

1
2
3
4
5
6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**

8
9 In the Matter of:

10 **Adrian Gentry**

11 Claim No. 23-ECO-15

Proposed Decision

(Penal Code § 4900, subd. (a))

12 **I. Introduction**

13 On April 24, 2023, Adrian Gentry (Gentry) submitted an application¹ to the California Victim
14 Compensation Board (CalVCB) seeking compensation as an erroneously convicted person pursuant to
15 Penal Code section 4900, which was supplemented on June 19, 2023.² The claim is based on
16 Gentry's 2018 convictions for voluntary manslaughter and assault by means likely to produce great
17 bodily injury, with a firearm enhancement for which he served six years and 28 days in prison.³ On
18 February 3, 2023, two years after Gentry's release from custody, the trial court vacated Gentry's
19
20

21 _____
22 ¹ Gentry Application (App.) pp. 1-65. The pagination refers to the continuous page numbers for the
23 entire 65-page PDF file submitted on April 24, 2023, including the Erroneously Convicted Person Claim
24 Form (App. at pp. 1-8); minute order from the February 3, 2023, hearing (App. at pp. 9-11); Court
25 Access Portal for *People v. George*, San Bernadino County Superior Court case number FSB1500023-
26 2 (App. at pp.12-63); and copy of the mailing envelope (App. at pp. 64-65).

27 ² Gentry Supplement (Supp.) pp. 1-19. The pagination refers to the continuous page numbers for the
28 19-page PDF file submitted on June 19, 2023, as a supplement to Gentry's application. This
supplement includes a revised Erroneously Convicted Person Claim Form (Supp. at pp. 1-7), excerpts
from the crime report (Supp. at pp. 8-10); email to Gentry from Racheal Rhoades, LMFT (Supp. at pp.
11-12); minute order from February 3, 2023, hearing (Supp. at pp. 13-15); August 9, 2018, plea
agreement (Supp. at pp. 16-18); and copy of the mailing envelope (Supp. at p. 19).

³ Pen. Code, §§ 192, subd. (a), 245, subd. (a)(4), and 12022, subd. (a).

1 manslaughter conviction pursuant to Penal Code section 1172.6.⁴ Gentry seeks compensation in the
2 amount of \$310,520, or \$140 per day for having been confined a total of six years and 28 days (e.g.,
3 2,218 days).

4 The Attorney General's Office objected to Gentry's claim on March 4, 2024, arguing that Gentry
5 failed to prove his innocence by a preponderance of the evidence.⁵ The Attorney General is
6 represented by Deputy Attorney General Tami Hennick (DAG Hennick), and Gentry is self-
7 represented. The matter was assigned to CalVCB Senior Attorney Kristen Sellers. CalVCB held a
8 hearing on September 25, 2024, at 9:30 a.m. DAG Hennick made an appearance via Zoom; however,
9 Gentry failed to appear. The administrative record closed on September 25, 2024, at 10:00 a.m., after
10 waiting 30 minutes for Gentry to make an appearance. Notably, CalVCB has not heard from Gentry
11 since March 25, 2024.

12 After considering all the evidence in the record, the claim is recommended for denial because
13 Gentry has failed to prove by a preponderance of the evidence that he is innocent of manslaughter as
14 it was defined when the crime occurred.

15 **II. Procedural Background**

16 **A. Gentry's Original Conviction**

17 On January 1, 2015, Gentry was arrested and along with four co-defendants, charged with one
18 count of murder, two counts of attempted murder, and shooting at an inhabited dwelling in San
19 Bernadino County Superior Court case number FSB1500023-5.⁶ It was further alleged that a principal
20 personally and intentionally discharged a firearm causing great bodily injury or death and that Gentry
21 was a minor who was at least 16 years of age at the time of the offense.⁷

22 On August 9, 2018, Gentry pleaded guilty to voluntary manslaughter and assault by means
23 likely to produce great bodily injury, with an enhancement that a principal was armed with a firearm.⁸

24
25 ⁴ All further statutory references are to the Penal Code unless otherwise noted.

26 ⁵ AGRL at pp. 1-13.

27 ⁶ Pen. Code, §§ 187, subd. (a); 664/187, subd. (a), 246.

28 ⁷ Pen. Code, §§ 12022.53, subds. (b), (c), (d), and (e)(1); Welf. and Inst. Code, § 707, subd. (d)(1).

⁸ Pen. Code, §§ 192, subd. (a), 245, subd. (a)(4), and 12022.5, subd. (d).

1 Gentry was then sentenced to an aggregate sentence of eight years in state prison.⁹ The plea
2 agreement specified that Gentry would be sentenced to six years for the voluntary manslaughter, with
3 a one-year enhancement to run consecutively, and an additional one-year consecutive term for the
4 aggravated assault.¹⁰

5 **B. Appellate Court Decision**

6 On May 29, 2020, Gentry filed a petition for resentencing under Penal Code section 1172.6¹¹
7 with the superior court, asserting that, although he pleaded guilty to manslaughter, in light of statutory
8 changes made by Senate Bill 1437, effective June 1, 2019, he could not be convicted of that crime
9 today.¹² The district attorney opposed the petition, arguing that Gentry failed to state a prima facie
10 case because section 1172.6 did not apply to manslaughter. On October 30, 2020, the court
11 summarily denied Gentry's petition, finding he was statutorily ineligible for relief under section 1172.6
12 because he pleaded guilty to voluntary manslaughter and relief was limited to convictions for
13 murder.¹³

14 Gentry appealed, but, while his appeal was pending, he completed his sentence and was
15 released from custody on February 1, 2021.¹⁴

18 ⁹ AGRL Exhibits (Exs.) pp. 1- 304. The pagination refers to the continuous page numbers for the entire
19 313-page PDF file submitted on March 4, 2024, including the Clerk's Transcript on Appeal (AGRL Exs.
20 at pp. 1-63); Reporter's Transcript on Appeal (AGRL Exs. at pp. 64-88); Court of Appeal opinion (AGRL
21 Exs. at pp.89-94); Transcript on Remand (AGRL Exs. at pp. 95-100); CDCR File Excerpt (AGRL Exs. at
22 p. 101); Preliminary Hearing Transcript (AGRL Exs. at pp. 102-285); and Sesslin Affidavit (AGRL Exs.
23 at pp. 286-304).

24 ¹⁰ See AGRL Exs. at pp. 39-40, 78-79.

25 ¹¹ Pen. Code, § 1170.95 was renumbered to Pen. Code, § 1172.6, effective June 30, 2022.

