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

8 In the Matter of:

9 **Richard Michael Almeda**

10 Claim No. 23-ECO-53

Proposed Decision

Penal Code § 4900, subd. (a)

11 **I. Introduction**

12 On November 7, 2023, Richard Michael Almeda (Almeda) submitted a claim to the California
13 Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to Penal Code
14 section 4900. The claim is based upon Almeda's 2018 conviction for assault with a deadly weapon
15 causing great bodily injury, which was reversed on appeal without a finding of factual innocence.
16 Almeda admits that he stabbed the victim but maintains he acted in defense of another. Almeda seeks
17 compensation in the amount of \$187,040 for 1,336 days imprisonment, which includes time served for
18 a misdemeanor conviction for resisting arrest.

19 The Attorney General opposed the claim on July 16, 2024, arguing that the evidence fails to
20 prove Almeda's innocence by a preponderance and, alternatively, compensation amounts to \$136,080
21 for only 972 days of imprisonment that solely resulted from the challenged conviction. Almeda waived
22 his right to a hearing and submitted a reply brief instead on August 28, 2024. The record closed
23 thereafter on September 4, 2024.

24 Throughout these proceedings, Almeda was represented by Chris C. Clauson, Esq., and the
25 Attorney General was represented by Deputy Attorney General Kathryn L. Althizer. The claim was
26 assigned to CalVCB Senior Attorney Laura Simpton. After considering all the evidence in the record,
27 the claim is recommended for denial because Almeda has failed to prove by a preponderance of the
28 evidence that he acted in defense of another in order to demonstrate that he did not commit the

1 challenged offense. Overall, the proffered exculpatory evidence fails to satisfy Almeda's burden under
2 subdivision (a) of Penal Code section 4900 to show that he is more likely innocent than guilty of
3 assault with a deadly weapon causing great bodily injury.

4 **II. Procedural Background**

5 **A. Criminal Proceedings**

6 Almeda was arrested on September 17, 2017, and subsequently charged in El Dorado County
7 Superior Court case number P18CRF0030 with one count of felony assault with a deadly weapon (i.e.,
8 a knife) with an enhancement for causing great bodily injury and one count of misdemeanor resisting
9 arrest.¹ Almeda's codefendants, Justin Stice-Weatherwax (Stice) and Anthony Marquez (Marquez)
10 were also charged with assault. The charges stemmed from a confrontation by Almeda, Stice, and
11 Marquez at the home of the victim Douglas A. (Douglas).² Stice proceeded to trial with Almeda, while
12 Marquez accepted a plea to misdemeanor assault.

13 On May 23, 2018, a jury found Almeda guilty of misdemeanor resisting arrest but deadlocked
14 on the remaining felony charge. On November 27, 2018, a second jury found Almeda guilty as charged
15 of felony assault with a deadly weapon causing great bodily injury. In addition, the second jury found
16 Stice guilty of the lesser-included offense of simple assault.³ Almeda was sentenced on March 11,
17 2019, to six years imprisonment for the felony assault, plus a concurrent term of 364 days for the
18 misdemeanor resisting arrest.⁴

19 Almeda appealed. On April 5, 2021, the Third District Court of Appeal reversed Almeda's
20 assault conviction due to prosecutorial misstatements about the law of defense of another.⁵
21 Specifically, the prosecutor improperly argued, contrary to California law, that Almeda had no right to
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23 ¹ Pen. Code, §§ 148 (resisting arrest), 245 (assault), 12022.7 (great bodily injury enhancement); see
24 also Almeda Application (App.) at pp. 2, 9; Almeda Designated Records (ADR) at pp. 1213-1216;
Attorney General Response Letter (AGRL) at p. 1.

25 ² App. at pp. 12, 87; AGRL Exhibits (Ex.) at pp. 1-2. The victim and his family members are referred to
26 by their first names only in an effort to protect their privacy.

27 ³ ADR at pp. 1214, 1909; AGRL at pp. 2, 3-13.

28 ⁴ App. at pp. 3, 10; ADR at pp. 1800, 1909.

⁵ ADR at pp. 1911, 1916-1919.

1 defend Stice if Stice had no right to defend himself as the instigator of the fight. The case was
2 remanded to the superior court for retrial a third time.

3 Instead of a retrial, on May 14, 2021, the prosecution moved to dismiss the assault charge
4 against Almeda, which was granted.⁶ The superior court deemed the 364-day sentence for Almeda's
5 related misdemeanor conviction served in full. Almeda was released from custody that same day, after
6 having been continuously confined for 1,336 days since his arrest on September 17, 2017.⁷

7 **B. CalVCB Proceedings**

8 On November 7, 2023, CalVCB received Almeda's claim for compensation as an erroneously
9 convicted offender pursuant to Penal Code section 4900. The claim was submitted as an email with
10 multiple attachments, which were combined into a single document spanning 162 pages. The email
11 included a link to download numerous court records in support of the claim, which were combined into
12 a single document spanning 1,946 pages. Almeda requested compensation in the amount of \$187,040
13 for all 1,336 days of his imprisonment for his vacated assault conviction and still-valid misdemeanor
14 conviction in case number P17CRF0380.⁸

15 By letter dated November 16, 2023, addressed to representatives for both Almeda and the
16 Attorney General, the hearing officer confirmed receipt of the claim and construed it as a request for
17 compensation solely for Almeda's vacated felony conviction in accordance with Penal Code sections
18 4900 and 4901. The hearing officer explained that relief was not available for Almeda's misdemeanor
19 conviction as a matter of law but invited either party to submit briefing on the issue if they disagreed.
20 Otherwise, the hearing officer deemed the claim, as construed, filed under subdivision (a) of section
21 4900 and requested a response from the Attorney General within 60 days.

22 Following three extensions for demonstrated good cause, the Attorney General timely
23 submitted a response letter on July 16, 2024, along with 25 exhibits spanning 127 pages plus 13 audio
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25 ⁶ ADR at p. 1933.

26 ⁷ The number of days between Almeda's arrest on September 17, 2017, and his release on May 14,
27 2021, was calculated using the online "Days Calculator" located at <https://www.timeanddate.com/date/durationresult.html>.

28 ⁸ App. at p. 3.

1 recordings. The Attorney General maintained that Almeda had failed to prove his innocence of assault
2 by a preponderance of evidence because the evidence failed to demonstrate that Almeda acted in
3 defense of another when he stabbed the victim. The Attorney General alternatively maintained that, if
4 CalVCB should approve the claim, Almeda's compensation amounted to \$136,080 for 972 days
5 imprisonment, after subtracting 364 days for his misdemeanor conviction from his total confinement of
6 1,336 days.⁹

7 On July 18, 2024, the hearing officer requested the parties' timing preferences for scheduling a
8 hearing on Almeda's claim, at which Almeda was entitled to appear and testify in support of his claim,
9 along with any other witnesses he may wish to present.¹⁰ In a reply-all email sent by Almeda's counsel
10 on July 30, 2024, he confirmed that Almeda "waived" the hearing and "has elected to proceed solely
11 on the written record."¹¹ At the hearing officer's invitation on July 31, 2024, Almeda agreed to submit a
12 reply brief to the Attorney General's response letter within 30 days.

13 Almeda timely submitted the reply brief on August 28, 2024. It disputed aspects of the Attorney
14 General's factual summary and legal argument. It did not address the Attorney General's
15 compensation calculation nor the hearing officer's construction of Almeda's claim to exclude his
16 misdemeanor conviction.¹² The record closed thereafter on September 4, 2024.

17 **III. Factual Summary**

18 As detailed below, 21-year-old Almeda stabbed 47-year-old Douglas in the back after arriving
19 uninvited at Douglas' home with his friend Stice and brother Marquez. Although Almeda maintains that
20 he justifiably stabbed Douglas in defense of Stice, a preponderance of evidence fails to support his
21 version of events.

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25 ⁹ AGRL at pp. 63-64.

26 ¹⁰ Pen. Code, § 4903, subd. (a); Cal. Code Regs., tit. 2, § 644.

27 ¹¹ Email from claimant's counsel Clauson sent July 30, 2024, at 8:09 a.m.

28 ¹² Almeda Reply (Reply), submitted via email from Clauson on August 28, 2024, at 11:18 a.m.

1 **A. The Stabbing**

2 On the early evening of September 16, 2017, Douglas was asleep inside his home, which was
3 located on a half-acre in El Dorado County. The property was accessible by a common driveway
4 shared with several neighbors. Douglas' wife Shaun and their two-year-old granddaughter were also at
5 home. Dustin, their 23-year-old son, lived in a trailer on the property, and Almeda's 17-year-old sister
6 Elaina was there too.¹³ Elaina had left her home about a week earlier after stealing her brother
7 Marquez's car and "destroy[ing]" it.¹⁴ Dustin and Almeda had once been friends, but several months
8 earlier, Almeda beat up Dustin. Unrelatedly, Almeda previously worked at the same company as
9 Douglas until Douglas fired him for being under the influence at work.¹⁵

10 Shortly before 8:00 p.m., as Douglas was sleeping, Almeda headed to Douglas' home with his
11 older brother Marquez and their friend Stice, along with Marquez's girlfriend Maria Gutierrez
12 (Guttierrez) and Almeda's girlfriend Chrystal Cruz (Cruz).¹⁶ The group of five rode in a Kia driven by
13 Gutierrez, who parked the car on the common driveway located just outside of Douglas' property line.
14 All three men exited the Kia and eventually entered Douglas' property, while both women remained
15 seated in the car.¹⁷

16 Marquez immediately headed towards Dustin's trailer. Yelling loudly, Marquez demanded to
17 see Elaina. After Dustin opened the door, Marquez rushed past him into the trailer and attacked
18 Elaina. Marquez struck her several times.¹⁸ As Marquez later admitted, he was mad at Elaina, not only

20 ¹³ ADR at pp. 355-356, 1398, 1610; AGRL at p. 14; AGRL Ex. at pp. 26, 68. To avoid confusion,
21 Almeda's sister is referred to as Elaina, although different spellings of her name appear in the record.

22 ¹⁴ AGRL Ex. at p. 40 (Elaina's mother's statement); AGRL Audio Ex. 30 (law enforcement recording of
23 Elaina's mother statement).

24 ¹⁵ ADR at p. 1288; AGRL Ex. at p. 16.

25 ¹⁶ App. at p. 12; AGRL at p. 3; AGRL Ex. at pp. 20, 43.

26 ¹⁷ App. at p. 87; App. Ex. at p. 1910; AGRL Ex. at pp. 14-15, 52; AGRL Audio Exs. 32-33 (law
27 enforcement recording of Stice's first and second hospital statements). As detailed *infra* (Sections
28 III(E) and IV(D)(1)), Almeda's prior, inconsistent denials to entering Douglas' property are not credible.
(AGRL Exs. 41, 45, AG Audio Exs. 37, 28 (law enforcement recording of claimant's statements).)

¹⁸ AGRL Ex. at pp. 2, 51, 60; AGRL Audio Exs. 27, 31 (law enforcement recordings of statements by
Dustin, Shaun, and Marquez). As detailed *infra* (Sections III(G) and IV((D)(1))), Elaina's subsequent
and inconsistent trial testimony, which denied any physical fight with Marquez despite her visible

1 because of her involvement with Dustin as an adult man, but also because Elaina had stolen his car
2 the week prior and totaled it.¹⁹

3 After Marquez entered the trailer, Dustin ran to his parents' home and woke up Douglas. Dustin
4 told Douglas about the men outside. Dustin looked afraid. Douglas grabbed an aluminum baseball bat
5 and walked outside, followed by his wife Shaun and Dustin.²⁰ Neither Douglas nor Shaun had any prior
6 criminal history, but Almeda had been previously convicted of a crime involving moral turpitude for
7 carrying a loaded firearm.²¹ Dustin had also been convicted of carrying a loaded firearm, which he
8 apparently committed with Almeda in 2013.²²

9 Douglas immediately spotted Almeda and Stice standing on his property.²³ From a distance of
10 approximately 15 feet, Douglas and the men shouted at each other. To Douglas, the men appeared to
11 be aggressive and under the influence.²⁴ As Almeda concedes, he was "angry, upset, yelling and
12 swearing."²⁵ Among their rants, the men yelled they wanted to "kick [Dustin's] ass" and called Douglas'
13 wife a racist and misogynistic slur, but no verbal threats were specifically directed at Douglas.²⁶
14 Douglas repeatedly ordered the men off his property, but they did not leave and, instead, stepped
15 towards him approximately three to five feet.²⁷ Douglas told Shaun to call 911, and she briefly
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18 injuries to responding officers and admissions by Marquez, is not credible. (AGRL at pp. 35-36, ADR at
19 pp. 418, 433-435, 439.)

