Ponce earlier that night 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.⁸⁷ 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.⁸⁸

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, 2008,
13 two calls were exchanged between White's cell phone and Smith's (424) cell phone. The first call
14 lasted approximately 3 minutes and 20 seconds, the second call lasted approximately 1 minute.⁸⁹
15 Smith's (424) cell phone had an entry for White's cell phone under the initial of his first name "D."⁹⁰

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

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

24 ⁸⁴ White Ex. 1 at p. 13; AG Exs. 17 at p. 15 (Honest opn); 25 at p. 3632.

25 ⁸⁵ This distance was calculated using Google Maps.

26 ⁸⁶ White Ex. 1 at p. 13; AG Exs. 14 at pp. 3979-3980; 17 at p. 15 (Honest opn); 25 at pp. 3633-3634.

27 ⁸⁷ White Ex. 1 at p. 28; AG Ex. 25 at p. 3634.

28 ⁸⁸ White Ex. 1 at p. 13; AG Ex. 25 at pp. 3634-3635.

⁸⁹ White Ex. 1 at p. 9; AG Exs. 1 at p. 75; 25 at p. 3616.

⁹⁰ AG Ex. 1 at p. 75.

1 “chop” the Navigator to sell its parts. Smith claimed he was waiting to hear from Ponce before
2 chopping it up. However, Smith could not explain why he had already switched the license plate for
3 the Navigator, since Ponce had not yet called to confirm that he had reported the Navigator as stolen.
4 Smith insisted that he was unaware that Smith had been murdered. Smith denied killing Ponce and
5 tearfully professed to be afraid of Ponce’s business associates. When asked about the nine
6 millimeter bullets found in his home, which were the same caliber used to shoot Ponce, Smith
7 claimed to have possessed the ammunition for years and denied owning a matching nine millimeter
8 firearm.⁹¹

9 Later that day, police interrogated Smith again. This time, Smith claimed he did not actually
10 see Ponce when he took possession of the Navigator in Compton and had merely assumed that
11 Ponce was present somewhere nearby. The Navigator was parked in Compton at a prearranged
12 location with the keys left inside. When pressed by police, Smith could not explain how Ponce’s killer
13 would know to deliver the Navigator from Lancaster to this prearranged location in Compton.⁹² After
14 being confronted with his cell phone records, Smith acknowledged having multiple discussions with
15 Ponce within a few hours of his death, about a business deal. Smith claimed that he and Ponce had
16 an agreement for Smith to move one or two truckloads of goods, for which Smith expected to be paid
17 \$10,000. Smith admitted driving to Sand Canyon in Santa Clarita that night, ostensibly to a Denny’s
18 located near the 14 Freeway, but Smith insisted the deal never happened. However, video
19 surveillance for that particular Denny’s did not show anyone resembling Smith that night. Smith
20 denied meeting Ponce that evening.⁹³

21 The next day on November 7, 2008, Smith was released from custody, but police contacted
22 him again. This time, Smith mentioned that his “buddy” Honest had driven him to pick up the
23 Navigator after it was ticketed at 6th Street and Slauson.⁹⁴ Smith added that Ponce had once paid
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25
26 ⁹¹ AG Exs. 1 at pp. 41-47; 4 at pp. 681-730.

27 ⁹² AG Ex. 4 at p. 792.

28 ⁹³ AG Exs. 1 at pp. 38, 42-49; 4 at pp. 760-797.

⁹⁴ AG Ex. 5 at pp. 863-864.

1 him \$17,000 or \$18,000 for a previous job. Smith also claimed that Ponce often carried as much as
2 \$100,000 or \$200,000 in cash.⁹⁵

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.⁹⁶

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 had 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.⁹⁷

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 supposedly believed that Ponce was still alive.

26
27 ⁹⁵ AG Ex. 5 at p. 862.

28 ⁹⁶ White Ex. 1 at p. 8; AG Exs. 12 at pp. 3322-3353; 15 at pp. 4249-4250; 23 at pp. 1835-1839.

⁹⁷ AG Exs. 1 at pp. 59-67; 5 at pp. 833-941; 17 at pp. 7-9 (Honest opn).

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 some tires into Smith's truck and possibly driving
4 a commercial truck. Honest and White agreed to perform this "quick gig" in order to make "some
5 money." Honest claimed that all three drove separately to the Lancaster job. Honest admitted driving
6 Smith's green pickup truck, but he did not know what vehicle Smith had driven. Honest insisted that
7 he had waited in an AM/PM parking lot for Smith, where Honest supposedly met up with another
8 "dude who was supposed to do the tires." Honest claimed that, after waiting for hours, Smith finally
9 called him and told him the deal was off. As related by Honest, Smith said "it went wrong" and "the
10 shit never panned out." Honest then called White, who was waiting somewhere else, and told him
11 the deal was off. Honest maintained that everyone simply went home. Honest made no mention of
12 meeting White in person along the freeway after the call. Honest told police several times that he felt
13 that he was "set up."⁹⁸

14 Meanwhile, a search of Honest's home on March 2, 2011 revealed a .40 caliber semi-
15 automatic.⁹⁹ 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.¹⁰⁰ Honest also drove a black Dodge Magnum.¹⁰¹ 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.¹⁰²

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.¹⁰³ Police searched
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25 ⁹⁸ AG Exs. 1 at pp. 80-81; 5 at pp. 926-933; 17 at pp. 9-10 (Honest opn).

26 ⁹⁹ Honest Ex. 1 at p. 6.

27 ¹⁰⁰ AG Ex. 1 at p. 59.

28 ¹⁰¹ AG Ex. 1 at p. 60.

¹⁰² AG Ex. 1 at p. 55.

¹⁰³ White Ex. 1 at p. 6; 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.¹⁰⁴

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.¹⁰⁵

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 supposedly arranged. White noted that he was licensed to drive commercial trucks. White agreed
15 that \$5,000 to drive a single load was suspiciously high, but White argued that, if the load was illegal,
16 then Honest would not have bothered to hire a licensed driver. White stated that, on the night of the
17 job, he left his home in Bloomington around 9:00 or 10:00 p.m. and drove his Chevy Impala to
18 Lancaster, where he planned to meet Honest to retrieve the keys to the truck that he was to drive.
19 After arriving in Lancaster, White waited to hear from Honest, but he could not recall whether he had
20 waited at a gas station or in a rural desert area. Eventually, Honest called and told White that the job
21 had fallen through. Thereafter, the two met along the 14 Freeway, when Honest was supposedly
22 driving his black Dodge Magnum. At that time, Honest appeared upset, but he did not provide any
23 further explanation. Afterwards, White simply drove back home.¹⁰⁶

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27 ¹⁰⁴ AG Ex. 1 at p. 109.

28 ¹⁰⁵ White Ex.1 at pp. 6-7; AG Exs. 1 at pp. 73-74; 20 at pp. 612-690; 28 at pp. 6-7.

¹⁰⁶ White Ex. 1 at p. 7; AG Exs. 1 at pp. 74-77; 20 at pp. 690-695.

1 One year later on March 2, 2011, police arrested White for Ponce’s murder and interviewed
2 him the next day.¹⁰⁷ 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 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 police first interrogated him in 2010. White specifically denied ever discussing Ponce’s murder
7 with Honest.¹⁰⁸ Meanwhile, a search of White’s home revealed a 12-gauge shotgun and a bullet-
8 proof vest.¹⁰⁹

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.”¹¹⁰ 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?

25 ¹⁰⁷ White Ex. 1 at pp. 7-8; AG Exs. 1 at pp. 80, 82-83; 20 at pp. 709-710.

26 ¹⁰⁸ AG Exs. 1 at pp. 80, 82-83.

27 ¹⁰⁹ White Ex. 1 at p. 7.

28 ¹¹⁰ AG Ex. 20 at p. 704 (emphasis added). At the CalVCB hearing, White insisted that he said “a” rather than “the” when referring to the murder. However, the audio recording confirms that White said “the” as reported in the written transcript. (AG Ex. 21.) This dispute is ultimately insignificant because, even if White had said “a,” the same inquiry from his wife would have been expected had she not known about Ponce’s death.

1 White: Baby. Yeah.

2 Immediately thereafter, Perez mentioned that White's mother was coming to visit. Perez finally
3 promised to do "whatever it takes to take you out."¹¹¹

4 **I. Trial Proceedings**

5 Honest and White were tried separately. Much of the same evidence detailed above was
6 presented in both proceedings, excluding their criminal histories. One significant difference
7 concerned the admissibility of the out-of-court interview statements rendered by the other, as well as
8 Smith, due to hearsay and Confrontation Clause limitations.¹¹² Also, Honest did not testify at his trial,
9 but White testified at his.

10 When testifying on his own behalf, White continued to deny any involvement in Ponce's
11 murder. According to White, Honest told him about a job to move some "cargo loads" and gave him
12 Smith's phone number to call if he was interested. The promised pay for one-night's work was
13 \$5,000. White called Smith on October 5, 2008, and Smith supposedly confirmed that the job would
14 happen in the Lancaster area at night and to 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 stopped
22 in Inglewood to eat. White called Honest again to see if he had any more information about the job.
23 White finally drove back home to Bloomington. White denied killing Ponce or even meeting him that
24

25
26

¹¹¹ AG Exs. 20 at pp. 702-707; 21 (audio recording).

27 ¹¹² 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 night. As for his jail conversation with his wife, White claimed that it referred to the fact that they had
2 oral sex on the morning before his arrest.¹¹³

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."¹¹⁴ The
6 court added, "There were certain points he testified unbelievably, and it seems that the jury did not
7 believe him."¹¹⁵

8 **J. CalVCB Proceedings**

9 Both parties submitted additional evidence to CalVCB, beyond what was admitted in White's
10 trial. To support his claim of actual innocence, White proffered his own declaration, which summarily
11 claimed that he "did not commit, and played no role in, the horrible crime for which [he] was convicted
12 and incarcerated." White maintains his sole mistake was his "agree[ment] to transport goods that I
13 had been told were stolen." White details his work history and college education prior to his arrest for
14 Ponce's murder, as well as an award he received from the Los Angeles County District Attorney's
15 Office in 1998 for being a "Courageous Citizen" by thwarting a violent robbery. White also included
16 multiple documents confirming the adverse economic consequences of his incarceration, as well as
17 multiple character letters from family and friends, plus the entire Opening Brief on appeal. Finally,
18 White provided a one-page declaration from Smith, who is currently serving three, consecutive life
19 terms without the possibility of parole for three separate murders, not including Ponce's.¹¹⁶

20 **1. Smith's Declaration**

21 In his declaration, Smith admitted that he "drove from the Los Angeles area to the Lancaster
22 area" on the evening October 6, 2008, supposedly "with the intention of moving a load of cargo (tires)
23 for Maurillio Ponce." Smith further admitted that White and Honest also drove to Lancaster, at
24 "roughly the same time", but in separate vehicles, and only "for the purpose of assisting with the
25

26 ¹¹³ AG Ex. 25 at pp. 4237-4531.

27 ¹¹⁴ AG Ex. 26 at p. 6014.

28 ¹¹⁵ AG Ex. 26 at p. 6016.