26 ¹² AGRL at pp. 2-3; Senate Bill No. 1437 (2017-2018 Reg. Sess.) limited accomplice liability under the
27 felony-murder rule, eliminated the natural and probable consequences doctrine as it relates to murder,
28 and eliminated convictions for murder based on a theory under which malice is imputed to a person
based solely on that person's participation in a crime. Senate Bill No. 1437 also created a procedure,
codified at section 1172.6, for a person convicted of murder under the former law to be resentenced if
the person could no longer be convicted of murder under the amended law.

¹³ AGRL Exs. at pp. 82-83, 91.

¹⁴ App at p. 3; AGRL Exs. at p. 101.

1 On June 8, 2022, following an amendment to section 1172.6 that extended its resentencing
2 provisions to convictions for attempted murder and manslaughter, the Fourth District Court of Appeal
3 reversed the trial court’s order denying Gentry’s petition for resentencing and remanded the petition to
4 the trial court with directions to issue an order to show cause and set an evidentiary hearing.¹⁵

5 **C. The Superior Court Granted Gentry’s Penal Code § 1172.6 Petition**

6 On remand, the district attorney conceded that the sole basis for Gentry’s murder liability was
7 the natural and probable consequences doctrine, and that Gentry could not now be convicted of
8 murder, as the natural and probable consequences doctrine has since been eliminated.¹⁶ Notably, the
9 court asked the district attorney to confirm whether there were underlying charges, to which the district
10 attorney responded, “No.”¹⁷ Based on their representation that Gentry had no other charges he could
11 be sentenced on, the court determined that resentencing was inappropriate and found him “not liable
12 for homicide or attempted homicide or manslaughter under the newly enacted Penal Code 189,” and
13 vacated his conviction.¹⁸

14 However, the court minutes from the February 3, 2023, hearing reflect that Gentry’s conviction
15 for aggravated assault was also vacated.¹⁹ The Attorney General contends that this was simply a
16 clerical error, arguing that, “the minute order does not accurately reflect the trial court’s proceedings,”
17 and Gentry “remains validly convicted of aggravated assault.”²⁰ The Attorney General reasons that the
18 reporter’s transcripts and other court records show the trial court did not vacate the assault conviction
19 and suggests that neither the prosecutor nor the court addressed the need for resentencing on
20 Gentry’s aggravated assault conviction during the February 3, 2023, hearing because it was not at

21
22
23 ¹⁵ AGRL Exs. at pp. 89-94.

24 ¹⁶ AGRL Exs. at p. 98.

25 ¹⁷ AGRL Exs. at p. 98.

26 ¹⁸ AGRL Exs. at pp. 98-99.

27 ¹⁹ App. at pp. 9-10.

28 ²⁰ AGRL at p. 3. See *People v. Contreras* (2015) 237 Cal.App.4th 868, 880 [as a general rule, where there is a discrepancy between the minute order and the oral pronouncement of judgment, the oral pronouncement controls.]

1 issue at that hearing.²¹ The Attorney General emphasizes that the prosecutor was correct when they
2 told the court that there were no underlying charges for which Gentry could be resentenced following
3 the reversal of the manslaughter conviction, because Gentry had already been sentenced and served
4 his time for the aggravated assault conviction, which he never challenged.²² Moreover, “Senate Bill
5 1437 does not apply outside of the murder and manslaughter context, and would not be a basis to
6 strike [Gentry’s] aggravated assault conviction.”²³

7 **D. Gentry’s Erroneously Convicted Person Claim**

8 On April 24, 2023, CalVCB received Gentry’s claim seeking compensation as an erroneously
9 convicted person under Penal Code section 4900. In his claim, Gentry alleged he served a total of six
10 years and 28 days in custody, solely as a result of his erroneous convictions, from the date of his
11 arrest on January 1, 2015, to the date of his release on February 1, 2021.²⁴ On May 18, 2023, CalVCB
12 sent a letter to Gentry notifying him that his claim was deficient for multiple reasons. Specifically, it
13 lacked documentation confirming his conviction, imprisonment, and release for the challenged
14 convictions, and a statement of factual innocence showing that he did not commit manslaughter or
15 assault as those crimes were defined at the time of commission. In addition, the claim failed to raise a
16 basis upon which relief could be granted, as it was solely based on a vacated conviction due to a
17 change in the legal definition of the crime, which is not eligible for relief under section 4900. The letter
18 allowed Gentry 30 days to submit a response that cured the identified deficiencies.

19 By email on June 19, 2023, Gentry timely responded with supplemental documents including: a
20 revised Erroneously Convicted Person Claim Form; excerpts from the San Bernadino County Sheriff’s
21 Department’s crime report; an email from Racheal Rhoades, LMFT, confirming five completed therapy
22 sessions; the minute order from the February 3, 2023, hearing; and the Change of Plea form filed with

23 _____
24 ²¹ AGRL at p. 3.

25 ²² AGRL at pp. 3-4.

26 ²³ AGRL at p. 3.

27 ²⁴ See App. at p. 3. While Gentry seeks compensation for 2,218 days he was imprisoned, the number
28 of days between the date of his arrest on January 1, 2015, to and including the date of his release on
February 1, 2021, is 2,224. This calculation was determined using the online “Days Calculator” located
at <https://www.timeanddate.com/date/duration.html>.

1 the San Bernadino County Superior Court on August 9, 2018, which reflects Gentry pleaded “guilty” to
2 the challenged offenses and accepted an aggregate term of eight years in state prison.²⁵ Gentry’s
3 response also included a statement, signed under penalty of perjury, that he did not commit the crime
4 he was charged with, and he “had no knowledge of,” nor did he participate” in the crime which was
5 committed.”²⁶

6 On September 8, 2023, the CalVCB found Gentry’s response cured the deficiencies outlined in
7 its May 18, 2023, letter, and requested a response letter from the Attorney General within 60 days in
8 accordance with Penal Code section 4902.²⁷ Following two extensions for demonstrated good cause,
9 the Attorney General timely submitted a response letter on March 4, 2024, along with seven exhibits
10 totaling 317 pages.²⁸ Included in the exhibits were court records, clerks’ transcripts, preliminary
11 hearing transcripts, San Bernadino County Sheriff’s Department Sesslin Affidavit, the Appellate Court’s
12 opinion, and CDCR records.