20 ¹⁹ AGRL Ex. at pp. 2, 51-52, 60; AGRL Audio Exs. 27, 31 (law enforcement recordings of statements
21 by Dustin, Shaun, and Marquez).

22 ²⁰ ADR at pp. 711-714, 821, 840, 1910.

23 ²¹ ADR at p. 109; AGRL at p. 51; AGRL Exs. at pp. 69, 75; *People v. Bedolla* (2018) 28 Cal.App.5th
24 535, 550-555 (carrying a loaded firearm in public "suggests a 'general readiness to do evil' ... or moral
25 laxity of some kind").

26 ²² ADR at pp. 853-854; AGRL at p. 43.

27 ²³ App. at pp. 12-13, 87; ADR at p. 1910.

28 ²⁴ ADR at p. 719.

²⁵ Reply at p. 4.

²⁶ ADR at pp. 718, 844; AGRL at p. 16; AGRL Ex. at pp. 3, 6; AGRL Audio Ex. 34 (law enforcement
record of Douglas' first hospital statement).

²⁷ ADR at p. 721.

1 retreated inside the house to do so.²⁸ Meanwhile, Douglas raised the bat, but did not swing it, and
2 began stepping towards the two men, who finally started to retreat. At times, the men took one step
3 forward and two steps back, as Douglas continued holding the bat, occasionally moving it to his side or
4 pointed at the men.²⁹ Douglas continued in this manner, maintaining a distance of about six feet from
5 the men, as they backed off his property toward the common driveway.³⁰

6 Meanwhile, Dustin ran back to the trailer to aid Elaina. A fight ensued between Dustin and
7 Marquez, leaving Douglas outnumbered and alone to fend off Almeda and Stice. It is unclear if Dustin
8 was armed with a wooden bat at that time, or only later. Dustin eventually expelled Marquez from the
9 property around the time that Douglas was stabbed.³¹

10 Once Almeda and Stice stepped beyond Douglas' property line onto the common driveway,
11 they continued facing Douglas and yelling profanities at him. Rather than returning to the Kia, Almeda
12 stood by a neighbor's parked car, and Stice stood on top of a woodpile located next to Douglas'
13 property. Douglas remained standing on his own property, about eight to ten feet away from both men,
14 while continuing to hold the baseball bat. Douglas did not know of Marquez's location, but he heard
15 scuffling sounds behind him.³²

16 Stice, who admitted being "pumped up and pissed off," screamed at Douglas to "drop the bat
17 and ...fight like a man."³³ Douglas remained standing on his property, still holding the bat. Stice next
18 grabbed a piece of firewood. Douglas shouted at Stice to put it down, and Stice initially complied.³⁴ But
19 then Stice grabbed it again and forcibly threw it at Douglas. The piece of wood measured
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22 ²⁸ ADR at pp. 70-71, 1443.

23 ²⁹ ADR at pp. 716-727.

24 ³⁰ ADR at pp. 714-727, 1910.

25 ³¹ ADR at pp. 242, 400, 420-424, 840-862, 1231-1253; AGRL Ex. at pp. 2, 50-52.

26 ³² ADR at pp. 724-732, 1910; AGRL at p. 17; AGRL Audio Ex. 34 (law enforcement recording of
27 Douglas' first hospital statement).

28 ³³ AGRL Ex. at p. 26; AGRL Audio Ex. 33 (law enforcement recording of Stice's second hospital
statement).

³⁴ ADR at p. 732.

1 approximately 14 inches long and seven inches wide. It narrowly missed Douglas' head by six to eight
2 inches and landed approximately 20 feet behind him.³⁵

3 Afraid for himself and his family, Douglas charged at Stice with the bat raised.³⁶ Stice advanced
4 towards Douglas.³⁷ A struggle ensued, during which Stice punched Douglas in the nose, Douglas
5 pinned Stice against a neighbor's car, Almeda stabbed Douglas in the back, and Douglas finally struck
6 Stice with the bat for the first time.³⁸ Douglas continued to swing at both men as each alternatively
7 advanced towards him, before each lost their footing and fell down but then popped back up. Douglas
8 ultimately hit Stice with a bat approximately five times, but he never hit Almeda. The only injury Stice
9 received from Douglas' bat was a single wound to his forehead, which required seven stitches.³⁹

10 The altercation ended when someone eventually said, "Let's go." By then, Dustin had expelled
11 Marquez from the property. Marquez returned to the Kia first, followed by Almeda, and then finally
12 Stice. As they started to drive away, Dustin struck the Kia's rear window with a wooden bat, shattering
13 it.⁴⁰

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17 ³⁵ ADR at pp. 80, 730-737; AGRL at p. 50; AG Audio Exs. 34, 35 (law enforcement recordings of
Douglas' first and second hospital statements).

18 ³⁶ ADR at pp. 737, 742, 803, 1910; AGRL Ex. at p. 64.

19 ³⁷ AGRL Ex. at pp. 64, 66.

20 ³⁸ As detailed *infra* (Sections III(F)&(G) and IV(D)(2)), this disputed sequence of events is the most
21 likely scenario after considering the overall record. (See, e.g., ADR at pp. 86, 741-745, 750-751, 1271,
22 1445-1447 (Douglas testifying that he hit Stice with the bat only after he was stabbed), at p. 949
(Deputy Cooney testifying that, despite his report, a transcript of his hospital interview revealed that
23 Douglas described the stabbing and then striking Stice with the bat); see also AGRL Ex. at pp. 2
(Douglas telling first responder that Stice threw the wood at him and then Stice punched him, after
24 which Almeda stabbed him, and then Douglas hit Stice with the bat), 26 (Stice admitting he threw the
wood at Douglas, then punched Douglas, after which Douglas hit his forehead with the bat), 64-66
(Stice confessing that he threw the wood, walked up to Douglas and punched him, after which Douglas
25 hit Stice's forehead with the bat); AGRL Audio Exs. 26, 32, 33 (law enforcement recordings of
statements by Douglas and Stice).

26 ³⁹ AGRL Ex. at pp. 15, 25, 27. As detailed *infra* (Sections III(D) and IV(D)(2)), Almeda's assertion that
27 Stice sustained additional injuries as a result of Douglas' alleged attack that supposedly left Stice
battered and in a neck brace is not credible. (App. at pp. 15, 31.)

28 ⁴⁰ ADR at pp. 240-248, 852-853; AGRL Ex. at p. 2.

1 Bleeding and out of breath, Douglas waited for police to arrive while lying down on the walkway
2 in front of his home. After their arrival at approximately 8:04 p.m., Douglas was transported by
3 ambulance to the hospital for treatment of his injuries. In addition to a bloody nose and facial
4 contusions, Douglas sustained a serious stab wound on his mid back that measured approximately
5 one and half centimeters wide and five centimeters deep.⁴¹ The blade entered Douglas' chest cavity,
6 causing it to fill with blood, and possibly punctured a lung. Douglas underwent surgery and six days of
7 hospitalization to treat his injuries.⁴²

8 **B. Resisting Arrest**

9 After fleeing Douglas' property, the group travelled in the Kia to Gutierrez's home. Almeda and
10 Marquez remained inside. Gutierrez drove Stice, whose head was still bleeding, to a nearby gas
11 station and contacted law enforcement. Cruz joined them. Stice was eventually transported to the
12 hospital. Meanwhile, sheriff deputies questioned Gutierrez about Almeda and Marquez's whereabouts,
13 but she falsely denied any knowledge. Deputies went to Gutierrez's home, and spotted Almeda and
14 Marquez inside. However, Gutierrez continued to deny any knowledge of the men's whereabouts and
15 refused consent to search her home.

16 Law enforcement surrounded Gutierrez's home, and a standoff ensued. Using a loudspeaker,
17 deputies repeatedly ordered both men to surrender. Around 11:30 p.m., Marquez exited Gutierrez's
18 home. He falsely told police that Almeda was not inside.⁴³ The standoff continued, during which SWAT
19 arrived. Over the loudspeaker, SWAT warned Almeda that chemical munitions would be deployed if he
20 did not surrender.⁴⁴

21 Eventually, at 3:30 a.m., SWAT fired tear gas inside Gutierrez's home.⁴⁵ Shortly thereafter,
22 Almeda walked outside wearing only his underwear. Almeda nevertheless kept one hand concealed,
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25 ⁴¹ ADR at pp. 290-292, 752.

26 ⁴² ADR at pp. 94, 290-292, 748, 752, 1270.

27 ⁴³ AGRL Ex. at pp. 49, 51; AGRL Audio Ex. 31 (law enforcement recording of Marquez interview).

28 ⁴⁴ AGRL Ex. at pp. 8, 40.

⁴⁵ AGRL Ex. at pp. 8, 40.

1 despite numerous commands to show his hands. SWAT fired a nonlethal sponge round at Almeda, but
2 then Almeda retreated back inside the home. A K9 unit was next deployed, after which Almeda finally
3 surrendered.⁴⁶

4 **C. Marquez's Statements**

5 Upon exiting Gutierrez's home, Marquez identified himself to law enforcement with a different
6 last name, refused to disclose Almeda's name, and falsely claimed that his brother was no longer
7 inside. When asked about the confrontation at Douglas' property, Marquez denied that anyone had a
8 knife, insisted that he did not see any stabbing, and then suggested Douglas may have stabbed
9 himself with his own knife. Marquez admitted that he had entered Douglas' property earlier that night
10 and went to Dustin's trailer. Marquez also admitted that he had grabbed Elaina's hair because he was
11 mad at her due to her involvement with an older man, as well as her theft and destruction of his car the
12 prior week. Marquez acknowledged that his sister did not want to leave Douglas' property with him.
13 Marquez claimed that Dustin had beat him with a wooden bat.⁴⁷

14 **D. Stice's Statements**

15 When Stice initially spoke to deputies at the gas station, he stated that he had been hit by a
16 baseball bat a total of four to five times while helping his friends locate their sister. Stice denied
17 knowing the whereabouts of Almeda or Marquez. Stice did not mention refusing to leave Douglas'
18 property, throwing a piece of firewood at him, or punching him.⁴⁸

19 In his first interview at the hospital, Stice described his assailant as an "older dude," who was
20 either Dustin's father or grandfather.⁴⁹ Stice admitted going to Douglas' property with Almeda and
21 Marquez, but he denied that Gutierrez or Cruz joined them. Stice further admitted all three men
22 entered Douglas' property. However, Stice claimed that when Douglas shouted at them while holding a
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25 ⁴⁶ AGRL Ex. at pp. 8-9.

26 ⁴⁷ AGRL at pp. 10-12; AGRL Ex. at pp. 50-53; Audio Ex. 31.

27 ⁴⁸ AGRL at p. 7; AGRL Ex. at p. 14.

28 ⁴⁹ AGRL Ex. at p. 26; AGRL Audio Ex. 22.

1 bat, Stice merely told Douglas to “calm down and talk rationally.”⁵⁰ Stice also admitted he punched
2 Douglas in the face, after which Douglas struck him with the bat approximately four to five times, but
3 Stice omitted throwing the firewood at Douglas. As for his injuries, Stice noted that he had sustained
4 unrelated “cuts and scrapes” earlier that day while at the river, where he had fallen on the rocks
5 multiple times.⁵¹ Stice acknowledged Almeda “laid hands” on Douglas, but insisted Almeda did so only
6 after Douglas hit Stice. Stice denied seeing a knife or anyone getting stabbed.⁵²

7 In his second interview at the hospital, Stice altered his version of events. He admitted telling
8 Douglas to put down the bat to “fight like a man,” and when Douglas refused, he further admitted
9 throwing a piece of firewood at Douglas. Thereafter, according to Stice, Douglas approached him “at
10 mid-speed” while swinging the bat, Stice punched Douglas in the jaw, and then Douglas struck Stice
11 on the forehead with a bat. Stice admitted that Douglas did not hit him again after striking his forehead,
12 even though Douglas continued to swing the bat.⁵³ Stice expressly confirmed that the “only injury he
13 had received from [Douglas] ... was the baseball bat wound to his forehead.”⁵⁴ Stice reiterated that he
14 was injured “earlier in the day when he was at the river consuming alcohol” and “fell down a hill where
15 he sustained scrapes and bruises.”⁵⁵ Although Stice still denied seeing anyone getting stabbed, he
16 admitted that Almeda may have had a knife and may have stabbed Douglas after Douglas hit Stice.⁵⁶

17 Four months later, Stice spoke to law enforcement again and provided additional incriminating
18 details. Stice admitted that the group went to Douglas’ property to confront Elaina about wrecking
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21 ⁵⁰ AGRL Ex. at p. 15.