¹¹⁶ White Ex. 5.

1 cargo.” However, the cargo deal “did not go through,” and so Smith “telephoned Charles Honest,
2 who was waiting for word from me at a separate location, to inform him that the deal was off and that
3 he should return home.” Smith insisted that he “never met up in person with Charles Honest or
4 De’Wann White on the night of October 6, 2008 or the early morning hours of October 7, 2008.”
5 Smith added, “To the best of my knowledge, neither Charles Honest nor De’Wann White had
6 anything to do with the death of Maurillio Ponce.” Smith concluded, “I believe unequivocally that
7 De’Wann White and Charles Honest are in fact innocent of the crimes for which they were convicted
8 in the death of Maurillio Ponce.”

9 However, Smith’s declaration is silent on several issues. First, it does not address whether
10 Smith met up with Ponce or how Smith ended up with Ponce’s vehicle. Second, the declaration does
11 not address who murdered Ponce. Finally, the declaration offers no explanation as to why the deal,
12 for which three individuals had just separately driven over 80 miles, was suddenly off.

13 In opposition to White’s application, the Attorney General submitted a response letter
14 supported by 36 “joint exhibits.” The exhibits included the appellate court record for both White and
15 Honest’s separate trials, as well as the “murder book” containing all investigative reports for Ponce’s
16 death, in addition to court records related to Smith’s multiple convictions for murder. The exhibits
17 also included the Attorney General’s recent interviews with Honest and White.

18 **2. Honest’s 2016 AG Interview**

19 In Honest’s interview with the Attorney General on December 9, 2016, he generally repeated
20 the same version of events he told police, but added some new details. On the night of Ponce’s
21 murder, Honest, Smith, and White each drove separately to the Santa Clarita area for the sole
22 purpose of stealing some tires. Honest drove Smith’s pickup truck, rather than his own car, so that he
23 could fit 12 to 16 tires in it. White was supposed to drive another truckload of tires, but only “if there
24 was a truckload for him to drive....” Honest denied being promised any specific amount as
25 compensation, but he hoped he would receive “maybe several thousand dollars” because Smith
26 owed him a lot of money. Honest suspected that their planned activities were illegal. Ultimately,
27 Smith called and said the job was off. Honest next called White to tell him the news. The two met up
28 along the freeway.

1 Thereafter, Honest drove back towards Los Angeles and stayed at Crail's home in Culver City.
2 Significantly, Honest admitted that Smith followed behind Honest on the drive back from Santa Clarita
3 to Culver City. Honest insisted that Smith was driving the same car he (Smith) had driven to Santa
4 Clarita earlier that night. Honest further insisted that Smith was not driving Ponce's Navigator. Smith
5 stopped in Culver City, where Smith "took his truck back" from Honest, and then Honest "got my car
6 and left." Honest did not explain how Smith could have taken back his truck from Honest if Smith was
7 already driving another car. Honest also did not explain why his own car would have been left in
8 Culver City, instead of Smith's condominium in Marina del Rey, since Honest had driven there earlier
9 that night to pick up Smith's truck.

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

20 **3. White's 2016 AG Interview**

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

27
28 ¹¹⁷ AG Exs. 31 (Honest audio recording); 32 (transcript).

1 White claimed that he had driven alone from his home in Bloomington, through Los Angeles,
2 to Santa Clarita and then Lancaster, and never stopped by Honest's home or Smith's condominium
3 along the way. Although this route lengthened the distance travelled by White from Bloomington to
4 Lancaster, he claimed to be unaware of a much shorter route that would have bypassed Los Angeles
5 entirely, despite being a licensed truck driver.¹¹⁸ White insisted he ended up in Lancaster after
6 missing his exit. White noted that he had declined a deal from the District Attorney to testify against
7 Smith because he "didn't know anything." White acknowledged that he was still friends with
8 Honest.¹¹⁹

9 4. Honest's CalVCB Testimony

10 At the CalVCB hearing on August 1, 2017, Honest generally repeated the same version of
11 events as in his 2016 interview, but with a few new details and significant contradictions. Honest
12 claimed that, sometime before October 2008, he lost \$12,000 as a result of Smith's unsuccessful wire
13 fraud scene.¹²⁰ Honest hoped to recuperate some of those losses when, in October 2008, Smith
14 called him and told him of a scheme to move some tires. The scheme required Honest to drive
15 Smith's pickup truck to an undisclosed location in the area of Palmdale, where an unidentified person
16 would transfer up to 10 sets of tires (i.e., 40 tires) from a large commercial truck into the bed of
17 Smith's pickup truck. Once the tires were loaded onto Smith's pickup truck, Honest would drive it
18 back to Smith's condominium, where Smith already had a buyer lined up to purchase the tires.¹²¹

19 After speaking to Smith, Honest called White to ask him to help carry out the plan by driving a
20 commercial truck if needed, and White agreed. Honest offered some money to White in exchange for
21

22 ¹¹⁸ According to Google Maps, the shortest route between Bloomington and Lancaster is approximately
23 80 miles and follows I-15 north, Freeway 138 west, and finally Freeway 14 north. This route entirely
24 bypasses Los Angeles, Marina del Rey, and Santa Clarita. By comparison, the route reflected by
25 White's cell from data from Bloomington through Los Angeles, Marina del Rey, Santa Clarita, and
Lancaster is approximately 150 miles.

26 ¹¹⁹ AG Exs. 29 (White audio recording); 30 (transcript).

27 ¹²⁰ As described by Honest, it involved someone transferring funds from one bank account to another
without permission. Honest claimed he was unable to recall any names of the individuals involved in
this scheme. Smith owed money to a "middle man" who did not receive his share of the transfer.

28 ¹²¹ 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 his services, but Honest denied the amount was \$5,000. Honest maintained, instead, that Ponce had
2 previously offered him that specific amount to transport stolen electronics. This offer occurred during
3 a meeting with Ponce in the Palmdale area that had been arranged by Smith. Honest hoped to be
4 paid for assisting Smith's latest plan but denied being promised a specific amount.

5 Pursuant to the plan, Honest drove his own car to Smith's secured condominium parking
6 garage on the evening of October 6, 2008, left it parked there, and then drove Smith's green pickup
7 to the Palmdale area. Honest denied seeing Smith when transferring vehicles, claiming that Smith
8 had left the keys to the pickup hidden in the bumper. Honest drove for approximately an hour,
9 headed north along the 14 Freeway, and stopped in the Palmdale area. Honest waited there for
10 another hour. Honest maintained that he, Smith, and White each drove separately to the same
11 general area. The threesome did not carpool or caravan together, supposedly because the plan was
12 devised at the last minute.

13 Smith eventually called Honest and informed him the deal was off. Thereafter, Honest spoke
14 to White over the phone and told him the news. During their conversation, Honest asked White
15 where he was, and after realizing they were near each other, they decided to meet in person at an
16 off-ramp along the 14 Freeway. Honest claimed that the police report in which he denied meeting up
17 with White was a lie. Honest insisted that, after stopping, he had walked over to White's car and told
18 White, again, the deal was off because something went bad. Honest then drove back towards Los
19 Angeles in Smith's pickup, but he went to Crail's home in Culver City and stayed there for an
20 unspecified period of time.¹²² Later, Honest drove to Smith's condominium, where he returned
21 Smith's pickup truck and left in his own car. Contrary to his earlier interview with the Attorney
22 General, Honest denied seeing Smith any time that night, not even near Crail's home where he had
23 previously claimed to have swapped cars with Smith. Honest attributed this significant difference in
24 his version of events to his shaky memory.

25 Honest admitted having two phones in 2008, one of which was given to him by Smith. When
26 asked why the two phones were communicating with each other on the night of Ponce's murder,

27
28 ¹²² 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 Honest insisted he had both phones in his possession and was merely using one phone to check the
2 messages for the other phone. Honest also admitted that, in November 2008, he had helped Smith
3 move the Navigator, ostensibly to chop it up at Ponce's request. Honest denied knowing that Ponce
4 was dead at that time.

5 Honest claimed that, of the three guns police seized in his home in October 2008, one
6 belonged to his then-girlfriend and the other two belonged to Smith. Honest was storing Smith's guns
7 as a favor to Smith, even though Honest was not allowed to possess a firearm as an ex-felon.
8 Honest maintained that he had only spoken to Smith one time after Smith was arrested for Ponce's
9 murder in 2008. Honest supposedly asked Smith if he had killed Ponce, and Smith replied that he did
10 not.

11 **5. White's CalVCB Testimony**

12 White also testified at the CalVCB hearing on August 1, 2017. As in his prior statements,
13 White claimed that Honest had approached him about a job to drive a commercial truck, carrying an
14 unspecified load, from one point to another, somewhere in the Lancaster area. The job would pay
15 \$5,000. Honest did not reveal the type of load to be transported but assured White it did not involve
16 guns, explosives, or drugs. White did not own a commercial truck and assumed one would be
17 provided for him. White admitted speaking to Smith over the phone a couple days before the job was
18 supposed to happen, but he not recall what they had discussed. White maintained that Smith never
19 mentioned Ponce, robbery, or murder.

20 On the evening of October 6, 2008, White drove by himself, in his own car, from his home in
21 Bloomington to the Lancaster area. White did not know where he was supposed to pick up the
22 commercial truck or drop off the load. White was only told to meet Honest at a particular street,
23 possibly Soledad Canyon Road in Santa Clarita. However, White missed his freeway exit. White
24 eventually stopped in Lancaster on "one of the letter streets" and called Honest, who told him to wait
25 there. After an hour with no communication from Honest, White decided to leave and "jumped back
26 on the freeway." White then called Honest and told him that he was driving home. White denied that
27 Honest told him over the phone that the plan was off. Instead, while talking over the phone, the two
28 decided to meet in person along the side of the 14 Freeway. At that meeting, Honest disclosed for

1 the first time that the deal was off. White continued home, although he drove a much longer route
2 through Los Angeles, to get a burrito, before finally returning to Bloomington. White denied meeting
3 Smith or Ponce. White also denied seeing Ponce's Navigator. After this night, White never spoke to
4 Smith again.

5 As for the recorded conversation with his wife, White insisted he referred to "a" murder, not
6 "the" murder, despite the contrary transcript and recording. He also insisted that his wife's questions
7 about "protecting yourself when you eat" and "always clean up after you eat" referred to their act of
8 oral sex shortly before White's arrest. When asked why his wife would be asking White about his
9 post-sex cleaning habits when his wife had been present to observe those habits, White claimed she
10 was merely concerned that his DNA sample would be contaminated. White denied the comments
11 were a code about White's involvement in Ponce murder. White admitted being aware that all jail
12 phone calls were monitored.

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

17 **IV. DETERMINATION OF ISSUES**

18 Penal Code section 4900 allows a person, who claims to have been erroneously convicted and
19 imprisoned for a felony offense, to apply for compensation from CalVCB.¹²³ By regulation, the
20 application must include a completed claim form and supporting documentation.¹²⁴ Once the
21 application is properly filed, CalVCB typically requests a written response from the Attorney General
22 pursuant to Penal Code section 4902, and then an informal administrative hearing ensues in
23 accordance with Penal Code section 4903.¹²⁵

24 Throughout these proceedings, the claimant bears the burden to prove, by a preponderance of
25 the evidence, that (1) the crime with which he was charged and convicted was either not committed at
26

27 ¹²³ Pen. Code, § 4900.