13 On March 4, 2024, the assigned Hearing Officer, Kristen Sellers, sent an email to the parties,
14 requesting they confer with each other about (1) whether they intended to submit pre-hearing briefs;
15 (2) whether Gentry wanted an evidentiary hearing before a hearing officer, at which the parties could
16 present evidence and witnesses subject to cross-examination; (3) the parties’ preferred timeline for a
17 hearing, noting that a hearing likely could not be scheduled before June 2024; and (4) if a hearing was
18 requested, whether the parties wanted an in-person evidentiary hearing or preferred to appear by
19 videoconference via Zoom. DAG Hennick responded, indicating that she spoke with Gentry, and he
20 wanted to move forward with an evidentiary hearing, and both parties requested to appear via Zoom.
21 She further indicated that, while Gentry did not provide a preferred timeline for the hearing, her
22 preference would be that the hearing be held no earlier than September 2024.

23 On March 22, 2024, the Hearing Officer notified the parties via email that the hearing would be
24 held on September 25, 2024, at 9:30 a.m. via Zoom. The email further set forth the pre-hearing briefing

25 ²⁵ Supp. at pp. 1-19.

26 ²⁶ Supp. at p. 4.

27 ²⁷ Cal. Code Regs., tit. 2, § 642, subd. (c).

28 ²⁸ AGRL at pp. 1-13; AGRL Exs. at pp. 1-304.

1 schedule: an optional pre-hearing brief was due on September 13, 2024, and the mandatory pre-
2 hearing statement was due on September 18, 2024.²⁹ Gentry replied to the Hearing Officer's March
3 22, 2025, email three days later with questions about the pre-hearing motion dates.³⁰ On April 9, 2024,
4 the Hearing Officer responded to Gentry's email again confirming the scheduled hearing date of
5 September 25, 2024, at 9:30 a.m. via Zoom as well as the corresponding pre-hearing briefing
6 schedule, and attached a copy of the general hearing regulations and all other regulations applicable
7 to Penal Code section 4900 hearings.³¹ Having received no further communication from Gentry, and
8 no indication that Gentry's email address on file was no longer valid, on September 23, 2024, the
9 Hearing Officer emailed the parties, requesting Gentry submit the mandatory pre-hearing statement
10 that was due on September 18, 2024. The Hearing Officer once again reminded the parties of the
11 scheduled hearing on September 25, 2024, at 9:30 a.m. Gentry neither responded to the email nor did
12 he ever provide a mandatory pre-hearing statement.

13 The assigned Hearing Officer held a hearing via Zoom on September 25, 2024, at which DAG
14 Hennick appeared remotely by videoconference. Gentry failed to appear, and, after waiting 30
15 minutes, the hearing was adjourned and the administrative record closed.³²

16 Gentry was notified of the date of the hearing on March 22, 2024, April 9, 2024, and September
17 23, 2024. Under the regulations governing CalVCB, if a claimant fails to appear at the hearing the
18 Board may base its decision on previously submitted evidence.³³

19 **III. Factual Background**

20 **A. The Crime**

21 At about 11:00 p.m. on December 31, 2014, Javier and Richard, were working as on-duty
22 security guards for Cal Skate when a group of five young Black males, including Laquan, Maurice,
23

24 ²⁹ A courtesy hard copy of this email was also sent by regular mail on April 3, 2024, to Gentry's address
25 on file.

26 ³⁰ This is the last communication CalVCB received from Gentry to date.

27 ³¹ Cal. Code Regs., tit. 2, §§ 615.1-619.7, 640-646.

28 ³² Cal. Code Regs., tit. 2, § 644, subd. (l).

³³ Cal. Code Regs., tit. 2, § 644, subd. (g).

1 Ezekiel, Topaz, and Gentry, arrived at Cal Skate for a New Year's Eve party.³⁴ Upon entry, the group
2 almost immediately began to argue with the Cal Skate staff about the dress code and reluctantly
3 checked their hats with security.³⁵ While inside, the group got into a verbal altercation with some other
4 patrons that had to be broken up by security.³⁶ As a result, they were asked to leave the skating rink
5 and informed that they would not be allowed to re-enter once they left the premises.³⁷ When they
6 attempted to reclaim their hats from security, Maurice was told that his hat had been lost.³⁸ Topaz,
7 along with others in the group, became upset and started yelling at the Cal Skate employees,
8 demanding a refund.³⁹ Topaz attempted to re-enter the skating rink when Richard stopped him.⁴⁰ They
9 started arguing, and Topaz challenged Richard to a fight.⁴¹ Richard drew his Taser as he escorted
10 Topaz out of the building and toward the parking lot, while Javier and the rest of the group followed.⁴²

11 Once outside, Topaz and Richard continued to argue, exchanging insults.⁴³ One of the Cal
12 Skate employees, Joshua, described Gentry as "the loud mouth of the group" and the "instigator" of
13 the fight both inside and outside of the skating rink as the group argued with Richard and other staff
14 members.⁴⁴ A second Cal Skate employee heard Gentry threaten to shoot Richard.⁴⁵

18 ³⁴ AGRL Exs. at pp. 109-110; The victims and witnesses are referred to by their first names only to
19 protect their privacy. Laquan and Maurice are brothers.

20 ³⁵ AGRL Exs. at pp. 110-112.

21 ³⁶ AGRL Exs. at p. 122.

22 ³⁷ AGRL Exs. at pp. 112-115.

23 ³⁸ AGRL Exs. at p. 123.

24 ³⁹ AGRL Exs. at pp. 112-116, 203-204.

25 ⁴⁰ AGRL Exs. at pp. 112-115.

26 ⁴¹ AGRL Exs. at pp. 115, 123.

27 ⁴² AGRL Exs. at pp. 115, 205-207.

28 ⁴³ AGRL Exs. at pp. 203-204.

⁴⁴ AGRL Exs. at pp. 211-214.

⁴⁵ AGRL Exs. at pp. 203-205.