22 ⁵¹ AGRL Ex. at p. 15.

23 ⁵² AGRL at pp. 13-14; AGRL Audio Ex. 32 (law enforcement recording of Stice’s first hospital
statement); see also AGRL Ex. at pp. 15-16.

24 ⁵³ AGRL at p. 14; AGRL Ex. at p. 26 (“After Justin got hit in the forehead he fell down. Douglas
continued swinging the bat after Justin fell down, but Douglas did not hit him anymore”); AGRL Audio
25 Ex. 33, at 15:42 (law enforcement recording of Stice’s second hospital statement).

26 ⁵⁴ AGRL Ex. at p. 25.

27 ⁵⁵ AGRL Ex. at p. 25.

28 ⁵⁶ AGRL at pp. 14-15; AGRL Ex. at pp. 26-27; AGRL Audio Ex. 33 (law enforcement recording of
Stice’s second hospital statement).

1 Marquez's car, as well as her relationship with Dustin.⁵⁷ Stice also admitted that he "probably" started
2 the fight with Douglas when he threw the firewood.⁵⁸ Stice further admitted that he made first physical
3 contact when he "walked up to" Douglas and "socked him," after which Douglas hit Stice on the
4 forehead with the bat.⁵⁹ Finally, Stice claimed Douglas hit him "quite a bit" but could not recall how
5 many times.⁶⁰

6 **E. Almeda's Statements**

7 During his first interview at the hospital with law enforcement, Almeda was hostile and
8 deceptive. He falsely claimed to have been at his girlfriend's home all night. In addition, he falsely
9 claimed to have been asleep in the attic, unaware of law enforcement's repeated demands to
10 surrender, when the tear gas was deployed. Moreover, he falsely insisted that he did not go to
11 Douglas' property, did not have "beef" with Douglas or Dustin, and did not stab Douglas with a knife.⁶¹

12 During his second interview at the jail, Almeda was argumentative and manipulative, altering
13 his account several times after being caught in a lie.⁶² Almeda admitted that he had travelled to
14 Douglas' home with Stice, Marquez, Gutierrez, and Cruz. However, he claimed that only Marquez
15 entered the property to retrieve their sister, while Almeda supposedly remained on the common
16 driveway, joined by Stice only after both Douglas and Dustin confronted him with baseball bats.
17 Almeda denied that Stice threw any firewood and insisted that Douglas began swinging a bat at both
18 Stice and him for "no reason."⁶³ Almeda initially claimed that he only retrieved a knife from the Kia after
19 Douglas started beating Stice, but when challenged on this scenario, Almeda admitted that the knife
20 was in his pocket all along. When asked why he had armed himself before stepping out of the Kia,

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22 ⁵⁷ AGRL at pp. 25-26; AGRL Ex. at pp. 63-65.

23 ⁵⁸ AGRL Ex. at p. 66.

24 ⁵⁹ AGRL Ex. at pp. 64, 66.

25 ⁶⁰ AGRL Ex. at p. 66.

26 ⁶¹ AGRL at pp. 19-20; AGRL Ex at p. 41; AG Audio Ex.37 (law enforcement recording of Almeda's
hospital statement).

27 ⁶² AGRL at pp. 20-25; AGRL Ex. at pp. 43-47; AGRL Audio Ex. 38 (law enforcement recording of
Almeda's jail statement).

28 ⁶³ AGRL Ex. at pp. 44,45.

1 Almeda falsely replied that he always carried this knife, but after acknowledging that the knife
2 belonged to Gutierrez, Almeda insisted that he merely happened to place her knife in his pocket earlier
3 that day. When asked why he pulled out the knife, Almeda initially denied trying to save his friend but
4 added that Douglas “swung on me with a baseball bat! His intention was to beat both of us up.”⁶⁴
5 Almeda claimed that Douglas struck Almeda’s pinky finger with the bat, although no injury was
6 visible.⁶⁵

7 When asked why he had stabbed Douglas, Almeda stated he was “worried that [Douglas] was
8 going to continue to beat all of us up, senseless.”⁶⁶ However, Almeda subsequently admitted that,
9 “after I did it I was like, I don’t know what the fuck I’m doing” and wished he had not done it.⁶⁷ Almeda
10 was evasive when asked to describe where and how he stabbed Douglas, at one point claiming that
11 he was facing Douglas when he stabbed him, even though Douglas was stabbed in the back.⁶⁸
12 Almeda subsequently added that he “was trying to stop [Douglas] from swinging on my friend for no
13 fucking reason.”⁶⁹ Almeda claimed that, after the stabbing, “Douglas continued to beat [Stice] with the
14 bat,” while Almeda “just stood there in shock for a second before everybody ran back to the car.”⁷⁰
15 Almeda denied traveling to Douglas’ property with the intent to start a fight, but he admitted that he had
16 previously “got into a fight” with Dustin and had “whooped his ass.”⁷¹

17 As for resisting arrest, Almeda insisted that he was asleep and never heard the loudspeaker,
18 despite deputies’ observations of Almeda and Marquez moving around inside the home. When
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22 ⁶⁴ AGRL Ex. at p. 45; AG Audio Ex. 38 (law enforcement recording of Almeda’s jail statement).

23 ⁶⁵ AGRL Ex. at p. 45; AG Audio Ex. 38 (law enforcement recording of Almeda’s jail statement).

24 ⁶⁶ AGRL Ex. at p. 45; AG Audio Ex. 38 (law enforcement recording of Almeda’s jail statement).

25 ⁶⁷ AGRL Ex. at p. 45; AG Audio Ex. 38 (law enforcement recording of Almeda’s jail statement).

26 ⁶⁸ AGRL Ex. at pp. 45-46.

27 ⁶⁹ AGRL Ex. at p. 46.

28 ⁷⁰ AGRL Ex. at p. 46.

⁷¹ AGRL Ex. at p. 47.

1 challenged, he admitted that he hid in the attic but then supposedly fell asleep there, wearing only his
2 underwear, until awoken by tear gas.⁷²

3 **F. Douglas' Statements**

4 Douglas provided multiple statements about the stabbing, initially at the scene, then at the
5 hospital, and months later when testifying at the preliminary hearings and trials. As detailed below,
6 Douglas was cooperative with law enforcement, and his plausible version of events was largely
7 consistent with only minor discrepancies, likely attributable to the stress of the moment and passage of
8 time.

9 At the crime scene, while in pain and struggling to breathe, Douglas spoke to first responders
10 for roughly three minutes. In his brief description of the altercation to Deputy Vaughan, Douglas
11 recalled the men were on his property, belligerent, and refused to go. Douglas approached them with a
12 bat to get them to leave. Thereafter, Stice threw a piece of firewood at him, either Stice or Almeda
13 punched him, and then Almeda stabbed him. Douglas acknowledged swinging his bat after the wood
14 was thrown, without hitting anyone, in order to get Stice to back away. After the stabbing, a fight
15 ensued, and Douglas swung his bat at anything that moved.⁷³ Douglas did not mention restraining
16 Stice against the car with a bat, nor did he mention Stice or Almeda alternately coming at him after
17 each fell down and popped back up.⁷⁴

18 At the hospital, Douglas spoke twice to law enforcement. In his first statement to Deputy
19 Cooney, Douglas stated that Stice had punched him after the stabbing, around the time when
20 someone shouted, "Let's go," rather than earlier when the physical altercation commenced.⁷⁵ Douglas
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23 ⁷² AGRL Exs. at pp. 46-47; AGRL Audio Ex. 38 at 1:04:55 (law enforcement recording of Almeda's jail
statement).

24 ⁷³ AGRL at p. 5; AGRL Ex. at p. 1; AGRL Audio Ex. 26 (law enforcement recording of Douglas'
25 statement on scene).

26 ⁷⁴ AGRL at p. 34; ADR at pp. 337-341.

27 ⁷⁵ AGRL at p. 16; AGRL Audio Ex. 34 at 9:14 (law enforcement recording of Douglas' first hospital
28 statement). As noted by the Attorney General, Deputy Conney's report suggests that Stice punched
Douglas immediately after throwing the piece of firewood, but Douglas actually stated that he was
punched after someone said, "Let's go." (AGRL at p. 16 n.18; AGRL Ex. at p. 17.)

1 also stated that he started to swing the bat after Stice threw the firewood, adding, “I don’t think I hit him
2 initially,” “...until...,” and “I don’t think I hit him.”⁷⁶ Douglas next described the stabbing, after which he
3 acknowledged that he struck Stice “five, six times... maybe more.”⁷⁷ Douglas added additional details
4 concerning Stice falling down and their struggle against the car.

5 In his second statement at the hospital to Deputy Peterson, Douglas described the altercation
6 with Stice and Almeda in greater detail, which generally included the same sequence of events as his
7 first hospital statement. Douglas added that he had alternatively swung the bat at Stice and Almeda as
8 each came at him after falling down, as well as his struggle with Stice while pressed against a car.⁷⁸
9 There was no discussion as to when exactly Douglas hit Stice with the bat in relation to the stabbing.

10 When testifying at the first preliminary hearing in December 2017, Douglas generally repeated
11 the same version of events.⁷⁹ However, Douglas stated that he first swung the bat after he was
12 stabbed, rather than after Stice threw the firewood. Douglas acknowledged moving the bat earlier
13 while pressuring Stice and Almeda off his property.⁸⁰ Douglas denied telling law enforcement that he
14 hit Stice with the bat approximately five to six times before he was stabbed.⁸¹

15 When testifying at the second preliminary hearing in February 2018,⁸² Douglas’ account
16 generally matched his earlier testimony.⁸³ Douglas insisted, again, that he first hit Stice with the bat
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19 ⁷⁶ AGRL at p. 16; AGRL Audio Ex. 26 at 5:36-5:48 (law enforcement recording of Douglas’ statement
20 on scene).

21 ⁷⁷ AGRL at p. 16; AGRL Audio Ex. 26 at 7:49-7:53 (law enforcement recording of Douglas’ statement
22 on scene); ADR at p. 949. As detailed *infra* (Sections III(F)&(G) and IV(D)(2)), these two separate
statements did not amount to an admission that Douglas hit Stice before the stabbing, regardless of
Deputy Cooney’s contrary representation. (AGRL Ex. at p. 17; ADR at pp. 935-938, 1418-1426.)

23 ⁷⁸ AGRL at pp. 17-18; AGRL Ex. at p. 42-43; AGRL Audio Ex. 35 (law enforcement recording of
Douglas’ second hospital statement).

24 ⁷⁹ AGRL at pp. 27-28; ADR at pp. 1263-1296.

25 ⁸⁰ ADR at p. 1293.

26 ⁸¹ ADR at pp. 1293-1294.

27 ⁸² Evidently, the prosecution dismissed the charges sometime after the first preliminary hearing and
then refiled the same charges followed by a second preliminary hearing. (App. at pp. 2, 9, 86.)

28 ⁸³ AGRL at pp. 38-40; ADR at pp. 1437-1463.