28 ¹²⁴ Cal. Code Regs., tit. 2, § 640, subd. (a)(1)-(2).

¹²⁵ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

1 all, or, if committed, was not committed by him, and (2) he sustained injury through his erroneous
2 conviction and imprisonment.¹²⁶ “Preponderance of the evidence” means evidence that has more
3 convincing force than that opposed to it.¹²⁷ If the claimant satisfies this burden of persuasion for both
4 elements of innocence and injury, then CalVCB shall recommend to the Legislature an award of
5 compensation equal to \$140 per day for every day of time spent in custody.¹²⁸

6 CalVCB proceedings are informal and the traditional rules of evidence do not apply.¹²⁹ When
7 determining whether the applicant has satisfied his burden of proof, CalVCB may consider the
8 “claimant’s denial of the commission of the crime; reversal of the judgment of conviction; acquittal of
9 claimant on retrial; or, the decision of the prosecuting authority not to retry claimant of the crime....”
10 However, none of these circumstances may be deemed sufficient evidence to warrant a
11 recommendation for compensation “in the absence of substantial independent corroborating evidence
12 that claimant is innocent of the crime charged.” CalVCB may also “consider as substantive evidence
13 the prior testimony of witnesses [that] claimant had an opportunity to cross-examine, and evidence
14 admitted in prior proceedings for which claimant had an opportunity to object.”¹³⁰

15 Ultimately, all relevant evidence is admissible “if it is the sort of evidence on which reasonable
16 persons are accustomed to rely in the conduct of serious affairs,” even if a common law or statutory
17 rule “might make its admission improper over objection in any other proceeding.” CalVCB “may also
18 consider any other information that it deems relevant to the issue before it.”¹³¹

19 **A. Binding Court Determinations by Statute**

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

24
25 ¹²⁶ Pen. Code, §§ 4903, subd. (a), 4904.

26 ¹²⁷ *People v. Miller* (1916) 171 Cal. 649, 652.

27 ¹²⁸ Pen. Code, § 4904.

28 ¹²⁹ See Cal. Code Regs., tit. 2, § 615.1, subd. (a).

¹³⁰ Cal. Code Regs., tit. 2, § 641, subds. (a)-(b).

¹³¹ Cal. Code Regs., tit. 2, § 641, subds. (c)-(f).

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

6 Plainly understood, section 4903 binds CalVCB to any factual finding rendered by a court when
7 granting habeas relief, or a motion for new trial, or a certificate of factual innocence.¹³² Significantly,
8 this enumerated list omits any findings rendered by an appellate court on direct appeal.

9 Based upon this omission, the Attorney General insists that an appellate court's determinations
10 are not binding upon CalVCB. The Attorney General bolsters this plain reading of Penal Code section
11 4903 by noting similar omissions in Penal Code sections 1485.5 and 1485.55, which list the types of
12 court findings that bind CalVCB, as well as the legislative history for all of these statutes. The Attorney
13 General argues that the omission was intentional because appellate courts do not render factual
14 findings or credibility determinations on appeal; rather, appellate courts review the sufficiency of
15 evidence to support such findings by trial courts. The Attorney General therefore concludes that “no
16 determinations made by a court on direct appeal can bind the Board.”¹³³

17 White counters that the Attorney General's “overly technical reading” of the statutory language
18 is refuted by *Madrigal v. California Victim's Comp. & Gov. Claims Bd.* (2016) 6 Cal.App.5th 1108.¹³⁴ In
19 *Madrigal*, the Second District Court of Appeal construed an earlier version of Penal Code section
20 1485.5 to conclude that CalVCB was bound by all findings and credibility determinations rendered by a
21 court when granting habeas relief, even if the habeas proceeding was contested, and even if the
22 findings did not amount to a determination of innocence.¹³⁵ As emphasized by White, the *Madrigal*
23 court quoted from a legislative digest for the proposition that section 1485.5 required CalVCB “to
24 incorporate and be consistent with the factual findings, including credibility determinations, of the court
25 granting the writ *or reversing the conviction*, and ... those factual findings, including credibility

25 ¹³² See *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1045 (explaining process of statutory interpretation
26 “begin[s] with the statutory language, which is usually the most reliable indicator of legislative intent”).

27 ¹³³ AG Brief (6/1/18) at p. 13.

28 ¹³⁴ Honest's Response (7/10/18) (incorporating separate White Response); see also White's Response
(7/10/18) at pp. 5-7.

¹³⁵ *Madrigal, supra*, 6 Cal.App.5th at pp. 1118-1119.

1 determinations, [are] binding upon the [B]oard.”¹³⁶ White cites this italicized language as proof that the
2 Legislature and *Madrigal* court must have intended appellate court determinations that result in a
3 conviction’s reversal to be binding upon CalVCB, at least in the context of a finding of insufficient
4 evidence to support the conviction.¹³⁷

5 Ultimately, White’s invocation of case law and legislative analysis is unconvincing. The
6 statutory language in Penal Code section 4903 is plain and unequivocal. The enumerated list of
7 binding factual determinations does not include appellate court decisions. This plain meaning is not
8 undermined by *Madrigal*, which involved a different statute in the context of an entirely different legal
9 issue. Moreover, it appears that the *Madrigal* court used the terms “granting the writ” and “reversing
10 the conviction” interchangeably, as it characterized *Madrigal*’s conviction as a reversal, even though it
11 was vacated during a habeas proceeding and not on direct appeal.¹³⁸ This conclusion is not altered by
12 White’s argument that an appellate court may issue factual findings when conducting an original writ
13 proceeding,¹³⁹ as those findings by the appellate court would indeed be binding under section 4903 as
14 a habeas proceeding, not an appellate proceeding. Finally, this construction is consistent with the
15 legislative intent behind 4903, which emphasized that “[t]rial courts are trained jurists with substantial
16 trial experience....”¹⁴⁰

17 **B. Binding Court Determinations by Res Judicata**

18 While no statute binds CalVCB to an appellate court’s determinations on direct appeal, the
19 doctrine of res judicata does. Under this doctrine, a judgment is conclusive on the parties and their
20 privies. Res judicata therefore bars relitigation of claims that were, or could have been, raised in a prior
21 proceeding.¹⁴¹ The related doctrine of collateral estoppel similarly precludes relitigation of the same
22
23

24 ¹³⁶ *Id.* at p. 1119 (ellipses and brackets in original, italics added).

25 ¹³⁷ White’s Response (7/10/18) at pp. 7-12.

26 ¹³⁸ *Id.* at p. 1118 (“*Madrigal*’s conviction was reversed for legal error”).

27 ¹³⁹ White’s Response (7/10/18) at p. 11.

28 ¹⁴⁰ Sen. Com. On Public Safety, Analysis of Sen. Bill No. 618 (2013-2014 Reg. Sess., as amended April 15, 2013, p. 14.

¹⁴¹ *Noble v. Draper* (2008) 160 Cal.App.4th 1, 10-12.

1 issues and arguments that were already decided in the prior proceeding.¹⁴² Thus, an appellate court's
2 determination of an issue or claim between a claimant and the Attorney General is binding in a
3 subsequent CalVCB proceeding and may not be reconsidered on the same or different grounds that
4 were, or could have been, previously presented on appeal.

5 Admittedly, the First District Court of Appeal declined to apply collateral estoppel in a CalVCB
6 proceeding in *Tennison v. California Victim Compensation and Government Claims Board* (2007) 152
7 Cal.App.4th 1164, 1174-1180. In *Tennison*, the claimant applied for compensation from CalVCB after
8 obtaining a finding of factual innocence from the trial court based upon the district attorney's stipulation.
9 Since no statutory provision bound CalVCB to the court's findings at that time, the claimant invoked
10 collateral estoppel to compel CalVCB to grant his application. The *Tennison* court found collateral
11 estoppel did not apply to CalVCB for two reasons. First, the court reasoned the issue of innocence had
12 not actually been previously litigated by the parties, given the district attorney's stipulation. Second, the
13 court concluded that public policy would be undermined by applying collateral estoppel because the
14 underlying evidence did not support a finding of factual innocence and, at that time, the statutory
15 provisions governing factual findings of innocence and compensation for erroneously convicted felons
16 were entirely separate with no overlap.¹⁴³

17 Neither rationale in *Tennison* for avoiding collateral estoppel currently applies to White's case.
18 First, the sufficiency of evidence supporting White's first-degree murder conviction was thoroughly
19 litigated by the Attorney General before the Court of Appeal. Second, recent statutory changes render
20 a court's finding of factual innocence binding upon CalVCB and may even, in certain circumstances,
21 automatically compel a recommendation for compensation.¹⁴⁴ Accordingly, *Tennison* is entirely
22 distinguishable.

23 Applying res judicata and collateral estoppel here, numerous aspects of the Court of Appeal's
24 decision are binding upon CalVCB. Most significantly, CalVCB is bound to conclude, as the Court of
25

26 ¹⁴² *Ibid.*; see also 7 Witkin, Cal. Proc. 5th, Judgement: Res Judicata, § 413 (Supp. 2008).

27 ¹⁴³ *Tennison, supra*, 152 Cal.App.4th at pp. 1176, 1179-1180.

28 ¹⁴⁴ Pen. Code, §§ 851.865 (enacted 2016), 1485.55, subd. (d) (amended 2016); 4902, subd. (a) (amended 2016).

1 Appeal did, that *“there is insufficient evidence to establish White aided and abetted Ponce’s murder*
2 *under the direct aiding and abetting theory pursued at trial.”* Nonetheless, CalVCB is also bound to
3 conclude, as the Court of Appeal did, that a *“jury could reasonably infer that White was present at the*
4 *scene of Ponce’s murder.”* White’s presence at the murder scene *“does not, however, support a*
5 *reasonable inference that White intended to kill Ponce or that he knowingly and intentionally aided and*
6 *abetted the person who killed Ponce.”*¹⁴⁵ CalVCB accepts, as the Court of Appeal concluded, that even
7 though White was *“in the vicinity of the crime scene and the other murder suspects at the time of*
8 *Ponce’s death, there is no other evidence showing what White was doing that night.”*

9 Moreover, CalVCB may assume, as the Court of Appeal did, that *“White’s statement to his wife*
10 *establishes that he knew of Ponce’s murder because of his interactions with Honest and Smith on the*
11 *night of the murder,”* but that *“statement in no way reflects on White’s mental state at the time of, and*
12 *leading up to, Ponce’s murder.”*¹⁴⁶ Similarly, CalVCB must find, as the Court of Appeal did, that

13 *“White’s initial statements that he was not in Lancaster on the night of Ponce’s murder*
14 *and that he did not know Smith – statements that were later shown to be false – do not*
15 *tend to prove that he intended to kill Ponce or knowingly and intentionally aided killing*
16 *Ponce, even when those statements are considered in conjunction with the cell phone*
17 *records placing his phone near the location where Ponce was killed.”*¹⁴⁷

18 Ultimately, CalVCB must conclude, as the Court of Appeal did, that *“there is no evidence demonstrating*
19 *that White knew of a plan to kill Ponce or that he intentionally aided in Ponce’s killing.”*¹⁴⁸

20 CalVCB recognizes that all of the italicized determinations by the Court of Appeal are binding in
21 this proceeding. Distilled to their core, CalVCB may find, solely based upon the evidence presented
22 during the prosecution’s case-in-chief at trial, that White was present when Ponce was fatally shot by
23 Smith. However, CalVCB may not find, solely based upon that evidence, that White knew in advance
24 of Smith’s plan to murder Ponce, specifically intended to aid Smith commit that murder, and actually
25 aided or encouraged Smith commit that murder. Otherwise, White’s actions, while present at the scene
26 with Smith and Honest, are unknown.