1 In the parking lot, the group split up.⁴⁶ Topaz, Gentry, Ezekiel, Maurice, and Laquan got into a
2 white sedan; the other group members got into a dark colored sedan.⁴⁷ Topaz sat in the driver's seat of
3 the white sedan. Gentry sat in the front passenger seat beside Topaz. Ezekiel, Maurice, and Laquan
4 sat in the back seat.⁴⁸

5 Richard approached the dark colored sedan with his Taser still in his hand as he and the
6 occupants of that vehicle continued shouting at each other.⁴⁹ The dark colored sedan then fled through
7 the parking lot.⁵⁰ Within moments of the dark colored sedan exiting the parking lot, the white sedan
8 turned off its lights, pulled up close to Richard, and stopped.⁵¹ Ezekiel and Maurice then fired several
9 shots from the rear passenger window of the car. After a brief pause, Javier returned fire, and the
10 white sedan fled the scene.⁵² Richard was shot and died on the way to the hospital.⁵³ Javier was
11 injured by a bullet fragment, and Schuyler, a patron who was outside smoking at the time of the
12 shooting, sustained a gunshot wound to the inside of his right thigh, which required hospitalization for
13 approximately three weeks following surgery.⁵⁴

14 **B. Evidence Presented at the Preliminary Hearing⁵⁵**

15 **1. Javier**

16 During his investigation, Sergeant Walker interviewed Javier, who on the night of the crime was
17 working as a security guard at Cal Skate.⁵⁶ He was responsible for searching male patrons, collecting
18

19 ⁴⁶ AGRL Exs. at pp. 220-221.

20 ⁴⁷ *Id.*

21 ⁴⁸ AGRL Exs. at p. 229.

22 ⁴⁹ AGRL Exs. at p. 134.

23 ⁵⁰ AGRL Exs. at p. 213.

24 ⁵¹ AGRL Exs. at p. 214

25 ⁵² *People v. George* (Jan. 11, 2021, E072299) [nonpub. opn.] at. p. 2.

26 ⁵³ *Id.*

27 ⁵⁴ *Id.*

28 ⁵⁵ Because Gentry pleaded guilty prior to trial, the record includes preliminary hearing transcripts, where witness statements were presented through law enforcement officer testimony pursuant to Penal Code section 872.

⁵⁶ AGRL Exs. at pp. 109-110.

1 any contraband, and turning it into the Cal Skate employees.⁵⁷ While conducting searches, he
2 encountered a group of young Black males who did not want to check their hats upon entering the
3 skating rink, but eventually acquiesced.⁵⁸ Javier relayed that the group was later involved in a verbal
4 altercation with other patrons inside the skating rink.⁵⁹ When the group attempted to leave the skating
5 rink and claim their personal belongings, Cal Skate employees could not find one of the group
6 member's hats.⁶⁰ Shortly thereafter, Richard informed Javier that once the group left, they were not
7 going to be allowed back into the skating rink.⁶¹

8 After telling the group they could not re-enter the skating rink, Javier observed Richard get into
9 an argument with one of the group members who was trying to re-enter.⁶² That group member was
10 wearing a white, long-sleeved shirt and black pants.⁶³ Javier heard the group member challenge
11 Richard to a fight.⁶⁴ Richard then escorted the group member toward the parking lot, as Javier and the
12 rest of the group followed.⁶⁵ Once in the parking lot, Javier overheard an insult from one of the group
13 members about Richard's mother, but he could not recall exactly what was said.⁶⁶ He saw Richard
14 take his Taser out and point it at the group. He did not actually tase anyone.⁶⁷

15 The group then split into two groups and got into separate vehicles: a white sedan and a dark
16 colored sedan.⁶⁸ Richard approached the dark colored sedan on the driver's side and spoke to the
17
18

19 ⁵⁷ AGRL Exs. at p. 110.

20 ⁵⁸ AGRL Exs. at p. 111.

21 ⁵⁹ AGRL Exs. at p. 145.

22 ⁶⁰ AGRL Exs. at p. 113.

23 ⁶¹ *Id.*

24 ⁶² AGRL Exs. at p. 115.

25 ⁶³ *Id.*

26 ⁶⁴ *Id.*

27 ⁶⁵ *Id.*

28 ⁶⁶ AGRL Exs. at p. 116.

⁶⁷ *Id.*

⁶⁸ AGRL Exs. at pp. 116-117.

1 occupants.⁶⁹ The dark colored sedan eventually pulled out of its parking stall and headed toward the
2 exit.⁷⁰ As the dark colored sedan exited the parking lot, Javier observed the white sedan move out of
3 its parking stall and pull up several feet behind Richard.⁷¹ Javier then heard a gunshot.⁷² Richard told
4 Javier he was hurt and he watched as Richard fell to the ground.⁷³ Although Javier only heard one
5 gunshot, he believed several gunshots had been fired, so he took cover behind a vehicle and returned
6 fire at the white sedan as it sped off, firing two to three rounds.⁷⁴ Javier sustained a slight graze wound
7 to the left side of his face and left ear.⁷⁵

8 Javier never saw a gun on the night of the crime, other than those possessed by security.⁷⁶ In
9 fact, none of the individuals interviewed by Sergeant Walker said they saw the group of young Black
10 males with a firearm prior to the shooting.⁷⁷

11 2. Maurice

12 Sergeant Walker also interviewed Maurice as part of his investigation.⁷⁸ Maurice admitted that
13 on the night of the crime, he got into a verbal altercation with security at Cal Skate and was asked to
14 leave.⁷⁹ When he attempted to retrieve his hat from security, Cal Skate staff told him that it had been
15 lost and asked him to write his name and phone number down so that he could be contacted later and
16 reimbursed.⁸⁰ As the group was walking outside, Topaz tried to re-enter the skating rink.⁸¹ He then

17
18 ⁶⁹ AGRL Exs. at p. 117.

19 ⁷⁰ *Id.*

20 ⁷¹ AGRL Exs. at pp. 118-119.

21 ⁷² AGRL Exs. at p. 119.

22 ⁷³ *Id.*

23 ⁷⁴ AGRL Exs. at pp. 119, 141.

24 ⁷⁵ AGRL Exs. at p. 121.

25 ⁷⁶ AGRL Exs. at p. 140.

26 ⁷⁷ AGRL Exs. at p. 144.

27 ⁷⁸ AGRL Exs. at p. 121.

28 ⁷⁹ AGRL Exs. at p. 122.

⁸⁰ AGRL Exs. at pp. 122-123.

⁸¹ AGRL Exs. at p. 123.