1 only after he was stabbed, and Douglas denied making any contrary statement to law enforcement at
2 the hospital.⁸⁴ Douglas also insisted, again, that he did not swing the bat until after he was stabbed,
3 although he acknowledged moving the bat while pressuring the men off his property. As for the timing
4 of when Stice punched him in the nose, Douglas still thought it happened after the stabbing, and he did
5 not recall making a contrary statement to law enforcement, but Douglas acknowledged this portion of
6 the altercation was “a blur” and he could only remember bits and pieces of his interview.⁸⁵

7 When testifying at the first trial in May 2018, Douglas’ account was largely consistent with his
8 prior testimony but with a few differences.⁸⁶ Specifically, Douglas acknowledged that Stice may have
9 punched him in the face shortly after throwing the firewood, when Douglas had charged towards Stice
10 before the stabbing.⁸⁷ Douglas also admitted that he may have punched Stice with his fist while the
11 two struggled against the car before the stabbing. As for the discrepancies over when Douglas began
12 to swing the bat, Douglas clarified that, while he did not complete a full swing of the bat until after he
13 was stabbed, he did move the bat when advancing towards the men as a partial “checked” swing.⁸⁸ As
14 in his prior statements, Douglas insisted that he did not hit anyone with a bat until after he was
15 stabbed.⁸⁹

16 On cross-examination, Douglas seemingly admitted that he had previously and untruthfully
17 denied knowing that Elaina was related to Almeda at the time of the stabbing,⁹⁰ even though Douglas
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20 ⁸⁴ Deputy Vaughan also testified at the second preliminary hearing and confirmed that Douglas told
21 him at the scene that he first hit Stice with a bat after he was stabbed. (ADR at pp. 1377-1410.) But as
22 detailed *infra* (Sections III(G) and IV(D)(2)), Deputy Cooney inaccurately testified at the second
23 preliminary hearing that, while in the hospital, Douglas had admitted to striking Stice five to six times
with the bat before the stabbing occurred. (ADR at pp. 1418-1419, 1426; see also AGRL at pp. 16-17
n.19; 38-39 n.27.)

24 ⁸⁵ ADR at p. 1451.

25 ⁸⁶ AGRL at pp. 29-32; ADR at pp. 56-193.

26 ⁸⁷ ADR at pp. 139, 163-164.

27 ⁸⁸ ADR at p. 87.

28 ⁸⁹ ADR at pp. 56-193.

⁹⁰ ADR at pp. 119-120; AGRL at p. 58.

1 had readily admitted this detail when speaking to law enforcement at the hospital.⁹¹ Douglas also
2 admitted inconsistencies in his testimony about the dimension of the firewood. Finally, when accused
3 by the defense of refusing to provide a direct answer to the question of whether Douglas had
4 previously admitted that Almeda did not verbally threaten him, defense counsel commented, “For the
5 record, the witness is smirking and laughing.”⁹² However, the prosecutor immediately moved to strike
6 this comment, which was granted. As the court later explained, only the judge, not the attorney, makes
7 the record, and the judge did not see the supposed smirk.⁹³

8 When testifying at the second trial in November 2018, Douglas’s account was generally
9 consistent with his prior testimony.⁹⁴ However, Douglas indicated that the timing of when Stice
10 punched him in the nose occurred after the stabbing.⁹⁵ Also, Douglas added, for the first time, that he
11 was “pretty heavily medicated” with Morphine when he spoke to law enforcement at the hospital,
12 during which he supposedly admitted to hitting Stice before the stabbing.⁹⁶ Douglas continued to insist
13 that he only struck Stice after the stabbing.⁹⁷

14 **G. Other Witnesses**

15 Significantly, Deputy Cooney testified at the second trial. Based on his report, Deputy Cooney
16 initially maintained that Douglas had admitted striking Stice with the bat before the stabbing. However,
17 Deputy Cooney subsequently conceded that his report was merely a summary of their conversation,
18 and he no longer recalled “word for word” what Douglas had said at the hospital.⁹⁸ After reviewing a
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22 ⁹¹ AGRL Ex. at p. 42.

23 ⁹² ADR at p. 187.

24 ⁹³ ADR at pp. 221-222.

25 ⁹⁴ AGRL at pp. 40-42; ADR at pp. 706-817.

26 ⁹⁵ ADR at pp. 745, 752, 811.

27 ⁹⁶ ADR at pp. 759-761, 780, 784, 806.

28 ⁹⁷ ADR at pp. 706-817.

⁹⁸ ADR at pp. 936-937, 941.

transcript of that conversation, Deputy Cooney acknowledged that Douglas had described striking Stice after the stabbing, not before.⁹⁹

Other witnesses corroborated Douglas' account. Dustin told law enforcement and later testified that he saw Stice throw the piece of firewood at Douglas, followed by a struggle between Stice and Douglas with hands only, during which Almeda stabbed Douglas in the back, after which Douglas first struck Stice with the bat.¹⁰⁰ Douglas' wife Shaun, who only saw a portion of the altercation, spotted a piece of firewood on the ground that had not previously been there and observed a scuffle between Douglas and Stice when Douglas exclaimed that he had been stabbed.¹⁰¹

By comparison, Almeda's associates relayed inconsistent versions of events. When speaking to law enforcement, Marquez's girlfriend Gutierrez claimed to have only seen a fight between Dustin and Stice and denied any knowledge of the stabbing.¹⁰² Almeda's girlfriend Cruz initially denied knowing Almeda and then claimed she had not seen him for two weeks. She also denied being present during the altercation and claimed that she only later heard that either Dustin or Douglas had hit Stice.¹⁰³ Finally, Elaina initially told law enforcement that she only heard, but did not see, the altercation on the driveway, but then she inconsistently testified that she observed Douglas start to beat Stice with the bat without provocation, while Stice merely yelled for help. Elaina denied observing any physical contact between Douglas and Almeda. Elaina claimed that she had previously lied to police about the altercation at Shaun's request, even though Shaun remained on the phone with 911 until law enforcement arrived.¹⁰⁴

⁹⁹ ADR at p. 949; AGRL at p. 44.

¹⁰⁰ AGRL at pp. 5, 27, 33-35, 43; AGRL Ex. at p. 2; ADR at pp. 243-246, 342-344, 846-852, 1233-1235.

¹⁰¹ AGRL at pp. 6, 19, 32-33, 42; AGRL Ex. at pp. 3, 56-58; ADR at pp. 200-231, 818-832.

¹⁰² AGRL at pp. 8-9; AGRL Ex. at pp. 19-21, 38-39.

¹⁰³ AGRL at p. 9; AGRL Ex. at pp. 11-12.

¹⁰⁴ AGRL at pp. 6, 29, 35-36, 62; AGRL Ex. at p. 60; ADR at pp. 410-433, 1298-1305, 1611.

H. Criminal Proceedings

The first jury was unable to reach a unanimous verdict, either to convict or acquit Almeda, on the charge of felony assault with a deadly weapon causing great bodily injury. The second jury unanimously concluded, beyond a reasonable doubt, that Almeda was guilty as charged. The second jury also found Stice guilty of simple assault. The second jury's guilty verdict for Almeda's felony conviction was reversed on appeal due to prosecutorial misstatements of law concerning the defense of another. Upon remand, the prosecutor dismissed the felony charge for unspecified reasons, rather than pursue a third trial against Almeda.

I. CalVCB Evidence

In this administrative proceeding, Almeda's only new evidence consists of two declarations, one from him and another from Stice. No other declarations, not even from Almeda's brother Marquez or sister Elaina, were offered. Moreover, Almeda expressly declined a hearing in this administrative proceeding, at which he would have been entitled to testify on his own behalf.¹⁰⁵ By comparison, the Attorney General offers multiple reports and recordings of law enforcement interviews, which are incorporated above, as well as Almeda's prior and ongoing criminal history, which is summarized below.

1. Stice Declaration

In a declaration signed on October 11, 2023, Stice claims, in conclusory fashion, that he was "assaulted by a grown man wielding an aluminum baseball bat and striking me repeatedly with it at full force."¹⁰⁶ Stice neglects to admit his own age as an adult male or his initial description of Douglas as a grandfather.¹⁰⁷ Stice adds that he "sincerely believed the possibility existed that my life would not extend past that night" and that, had Almeda "not acted with such reason, caution, and calculation, I believe I would have been beaten to death" by Douglas.¹⁰⁸ Stice fails to specify what actions Almeda

¹⁰⁵ Pen. Code, § 4903; Cal. Code Regs., tit. 2, § 644.

¹⁰⁶ App. at pp.155-156.

¹⁰⁷ AGRL Ex. at p. 26.

¹⁰⁸ App. at pp.155-156.

1 supposedly took to save his life. Stice further fails to acknowledge his own aggressive acts leading up
2 to the altercation with Douglas. Instead, Stice minimizes his “mannerism and tactics” as “cavalier at
3 best, stupid at worst.”¹⁰⁹ Without admitting any fault, Stice merely alleges that his “immaturity and
4 capriciousness played a part in placing us in a position of peril.”¹¹⁰ Notably, Stice’s declaration fails to
5 address throwing the piece of firewood at Douglas or punching Douglas in the face. It also fails to
6 detail exactly when or how Almeda stabbed Douglas in the back. Instead, Stice insists that their
7 “noble” intentions were justified by concern over Elaina’s “inappropriate relationship” with Dustin,
8 without recognizing Marquez’s additional concern over Elaina’s theft and destruction of his car.¹¹¹

9 **2. Almeda Declaration**

10 In a declaration also signed on October 11, 2023, Almeda provides yet another inconsistent
11 and ultimately implausible account. Almeda now admits entering Douglas’ property, but solely “to bring
12 my sister home upon my mother’s request...”¹¹² Almeda contents that he was “unarmed” when he
13 arrived, despite his prior admission to possessing a knife in his pocket all along.¹¹³ Almeda also admits
14 that he stabbed Douglas in the back, despite previously claiming that he stabbed Douglas while facing
15 him, but Almeda insists that “[n]o crime was committed” because he acted in defense of Stice.¹¹⁴

16 According to Almeda, Douglas “marched us off his property while constantly swinging his bat at
17 us and threatening to hit us with the baseball bat,” then “continued threatening us by swinging his
18 baseball bat toward us” even after he and Stice had exited the property.¹¹⁵ Douglas’ alleged actions, in
19 turn, “prompted [Stice] to throw a piece of wood at Doug [*sic*]...”¹¹⁶ Thereafter, Douglas allegedly
20 “proceeded to savagely assault [Stice] by repeatedly hitting him with the baseball bat at full swing,”

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22 ¹⁰⁹ App. at pp.155-156.

23 ¹¹⁰ App. at pp.155-156.

24 ¹¹¹ App. at pp.155-156.

25 ¹¹² App. at p. 87.

26 ¹¹³ App. at p. 87.

27 ¹¹⁴ App. at p. 88.

28 ¹¹⁵ App. at pp. 86-89.

¹¹⁶ App. at pp. 86-89. The declaration refers to Douglas by the nickname “Doug.”

1 even though Stice only sustained a single injury to his forehead.¹¹⁷ As Douglas allegedly assaulted
2 Stice, Almeda supposedly “rushed to the car and grabbed a pocket knife that I was required to
3 possess for occupational purposes,” despite his contrary admission to law enforcement.¹¹⁸ Almeda
4 then “stabbed [Douglas] once in his back which stopped [Douglas’] repeated assaults upon [Stice].”¹¹⁹

5 Almeda fails to mention any of his own aggressive actions, such as his verbal threats against
6 Dustin or refusal to leave the property. Almeda also fails to detail what happened immediately after the
7 stabbing, such as whether Douglas attempted to strike Stice again or how Stice and Almeda finally
8 avoided Douglas’ reach.

9 **3. Almeda’s Criminal History**

10 According to the Attorney General, the likelihood that Almeda unlawfully assaulted Douglas
11 with a deadly weapon causing great bodily injury is bolstered by Almeda’s prior and subsequent bad
12 acts.¹²⁰ In 2015, Almeda was convicted of misdemeanor carrying a concealed dirk or dagger.¹²¹ The
13 following year in 2016, Almeda was convicted of misdemeanor unlawful sexual intercourse with a
14 minor, for which he was still on probation when he stabbed Douglas in 2017.¹²² Also in 2016, Almeda
15 was convicted of misdemeanor carrying a loaded firearm in a public place.¹²³ While imprisoned in
16 2019, Almeda battered another inmate, causing serious injury, by punching him twice in violation of
17 prison regulations, moments after others had assaulted the same inmate.¹²⁴ After his release in 2023,
18 Almeda was arrested for, but not convicted of, misdemeanor assault and trespass after he allegedly
19 entered the home of a couple, whom he did not know, and refused to leave despite multiple requests,
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22 ¹¹⁷ App. at p. 88.

23 ¹¹⁸ App. at p. 88.

24 ¹¹⁹ App. at p. 88.

25 ¹²⁰ AGRL at pp. 45-46, 53, 55.

26 ¹²¹ AGRL Ex. at pp. 70-71 (Pen. Code, § 21310).

27 ¹²² AGRL Ex. at pp. 68-69, 87 (Pen. Code, § 261.5).

28 ¹²³ AGRL Ex. at pp. 69, 75 (Pen. Code, § 25850).