26 ¹⁴⁵ White Ex. 1 at p. 18.

27 ¹⁴⁶ White Ex. 1 at p. 19.

28 ¹⁴⁷ White Ex. 1 at p. 20.

¹⁴⁸ White Ex. 1 at p. 18.

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 White’s trial was insufficient to support his
4 first-degree murder conviction, upon proof beyond a reasonable doubt, under an aider and abettor
5 theory. As acknowledged by White,¹⁴⁹ 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 White’s trial during the prosecution’s case-in-chief.¹⁵⁰ That evidence did not
8 include White’s testimony or hearsay statements from White’s codefendants Smith and Honest, nor did
9 that evidence include White and Honest’s most recent interviews and testimony at the CalVCB
10 proceeding. Thus, White’s insistence that the appellate court considered “the exact same evidence as
11 presented in this compensation proceeding” is incorrect.¹⁵¹

12 In sum, the appellate court’s binding determination that the evidence at trial cannot support a
13 rational inference that White aided and abetted Ponce’s murder does not preclude CalVCB from finding
14 that White has failed to demonstrate his actual innocence of Ponce’s murder.

15 **C. New Theories of Murder Culpability**

16 The parties disagree whether CalVCB may consider a new theory of guilt, which was not
17 presented to the jury during White’s criminal trial, when determining whether White has proven his
18 innocence in this proceeding. Penal Code section 187, subdivision (a), generally defines the crime of
19 murder as “the unlawful killing of a human being, or a fetus, with malice aforethought.” Prior to 2019,
20 Penal Code section 189 classified murder as “first degree” if, inter alia, the killing was “willful,
21 deliberate, and premediated,” or if it was “committed in the perpetration of, or attempt to perpetrate,” an
22 enumerated felony such as “carjacking, robbery, [or] burglary....”¹⁵² All other murders were “second
23 _____

24 ¹⁴⁹ White Response (7/10/18) at p. 11.

25 ¹⁵⁰ See Pen. Code, § 1118.1 (compelling entry of acquittal for insufficient evidence upon defendant’s
26 motion following prosecution’s case-in-chief).

27 ¹⁵¹ White Response (7/10/18) at pp. 11-12.

28 ¹⁵² Senate Bill (SB) 1437, enacted on September 30, 2018, amended Penal Code sections 188 and 189
to significantly change the requisite elements for felony-murder liability. Under these revised statutes,
which become effective January 1, 2019, felony-murder liability will only apply to a defendant, who was
not the actual killer and lacked a specific intent to kill, if that defendant was a major participant in the

1 degree.”¹⁵³ Penal Code section 31 explains that, in general, persons who aid and abet a crime are just
2 as guilty of that crime as the actual perpetrator. An aider and abettor’s vicarious culpability includes not
3 only the target crime he intended to assist, but also any non-target crime that is a natural and probable
4 consequence of the target crime.¹⁵⁴ A consequence is “natural and probable” if it falls within the normal
5 range of outcomes that may be reasonably expected to occur if nothing unusual has intervened.”¹⁵⁵

6 Multiple theories will support a murder conviction under Penal Code section 187, subdivision
7 (a). First, the defendant may be guilty of murder if he personally and intentionally killed another with
8 premeditation. Second, the defendant may be guilty of murder as an aider and abettor if he knew
9 another person intended to kill with premeditation, shared that intent, and assisted or encouraged the
10 killing. Third, prior to 2019, the defendant may be guilty of murder under the felony-murder rule if a
11 person was killed during the defendant’s commission of an enumerated felony like robbery or
12 carjacking. Fourth, prior to 2019, the defendant may be guilty of murder if he aided and abetted
13 another person’s crime for an offense other than first-degree murder, and murder was a natural and
14 probable consequence of the target crime.¹⁵⁶ The first three theories are classified as first-degree
15 murder; the latter is deemed second-degree.

16 As noted by the Attorney General,¹⁵⁷ a “murder charge under Penal Code section 187 places
17 the defense on notice of, and allows trial and conviction on, all degrees and theories of murder,
18 including first degree murder under section 189.”¹⁵⁸ “When an accusatory pleading charges ‘murder,
19

20
21 underlying felony and acted with reckless indifference to human life and the victim was not a peace
22 officer. These statutory changes, however, do not impact CalVCB’s determination as to whether White
23 was erroneously convicted in 2011 of Ponce’s murder under then-existing law. Accordingly, CalVCB
24 will consider the theories of culpability that were in effect at that time when evaluating whether Honest
25 has affirmatively demonstrated his innocence.

26 ¹⁵³ Pen. Code, § 189.

27 ¹⁵⁴ *People v. Chiu* (2014) 59 Cal.4th 155, 161-162.

28 ¹⁵⁵ *People v. Leon* (2008) 161 Cal.App.4th 149, 158.

¹⁵⁶ *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).

¹⁵⁷ AG Brief (6/1/18) at p. 15.

¹⁵⁸ *People v. Contreras* (2013) 58 Cal.4th 123, 149.

1 without specifying the degree,' it will be sufficient to charge murder in any degree.”¹⁵⁹ Thus, “a
2 defendant may be convicted of felony murder even though the information charged only murder with
3 malice.”¹⁶⁰ If multiple theories are presented to the jury to support a murder conviction, the jury need
4 not unanimously agree upon one of those theories. “It is settled that as long as each juror is convinced
5 beyond a reasonable doubt that the defendant is guilty of murder as that offense is defined by statute, it
6 need not decide unanimously by which theory he is guilty.”¹⁶¹ However, if the jury is presented with
7 only one theory at trial, an appellate court reviewing the sufficiency of evidence to support the murder
8 conviction may not, as a matter of due process, consider a new and alternative theory to support the
9 jury’s verdict.¹⁶²

10 Here, White was charged with an open count of murder, as a violation of Penal Code section
11 187 without specification as to degree or theory. Specifically, White was charged as follows:

12 “On or about October 7, 2008, in the County of Los Angeles, the crime of MURDER, in
13 violation of PENAL CODE SECTION 187(a), a Felony, was committed by ANTHONY
14 WAYNE SMITH, CHARLES ERIC HONEST AND DEWANN WESLEY WHITE, who did
unlawfully, and with malice aforethought murder MAURILLIO PONCE, a human being.”¹⁶³

15 The jury’s verdict found White “GUILTY of the crime of WILLFUL, DELIBERATE AND PREMEDIATED
16 FIRST DEGREE MURDER, victim MAURILLIO PONCE, in violation of Penal Code Section 187(a), a
17 felony, as charged in Count 1 of the information.”¹⁶⁴ While the charge did not specify the particular
18 theory of White’s culpability, the jury necessarily relied upon the sole theory presented at trial, which
19 was as an aider and abettor to Smith’s premediated murder.¹⁶⁵ Consequently, the appellate court was
20 precluded by due process from affirming White’s murder conviction based upon any other theory of
21

22 ¹⁵⁹ *People v. Carey* (2007) 41 Cal.4th 109, 132.

23 ¹⁶⁰ *People v. Morgan* (2007) 42 Cal.4th 593, 616.

24 ¹⁶¹ *People v. Jenkins* (2000) 22 Cal.4th 900, 1024-1025.

25 ¹⁶² *Griffin v. United States* (1991) 502 U.S. 46, 49 (“a general jury verdict was valid so long as it was
26 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”).

27 ¹⁶³ AG Ex. 19 at p. 300.

28 ¹⁶⁴ AG Ex. 19 at p. 722.

¹⁶⁵ White Ex. 1 at p. 20.

1 guilt, such as felony-murder or natural and probable consequence, even if supported by the
2 evidence.¹⁶⁶ For this reason, the appellate court expressly declined the Attorney General’s request to
3 consider the sufficiency of evidence under a natural and probable consequences theory.¹⁶⁷

4 This constitutional constraint does not apply in this CalVCB administrative proceeding. Penal
5 Code section 4900 requires a claimant seeking compensation to demonstrate, by a preponderance,
6 that he or she is actually innocent of “the crime with which he or she was *charged*...”¹⁶⁸ Compensation
7 is warranted under Penal Code section 4904 upon a showing that “the crime with which the claimant
8 was *charged* was either not committed at all, or if committed, was not committed by the claimant...”¹⁶⁹
9 Thus, “the question to be answered [by CalVCB] is not whether there is sufficient evidence to establish
10 culpability, but whether or not claimants can establish they are not culpable.”¹⁷⁰ The burden falls upon
11 the claimant to demonstrate his actual innocence of the charged crime under all conceivable theories,
12 not merely negate a particular theory advanced at trial.

13 Because White was charged with murder as a non-specific violation of Penal Code section 187,
14 subdivision (a), White bears the burden to demonstrate his innocence of that murder under any legal
15 theory that may support such a charge in this proceeding. This includes felony-murder and natural and
16 probable consequence, even though neither theory was presented at White’s jury trial. As noted by the
17 Attorney General, this conclusion is supported by the plain text of Penal Code section 4900, consistent
18 with the claimant’s burden of proof in this civil proceeding, and generally promotes public policy by
19 allowing the Board to consider whatever legal theory best supports the evidence before it, which often
20 includes new evidence not known by the trial prosecutor.¹⁷¹

21 This result is supported by *People v. Etheridge* (2015) 241 Cal.App.4th 800, 810, a case cited
22 by White for the opposite conclusion.¹⁷² In *Etheridge*, the defendant sought a finding of factual

24 ¹⁶⁶ See *Griffin, supra*, 502 U.S. at p. 49; *Guiton, supra*, 4 Cal.4th at p. 1129.

25 ¹⁶⁷ White Ex. 1 at p. 20.

26 ¹⁶⁸ Pen. Code, § 4900 (italics added).

27 ¹⁶⁹ Pen. Code, § 4904 (italics added).

28 ¹⁷⁰ *Tennison, supra*, 152 Cal.App.4th at p. 1191.

¹⁷¹ AG Brief (6/1/2018) at pp. 14-20.

¹⁷² Honest’s Brief (5/3/2018) at pp. 10, 14; White Response (7/10/2018) at pp. 13-14.