1 challenged Richard to a fight.⁸² Richard escorted him outside and the argument continued in the
2 parking lot.⁸³ Topaz called Richard a “bitch,” and Richard responded that Topaz’s mother was a “bitch,”
3 which only escalated the fight.⁸⁴ Richard took his Taser out and first pointed it at Topaz and then at
4 Topaz’s friend, Wesley.⁸⁵ Richard did not actually tase anyone, he “just put the red laser from the
5 Taser on each of those two subjects.”⁸⁶ At that moment, a guy named Marques intervened and
6 grabbed Topaz, removing him from the situation.⁸⁷ The group then split up into two vehicles: a white
7 sedan and a dark colored sedan. Topaz, Gentry, Maurice, Laquan, and Ezekiel all got into the white
8 sedan.⁸⁸ Topaz was in the driver’s seat and Gentry in the front passenger seat, while Maurice
9 was in the seat directly behind Topaz, Laquan in the middle back seat, and Ezekiel in the rear
10 passenger side seat.⁸⁹ Tim, Marques, Wesley, and Deon got into the dark colored sedan.⁹⁰ As the
11 white sedan made its way toward the exit, Ezekiel rolled down the rear passenger side window and
12 began shooting at Richard.⁹¹ Maurice estimated that Ezekiel fired nine rounds at Richard.⁹² The
13 security guards then returned fire at the white sedan, and Maurice grabbed his brother, Laquan, and
14 “ducked down, taking cover.”⁹³

15 When Maurice was asked whether he fired a gun, he requested to speak to his mother alone.⁹⁴
16 His discussion with his mother in the interview room, however, was still audio and video recorded, as
17

18 ⁸² *Id.*

19 ⁸³ *Id.*

20 ⁸⁴ AGRL Exs. at p. 123.

21 ⁸⁵ AGRL Exs. at p. 124.

22 ⁸⁶ *Id.*

23 ⁸⁷ *Id.*

24 ⁸⁸ AGRL Exs. at pp. 124-125.

25 ⁸⁹ AGRL Exs. at p. 125.

26 ⁹⁰ AGRL Exs. at pp. 125-126.

27 ⁹¹ AGRL Exs. at p. 126.

28 ⁹² *Id.*

⁹³ *Id.*

⁹⁴ AGRL Exs. at p. 127.

1 that was common practice.⁹⁵ Watching through the monitor from the room next door, Sergeant Walker
2 observed Maurice's mother ask him to be honest and tell her if he had in fact fired a weapon during the
3 incident. He responded by staring at the ground for a couple of seconds. His mother then moved her
4 chair closer to him and put her arm around him, when Maurice finally answered, "Yes I did."⁹⁶

5 A white Nissan Maxima was later recovered, and while being processed, police found three
6 backpacks in the trunk.⁹⁷ The first backpack had homework inside with Laquan's name.⁹⁸ The second
7 backpack had schoolwork inside with Maurice's name on it.⁹⁹ The third backpack had schoolwork
8 inside with the name "Raishaun" on it.¹⁰⁰ Investigators later found out that Raishaun was not present at
9 Cal Skate on the night of the crime, but his mother was the owner of the vehicle.¹⁰¹

10 Sergeant Walker attempted to interview Gentry, but Gentry declined.¹⁰²

11 On cross-examination, Sergeant Walker conceded that the security guards were "a little uneasy
12 or on edge" the night of the crime because they had received a threat that there was going to be a
13 shooting at Cal Skate that night, but they did not know much else.¹⁰³

14 3. Schuyler

15 Detective Kirby, who was assisting with the investigation, interviewed Schuyler while he was at
16 the hospital recovering from a bullet entry wound on his right thigh.¹⁰⁴ Schuyler took his four nephews to
17 the skate party at Cal Skate that evening.¹⁰⁵ He exited several times to smoke cigarettes outside of the
18

19
20 ⁹⁵ AGRL Exs. at pp. 127-128.

21 ⁹⁶ AGRL Exs. at pp. 128-129.

22 ⁹⁷ AGRL Exs. at p. 129.

23 ⁹⁸ *Id.*

24 ⁹⁹ AGRL Exs. at pp. 129-130.

25 ¹⁰⁰ AGRL Exs. at p. 130.

26 ¹⁰¹ *Id.*

27 ¹⁰² AGRL Exs. at p. 131.

28 ¹⁰³ *Id.*

¹⁰⁴ AGRL Exs. at p. 149.

¹⁰⁵ *Id.*

1 building, and, on several occasions, he went out and had brief conversations with Richard.¹⁰⁶ One of
2 the last times he went outside, Schuylar observed Richard in a verbal altercation with a male juvenile
3 about not being allowed to wear a baseball hat inside the skating rink.¹⁰⁷ The juvenile had several other
4 male juveniles with him.¹⁰⁸ He heard Richard tell the juvenile something to the effect of, “Just get out of
5 here. You’re not going to do anything anyways.”¹⁰⁹ To which the juvenile called Richard a “bitch” and a
6 “motherfucker.”¹¹⁰ Schuylar then noticed several other security guards come out as back up for
7 Richard.¹¹¹ At that point, Schuylar turned around and attempted to go back inside Cal Skate, when he
8 heard approximately four gunshots and felt pain in his right thigh.¹¹² He described the juvenile Richard
9 had been arguing with as “smaller in stature,” five feet, eight inches to six feet tall and 160 pounds.¹¹³
10 He never saw any of the juveniles with a weapon.¹¹⁴

11 **4. Wesley**

12 As part of the investigation, Detective Leininger interviewed Wesley.¹¹⁵ Wesley gave several
13 different stories and at some point, asked for his mother, who sat in on the interview.¹¹⁶ He arrived at
14 Cal Skate in the dark colored sedan, along with Tim, Laquan and Ezekiel.¹¹⁷ When they arrived at Cal
15 Skate, he and other members of their group went inside the skating rink, while others remained
16 outside.¹¹⁸ Once inside, Wesley stated that they checked their hats and received a claim ticket.¹¹⁹

18 ¹⁰⁶ *Id.*

19 ¹⁰⁷ AGRL Exs. at p. 150.

20 ¹⁰⁸ *Id.*

21 ¹⁰⁹ *Id.*

22 ¹¹⁰ *Id.*

23 ¹¹¹ *Id.*

24 ¹¹² AGRL Exs. at pp. 150-151.

25 ¹¹³ AGRL Exs. at p. 151.

26 ¹¹⁴ AGRL Exs. at p. 156.

27 ¹¹⁵ AGRL Exs. at p. 158.

28 ¹¹⁶ AGRL Exs. at pp. 158-159.

¹¹⁷ AGRL Exs. at pp. 159-160.

¹¹⁸ AGRL Exs. at p. 161.