¹²⁴ AGRL Ex at pp. 75-86 (Cal. Code Regs., tit. 15, § 3005, subd. (d)1)).

after which he threw a chair at one of the victims.¹²⁵ That same day, Almeda was also arrested for misdemeanor vandalism after smashing the car window of another victim.¹²⁶

IV. Determination of Issues

Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned for a felony offense that they did not commit, to submit a claim for compensation to CalVCB for the injury sustained.¹²⁷ Under subdivision (a) of section 4900, claimants bear the burden to prove by a preponderance that (1) the crime with which they were convicted either did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous conviction.¹²⁸ Pursuant to Penal Code section 4901, the claim must be submitted within ten years after release from prison but not until 60 days after the reversal of a conviction.¹²⁹

Once such a claim is timely received and filed, Penal Code section 4902 requires the Attorney General to submit a written response.¹³⁰ Thereafter, under Penal Code section 4903, an informal hearing before a hearing officer ensues, at which the claimant and Attorney General may present evidence concerning innocence and injury.¹³¹ Upon the requisite showing, CalVCB shall approve payment pursuant to Penal Code section 4904 for the purpose of indemnifying the claimant for the injury sustained if sufficient funds are available, upon appropriation by the Legislature, at a rate of \$140 per day for their erroneous imprisonment.¹³² A conditional amendment to section 4904, which would have augmented compensation at the rate of \$70 per day for time spent “on supervised release” after July 2024, ultimately did not become operative.¹³³

¹²⁵ AGRL Ex. at pp. 102-107 (Pen. Code, §§ 242, 602).

¹²⁶ AGRL Ex. at pp. 98-101 (Pen. Code, §594).

¹²⁷ Pen. Code, § 4900.

¹²⁸ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

¹²⁹ Pen. Code, § 4901, subds. (a), (c).

¹³⁰ Pen. Code, § 4902, subd. (a); Cal Code of Regs., tit. 2, § 640.

¹³¹ Pen. Code, § 4903, subd. (a); Cal Code of Regs., tit. 2, § 644.

¹³² Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

¹³³ See proposed Pen. Code, § 4904, subd. (d), operative July 1, 2024, subject to appropriation “only if General Fund moneys over the multiyear forecasts beginning in the 2024-2025 fiscal year are

1 In limited circumstances, a different and expediated procedure may apply to claims filed by
2 claimants whose convictions were reversed under specified circumstances. First, under Penal Code
3 section 1485.55 or 851.865, if the claimant received a court finding of factual innocence, then CalVCB
4 must approve the claim, without a hearing and within 90 days, for the demonstrated injury.¹³⁴ A finding
5 of factual innocence “must be made by at least a preponderance of the evidence and must reflect a
6 determination that the person charged and convicted of an offense did not commit the crime.”¹³⁵
7 Second, under subdivision (b) of Penal Code section 4900, if the claimant’s conviction was vacated by
8 a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), and the
9 charges were dismissed or acquitted on remand, and the Attorney General declined to object with clear
10 and convincing proof of guilt, then CalVCB must approve the claim, without a hearing and within 90
11 days, for the demonstrated injury.¹³⁶ Third, under recently-added subdivision (d) of section 1485.55, if a
12 court granted a motion for relief based upon a conviction that was vacated by a grant of habeas relief or
13 pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), the charges were dismissed or
14 acquitted on remand, and the district attorney failed to timely object with clear and convincing proof of
15 the claimant’s guilt, then CalVCB must approve the claim, without a hearing and within 90 days, for the
16 demonstrated injury.¹³⁷ Unless one of these statutory exceptions applies, then the claimant bears the
17 burden to prove innocence and injury by a preponderance of the evidence under subdivision (a) of
18 Penal Code section 4900.

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21 available,” as added by Stats.2022, c. 771 (A.B. 160), § 21; see also Governor’s May Revision (2024-
22 25), Introduction at pp. 9-10 (expressly excludes triggered expenditures from the 2022 Budget Act for
23 the Victim Compensation Program from the 2024-2025 budget due to “the negative multiyear
projections” to the General Fund), available online at [https://ebudget.ca.gov/2024-25/pdf/Revised/
BudgetSummary/ FullBudgetSummary.pdf](https://ebudget.ca.gov/2024-25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf).

24 ¹³⁴ Pen. Code, §§ 851.865; 1485.55, subds. (a), (b), and (e), 4902, subd. (a); see also Cal. Code of
25 Regs., tit. 2, § 640, subds. (e)(1)-(2).

26 ¹³⁵ *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (interpreting Pen. Code, § 1485.55, subd. (a).).

27 ¹³⁶ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

28 ¹³⁷ Pen. Code, § 1485.55, subd. (e). While a court order under subdivision (d) of section 1485.55 does
not constitute a finding of factual innocence, it nevertheless requires expediated approval of a filed
claim.

1 When determining whether the claimant has satisfied their burden of proof, the Board may
2 consider the “claimant’s denial of the commission of the crime; reversal of the judgment of conviction;
3 acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the
4 crime....”¹³⁸ The Board may also “consider as substantive evidence the prior testimony of witnesses
5 [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for
6 which claimant had an opportunity to object.”¹³⁹ Ultimately, the Board may consider “any other
7 information that it deems relevant to the issue before it,” even if inadmissible under the traditional rules
8 of evidence, so long as “it is the sort of evidence on which reasonable persons are accustomed to rely
9 in the conduct of serious affairs.”¹⁴⁰

10 CalVCB’s broad authority to consider all relevant evidence when deciding a claim for
11 compensation may be limited by various court decisions during the criminal proceedings. By statute,
12 CalVCB is bound by “factual findings” and “credibility determinations” rendered by a court during
13 proceedings on a claimant’s petition for habeas corpus, motion to vacate judgment pursuant to Penal
14 Code section 1473.6 or 1473.7, subdivision (a)(2), or an application for a certificate of factual
15 innocence.¹⁴¹ Nonetheless, CalVCB is not bound by a court’s “summary of, observations about, and
16 characterizations of the trial record when the [court] is *not* finding *facts* after entertaining new
17 evidence....”¹⁴² CalVCB is also bound by any factual stipulation made by the district attorney or
18 Attorney General while prosecuting either a petition for writ of habeas or a motion to vacate the
19 judgment.¹⁴³ Finally, a claim under Penal Code section 4900 may not be denied solely because the
20 claimant failed to obtain a court finding of factual innocence.¹⁴⁴

23 ¹³⁸ Cal. Code Regs., tit. 2, § 641, subd. (a).

24 ¹³⁹ Cal. Code Regs., tit. 2, § 641, subd. (b).

25 ¹⁴⁰ Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

26 ¹⁴¹ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c).

27 ¹⁴² *Gonzales v. CalVCB* (2023) 98 Cal.App.5th 427, 447, italics in original.

28 ¹⁴³ Pen. Code, § 1485.5, subds. (a) & (b).

¹⁴⁴ Pen. Code, § 1485.55, subd. (d); Cal. Code of Regs., tit. 2, § 645, subd. (f).

1 **A. Penal Code Section 4900, subdivision (a), Governs Almeda’s Claim**

2 Almeda’s challenged conviction for assault with a deadly weapon was reversed on direct
3 appeal by the appellate court due to prosecutorial misstatements about the defense of another.¹⁴⁵
4 Because reversal was not based upon a grant of habeas relief or pursuant to Penal Code section
5 1473.6 or 1473.7, subdivision (a)(2), the burden-shifting provision in subdivision (b) of Penal Code
6 section 4900 does not apply to Almeda’s claim.¹⁴⁶ After the charges were dismissed upon remand,
7 Almeda did not seek a court finding of factual innocence under Penal Code section 851.865 or
8 1485.55, nor did he seek an order for mandated relief under subdivision (d) of section 1485.55.
9 Consequently, none of the mandated approval provisions in section 851.865 or 1485.55 apply to
10 Almeda’s claim. Thus, Almeda’s claim does not fall within any of the limited statutory exceptions of
11 subdivision (a) of Penal Code section 4900. He therefore bears the burden to demonstrate his
12 innocence by a preponderance of the evidence in this administrative proceeding.

13 **B. Binding Determinations**

14 When considering whether Almeda has satisfied his burden of proof, CalVCB is bound by any
15 factual findings or credibility determinations rendered by a court when considering new evidence for a
16 petition for writ of habeas corpus, motion to vacate pursuant to Penal Code section 1473.6 or 1473.7,
17 subdivision (a)(2), or an application for a certificate of factual innocence.¹⁴⁷ Notably, this list excludes
18 an appellate court’s opinion rendered on direct appeal. Thus, the appellate court’s opinion is not
19 binding in this administrative proceeding, although it may be considered as relevant evidence.¹⁴⁸

20 Almeda nevertheless argues that “the appellate opinion is dispositive” of his claim.¹⁴⁹ He
21 insists, based upon the appellate court’s acknowledgment of some disputed evidence in the trial record

22 _____
23 ¹⁴⁵ ADR at pp. 1916-1919.

24 ¹⁴⁶ Pen. Code, § 4900, subd. (b).

25 ¹⁴⁷ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); *Gonzales v. CalVCB, supra*, 98 Cal.App.5th at pp.
26 447-228 (explaining that a binding finding is “made after the court has entertained new evidence that
the court has observed firsthand during the habeas proceeding” and excludes a mere summary by the
habeas court of the trial record).

27 ¹⁴⁸ Cal. Code Regs., tit. 2, § 641, subd. (f).

28 ¹⁴⁹ App. at pp. 26-28.

1 that Almeda may have stabbed Douglas after Douglas struck Stice with the bat, that “Almeda is
2 factually innocent by a preponderance of the evidence....”¹⁵⁰ Not so.

3 As the Attorney General persuasively counters, the appellate court’s characterizations about
4 the trial record and prosecutor’s misconduct “are not binding or dispositive.”¹⁵¹ Moreover, the appellate
5 court’s recognition of some disputed evidence in Almeda’s trial regarding the availability of the defense
6 of another does not amount to a finding of factual innocence, which requires “at least a preponderance
7 of the evidence and must reflect a determination that the person charged and convicted of an offense
8 did not commit the crime.”¹⁵² Indeed, the appellate court’s opinion did not conclude that Almeda acted
9 in defense of another, only that the prosecutor misstated the elements for such a defense to apply.
10 Similarly, the appellate court’s opinion did not specify when Douglas first hit Stice with the bat in
11 relation to the stabbing, only that the evidence on this point was disputed.¹⁵³ Thus, the appellate
12 court’s nonbinding opinion, alone, does not compel approval of Almeda’s claim.

13 Almeda further insists that, during the appellate litigation, the Attorney General “agreed” that
14 two deputies had “testified that Douglas told them that he started swinging the bat at [Stice] before he
15 got stabbed....”¹⁵⁴ The Attorney General disputes this characterization of the appellate briefing.¹⁵⁵
16 Regardless, any potential concession by the Attorney General during the appellate proceeding is not
17 binding, as it did not occur in a habeas proceeding or motion to vacate.¹⁵⁶ Furthermore, the supposed
18 concession is ultimately insignificant because it did not admit that Douglas hit Stice before he was
19 stabbed, only that there was disputed evidence as to when Douglas commenced swinging the bat.

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22 ¹⁵⁰ App. at p. 28.

23 ¹⁵¹ AGRL at p. 63.

24 ¹⁵² *Larsen v. CalVCB, supra*, 64 Cal.App.5th at p. 129.

25 ¹⁵³ ADR at pp. 1910-1911 (“victim testified that, after he was stabbed, he began swinging the bat as
26 hard as he could at [Stice]” while one deputy “testified ... that the victim told him that he ... hit [Stice]
several times with [the bat] before he was stabbed”).

27 ¹⁵⁴ App. at p. 30.

28 ¹⁵⁵ AGRL at p. 49.

¹⁵⁶ Pen. Code, § 1485.5, subds. (a) & (b).

1 Accordingly, no binding court finding or stipulation compels CalVCB's approval of Almeda's
2 claim. CalVCB remains free to determine the likelihood of Almeda's professed innocence after careful
3 consideration of all relevant evidence presented in this administrative proceeding.¹⁵⁷ No presumption is
4 made by the absence of a finding of factual innocence.¹⁵⁸

5 **C. Elements of Assault and Defense of Another**

6 To be convicted of assault with a deadly weapon, the prosecution must prove, beyond a
7 reasonable doubt, all of the following elements: (1) the defendant willfully committed an act with a
8 weapon, such as a knife, (2) the defendant was aware of facts that would lead a reasonable person to
9 realize that the act would directly and probably result in the application of force upon the victim, (3) the
10 defendant had the present ability to apply such force upon the victim, and (4) the defendant did not act
11 in self-defense or defense of another.¹⁵⁹ Thus, in a criminal prosecution, the defendant cannot be
12 convicted of assault unless the prosecution proves beyond a reasonable doubt that the defendant did
13 *not* act in self-defense or defense of another.