1 innocence for a robbery conviction, which had been reduced to a lesser-included petty theft due to
2 insufficient evidence that the defendant used force or fear when he took another's property. Under
3 Penal Code section 1485.55, the defendant was entitled to such a finding upon proof that he was
4 innocent of "*the crime with which he or she was charged.*" The *Etheridge* court noted identical
5 language in Penal Code section 4900 and, therefore, examined its legislative history for context. The
6 court concluded that a defendant is entitled to a finding of factual innocence only upon proof "that he or
7 she was 'innocent' in the sense that *he or she did not perform the acts 'that characterize the crime' or*
8 *are elements of the crime....*"¹⁷³ The *Etheridge* court considered "whether '*the crime*' pertains to *the*
9 *specific charge or the underlying acts of criminality.*" The *Etheridge* court 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."¹⁷⁴

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

18 This conclusion is not altered, whatsoever, by the Supreme Court's decision in *United States v.*
19 *Patterson* (1893) 150 U.S. 65, another case cited by White.¹⁷⁵ In *Patterson*, the Supreme Court
20 interpreted a federal statute that awarded compensation to commissioners "for hearing and deciding on
21 criminal charges." A commissioner claimed he was entitled to payment under this statute for
22 conducting hearings to determine whether a warrant should issue. The Supreme Court disagreed. As
23 the Court explained, the commissioner's probable-cause hearings were necessarily conducted before
24 "criminal charges" had been filed and, therefore, did not qualify for compensation. The Court reached
25 this conclusion by defining a "criminal charge" as something that "exists only when a formal written

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27 ¹⁷³ *People v. Etheridge, supra*, 241 Cal.App.4th at pp. 809-810 (emphasis added).

28 ¹⁷⁴ *Id.* at p. 810 (emphasis added).

¹⁷⁵ Honest's Brief (5/3/2018) at pp. 14-15; White Response (7/10/2018) at pp. 13-14.

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

8 Finally, *res judicata* principles do not preclude consideration of an alternative theory of guilt in
9 this proceeding. The Court of Appeal solely considered the sufficiency of evidence to support White’s
10 conviction for first-degree murder as an aider and abettor. The appellate court did not consider whether
11 White’s murder conviction may have been affirmed on a different theory, such as felony-murder or
12 natural and probable consequence. As previously explained, the appellate court was barred by due
13 process from upholding White’s criminal conviction based upon either of these different theories that
14 were not provided to the jury.¹⁷⁶ Accordingly, *res judicata* does not bar their consideration in this
15 administrative proceeding.

16 **D. Natural and Probable Consequence Theory of Second-Degree Murder**

17 White alternatively argues that, even if CalVCB may consider a new theory of culpability as a
18 general matter, CalVCB still may not consider the natural and probable consequence theory in his
19 specific case because that theory would only support a second-degree murder conviction, whereas he
20 was convicted of first-degree murder.¹⁷⁷ White insists that only those theories that would support a
21 first-degree murder conviction may be relied upon by CalVCB to deny his claim. Not so.

22 Penal Code section 4900 plainly requires a claimant to demonstrate his innocence “of the crime
23 with which he was charged....” As is common practice, White was charged with an open count of
24 murder under Penal Code section 187, which did not specify the particular degree.¹⁷⁸ Consequently,
25 the crime “charged” against White included both first and second-degree murder. Thus, even if White

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27 ¹⁷⁶ See *Griffin, supra*, 502 U.S. at p. 49; *Guiton, supra*, 4 Cal.4th at p. 1129.

28 ¹⁷⁷ White Brief (5/3/2018) at pp. 25-28.

¹⁷⁸ Levenson, *California Criminal Procedure*, § 11:7 Form of allegations – Murder (Dec. 2017 Update).

1 could prove his innocence of first-degree murder, he would not be entitled to any compensation unless
2 he could also prove his innocence of second-degree murder.

3 Moreover, a criminal charge in an accusatory pleading necessarily encompasses all lesser-
4 included offenses.¹⁷⁹ A single charge of a greater offense automatically provides adequate notice, in
5 accordance with due process, of the prosecution’s intent to prove all necessarily included lesser-
6 offenses.¹⁸⁰ Compensation under Penal Code section 4900, therefore, requires proof of innocence for
7 not only the charged offense, but all lesser-included offenses as well. Compensation must be denied
8 for any claimant who demonstrates his innocence of the charged offense, yet remains guilty of a lesser-
9 included offense. Even if the claimant served a longer term of imprisonment than authorized by the
10 lesser-included offense, he still would not be entitled to any compensation due to his inability to
11 demonstrate his innocence of “‘the acts that characterize the crime’ or are elements of the crime....”¹⁸¹
12 This conclusion is consistent with *Etheridge*, which rejected a finding of factual innocence for a
13 defendant who was innocent of his conviction for robbery, yet still guilty of the lesser-included offense
14 of petty theft with a prior.¹⁸² Any suggestion in *Etheridge* that a claimant may be entitled to
15 compensation for the excess imprisonment served beyond the maximum term for the lesser-included
16 offense is dicta.

17 But even assuming *Etheridge*’s dicta is controlling, a claim for compensation may not be
18 granted absent proof of both innocence and injury. As confirmed by Penal Code section 4904, a
19 claimant must demonstrate, by a preponderance, that he “has sustained injury through his [] erroneous
20 conviction and imprisonment.....” To the extent a claimant may demonstrate his innocence of the
21 actual charge for which he was convicted, yet fails to demonstrate his innocence of a lesser-included
22 offense, his injury is limited. In that case, the injury solely amounts to the excess length of
23 imprisonment served beyond the maximum sentence for the lesser-included offense. First-degree

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25 ¹⁷⁹ Pen. Code, § 1159 (permitting guilty verdict “of any offense, the commission of which is necessarily
included in that with which he is charged, or of an attempt to commit the offense.”)

26 ¹⁸⁰ *People v. Lohbauer* (1981) 29 Cal.3d 364, 369.

27 ¹⁸¹ *People v. Etheridge, supra*, 241 Cal.App.4th at p. 810 (citing *Ebberts v. State Bd. Of Control* (1978)
84 Cal.App.3d 329, 355 (denying compensation where defendant found not guilty by reason of
insanity)).

28 ¹⁸² *Id.* at pp. 808-810.

1 murder is punishable by a minimum of 25 years to life imprisonment, whereas the lesser-included
2 offense of second-degree murder is punishable by 15 years to life. White served less than five years
3 imprisonment for his first-degree murder conviction. Thus, even if White could demonstrate his
4 innocence of first-degree murder but not second-degree murder under a natural and probable
5 consequence theory, no compensable injury occurred under *Etheridge's* dicta.

6 Overall, CalVCB may consider a natural and probable consequence theory when determining
7 whether White has demonstrated his actual innocence of Ponce's murder.

8 **E. Felony-Murder Theory**

9 White further insists that CalVCB may not consider felony-murder theory as a new theory of
10 culpability in his particular case because he was never charged with any other felony besides
11 murder.¹⁸³ While the omission of a separate felony charge may preclude a criminal conviction for
12 felony-murder as a matter of due process, no such constitutional limitation applies in this administrative
13 proceeding, wherein White bears the burden to demonstrate his entitlement to compensation.

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

18 **F. Insufficient Proof of Innocence**

19 After considering the entire administrative record and giving binding effect to the appellate
20 court's determinations set forth above, White has failed to demonstrate his innocence by a
21 preponderance of the evidence. To be sure, many questions remain unanswered as to what exactly
22 transpired on the early morning of October 7, 2008. Nonetheless, after considering the appellate
23 court's conclusions as to the permissible inferences from the trial evidence, in addition to the new
24 evidence presented in this proceeding, White has failed to demonstrate that he is more likely innocent,
25 than guilty, of Ponce's murder, whether considered under a theory of natural and probable
26 consequences, felony-murder, or even as an aider and abettor to murder.

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28 ¹⁸³ White Response (7/10/2018) at p. 14.

1 **1. Appellate Court Inference**

2 As the Court of Appeal acknowledged, it may be reasonably inferred, solely from the trial
3 evidence during the prosecution’s case-in-chief, that White was present when Ponce was brutally
4 assaulted by Honest and fatally shot five times by Smith at a remote area in Lancaster.¹⁸⁴ In
5 accordance with the appellate court’s decision, CalVCB infers this conclusion.

6 Although White’s mere presence during the assault and murder was insufficient to prove his
7 guilt as an accomplice to premediated murder, in this proceeding, the burden of proof rests upon White
8 to affirmatively demonstrate his innocence. Thus, White must show he is more likely innocent, than
9 not, of a violent murder that was committed in his presence by his friend Honest and his acquaintance
10 Smith. White fails to satisfy this burden with false denials that he was never there and an incredible
11 account of his actions that evening.

12 **2. Logical Inferences**

13 Additional inferences from the administrative record circumstantially implicate White in Ponce’s
14 murder. First, Smith devised a plan to commit some type of criminal act, with the assistance of Honest
15 and White, on the night of October 6, 2008, in the vicinity of Santa Clarita, for which all three expected
16 to receive monetary compensation. Ponce may have been a willing participant initially, or perhaps he
17 was the intended victim all along. To execute the plan, White drove from his home in Bloomington to
18 Honest’s home in Los Angles, and then Smith’s condominium in Marina del Rey. Thereafter, Smith and
19 Honest drove together from Marina del Rey to Santa Clarita in Smith’s pickup truck, followed by White
20 driving his Chevy Impala. The threesome eventually met up with Ponce in Santa Clarita. It is unclear
21 whether something went awry with the plan.

22 The precise nature of Smith’s illegal plan remains unknown. White insists that the agreed-upon
23 plan merely consisted of transporting a commercial truckload of unspecified, stolen goods, but only if a
24 commercial truck was provided for him.¹⁸⁵ By comparison, the Attorney General posits that the plan
25 was to rob Ponce of his money, which Smith, Honest, and White believed would amount to thousands
26 of dollars, and they met in Santa Clarita based upon a mistaken belief that Ponce still lived in nearby

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28 ¹⁸⁴ White admits “overwhelming evidence” demonstrates that Smith killed Ponce. (White App. at p. 17.)

¹⁸⁵ White Response (7/10/2018) at pp. 18-19.

1 Palmdale.¹⁸⁶ Alternatively, the district attorney argued at trial that the plan all along was to kill Ponce,
2 although the appellate court found insufficient evidence to support a conviction on this basis. Given the
3 independent confirmation of Ponce's business dealings with Smith, it is possible that the original plan
4 involved some type of truck cargo heist in Santa Clarita. However, White's version of this plan is not
5 plausible. Regardless, the precise objective of this original plan need not be resolved in order to
6 determine whether White has satisfied his burden of proving his innocence.

7 Second, CalVCB infers, based upon their coordinated travel, that Smith, Honest, and White
8 arrived in Santa Clarita around 11:00 p.m., and then they met up with Ponce an hour later around
9 midnight. Afterwards, all four men eventually travelled north to Lancaster, arriving around 1:00 a.m.
10 The four men likely rode in three separate vehicles, which included Ponce and his Navigator, White in
11 his Impala, and Honest in Smith's pickup. It remains unknown, but ultimately inconsequential, whether
12 Smith rode this portion of the trip in the pickup or the Navigator.