1 However, when they went to claim their personal belongings on their way out, the Cal Skate employees
2 could not find Maurice's hat.¹²⁰ Maurice left his name and phone number with the employees and they
3 assured him that they would call him when they found his hat.¹²¹ After he provided his contact
4 information, he was told to leave. One of the security guards escorted him outside, as the rest of the
5 group followed.¹²² Wesley observed Topaz and the security guard get into a heated verbal exchange.
6 They were name calling, and, at one point, the security guard pulled out his Taser.¹²³ Wesley then got
7 back into the dark colored sedan as the security guard approached their vehicle and tapped on the
8 window with his Taser.¹²⁴ As they were leaving, the white sedan turned off its lights and started
9 shooting at the security guard.¹²⁵ Wesley and the others riding in the dark colored sedan met up with
10 the occupants of the white sedan at Topaz's house.¹²⁶ While there, Maurice and Ezekiel admitted to
11 Wesley that they were the ones that fired the guns.¹²⁷ Wesley told detectives that he was aware there
12 were two guns within the group prior to the shooting.¹²⁸ In fact, he had seen both Ezekiel and Maurice
13 with a gun.¹²⁹ However, none of the occupants of the dark colored sedan had a gun.¹³⁰

14 On cross-examination, when asked whether Wesley ever said Gentry had a gun, Detective
15 Leininger answered, "No."¹³¹ When asked if Wesley ever saw Gentry encouraging either Maurice or
16
17

18 ¹¹⁹ *Id.*

19 ¹²⁰ AGRL Exs. at p. 161.

20 ¹²¹ AGRL Exs. at p. 162.

21 ¹²² *Id.*

22 ¹²³ *Id.*

23 ¹²⁴ AGRL Exs. at pp. 182-183.

24 ¹²⁵ AGRL Exs. at p. 165.

25 ¹²⁶ AGRL Exs. at p. 166.

26 ¹²⁷ *Id.*

27 ¹²⁸ AGRL Exs. at p. 167.

28 ¹²⁹ AGRL Exs. at pp. 182-183.

¹³⁰ AGRL Exs. at p. 172.

¹³¹ AGRL Exs. at p. 182.

1 Ezekiel to shoot the security guard, he answered “No.”¹³² Finally, when asked if Wesley ever saw
2 Gentry yell any “gang slang or anything of that nature,” he answered, “No.”¹³³

3 **5. Eric**

4 Detective Leininger also interviewed Eric, the assistant manager of Cal Skate.¹³⁴ Eric told her
5 that one of the assailants, wearing a white, long-sleeved shirt, was upset about his missing hat and told
6 Richard that he was not leaving without his hat.¹³⁵ As a result, he had to be escorted out by security.¹³⁶
7 Eric went outside and observed the argument between Topaz and Richard.¹³⁷ He saw some members
8 of the group get into a white sedan as they continued exchanging insults with Richard.¹³⁸ At one point,
9 Richard took out his Taser.¹³⁹ The assailant who was “in the main conflict with [Richard]” got in and out
10 of the rear back passenger door of the white sedan, as the other occupants remained inside of the
11 vehicle.¹⁴⁰ Eric said Richard was walking back toward Cal Skate when the assailant again got out of the
12 white sedan, calling Richard names.¹⁴¹ Richard turned around and walked back toward the white
13 sedan.¹⁴² At that point, the assailant got back into the white sedan, the headlights turned off, and
14 someone started shooting at Richard.¹⁴³ Eric indicated that eight to ten gunshots came from the back
15 passenger seats.¹⁴⁴ Eric was standing right behind Richard when he fell to the ground.¹⁴⁵

16
17 ¹³² AGRL Exs. at p. 182.

18 ¹³³ *Id.*

19 ¹³⁴ AGRL Exs. at p. 173.

20 ¹³⁵ AGRL Exs. at p. 175.

21 ¹³⁶ *Id.*

22 ¹³⁷ AGRL Exs. at p. 176.

23 ¹³⁸ *Id.*

24 ¹³⁹ *Id.*

25 ¹⁴⁰ AGRL Exs. at pp. 176-177.

26 ¹⁴¹ AGRL Exs. at p. 177.

27 ¹⁴² *Id.*

28 ¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ AGRL Exs. at pp. 177-178.

1 **6. Laquan**

2 Detective Ward interviewed Laquan.¹⁴⁶ At the time of the interview, Laquan was wearing a
3 Chicago Bulls bucket-style hat and when asked about it, Laquan said he purchased it the day before,
4 on New Year’s Day.¹⁴⁷ However, he later told Detective Ward that he had been at his aunt’s home since
5 New Year’s Eve day, all the way to January 2, 2015, when he “finally left to move some property into
6 storage.”¹⁴⁸ He emphasized that he had not left her house at all and spent New Year’s Day texting his
7 girlfriend.¹⁴⁹ He denied ever being at Cal Skate on the night of the crime.¹⁵⁰ He also indicated that his
8 brother, Maurice, was also at his aunt’s home, but he was downstairs whereas Laquan stayed
9 upstairs.¹⁵¹

10 **7. Cameron**

11 Detective Ward also interviewed Cameron, a part-time employee at Cal Skate who was working
12 on the night of the crime.¹⁵² Cameron arrived at the location and saw a group of Black males arguing
13 about having to remove their baseball caps before entering the skating rink; however, he did not
14 witness the entire argument.¹⁵³ He later saw the same group inside the skating rink without their hats.¹⁵⁴
15 Later that evening, he noticed the group attempting to get their hat backs on the way out and saw there
16 was disturbance.¹⁵⁵ One of the group members was upset because Cal Skate staff lost his hat, which
17 was a limited-edition California Angels hat that was worth a couple hundred dollars.¹⁵⁶ Cameron noted
18 that the person who lost his hat was not really the trouble maker. He was just trying to get his hat back

19 _____
20 ¹⁴⁶ AGRL Exs. at p. 189.

21 ¹⁴⁷ AGRL Exs. at p. 199.

22 ¹⁴⁸ AGRL Exs. at p. 200.

23 ¹⁴⁹ AGRL Exs. at pp. 199-200.

24 ¹⁵⁰ AGRL Exs. at p. 201.

25 ¹⁵¹ *Id.*

26 ¹⁵² *Id.*

27 ¹⁵³ AGRL Exs. at p. 202.

28 ¹⁵⁴ *Id.*

¹⁵⁵ AGRL Exs. at p. 203.