14 A person generally lacks the right to self-defense if they provoked the fight with the intent to
15 create an excuse to use force.¹⁶⁰ For example, if the person started the fight, then self-defense may
16 apply only if the aggressor tried to stop fighting, communicated their desire to stop fighting, and gave
17 their opponent a chance to stop fighting.¹⁶¹

18 For the defense of another to apply, the defendant must reasonably believe that another
19 person was in imminent danger of suffering bodily injury and the use of force was necessary to defend
20 against that danger, and the defendant must use no more force than reasonably necessary to defend
21 against that danger.¹⁶² Notably, as observed by the California Supreme Court in *People v. Randle*

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24 ¹⁵⁷ Pen. Code, §§ 4903, subds. (a) & (c); 4904.

25 ¹⁵⁸ Pen Code, § 1485.55, subd. (d).

26 ¹⁵⁹ Pen. Code, § 245, subd. (a)(1); CALCRIM 875.

27 ¹⁶⁰ CALCRIM 3472 (Right to Self-Defense: May Not be Contrived).

28 ¹⁶¹ CALCRIM 3741 (Right to Self-Defense: Mutual Combat or Initial Aggressor).

¹⁶² CALCRIM 3470 (Right to Self-Defense or Defense of Another).

1 (2005) 35 Cal.4th 987, 999-1000, “reasonableness” for purposes of the defense of another “is tested
2 from the point of view of the defendant, not the point of view of the person being defended.”¹⁶³ Thus,
3 “one coming to the defense of others is protected by the mistake-of-fact doctrine and may act upon the
4 situation as it reasonably seems to be.”¹⁶⁴

5 Significantly, even though a criminal conviction requires the prosecution to prove beyond a
6 reasonable doubt that the defense of another did *not* apply, relief under subdivision (a) of Penal Code
7 section 4900 requires the claimant to prove by a preponderance that the defense *did* apply. As
8 explained in *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 587 n.7, “even an acquittal on
9 the basis [of self-defense] would alone be insufficient” for compensation because the “claimant must
10 carry the burden of proof of innocence by a preponderance of the evidence.”¹⁶⁵ Indeed, as recently
11 confirmed in *Gonzales v. CalVCB, supra*, 98 Cal.App.5th 427, which cited *Diola* approvingly,
12 compensation is barred for claims under subdivision (a) of section 4900 “where the evidence is in
13 equipoise” (i.e., “a tie”), which “further expands the universe of instances in which evidence insufficient
14 to prove guilt beyond a reasonable doubt may nevertheless not entitle [a claimant] to a finding of
15 factual innocence.”¹⁶⁶ In other words, “a finding of legal insufficiency due to the ‘prosecution’s failure of
16 proof’ at trial is not necessarily equivalent to a finding of factual innocence by a preponderance of the
17 evidence.”¹⁶⁷

18 Thus, Almeda’s claim cannot be approved by CalVCB solely based upon a reasonable doubt
19 whether he acted in defense of Stice. Rather, Almeda must affirmatively demonstrate, based upon all
20 the evidence in the administrative record, that it is more-likely-than-not that he did act in defense of
21 Stice.

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23 ¹⁶³ *People v. Randle* (2005) 35 Cal.4th 987, 999-1000, overruled on another point in *People v. Chun*
24 (2009) 45 Cal.4th 1172, 1201; see also ADR at pp. 1916-1917 (citing *Randle*).

25 ¹⁶⁴ *Ibid.*

26 ¹⁶⁵ Contrary to Almeda’s challenge to the Attorney General’s citation of *Diola* as “mendacious,
27 misleading, unethical and malicious” (Reply at p. 7), this case remains valid law, regardless of
28 subsequent statutory amendments to the compensatory scheme.

¹⁶⁶ *Gonzales, supra*, 98 Cal.App.5th at pp. 443-444.

¹⁶⁷ *Id.* at p. 444.

1 **D. Insufficient Proof of Innocence**

2 Almeda fails to prove his innocence in this administrative proceeding. Given Almeda's
3 admission to having stabbed Douglas in the back with a knife, his claim of innocence requires proof
4 that he justifiably acted in defense of Stice. But as detailed below, a preponderance of the evidence
5 fails to demonstrate that Almeda actually and reasonably believed Stice was in imminent danger of
6 suffering bodily injury when he stabbed Douglas, and that Almeda used no more force than reasonably
7 necessary to defend against that danger. Indeed, there is strong evidence to the contrary. Accordingly,
8 Almeda's claim for compensation must be denied because he fails to prove that the stabbing was,
9 more likely than not, justified as defense of another.¹⁶⁸

10 **1. Exculpating Evidence**

11 Almeda offers little new evidence in this administrative proceeding to support his claim. Besides
12 the declarations from himself and Stice, he primarily relies upon legal arguments, along with the first
13 jury's acquittal and the appellate court's reversal of the second jury's conviction. None suffice to carry
14 his burden, as detailed below.

15 At the threshold, Almeda argues that he is innocent because, in his view, the prosecution failed
16 to prove his guilt beyond a reasonable doubt.¹⁶⁹ But even assuming the prosecution's evidence was
17 insufficient to demonstrate guilt beyond a reasonable doubt, this is not the correct standard for relief
18 under Penal Code section 4900, which represents "a *civil* determination of culpability" that requires the
19 claimant to "carry the burden of proof of innocence by a preponderance of the evidence."¹⁷⁰ As
20 confirmed by *Diola* and *Gonzales*, innocence in this administrative context cannot be demonstrated

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23 ¹⁶⁸ The Attorney General additionally argues that Almeda's claim must be denied because he is
24 precluded, as a matter of law, from asserting defense of another under *Randle* because "his wrongful
25 conduct established the circumstances under which Douglas' attack [against Stice] was legally
26 justified." (AGRL at p. 49.) Almeda counters that this aspect of *Randle* solely limits the availability of
27 self-defense but not defense of another. (Reply at pp. 2-4.) This legal issue need not be resolved in
28 light of the hearing officer's conclusion that Almeda failed to prove by a preponderance of evidence that
he actually and reasonably believed that Stice was in imminent danger of suffering bodily injury that
necessitated stabbing Douglas.

¹⁶⁹ App. at pp. 28-37, 41-56.

¹⁷⁰ *Diola*, *supra*, 135 Cal.App.3d at p. 588, n.7, italics in original.

1 solely based upon a reasonable doubt of guilt.¹⁷¹ Almeda's challenge to *Diola*'s validity by noting
2 subsequent, unrelated changes to the statutory scheme for section 4900 claims is ultimately
3 unpersuasive, particularly given recent decisions citing approvingly to *Diola*.¹⁷² Thus, in order to prevail
4 on his claim, Almeda must affirmatively prove that he was likely acting in defense of another when he
5 stabbed Douglas, even assuming the prosecution's case was insufficient to prove beyond a
6 reasonable doubt that he was not.

7 Almeda also alleges multiple legal errors to support his claim of innocence.¹⁷³ For example, he
8 alleges prosecutorial misconduct, erroneous instruction by the trial court, excessive force by law
9 enforcement, and unreasonable search and seizure. But as the Attorney General aptly counters, such
10 legal considerations "are wholly irrelevant to the present inquiry of claimant's factual innocence."¹⁷⁴
11 Regardless of any legal errors that might have occurred during the criminal proceeding, CalVCB must
12 solely determine, based upon the evidence presented in this administrative proceeding, whether
13 Almeda is likely innocent of assault with a deadly weapon causing great bodily injury.¹⁷⁵

14 To that end, Almeda offers his declaration. In it, Almeda declares that, as Douglas "savagely"
15 and "repeatedly" hit Stice with a baseball bat, Almeda "saw" his friend's "life was in peril" and "knew he
16 needed to save [Stice]," so after retrieving a knife from the car "that [he] was required to possess for
17 occupational purposes," Almeda stabbed Douglas "once in the back which stopped [Douglas']
18 repeated assaults upon [Stice]."¹⁷⁶ Almeda insists that this declaration proves that he acted in defense
19 of Stice because he actually and reasonably believed that Stice was in imminent danger of suffering
20 bodily injury and he used no more force than was necessary to defend against that danger.¹⁷⁷

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22 ¹⁷¹ *Gonzales, supra*, 98 Cal.App.5th at p. 444; *Diola, supra*, 135 Cal.App.3d at p. 588, n.7.

23 ¹⁷² Reply at p. 7; cf. *Gonzales, supra*, 98 Cal.App.5th at p. 443 (citing *Diola*); *In re Anthony* (2015) 236
24 Cal.App.4th 204, 209 (citing *Diola*); *Tennison v. California Victim Comp. & Government Claims Bd.*
(2007) 152 Cal.App.4th 1164, 1182 (citing *Diola*).

25 ¹⁷³ App. at pp. 20-28, 56-84.

26 ¹⁷⁴ AGRL at p. 63.

27 ¹⁷⁵ Pen. Code, § 4900, subd. (a).

28 ¹⁷⁶ App. at pp. 87-88.

¹⁷⁷ App. at pp. 15, 30-35; Reply at p. 7.

1 However, Almeda is not credible. His overall credibility is impeached by his prior misdemeanor
2 conviction for carrying a loaded firearm in a public place, which is a crime of moral turpitude.¹⁷⁸ As for
3 Almeda's credibility concerning the stabbing specifically, it is further impeached by his own
4 inconsistent statements as to what occurred. For example, Almeda initially denied being anywhere
5 near Douglas' property, then claimed he only stood on the common driveway outside of Douglas'
6 property, and now admits that he did enter Douglas' property. Almeda initially claimed that he retrieved
7 the knife from the Kia only after Douglas started beating Stice, subsequently admitted that he had the
8 knife in his pocket all along supposedly because he always carried it, then admitted that the knife was
9 not his but insisted that he merely happened to have it in his pocket from earlier that day, and now
10 declares that the knife remained in the Kia until Douglas started beating Stice. In addition, Almeda
11 declares that he "knew he needed to save" Stice by stabbing Douglas, yet Almeda admitted shortly
12 after to law enforcement, "I don't know what the fuck I'm doing," and wished he had not done it.¹⁷⁹
13 Almeda likewise declares that Douglas' "threatening" and "prolonged aggression" "prompted" Stice to
14 throw the firewood, yet Almeda previously denied that Stice threw anything at all.¹⁸⁰

15 Overall, Almeda's dramatically inconsistent accounts demonstrate his willingness to lie about
16 the stabbing whenever it suits him. Almeda's deceitfulness is further illustrated by his implausible
17 account for resisting arrest by supposedly falling asleep in the attic of someone else's home, wearing
18 just his underwear, without having heard the loudspeaker that repeatedly demanded his surrender. He
19 also fails to address how law enforcement saw him inside the house before deploying teargas to force
20 his exit from the house.

21 Moreover, Almeda's latest version of events is not plausible. Almeda supposedly went to
22 Douglas' home merely to pick up his 17-year-old sister Elaina, yet he waited until evening when he
23 was joined by two additional adult males. Almeda claimed he felt "betrayed" upon learning of a sexual
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26 ¹⁷⁸ AGRL at p. 51; *People v. Bedolla*, *supra*, 28 Cal.App.5th at pp. 550-555 (carrying a loaded firearm
in public "suggests a 'general readiness to do evil' ... or moral laxity of some kind").

27 ¹⁷⁹ App. at p. 88; AGRL Ex. at p. 45.

28 ¹⁸⁰ App. at p. 87; AGRL Ex. at pp. 44-45.