13 Third, it was not likely coincidental that all four men eventually met up a second time at the
14 remote intersection of West Avenue I and 110th Street West, near Ponce's home in Lancaster. Either
15 the men agreed in advance to rendezvous there, or else the three cars followed each other to that
16 location from Santa Clarita.¹⁸⁷ A prearranged meeting at this particular location seems less likely, given
17 its seemingly random location in a rural area without any identifiable landmarks nearby, as well as
18 Honest and White's apparent lack of familiarity with the city of Lancaster. Accordingly, a caravan of
19 sorts among the three vehicles appears to be the most plausible explanation.

20 Fourth, the precise purpose of the Lancaster meeting remains unknown, but it was certainly
21 criminal in nature. It is suspicious that these four men travelled such a long distance to a remote
22 location in the middle of the night. The suspicions increase after considering that this meeting required
23 Smith, Honest, and White to travel even farther away from their homes in Marina del Rey, south Los
24 Angeles, and Bloomington, respectively, and reassemble from Santa Clarita to Lancaster, just a few
25 miles from Ponce's home. Most significantly, the meeting lasted less than 30 minutes and ended with

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27 ¹⁸⁶ AG Brief (6/1/2018) at pp. 20-26.

28 ¹⁸⁷ This inference is supported by the absence of any phone calls between the four men while driving 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 Ponce being brutally beaten and fatally shot. All of these circumstances are consistent with an
2 intended purpose to rob Ponce, or to assault Ponce, or to outright kill Ponce, possibly as retribution for
3 whatever had just occurred in Santa Clarita. These circumstances are not consistent with an intended
4 purpose to drive a commercial truck containing stolen goods, as claimed by White. Accordingly, even
5 assuming all four men initially planned to steal a commercial truck load of cargo in Santa Clarita, that
6 initial plan does not explain their presence, hours later, at a dark and remote area of Lancaster that
7 ended with Ponce's brutal murder.

8 Fifth, CalVCB infers that, at some point during this mysterious meeting in Lancaster, Ponce was
9 assaulted by Honest, possibly with assistance from White. White's assistance is suggested by the
10 multiple bruises on Ponce's head, stomach, back, thigh, and arm, which may have been inflicted by
11 both Honest and White simultaneously kicking Ponce, minutes before Smith fatally shot Ponce. This
12 scenario seems more plausible than if White had merely stood by watching these violent events unfold,
13 particularly since Smith and Honest had invited White to this location, and White had prior experience
14 providing armed security. This scenario is also consistent with White's response to his wife during their
15 telephone conversation, shortly after his arrest for murdering Ponce, when she cryptically asked
16 whether White had "protect[ed]" himself and "clean[ed] up after" himself when eating.¹⁸⁸ White
17 responded with positive assurances, rather than a proclamation of innocence. He failed to offer
18 evidence to suggest that he only watched when Ponce was assaulted by Honest and shot by Smith.
19 Instead, White incredibly denies being present at all. Rather than demonstrating innocence, White's
20 false statements reveal his consciousness of guilt.¹⁸⁹ Though far from certain, the most plausible
21 version of events, based upon all of the evidence before CalVCB, is that White, together with Honest,
22 assaulted Ponce by kicking him.

23 The possibility that White may have assaulted Ponce with Honest is not precluded by the Court
24 of Appeal's decision. The appellate court found sufficient evidence to infer that White was present at
25 the scene of the murder and no evidence showing what White was actually doing when the murder

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27 ¹⁸⁸ AG Exs. 20 at pp. 702-707; 21.

28 ¹⁸⁹ See CALCRIM No. 362 (permitting inference of consciousness of guilt from defendant's false statements about crime).

1 occurred.¹⁹⁰ Since White bears the burden in this proceeding to demonstrate that he did not murder
2 Ponce, the absence of any credible evidence showing what he was doing while Ponce was brutally
3 assaulted and shot is ultimately fatal to his claim.

4 Sixth, CalVCB infers that Ponce lost possession of his Navigator to Smith, most likely as a result
5 of a robbery, during the Lancaster meeting.¹⁹¹ A robbery may be inferred by Ponce's initial possession
6 of his Navigator; Ponce's assault and murder during the Lancaster meeting with Smith, Honest, and
7 White; and Smith's continued possession of the Navigator one month later. A robbery would explain
8 the reason for Honest and possibly White's decision to assault Ponce, as it would enable Smith to
9 forcibly take Ponce's Navigator from his immediate presence. A robbery would also explain White's
10 admission to police that he believed Smith would pay him \$5,000 for his services that night. Viewed
11 overall, the evidence suggests the possibility that Honest and White willingly aided Smith's robbery of
12 Ponce by assaulting him.

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 White admits, "Overwhelming
17 evidence points to Anthony Smith as the person who murdered Ponce."¹⁹²

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.

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27 ¹⁹⁰ White. Ex. 1 at pp. 18-19.

28 ¹⁹¹ CALCRIM No. 1600 (defining robbery as taking the victim's property by use of force or fear from the victim's immediate presence).

¹⁹² White Post-Hearing Brief (5/3/2018) at p. 20.

1 Ninth, between 1:40 a.m. and 3:37 a.m., all three men in three separate cars drove in a caravan
2 of sorts from Lancaster, through Santa Clarita, and back to Los Angeles, covering approximately 80
3 miles in two hours. For at least 11 minutes between 2:38 a.m. and 2:49 a.m., all three stopped near
4 Lake Balboa and the Sepulveda Basin Wildlife Reserve in Sherman Oaks, possibly to clean up and/or
5 dispose of the murder weapon. Thereafter, the men eventually went their separate ways to return
6 home. Although White never spoke to Smith again, White remained friends with Honest.

7 Considered overall, these inferences from the administrative record strongly suggest that White
8 is guilty of Ponce's murder, either as a natural and probable consequence of assault, or felony-murder
9 during a robbery, or even as an aider and abettor to premediated murder. It matters not whether these
10 circumstances rise to the level of demonstrating White's guilt beyond a reasonable doubt or by a
11 preponderance because the burden remains upon White to demonstrate, by a preponderance, that he
12 did *not* murder Ponce under any of these plausible theories.

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

14 For liability as a natural and probable consequence of assault, White must have specifically and
15 intentionally aided an assault upon Ponce that naturally and probably resulted in Ponce's murder.¹⁹³ As
16 detailed above, Ponce sustained multiple bruises that might have been inflicted by two separate
17 individuals kicking him. As determined by CalVCB, White was present when Ponce was beaten by
18 Honest and fatally shot by Smith. White's presence at the crime scene was at the request of Honest
19 and Smith, both of whom had killed before, and for which White expected to be paid a large sum.
20 White fled the scene at the same time as Honest and Smith, stopping along the way to meet up with
21 them near a large body of water. White subsequently implied to his wife that he had taken preventative
22 measures to avoid leaving his DNA at the crime scene. White continued to remain friends with Honest
23 years after Ponce's death, even after they were both imprisoned for Ponce's murder. Finally, White
24 revealed a consciousness of guilt by falsely denying he was present when the murder occurred. Even
25 if this inculpatory evidence may carry some weight in this administrative proceeding, the burden
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28 ¹⁹³ CALCRIM No. 540 (defining natural and probable theory of murder pre-2019).

1 remains upon White to demonstrate, by a preponderance, either that he did *not* assault Ponce, or that
2 the assault did *not* naturally and probably result in Ponce's murder by Smith.¹⁹⁴

3 **b. Felony-Murder to Robbery**

4 For felony-murder liability, White must have intentionally aided Smith's robbery of Ponce, and,
5 during that robbery, a killing occurred.¹⁹⁵ As detailed above, the reason White might have assaulted
6 Ponce, together with Honest, was to facilitate Smith's robbery of Ponce's Navigator. This possibility is
7 not negated by the appellate court's conclusion that White's actions while at the murder scene were
8 unknown. CalVCB assumes this mere possibility does not carry any inculcating weight in this
9 proceeding. Nonetheless, the burden remains upon White to demonstrate, by a preponderance, that
10 he did *not* assist Smith commit a robbery of Ponce's Navigator, during which Ponce was killed.¹⁹⁶

11 **c. Accomplice to Premeditated Murder**

12 For liability under this theory, White must have specifically intended to assist Smith's
13 premeditated murder of Ponce. CalVCB acknowledges the appellate court's binding determination that
14 the trial evidence failed to prove, beyond a reasonable doubt, that White entered into an agreement
15 with Smith to assist Smith kill Ponce. Nevertheless, the evidence still suggests the possibility that
16 White might have done so. White was present when Smith repeatedly shot Ponce, even while Ponce
17 was on his knees. White arrived at this location at Smith's invitation, after having travelled with Smith
18 and Honest from Smith's home in Marina del Rey to Santa Clarita and then to the remote Lancaster
19 location where the killing occurred. Smith and Honest had killed before, and White had spoken by
20 telephone twice to Smith on the day before the killing and three times to Honest shortly before the
21 killing (i.e., 8:40 p.m., 1:03 a.m., 1:05 a.m.), followed by five more conversations shortly thereafter (i.e.,
22 2:30 a.m., 3:02 a.m., 3:03 a.m., 3:37 a.m., and 5:19 a.m.). Thus, White had an opportunity to reach an
23 agreement with Smith and Honest to assist in Ponce's premeditated murder.

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27 ¹⁹⁴ See *supra* § IV, (D) (discussing CalVCB's consideration of natural and proximate cause theory).

28 ¹⁹⁵ CALCRIM No. 540B (defining felony-murder elements pre-2019).

¹⁹⁶ See *supra* § IV, (E) (discussing CalVCB's consideration of felony-murder theory).

1 With this backdrop, White falsely insists he was not present during Ponce's murder, revealing
2 his consciousness of guilt.¹⁹⁷ He does not claim, for instance, that he was surprised when these violent
3 events unfolded in his presence. Nor does he claim, for example, that he urged Smith not to shoot
4 Ponce, or that he attempted to summon medical aid for Ponce after the shooting, or that he chastised
5 Honest for inviting him along to such a violence act. Under these circumstances, it remains possible
6 that White shared Smith's murderous intent, as required for guilt as an accomplice to premeditated
7 murder.

8 The appellate court's conclusion that the trial evidence failed to support any such inference
9 does not preclude this possibility.¹⁹⁸ Notably, the appellate court's determination was based upon
10 limited information that excluded recent and incredible statements from White, Honest, and Smith.
11 Moreover, the absence of sufficient evidence to support an inference of murderous intent is not
12 equivalent to a determination that such intent was actually lacking. Since White's actions and intent are
13 unknown, it remains possible that he aided Smith's premeditated murder of Ponce.

14 Although CalVCB does not give this mere possibility of an agreement to kill any incriminating
15 weight in this proceeding, White still bears the burden to prove, by a preponderance, that he did *not*
16 specifically intend to aid Smith's premeditated murder. Overall, the logical inferences from the
17 administrative record, considered along with the appellate court's binding determinations from the trial
18 evidence, circumstantially implicate White in Ponce's murder under multiple theories of liability to
19 varying degrees of probability.

20 **3. Smith Is Not Credible**

21 White relies extensively upon Smith's declaration as affirmative proof of his innocence.¹⁹⁹
22 However, Smith is not at all credible. As a general concern, Smith is a convicted three-time murderer,
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26 ¹⁹⁷ See CALCRIM No. 362 (permitting inference of consciousness of guilt from defendant's false
27 statements about crime).