¹⁵⁶ *Id.*

1 while a few others in the group were upset and shouting obscenities at the staff, demanding a refund.¹⁵⁷
2 Seeing this, Cameron decided to walk out behind two other security officers to assist with the
3 incident.¹⁵⁸ He knew the two security officers, including Richard, were armed.¹⁵⁹ He heard one of the
4 group members being escorted out of Cal Skate saying he was going to shoot Richard.¹⁶⁰ At that point,
5 Richard drew his Taser and continued escorting the group out. He then walked toward the dark colored
6 sedan as it was pulling out of the parking lot.¹⁶¹ After the dark colored sedan exited, Cameron saw the
7 white sedan pull forward and stop and then he heard gunfire coming from that vehicle.¹⁶² Cameron later
8 described the group member who threatened to shoot Richard as the individual who was seated in the
9 front passenger seat of the white sedan and wearing a white long-sleeved shirt.¹⁶³

10 A few days later, Detective Ward showed Cameron a six-pack photo lineup that contained
11 Gentry's photograph.¹⁶⁴ Cameron positively identified Gentry as the person who threatened to shoot
12 Richard.¹⁶⁵

13 8. Joshua

14 Detective Ward interviewed Joshua, another employee at Cal Skate.¹⁶⁶ He helped look for the
15 hat that went missing.¹⁶⁷ He described the group member involved in the verbal altercation inside the
16 skating rink as wearing a white, long-sleeved shirt.¹⁶⁸ Joshua initially went outside when Richard
17
18

19 ¹⁵⁷ AGRL Exs. at pp. 203-204.

20 ¹⁵⁸ AGRL Exs. at p. 204.

21 ¹⁵⁹ *Id.*

22 ¹⁶⁰ *Id.*

23 ¹⁶¹ AGRL Exs. at p. 205.

24 ¹⁶² AGRL Exs. at p. 206.

25 ¹⁶³ AGRL Exs. at p. 205.

26 ¹⁶⁴ AGRL Exs. at pp. 206-207.

27 ¹⁶⁵ AGRL Exs. at pp. 207-208.

28 ¹⁶⁶ AGRL Exs. at p. 208.

¹⁶⁷ AGRL Exs. at pp. 208-209.

¹⁶⁸ AGRL Exs. at p. 209.

1 escorted the group out of the skating rink.¹⁶⁹ While outside, he observed the continued verbal
2 altercation, with the group members yelling back and forth with the security officers.¹⁷⁰ At one point, the
3 group members broke into two groups – with some members getting into a dark colored sedan while
4 others got into a white sedan.¹⁷¹ The dark colored sedan left first and the white sedan started shooting
5 at Richard and the other employees who were standing on the corner next to him.¹⁷² He saw that the
6 gunshots were being fired from the passenger side of the white sedan.¹⁷³ Joshua then ran toward the
7 front entrance of Cal Skate.¹⁷⁴

8 Detective Ward showed Joshua a six-pack photo lineup that contained a photograph of Gentry.
9 Joshua picked Gentry’s photo out of the lineup.¹⁷⁵ He described Gentry as the “loudmouth of the group”
10 and wrote that down on Gentry’s photo.¹⁷⁶ He also positively identified Gentry on the surveillance
11 video.¹⁷⁷

12 9. Jeffrey

13 About two months after the crime, Detective Smith interviewed Jeffrey, who was present in the
14 parking lot before and during the shooting, and was the one to call 9-1-1.¹⁷⁸ Jeffrey was at Cal Skate on
15 the night of the crime, waiting outside to pick up his 15-year-old son, when he heard a commotion.¹⁷⁹
16 He saw a group of Black male juveniles being escorted out of Cal Skate by a security guard who he
17 described as “the one that got shot.”¹⁸⁰ He heard Richard call the group “bitches.”¹⁸¹ He then heard

18
19 ¹⁶⁹ AGRL Exs. at pp. 209-210.

20 ¹⁷⁰ AGRL Exs. at p. 210.

21 ¹⁷¹ *Id.*

22 ¹⁷² *Id.*

23 ¹⁷³ *Id.*

24 ¹⁷⁴ *Id.*

25 ¹⁷⁵ AGRL Exs. at p. 211.

26 ¹⁷⁶ *Id.*

27 ¹⁷⁷ AGRL Exs. at p. 212.

28 ¹⁷⁸ AGRL Exs. at pp. 219-220.

¹⁷⁹ AGRL Exs. at p. 220.

¹⁸⁰ *Id.*

1 someone in the group call Richard a “bitch.”¹⁸² He saw Richard remove his Taser and the group
2 subsequently divided into two different groups; one group got into a dark colored sedan, and the other
3 got into a white sedan.¹⁸³ He saw Richard approach the dark colored sedan, and, as it left the parking
4 lot, someone inside the white sedan began to shoot.¹⁸⁴ He saw multiple weapons and multiple
5 flashes.¹⁸⁵ He believed the front passenger of the white sedan and both of the rear passengers in the
6 white sedan were all firing weapons.¹⁸⁶ He indicated that he thought the two rear passengers were firing
7 from the rear passenger side window, while the front passenger was firing from the front passenger
8 side window.¹⁸⁷ He did not believe security returned fire.¹⁸⁸

9 **10. Ezekiel**

10 Detective Smith interviewed Ezekiel.¹⁸⁹ While Ezekiel initially denied being at Cal Skate on New
11 Year’s Eve and New Year’s Day, he later claimed that he was at Cal Skate but left before the
12 shooting.¹⁹⁰ After taking a polygraph exam, Ezekiel admitted that he had participated in the shooting.¹⁹¹
13 He was in the parking lot of the skating rink with his friend Tim when he saw the group being escorted
14 out by Richard.¹⁹² He saw there was an argument taking place between them, so he got out of the car
15 and went over to the group.¹⁹³ He spoke to Maurice, who told him that they got kicked out of Cal Skate
16
17

18 ¹⁸¹ AGRL Exs. at p. 236.

19 ¹⁸² *Id.*

20 ¹⁸³ AGRL Exs. at p. 220.

21 ¹⁸⁴ *Id.*

22 ¹⁸⁵ AGRL Exs. at p. 221.

23 ¹⁸⁶ *Id.*

24 ¹⁸⁷ *Id.*

25 ¹⁸⁸ *Id.*

26 ¹⁸⁹ *Id.*

27 ¹⁹⁰ AGRL Exs. at p. 222.