1 relationship between Elaina and his “dear friend” Dustin. But this entirely benign explanation for
2 entering Douglas’ property uninvited is suspect, given Almeda’s own criminal history for having sexual
3 intercourse with a minor, his prior assault upon Dustin, and Elaina’s recent damage to their brother’s
4 car. Once Almeda and his cohorts entered the property and encountered Douglas, they supposedly
5 reacted without any aggression, while Douglas, a 47-year-old grandfather with no criminal record,
6 inexplicably threatened them by swinging a baseball bat in their direction.¹⁸¹ Despite being
7 outnumbered two-to-one, Douglas allegedly continued swinging the bat at the men, who still did
8 nothing provocative after exiting the property, until finally Stice threw a piece of firewood in self-
9 defense. In response, Douglas supposedly started to savagely beat Stice with the baseball bat,
10 continued to do so repeatedly while Almeda ran back to the car to retrieve his knife, and immediately
11 stopped only after Almeda finally stabbed him in the back. Despite this sequence of events, Stice
12 nevertheless sustained just one injury to his forehead, while Douglas received a bloody nose, facial
13 contusions, and a five-centimeter-deep stab wound. Ultimately, this implausible scenario rings hollow.
14 It remains doubtful that Almeda stabbed Douglas while under an actual and reasonable belief that the
15 stabbing was necessary to defend Stice from imminent danger of bodily harm.

16 Stice’s conclusory declaration is similarly unbelievable. Stice summarily declares that Almeda
17 saved his life by stabbing Douglas “one time with a pocketknife he used for work.”¹⁸² However, Stice’s
18 declaration fails to specify exactly when Almeda stabbed Douglas in relation to when Douglas first
19 struck Stice with a bat. His declaration further fails to confirm whether Douglas stopped hitting Stice
20 with a bat because of the stabbing or some other action by Almeda, possibly by shouting “Let’s go.” As
21 such, Stice’s declaration, on its face, is not necessarily exculpatory. In addition to these glaring
22 omissions, portions of Stice’s declaration are refuted by contrary statements from Stice and Almeda.

24 ¹⁸¹ Perhaps recognizing the unlikeness of such a scenario, Almeda’s reply speculates that Douglas’
25 allegedly unprovoked aggression resulted from his “implicit subornation of statutory rape upon his own
26 real property....” (Reply at p. 6). However, Almeda’s speculation is even more unlikely, given that
27 Douglas specifically told his wife to call 911 at the start of the encounter with Almeda, knowing law
28 enforcement would soon arrive at his property and encounter Elaina there. (ADR at pp. 70-71, 1443,
1910.)

¹⁸² App. at p. 155.

1 For example, Almeda previously admitted that the knife did not belong to him and had been in his
2 pocket when he first stepped out of the Kia. Moreover, Stice previously admitted that he only sustained
3 a single injury from the bat and Douglas did not strike him again after inflicting that injury. Stice also
4 admitted that he started the fight with Douglas by throwing a piece of firewood at him and punching
5 Douglas in the face. For all these reasons, any exculpatory weight from Stice's unbelievable
6 declaration is minimal.

7 No other declarations from potential witnesses, such as Almeda's sister Elaina or brother
8 Marquez, are offered in this administrative proceeding. While Elaina testified at Almeda's first trial that
9 Douglas was the aggressor,¹⁸³ the jury impliedly rejected her account when failing to acquit Almeda.
10 Regardless, Elaina's testimony on this point lacks credibility in this administrative proceeding, given
11 her contrary statements to law enforcement at the scene and the weight of other evidence in the
12 record. Accordingly, Elaina's exculpatory testimony is not persuasive.

13 Although Almeda was never acquitted of assault with a deadly weapon, his first jury was unable
14 to reach a unanimous verdict on this charge. Nevertheless, a hung jury fails to prove Almeda's
15 innocence in this administrative proceeding. The jury's inability to return a guilty verdict merely reflects
16 that some – but not all – of the jurors had a reasonable doubt whether Almeda did not act in defense of
17 another. But such a doubt, even if shared among all the jurors, fails to demonstrate that Almeda
18 actually did act in defense of another.¹⁸⁴ Indeed, the jurors were prohibited from convicting Almeda of
19 assault, even if they unanimously believed that the defense of another was not likely, if their belief was
20 not beyond a reasonable doubt.¹⁸⁵ Accordingly, any exculpatory weight from the first jury's inability to
21 reach a unanimous verdict of guilt is marginal at best.¹⁸⁶

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24 ¹⁸³ ADR at pp. 406-439.

25 ¹⁸⁴ See *Diola*, *supra*, 135 Cal.App.3d at p. 587 n.7 (confirming that “even an acquittal on [the basis of
26 self-defense] would alone be insufficient for recovery” as the “claimant must carry the burden of proof
of innocence by a preponderance of the evidence”).

27 ¹⁸⁵ Pen. Code, § 245 (defining assault); CALCRIM 875 (explaining elements for assault).

28 ¹⁸⁶ Cal. Code Regs., tit. 2, § 641, subd. (a) (recognizing “acquittal on retrial” as admissible evidence).

1 Similarly, the appellate court's reversal of the second jury's conviction fails to demonstrate
2 Almeda's innocence. As previously explained, the appellate court's nonbinding decision does not
3 express any opinion as to the likelihood that Almeda acted in defense of Stice when he stabbed
4 Douglas. Rather, the court simply reversed Almeda's conviction, given "the conflict in the testimony"
5 about the timing of when Douglas struck Stice, because there was "a reasonable likelihood" that the
6 prosecutor's misstatement of law "caused one or more members of the jury to convict ... based on the
7 incorrect legal standard ... that impermissibly lowered [the prosecution's] burden of proof."¹⁸⁷ Such a
8 "reasonable likelihood" of error, even if binding in this administrative proceeding, fails to prove that
9 Almeda likely acted in defense of Stice. Accordingly, the appellate court's reversal carries little, if any,
10 exculpatory weight in this administrative proceeding.¹⁸⁸

11 The district attorney's decision not to retry Almeda constitutes admissible evidence in this
12 administrative proceeding.¹⁸⁹ Nonetheless, its significance is questionable given the absence of any
13 explanation for that decision. While it is possible the prosecutor doubted whether the evidence was
14 sufficient to prove Almeda's guilt beyond a reasonable doubt, the prosecutor may have alternatively
15 concluded that a third trial was not in the public's interest. Notably, a third trial would have required
16 Douglas to testify for the fifth time against Almeda, and Almeda had already served almost four years
17 of his six-year sentence. Under these circumstances, the district attorney's unexplained decision to
18 forego a third trial against Almeda is of limited exculpatory value.

19 Finally, Almeda argues, without citation to any legal authority, that he "had a legal right to check
20 upon the well being of his underage sister" Elaina and "a right to be present at [Douglas']
21 property...."¹⁹⁰ As his sole support, Almeda notes that he "was not charged with trespassing" or any
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24 ¹⁸⁷ ADR at p. 1918.

25 ¹⁸⁸ Cal. Code Regs., tit. 2, § 641, subd. (a) (recognizing "reversal of the judgment of conviction" as
26 admissible evidence).

27 ¹⁸⁹ Cal. Code Regs., tit. 2, § 641, subd. (a) (recognizing "decision of the prosecuting authority not to
28 retry claimant for the crime" as admissible evidence).

¹⁹⁰ Reply at p. 6.

1 other “‘wrongful’ conduct” for entering Douglas’ property.¹⁹¹ Regardless of the district attorney’s
2 charging strategy, there is no right to engage in vigilante justice. Indeed, by Almeda’s logic, any
3 relative of a minor would be entitled to enter and remain upon any private property wherever the minor
4 was present, regardless of the owner’s objection or the minor’s wishes, which is an untenable result.¹⁹²
5 Instead, if Almeda had been truly concerned about his sister, then he was solely entitled to relay those
6 concerns to law enforcement and wait for law enforcement to conduct a welfare check.¹⁹³ Given his
7 prior conviction for sexual intercourse with a minor, Almeda was well aware that law enforcement
8 would respond to any reported concerns about Elaina’s relationship with Dustin. Accordingly, Almeda’s
9 baseless argument is not exculpatory.

10 **2. Inculpatory Evidence**

11 In contrast, significant evidence incriminates Almeda for unjustifiably assaulting Douglas with a
12 deadly weapon causing great bodily injury. As detailed below, this includes Douglas’ credible
13 testimony that Almeda stabbed him before Douglas ever struck Stice with the bat, corroborating
14 admissions by Almeda and Stice, the comparative injuries sustained by all three men, Stice’s still valid
15 conviction for assaulting Douglas, and Almeda’s criminal history.

16 First and foremost, Douglas credibly described the unprovoked and coordinated assault by
17 both Almeda and Stice, during which Almeda stabbed Douglas in the back, and then Douglas struck
18 Stice for the first time with a bat. From his initial statements at the scene while still bleeding, his
19 subsequent statements in the hospital while medicated, to his ensuing court testimony on four
20 separate occasions, Douglas provided a compelling and persuasive account of the assault with only
21 minor discrepancies. Douglas was asleep in his own home while his wife and grandchild were also
22 present, when Almeda and Stice entered his property uninvited, refused to leave while shouting
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24 ¹⁹¹ Reply at p. 3.

25 ¹⁹² Pen. Code § 602, subd. (m); CALCRIM 2931 (defining trespass elements); cf. CALCRIM 3403
26 (recognizing narrow defense of necessity when the defendant acted in an emergency to prevent a
27 significant bodily harm to another, with no adequate legal alternative, without creating a greater danger
28 than the one avoided, while under an actual and reasonable belief that the act was necessary under the
circumstances).

¹⁹³ Pen. Code, 11106.4 (“welfare checks” by law enforcement).

1 profanities and threats of violence toward Douglas' son, and eventually backed off the property only
2 when Douglas brandished a baseball bat. Almeda and Stice nevertheless continued the altercation by
3 facing Douglas and shouting at him, even though Douglas remained standing on his own property
4 approximately eight to ten feet away from the men. Stice, in full view of Almeda, escalated the
5 altercation by throwing a piece of firewood that narrowly missed Douglas' head. In self-defense,
6 Douglas charged towards Stice, and the two struggled, during which Almeda stabbed Douglas in the
7 back. Wounded, Douglas hit Stice with a bat for the first time. Douglas ultimately struck Stice
8 approximately five or six times, inflicting a single injury to Stice's forehead. Douglas continued to swing
9 the bat in self-defense as Stice and Almeda alternately approached him until both men finally left in the
10 Kia.

11 Based upon this credible account, Almeda lacked an actual or reasonable belief in the need to
12 stab Douglas to defend Stice against imminent danger of bodily injury. At no time before the stabbing
13 was Stice in imminent danger of bodily injury, nor was any such belief reasonable under the
14 circumstances. Similarly, Almeda's use of force to stab Douglas, after Stice had thrown a piece of
15 firewood at Douglas' head and punched Douglas in the face, was not at all necessary. Had Almeda
16 and Stice merely retreated to the Kia, it appears the entire altercation would have immediately ceased.
17 Accordingly, Douglas' credible testimony precludes any finding that Almeda acted in defense of Stice
18 when he stabbed Douglas in the back.

19 In an effort to undermine Douglas' credibility, Almeda accuses Douglas of being "an admitted
20 perjurer with no credibility and total lack of respect for the justice system."¹⁹⁴ This unpersuasive
21 accusation appears to be based upon Douglas' alleged admission during cross-examination in the first
22 trial that he had untruthfully denied knowing that Elaina was Almeda's sister when the stabbing
23 occurred.¹⁹⁵ But as explained by the Attorney General, Douglas' supposed admission was likely due to
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27 ¹⁹⁴ App. at p. 16.

28 ¹⁹⁵ App. at pp. 16-20.

1 Douglas' confusion about the call of the question, as Douglas readily admitted to responding law
2 enforcement that Elaina and Almeda were related.¹⁹⁶

3 To bolster his accusation of Douglas as a perjurer, Almeda emphasizes various omissions or
4 discrepancies in Douglas' description of the attack, such as pinning Stice with the bat against the car,
5 Stice and Almeda alternately popping up, and supposedly admitting to Deputy Cooney that he hit Stice
6 with a bat before the stabbing.¹⁹⁷ However, Douglas' inclusion of additional details with only slight
7 variations appears to be the natural result of the stress of moment and passage of time. As such, it
8 does not undermine his credibility.¹⁹⁸ Indeed, Douglas' account remains remarkably consistent in
9 comparison to the dramatically different versions of events recited by Almeda. Moreover, as
10 persuasively urged by the Attorney General, Douglas' recorded statement while in the hospital to
11 Deputy Cooney did not admit to hitting Stice with a baseball bat before the stabbing, despite Deputy
12 Cooney's inaccurate characterization to the contrary in his report, which Deputy Cooney seemingly
13 acknowledged when testifying at the second trial.¹⁹⁹ Accordingly, Almeda's baseless accusation fails to
14 undermine Douglas' credibility.