28 ¹⁹⁸ White Ex. 1 at p. 19.

¹⁹⁹ White Response (7/10/2018) at p.18.

1 with special circumstances for torture and kidnapping. Such conduct reveals the depth of Smith's
2 willingness "to do evil."²⁰⁰ As such, it is difficult to trust Smith's representations.

3 Also, Smith has a significant motivation to lie about the events surrounding Ponce's death,
4 despite White's contrary claim.²⁰¹ Smith has been tried twice for murdering Ponce, both of which
5 resulted in a mistrial. Thus, Smith may still be prosecuted. Consequently, Smith may be motivated to
6 appease White, who may be a potential witness against him. True, Smith is already serving three
7 concurrent terms of life without possibility of parole, such that an additional life sentence for Ponce's
8 murder may appear superfluous. However, Smith would be eligible for the death penalty if retried for
9 Ponce's premeditated murder, given the special circumstance of his prior murder convictions.²⁰² And
10 even if Smith avoided the death penalty, a fourth murder sentence may adversely impact his terms of
11 confinement in prison.²⁰³

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

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24 ²⁰⁰ *People v. Castro* (1985) 38 Cal.3d 301, 315 (defining "moral turpitude" in context of felony
impeachment to include "general readiness to do evil").

25 ²⁰¹ White Post-Hearing Brief (5/2/2018) at p. 22 ("He has nothing whatsoever to gain from lying for the
benefit of White"); White Objections to PD (3/5/2018) at p. 6 (same).

26 ²⁰² Pen. Code, § 190.2, subd. (a)(2) (list of enumerated "death penalty" special circumstances includes
"defendant was convicted previously of murder in the first or second degree").

27 ²⁰³ 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 second statement to police later that same day, Smith claimed that he did not actually see
2 Ponce in Compton when he took possession of the Navigator and merely assumed he was present
3 somewhere nearby. Smith insisted that he and Ponce had previously agreed upon the location for this
4 exchange, but he could not explain how the person who took Ponce's Navigator on the night of his
5 murder would have known to deliver the Navigator to this prearranged location. Smith eventually
6 admitted to having multiple discussions with Ponce on the evening before his death, about a truck
7 cargo heist, and Smith further admitted driving to Santa Clarita to commit that heist. However, Smith
8 denied ever encountering Ponce, despite the fact that Ponce was also present in the vicinity of Santa
9 Clarita and was later found in possession of Ponce's Navigator and cell phone. Smith was also found
10 in possession of the same caliber bullets used to fatally shoot Ponce, yet a firearm of that same caliber
11 was not present. Overall, neither of Smith's exculpatory statements to police are believable.

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

18 Ultimately, Smith's declaration is not trustworthy. Contrary to Smith's claim that he was never in
19 Honest's presence on the night of Ponce's murder, Honest once admitted that Smith had driven behind
20 him from the Palmdale area to Culver City, where they both stopped, and Honest turned over Smith's
21 pickup to Smith. Smith's claim is further refuted by the cell phone evidence, which demonstrates that
22 Smith, Honest, and White were together on the night of October 6, 2008, and the early morning of
23 October 7, 2008. As previously detailed, the three met at Honest's home in Los Angeles, then traveled
24 to Smith's condominium in Marina del Rey, before heading north to Santa Clarita, and eventually farther
25 north to Lancaster, before all three suddenly started driving south back towards Los Angeles, stopping
26 near Lake Balboa and the Sepulveda Basin Wildlife Reserve on their way home. Logically, White and
27 Honest could not have known where to find Ponce and Smith in Lancaster unless they had been
28 together in Santa Clarita, and White, Honest, and Smith could not have known when to leave Lancaster

1 unless they had been together at the scene of Ponce's murder. Given Smith's misrepresentation on
2 these key points, CalVCB finds his entire declaration incredible.²⁰⁴

3 **4. Honest Is Not Credible**

4 White cites to Honest's account as corroborating evidence of his innocence.²⁰⁵ Honest testified
5 at the CalVCB hearing that he was not present when Ponce was murdered. Though not necessarily
6 exculpatory of White, Honest's testimony is viewed with caution.

7 At the outset, Honest's credibility is generally impeached by his 1995 manslaughter conviction
8 for fatally shooting another man nine times. Honest further admits participating in a fraudulent scheme
9 with Smith involving thousands of dollars. Thus, Honest's demonstrated "willingness to do evil" and to
10 engage in deceitful behavior warrant skepticism when considering his claims of innocence for Ponce's
11 murder.

12 Moreover, Honest is inherently biased. Like White, Honest is seeking a recommendation for
13 compensation from CalVCB in the amount of \$197,960 based upon his own claim of innocence for
14 Ponce's murder. Honest cannot admit White's guilt without implicating himself too.

15 Honest's credibility is further eroded by his own inconsistent statements surrounding Ponce's
16 death. Honest initially told police that he did not recognize Ponce and only later admitted to meeting
17 Ponce once, sometime in June 2008. Honest also initially told police that he could not recall going to
18 Lancaster in October 2008, and only later admitted going to the Palmdale area on the night of Ponce's
19 death, ostensibly to steal a load of truck cargo. In addition, Honest initially denied meeting up in person
20 with White on the night of Ponce's death, but then he later admitted that he did, though supposedly only
21 when both were already headed back home. At the conclusion of Honest's first police interview, he
22 suggested that he could incriminate Smith in Ponce's death, yet Honest has since denied any
23 knowledge about Ponce's death. Honest also admitted that he agreed to drive Smith's truck after Smith
24 agreed to take Ponce's Navigator to chop up, supposedly at Ponce's request months before his
25 murder.

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27 ²⁰⁴ 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").

²⁰⁵ White Objections to PD (3/5/2018) at p. 8.)

1 Significantly, Honest admitted to the Attorney General in 2016 that Smith had followed behind
2 him in a separate vehicle while driving back to Culver City, where they both stopped, and then Smith
3 took back his pickup from Honest. Honest even insisted that the vehicle driven by Smith was not
4 Ponce's Navigator. Honest's admission that Smith drove behind him from Lancaster to Culver City is
5 inferentially corroborated by the cell phone data, which shows Honest and Smith both in that area at
6 3:19 a.m. on October 7, 2008. This admission seemingly refutes White's insistence that he never met
7 Smith, since presumably Smith would have also stopped along the 14 Freeway when Honest met up
8 with White that night while driving back home. It also refutes Smith's declaration that he never saw
9 Honest or White during this period of time. Evidently Honest realized the significance of his admission
10 when he subsequently testified, to the contrary, that he never saw Smith that evening and, instead,
11 merely dropped off the pickup at Smith's condominium. Honest's attempt to explain this inconsistency
12 as merely a lapse in memory is not, persuasive.

13 Other aspects of Honest's account are refuted by independent evidence. For example, Honest
14 testified at the CalVCB hearing that he had both of his cell phones in his possession all night, and he
15 had merely used one phone to check the messages for the other phone. This explanation is refuted by
16 the cell phone location data, which demonstrated that Honest's two phones communicated with each
17 other five times between 2:00 and 3:00 a.m., and that both phones were in different locations during
18 this one-hour window. Similarly, Honest testified that, on the night of Ponce's murder, he remained
19 parked somewhere in the vicinity of Palmdale and only started driving home after receiving a call from
20 Smith informing him that the deal was off. However, Honest did not receive any calls from Smith
21 between 11:10 p.m., when Honest was near Sand Canyon in Santa Clarita, and 1:05 a.m., when
22 Honest was farther north in the Lancaster area, or 2:05 a.m., when Honest was in Acton, approximately
23 25 miles south of the crime scene. In fact, Smith's cell phone did not communicate with Honest's cell
24 phone until 3:19 a.m., when Honest called Smith while both were located in Culver City. Thus,
25 Honest's testimony on this point is refuted by the absence of any telephone calls between Honest and
26 Smith while in the area of Palmdale.

27 Finally, Honest's account is unbelievable. According to Honest, he had one conversation with
28 Smith about a last-minute plan to steal some tires in the Palmdale area. Honest agreed to help, even

1 though he did not know where he was supposed to pick up the tires, or how many tires he was
2 supposed to take, or how much money he was supposed to receive as payment for his help. Honest
3 recruited White to drive a commercial truck just in case one needed to be driven, for which White
4 expected to be paid \$5,000. Despite knowing so little, all three men then travelled separately, in
5 different vehicles, to the Palmdale vicinity, even though neither Honest nor White knew the final
6 destination where the tire theft was to occur, and even though all three would presumably need to work
7 together to pull off the plan. Then, after traveling so far and waiting alone for hours, Honest decided to
8 return home, without encountering Smith or Ponce, and without ever learning the reason why the plan
9 was called off, not even years later. Honest's story is incredible.

10 **5. White Is Not Credible**

11 White testified at the CalVCB hearing, as well as at his criminal trial, that he is innocent of
12 Ponce's murder. White denied being present when the murder occurred and further denied ever
13 meeting Smith or Ponce that night. If believed, White's testimony would provide affirmative evidence of
14 his actual innocence. However, White's testimony is not at all credible. It is noteworthy that the judge
15 who presided over White's trial opined that "[t]here were certain points [White] testified unbelievably,
16 and it seems that the jury did not believe him."²⁰⁶ Furthermore, White's prior misdemeanor conduct
17 involving moral turpitude indicates a general willingness to lie.

18 In this proceeding, White's credibility is undermined by the inconsistencies in his own account.
19 For example, when first questioned by police, White denied performing any side jobs with Honest or
20 knowing Smith, yet he later admitted speaking to Smith twice over the phone and agreeing to assist
21 Honest and Smith steal a truck cargo load in exchange for \$5,000. In addition, White initially told police
22 that he could not recall why he was in the Lancaster area on the night of Ponce's murder, suggested he
23 may have been at a bar or with a lady, and then eventually claimed he was parked at a gas station or
24 rural desert area waiting to hear from Honest about the planned cargo theft. White also told police that
25 Honest drove his (Honest) Dodge Magnum that night, yet White later told police Honest drove Smith's
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28 ²⁰⁶ AG Ex. 26 at p. 6016.

1 green pickup. White's shifting version of events when confronted with contrary evidence ultimately
2 precludes confidence in any of his representations.

3 White's recorded conversation with his wife also undermines his claim of innocence. The
4 conversation confirms that, by the time of his arrest in 2010, White had already confided to his wife
5 Perez about Ponce's murder, contrary to his claim that he only learned about Ponce's death when
6 police interrogated him after his arrest. Specifically, when Perez asked what he had been charged
7 with, White responded "the murder," and Perez did not ask for any details, such as who the victim was,
8 when it occurred, or why the police suspected White. CalVCB rejects White's assertion that he referred
9 to "a murder," rather than "the murder," as reported in the transcript, although the distinction is
10 ultimately insignificant to evaluating the oddity of Perez' response. Also, the exchange between Perez
11 and White as to whether he "protect[ed]" himself and "clean[ed] up after" he ate, immediately after
12 White advised Perez to wait on bail because he would be released if the DNA did not match, further
13 confirms White's involvement in Ponce's death. Tellingly, White replied to Perez's inquiry affirmatively,
14 rather than with a proclamation of innocence. CalVCB further rejects White's assertion that this
15 conversation merely referred to his hygiene after orally copulating Perez shortly before his arrest.
16 Perez would have been aware of White's hygiene practices since she was necessarily present, and any
17 nonhygienic practices would have benefited White by contaminating his DNA sample, thereby avoiding
18 any match with the crime scene. Accordingly, White's explanation of this conversation is not
19 believable.