15 Almeda also emphasizes the defense attorney's characterization of Douglas' demeanor during
16 the first trial as "smirking and laughing" supposedly because Douglas "knew he'd been caught again
17 perjuring himself on the witness stand."²⁰⁰ However, this characterization is unsupported by the record,
18 as it was ordered stricken by the court.²⁰¹ It therefore carries no weight in this administrative
19 proceeding. Overall, Douglas' account of the assault with a deadly weapon remains credible and
20 persuasive.

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23 ¹⁹⁶ AGRL at pp. 57-58; AGRL Ex. at p. 42; ADR at pp. 119-120, 1240.

24 ¹⁹⁷ App. at pp. 16-20.

25 ¹⁹⁸ See CALCRIM 105 ("Do not automatically reject testimony just because of inconsistencies or
26 conflicts. ...People sometimes honestly forget things or make mistakes about what they remember").

27 ¹⁹⁹ AGRL at p. 16 n.19; ADR at pp. 86, 741-745, 750-751, 949, 1271, 1418-1426, 1445-1447; AGRL
28 Ex. at p. 17; AGRL Audio Ex. 26 at 7:49-7:53.

²⁰⁰ App. at p. 18.

²⁰¹ ADR at pp. 221-222.

1 In a related challenge to Douglas' credibility, Almeda suggests that Douglas provoked the
2 entire altercation by swinging the baseball bat in a threatening manner to pressure Almeda and Stice
3 off his property and, therefore, Stice's subsequent decision to throw a piece of firewood at Douglas
4 was justified self-defense.²⁰² Not so.

5 This suggestion is refuted by the second jury's verdict finding Stice guilty of assaulting Douglas,
6 who necessarily rejected any claim of self-defense by Stice beyond a reasonable doubt. It is also
7 refuted by Douglas' version of events. As Douglas credibly explained, he only raised the bat, at times
8 moving it short of a full swing, after Almeda and Stice refused to leave his property.²⁰³ But even if
9 Douglas' movements with the bat may be fairly characterized as a full swing when pressuring Almeda
10 and Stice off his property, Stice's subsequent assault against Douglas when throwing the firewood at
11 his head was still not justified. Indeed, given Almeda's prior assault upon Douglas' son Dustin,
12 combined with Almeda and Stice's refusal to leave his property and their continuing threats against
13 Dustin and aggressive profanity towards Douglas and his wife, Douglas, who was outnumbered two-to-
14 one, displayed remarkable restraint when ejecting Almeda and Stice from his property by merely
15 swinging, either partial or in full, a baseball bat.²⁰⁴ While acting in defense of himself and his family on
16 his own property, Douglas was "not required to retreat."²⁰⁵ Rather, he was "entitled to stand his []
17 ground and defend himself [] and, if reasonably necessary, to pursue an assailant until the danger of
18 [bodily injury] had passed... even if safety could have been achieved by retreating."²⁰⁶ Thus, Almeda
19 and Stice instigated the entire ordeal, during which Douglas justifiably reacted to protect himself, his
20 family, and his property.

21 Additional evidence in the record bolsters Douglas' credibility. Most notably, Stice's admissions
22 to law enforcement corroborate Douglas' version of events. Stice admitted entering Douglas' property
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24 ²⁰² App. at pp. 13-15, 38-40.

25 ²⁰³ ADR at pp. 714-727, 1910.

26 ²⁰⁴ CALCRIM 3475 (Right to Eject Trespasser from Real Property); CALCRIM 506 (Justifiable
Homicide: Defending Against Harm to Person Within Home or on Property).

27 ²⁰⁵ CALCRIM 3470 (Right to Self-Defense or Defense of Another (Non-Homicide)).

28 ²⁰⁶ CALCRIM 3470 (Right to Self-Defense or Defense of Another (Non-Homicide)).

1 with Almeda and Marquez without permission, after which Douglas told them to get off his property or
2 he would call police.²⁰⁷ Stice admitted he was drunk, upset, and wanted to fight Douglas.²⁰⁸ Stice also
3 admitted that he threw the piece of firewood and punched Douglas, all before Douglas swung the bat
4 at him.²⁰⁹ Stice further admitted that he “probably” started the fight by throwing the firewood and then
5 initiating the first physical contact when he punched Douglas in the face.²¹⁰ Stice initially claimed that
6 Douglas struck him with a baseball bat “approximately 4-5 times” in total and admitted that Douglas did
7 not hit him again after injuring his forehead.²¹¹ Stice finally admitted that Douglas never struck Almeda
8 with the bat.²¹² All of these admissions simultaneously support Douglas’ account and undermine
9 Almeda’s claim of defense of another.

10 Almeda’s admissions and consciousness of guilt further support Douglas’ account.
11 Significantly, in a brief moment of candor, Almeda admitted that “after I did it I was like, I don’t know
12 what the fuck I’m doing” and wished he had not done it.²¹³ This admission of regret reflects Almeda’s
13 acknowledgement that his use of force was not actually or reasonably needed to prevent imminent
14 harm to Stice. Similarly, Almeda’s flight from the scene reflects his consciousness of guilt, as do his
15 subsequent false denials of traveling to and entering Douglas’ property.²¹⁴ These actions by Almeda
16 immediately after the stabbing indicate that he was aware of his guilt at that time.

17 The Attorney General further argues that Almeda’s criminal history suggests a propensity to
18 arm himself and participate in violence with others.²¹⁵ While such propensity evidence might be
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20 ²⁰⁷ AGRL Ex. at pp. 64-65.

21 ²⁰⁸ AGRL Ex. at pp. 26, 63-64.

22 ²⁰⁹ AGRL Ex. at pp. 26, 64, 66.

23 ²¹⁰ AGRL Ex. at pp. 26, 66.

24 ²¹¹ AGRL Ex at pp. 14, 25-26; AGRL Audio Ex. 32 (law enforcement recording of Stice’s first hospital
statement).

25 ²¹² AGRL Ex. at p. 26.

26 ²¹³ AGRL Ex. at p. 45.

27 ²¹⁴ CALCRIM 371 (Consciousness of Guilt: Suppression and Fabrication of Evidence); CALCRIM 372
(Defendant’s Flight).

28 ²¹⁵ AGRL at p. 55.

admissible in this administrative proceeding, Almeda's criminal history is considered solely to the extent it impeaches his credibility by demonstrating a willingness to lie.²¹⁶

The comparative seriousness of Douglas' injuries inferentially corroborates his version of events. Douglas sustained a bloody nose and facial contusions, as well as a serious stab wound. The wound extended five centimeters deep into Douglas' chest cavity, possibly punctured his lung, and treatment required surgery with six days of hospitalization. By comparison, Almeda lacked any injuries at all, and Stice sustained a single injury to his forehead, which was treated by seven stitches. Despite Almeda's insistence that Douglas inflicted additional injuries upon Stice that left him visibly battered and in a neck brace,²¹⁷ the record demonstrates otherwise. Specifically, Stice admitted to law enforcement that the "only injury he had received from that evening's altercation was the baseball bat wound to his forehead," and he explained that all of his remaining visible injuries were sustained earlier that day at the river when Stice "was intoxicated and fell down a hill...."²¹⁸ While Stice was apparently photographed at some point wearing a neck brace,²¹⁹ no explanation is provided as to its necessity, which might have been merely precautionary or due to the unrelated fall at the river. Overall, the extent of injuries sustained by all three men supports Douglas' account because, had he "savagely assaulted [Stice] by repeatedly hitting him with the baseball bat at full swing" as Almeda claims,²²⁰ then Stice likely would have sustained more than just a single injury to his forehead.

Finally, Stice's still-valid conviction for assault bolsters Douglas' account. The jury observed Douglas' testimony first-hand, considered the extensive cross-examination he endured, and ultimately believed beyond a reasonable doubt that Stice unjustifiably assaulted Douglas by throwing the piece of

²¹⁶ Cal. Code Regs., tit. 2, § 641, subd. (d) ("Evidence ... may be admitted even though there is a common law or statutory rule which might make its admission improper over objection in any other proceeding"); see also Evid. Code, §§ 1101, subd. (a) (generally barring propensity evidence); *People v. Wheeler* (1992) 4 Cal.4th 284, 295 (admitting witness' prior bad act of moral turpitude as relevant evidence of likely dishonesty).

²¹⁷ App. at pp. 15, 31.

²¹⁸ AGRL Ex. at p. 25; see also AGRL Ex. at p. 15 (Stice admitted that he "had fallen on the rocks of the river multiple times and sustained some cuts and scrapes on this body").

²¹⁹ ADR at p. 932.

²²⁰ App. at p. 88.

1 firewood at him and punching him in the face.²²¹ While the jury acquitted Stice on the greater charged
2 offense of assault with a deadly weapon, that verdict merely reflects the jury's reasonable doubt
3 whether the firewood constituted a deadly weapon, not whether an assault occurred. By convicting
4 Stice of the lesser-included assault charge, the jury necessarily determined that Stice did not act in
5 self-defense. Accordingly, the jury believed Douglas' testimony, which credibly described the assaults
6 by both Stice and Almeda, over the defense's alternate version of events.

7 Overall, the record contains ample evidence of Almeda's guilt. Given the sequence and timing
8 of events as persuasively detailed by Douglas, Almeda's alleged defense of another is unlikely.

9 **4. Comparative Analysis**

10 On balance, the evidence fails to prove that Almeda is more likely innocent than guilty of his
11 vacated conviction for assault with a deadly weapon causing great bodily injury. In addition to
12 Almeda's admission that he stabbed Douglas in the back, the inculpatory evidence includes Douglas'
13 credible and largely consistent version of events after having testified four times subject to cross-
14 examination throughout the criminal proceedings. It also includes corroborating admissions by Almeda
15 and Stice, the comparative nature of injuries by all three men, and Stice's still valid conviction for
16 assaulting Douglas. Combined, the incriminating evidence against Almeda is substantial.

17 By comparison, Almeda's evidence of innocence is minimal at best. Almeda and his self-
18 serving declaration lack credibility, given his inconsistent statements, dramatically different accounts,
19 and ultimately implausible version of events, as well as his prior conviction for a crime of moral
20 turpitude. Stice's conclusory declaration is likewise unbelievable and not necessarily exculpatory.
21 Almeda's legal arguments are misplaced, as any trial error during the criminal prosecution is ultimately
22 irrelevant to determining Almeda's likely innocence. Similarly, the first jury's inability to reach a
23 unanimous verdict, the appellate court's reversal of the second jury's guilty verdict, and the
24 prosecutor's unexplained decision to dismiss the charges upon remand ultimately carry little
25 exculpatory weight. Overall, the evidence exonerating Almeda is thin. Whether considered separately
26 or in combination, it fails to persuade that Almeda justifiably stabbed Douglas based upon an actual

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28 ²²¹ ADR at pp. 706-817, 1214.

1 and reasonable belief that such force was necessary to defend against an imminent danger of bodily
2 injury to Stice.


3 Ultimately, Almeda's claim amounts to a credibility contest between himself and Douglas, with
4 the burden of proof upon Almeda to show that his version of events is more believable. Douglas, who
5 has no criminal history,²²² was entirely cooperative with law enforcement, and he testified four times
6 under oath, during which he provided a largely consistent account of the altercation. In contrast,
7 Almeda was hostile towards law enforcement, provided inconsistent and outright false statements, and
8 declined to testify either at trial or in this administrative proceeding. On balance, Douglas' account
9 appears entirely plausible, while Almeda's is not.

10 After careful consideration of all the evidence in this administrative record, Almeda fails to
11 prove that his version of events most likely occurred. Having failed to demonstrate by a preponderance
12 that he justifiably stabbed Douglas in defense of Stice, his claim as an erroneously convicted person
13 under subdivision (a) of Penal Code section 4900 must be denied.

14 **V. CONCLUSION**

15 In accordance with subdivision (a) of Penal Code section 4900, the hearing officer
16 recommends that CalVCB deny Almeda's claim. He failed to demonstrate by a preponderance of
17 evidence that he did not commit the challenged felony offense for which he was convicted and
18 imprisoned. Almeda is, therefore, ineligible for compensation as an erroneously convicted person.

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20 Date: February 18, 2025



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28 ²²² ADR at p. 109.