20 CalVCB recognizes the appellate court's determination that this recorded conversation between
21 White and Perez was insufficient to prove White's guilt as an accomplice to Smith's murder.
22 Specifically, the appellate court found that, even assuming White's statements to Perez confirmed he
23 knew of Ponce's murder before his arrest, "that fact would not support an inference that White knew of,
24 and intended to facilitate, a plan to murder Ponce."²⁰⁷ Significantly, the appellate court did not consider
25 the implications of this conversation upon White's possible guilt for Ponce's murder as a natural and
26 probable consequence to assault or as a felony-murder during robbery. Accordingly, White's

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28 ²⁰⁷ White Ex. 1 at p. 19.

1 conversation with his wife, and his false testimony about that conversation, undermine his claim of
2 innocence in this proceeding.

3 In addition to his own inconsistencies, aspects of White's account are refuted by the cell phone
4 data. For instance, White told police that he remained at his home in Bloomington until 9:00 p.m. or
5 10:00 p.m., yet his cell phone data confirmed that he was already near Honest's home in south Los
6 Angeles by 9:14 p.m. White also insists that he never met Honest or Smith or Ponce that night, but his
7 cell phone data reveals a coordinated travel path from Los Angeles to Lancaster and back, with stops
8 along the way in Marina del Rey, Santa Clarita, and Sherman Oaks. White similarly denies being
9 present at the crime scene when Ponce was murdered, yet his phone, as well as Honest's, were in the
10 same vicinity of this rural location less than 30 minutes before the killing occurred.

11 Moreover, some aspects of White's testimony are contradicted by Honest's version of events.
12 For example, White claimed that, days beforehand, Honest had approached him about joining a
13 criminal scheme for which White would receive the precise sum of \$5,000 cash. Honest, however,
14 denied ever telling White a particular amount of compensation and further insisted that the criminal
15 scheme was devised at the last minute by Smith. White also denied being informed about the contents
16 to be stolen and claimed he was only assured that the cargo did not include guns, explosives, or drugs.
17 However, such secrecy is difficult to reconcile with Honest's claim that they only intended to steal tires.
18 White also maintained that, on the early morning of October 7, 2008, he and Honest met along the side
19 of the 14 Freeway, at which point Honest supposedly informed him for the first time that the deal was
20 off. By comparison, Honest initially told police that he did not meet in person with White that night, and
21 then, at the CalVCB hearing, Honest continued to insist that he first told White over the phone that the
22 deal was off before meeting in person. Though none of Honest's statements directly implicate White in
23 Ponce's murder, the inconsistencies between their benign versions of events ultimately undermine both
24 of their credibility.

25 Finally, White's version of events is not believable. First, White insists that he drove alone to
26 Lancaster and did not see Honest or Smith along the way, yet he drove a circuitous route that passed
27 near both of their homes that almost doubled the length of his trip (i.e., 150 miles), than if he had driven
28 straight from Bloomington to Lancaster (i.e., 80 miles). White supposedly drove this distance solely

1 based upon Honest's promise that his services as a commercial truck driver might be needed to move
2 a load of stolen cargo, for which White would be compensated \$5,000. But White did not know where
3 this transaction would occur, whether he would be provided with a commercial truck to drive, or exactly
4 what type of cargo he would be hauling. Despite never meeting Smith or Ponce that evening, White
5 happened to be approximately eight miles from where Smith murdered Ponce, just 25 minutes before
6 the killing occurred. Then, White happened to leave that rural area in Lancaster within minutes of
7 Honest and Smith, and all three happened to drive the same route back to Santa Clarita and Los
8 Angeles, stopping along the way near Lake Balboa and Sepulveda Basin Wildlife Reserve in Sherman
9 Oaks. Throughout this entire evening and early morning, White and Honest exchanged numerous
10 telephone calls (i.e., 8:40 p.m. in south Los Angeles, 1:03 a.m. in Lancaster, 1:05 a.m. in Lancaster,
11 2:30 a.m. in Santa Clarita, 3:02 a.m. in Inglewood, 3:03 a.m. in Inglewood, 3:37 a.m. in Inglewood, 5:19
12 a.m. in Bloomington), yet Honest waited to tell White that the planned cargo heist was off until they met
13 in-person along the freeway, and then he never gave an explanation as to why the heist was off, not
14 even years later after having been imprisoned because of these events.

15 Overall, CalVCB does not find White's account to be credible. Contrary to his sworn
16 statements, and in accordance with the appellate court's opinion, White was present in Lancaster when
17 Smith fatally shot Ponce, immediately after Honest assaulted Ponce. His testimony is entirely
18 unreliable and not persuasive evidence of his innocence.

19 **6. Absence of Physical Evidence**

20 In an effort to bolster his claim of innocence, White notes that none of his fingerprints or DNA
21 were found in Ponce's Navigator, and none of his belongings or fingerprints were found in Smith's
22 condominium.²⁰⁸ But the absence of this evidence does not exonerate White. Smith's condominium
23 was not searched until a month after Ponce's death. Thus, any fingerprints or personal belongings that
24 may have been left by White when briefly visiting Smith's condominium were likely gone by then.
25 Moreover, none of the plausible scenarios implicating White in Ponce's death require his presence
26 inside Ponce's Navigator. By comparison, ample evidence confirms that White knew Smith and was

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28 ²⁰⁸ White App. at p. 9.

1 present when Smith murdered Ponce. Ultimately, the absence of any physical evidence connecting
2 White to Ponce's vehicle or Smith's condominium fails to prove that he is more likely innocent than
3 guilty of Ponce's murder.

4 **7. Rejected Plea Offer**

5 As a final proffer of his innocence, White rejected a plea offer to voluntary manslaughter for five
6 years in exchange for his testimony against Honest and Smith. White insisted that he declined the offer
7 after his arrest in 2011 because he did not have any incriminating information to provide against Honest
8 or Smith. However, White may have declined the offer, despite possessing incriminating information,
9 because he believed the prosecution's case against him was too weak to result in a conviction, or he
10 feared being labeled a snitch against Smith, or he felt a sense of loyalty to his friend Honest. Given
11 White's other false statements about his whereabouts on the night of Ponce's murder, this factor fails to
12 prove that he is more likely innocent than guilty.

13 **8. Overall Evidence Fails to Prove Innocence**

14 After considering all the evidence detailed above, White has failed to prove his innocence by a
15 preponderance. The inculcating evidence includes White's presence when Ponce was fatally shot five
16 times by Smith and brutally assaulted by Honest. It also includes White's repeated false denials that he
17 was not there, which are indicative of his consciousness of guilt. It further includes White's explanation
18 about his jailhouse conversation with his wife Perez, which revealed not only that White had previously
19 discussed Ponce's murder with Perez, but also that their discussion caused Perez to fear that White's
20 DNA may be discovered.

21 Despite the appellate court's conclusive determination that insufficient evidence proved White
22 aided and abetted Smith's premediated murder of ponce, circumstantial inferences from the
23 administrative record suggest, to varying degrees, that White may be guilty. As detailed above, the
24 possible theories of White's guilt include a natural and probable consequence to assaulting Ponce,
25 felony-murder during a robbery of Ponce's Navigator, and an accomplice to Smith's premediated
26 murder. Simply because the trial evidence failed to support a reasonable inference of the latter theory
27 does not compel a contrary inference in this administrative proceeding, wherein White bears the burden
28 of persuasion.

1 Although proffered as exculpatory evidence, the inconsistent statements and falsehoods from
2 White, Honest, and Smith constitute further incriminating evidence against White. As detailed above,
3 White, Honest, and Smith disagree as to when they supposedly formed a plan to steal some cargo;
4 where this theft was to occur; how much money each would receive as compensation for their
5 assistance; and whether they met up in person at any time that night. A truthful account would not
6 include so many discrepancies over basic concepts. More importantly, the differing versions of events
7 articulated by White, Honest, and Smith are directly refuted by their cell phone data. Contrary to their
8 statements under oath, the data confirm that White, Honest, and Smith were all present together at the
9 scene of Ponce's murder, given their coordinated movements to and from Lancaster, combined with the
10 absence of any phone calls between them during the one-hour window when Ponce's murder occurred.
11 White's failure to truthfully describe his actions at the time of Ponce's murder is highly incriminating
12 and, ultimately, precludes any confidence in his protestations of innocence. The failure of both Smith
13 and Honest to truthfully describe their actions at the time of Ponce's murder, while they were present
14 with White, arouses suspicions and renders them incredible witnesses.

15 The remaining exculpatory evidence consists of the absence of any physical evidence directly
16 linking White to Ponce's murder, as well as White's rejected plea agreement. Neither is sufficient to
17 demonstrate White's innocence.

18 All in all, White's exculpatory evidence does not outweigh the incriminating evidence.
19 Specifically, it fails to prove that White is more likely innocent, than guilty, of Ponce's murder. Stated
20 differently, it fails to demonstrate, by a preponderance, that White did *not* intend to assist Smith commit
21 a robbery of Ponce's Navigator, during which Ponce was killed, as required for felony-murder liability.
22 Similarly, it fails to demonstrate, by a preponderance, that White did *not* assault Ponce with Honest,
23 which naturally and probably resulted in Ponce's murder by Smith, as required for natural and probable
24 consequence liability. Finally, it fails to demonstrate, by a preponderance, that White did *not* intend to
25 assist Smith's premediated murder of Ponce, as required for aider and abettor liability.

26 White repeatedly insists that, because the appellate court found no evidence to show what he
27 was doing on the night of Ponce's murder, CalVCB cannot infer that he assaulted, robbed, or murdered
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1 Ponce.²⁰⁹ Not so. In this proceeding, where White bears the burden of persuasion, the absence of any
2 finding as to what White was doing necessarily opens the door to all possibilities. Absent affirmative
3 proof that none of the plausible scenarios implicating White in Ponce's murder occurred, White has not
4 shown that he is more likely innocent, than guilty, of Ponce's murder. Thus, White has failed to prove
5 his innocence, even if the evidence is insufficient to prove his guilt.

6 **VII. CONCLUSION**

7 In sum, White's claim for compensation must be denied. He failed to demonstrate by a
8 preponderance of evidence that he is actually innocent of crime with which he was charged and
9 convicted. White is, therefore, ineligible for compensation under Penal Code section 4900.

10 Date: January 29, 2019

11 _____
12 Laura Simpton
13 Senior Attorney
14 California Victim Compensation Board

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28 ²⁰⁹ White Post-Hearing Brief (5/33/18) at pp. 8-28; White Response (7/10/18) at pp. 8, 16.

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**BEFORE THE VICTIM COMPENSATION BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

De’Wann White

PC 4900 Claim No. 16-ECO-06

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