28 ¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

1 because they were going to fight inside.¹⁹⁴ At that point, he learned that the employees lost Maurice's
2 hat, and he became involved in the argument with Richard.¹⁹⁵ Maurice told Ezekiel that Richard called
3 them "B's" and the "N word."¹⁹⁶ He went on to say that he felt Richard was trying to belittle them and
4 make them look bad in front of the crowd.¹⁹⁷ Ezekiel told detectives that he felt disrespected.¹⁹⁸ As the
5 argument continued in the parking lot, Richard pulled out his Taser and pointed it at Maurice and
6 Wesley.¹⁹⁹ The group then split up. Maurice and Ezekiel walked to Topaz's white sedan which was
7 waiting in the parking lot.²⁰⁰ Ezekiel then admitted to shooting Richard.²⁰¹ He explained that as he and
8 Maurice were walking toward Topaz's vehicle, they made the decision to shoot Richard.²⁰² The gun was
9 inside the vehicle and belonged to Topaz.²⁰³ Ezekiel described extending his right arm outside the rear
10 passenger side of the vehicle and firing four to six shots.²⁰⁴ As he fired, he turned away, claiming he
11 had never fired a gun before and did not know what was going to happen.²⁰⁵ After the shooting, he left
12 the gun in Topaz's vehicle.²⁰⁶

13 On cross-examination, Detective Smith confirmed that Ezekiel never indicated that Gentry told
14 him to shoot the security guard, nor did he encourage him.²⁰⁷

15 ///

17 ¹⁹⁴ AGRL Exs. at p. 223.

18 ¹⁹⁵ *Id.*

19 ¹⁹⁶ *Id.*

20 ¹⁹⁷ *Id.*

21 ¹⁹⁸ *Id.*

22 ¹⁹⁹ AGRL Exs. at pp. 223-224.

23 ²⁰⁰ AGRL Exs. at p. 224.

24 ²⁰¹ AGRL Exs. at p. 225.

25 ²⁰² *Id.*

26 ²⁰³ *Id.*

27 ²⁰⁴ AGRL Exs. at pp. 225-226.

28 ²⁰⁵ AGRL Exs. at p. 225.

²⁰⁶ AGRL Exs. at p. 226.

²⁰⁷ AGRL Exs. at p. 234.

1 **IV. Determination of Issues**

2 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
3 for a felony offense that they did not commit, to submit a claim for compensation to CalVCB for the
4 injury sustained.²⁰⁸ Typically, the claimant bears the burden to prove by a preponderance that (1) the
5 crime with which they were convicted either did not occur or was not committed by them and (2) they
6 suffered injury as a result of their erroneous conviction.²⁰⁹ In this context, injury means that, but for the
7 erroneous conviction, the claimant would have been free from custody.²¹⁰ Once a properly submitted
8 claim is filed, Penal Code section 4902 requires the Attorney General to submit a written response,
9 after which an informal administrative hearing ensues pursuant to Penal Code section 4903. If the
10 claimant satisfies their burden at the hearing, then Penal Code section 4904 requires CalVCB to
11 approve payment for the purpose of indemnifying the claimant for the demonstrated injury, at the rate of
12 \$140 per day of their incarceration, if sufficient funds are available, upon appropriation by the
13 Legislature.²¹¹ No compensation is authorized for any time spent on supervised released.²¹²

14 In limited circumstances, a different procedure may apply for claimants whose convictions have
15 been reversed. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court
16 finding of factual innocence during a proceeding that resulted in either a grant of habeas relief or a
17 vacated conviction pursuant to Penal Code section 1473.6, then CalVCB must automatically approve
18 the claim, within 90 days and without a hearing, pursuant to Penal Code section 4904 for the injury
19 sustained.²¹³ Second, under subdivision (b) of Penal Code section 4900, if the claimant's conviction
20

21 ²⁰⁸ Pen. Code, § 4900.

22 ²⁰⁹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

23 ²¹⁰ Cal. Code of Regs., tit. 2, § 640, subd. (f).

24 ²¹¹ Pen. Code, § 4904.

25 ²¹² Pen. Code, § 4904; see also proposed Pen. Code, § 4904, subd. (d), conditionally operative July 1,
26 2024, subject to appropriation, as added by Stats.2022, c. 771 (A.B. 160), § 21; Governor's May
27 Revision (2024-25), Introduction at pp. 9-10 (rejecting A.B. 160's conditional expenditures due to "the
28 negative multiyear projections" to the General Fund), available at <https://ebudget.ca.gov/2024-25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf>.

²¹³ Pen. Code, §§ 851.865; 1485.55, subd. (a), 4902, subd. (a), eff. Jan. 1, 2024; see also Cal. Code of Regs., tit. 2, § 640, subds. (e)(1)-(2).

1 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,
2 subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney General
3 declines to object with clear and convincing proof of guilt, then CalVCB must approve the claim within
4 90 days pursuant to Penal Code section 4904 for the injury sustained.²¹⁴ Third, under recently-added
5 subdivision (d) of section 1485.55, if a court granted a motion for relief based upon a conviction that
6 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,
7 subdivision (a)(2), the charges were dismissed or acquitted on remand, and the district attorney failed
8 to timely object with clear and convincing proof of the claimant's guilt, then CalVCB must approve the
9 claim, without a hearing and within 90 days, for the demonstrated injury.²¹⁵ While a court order under
10 subdivision (d) of section 1485.55 does not constitute a finding of factual innocence, it nevertheless
11 requires expedited approval of a filed claim.²¹⁶ Unless one of these narrow statutory exceptions applies,
12 then the claimant bears the burden to prove innocence and injury by a preponderance of the evidence
13 under subdivision (a) of Penal Code section 4900.

14 Under subdivision (a) of section 4900, claimants bear the burden of proving by a
15 preponderance that (1) the crime with which they were convicted either did not occur or was not
16 committed by them and (2) they suffered injury as a result of their erroneous conviction.²¹⁷ When
17 determining whether the claimant has satisfied their burden of proof, the Board may consider the
18 "claimant's denial of the commission of the crime; reversal of the judgment of conviction; acquittal of
19 claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the crime...."²¹⁸
20 The Board may also "consider as substantive evidence the prior testimony of witnesses [that] claimant
21 had an opportunity to cross-examine, and evidence admitted in prior proceedings for which claimant
22

23 ²¹⁴ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

24 ²¹⁵ Pen. Code, § 1485.55, subd. (e).

25 ²¹⁶ See *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (confirming that "a court finding of factual
26 innocence must be made by at least a preponderance of the evidence and must reflect a determination
27 that the person charged and convicted of an offense did not commit the crime").

27 ²¹⁷ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

28 ²¹⁸ Cal. Code Regs., tit. 2, § 641, subd. (a).

1 had an opportunity to object.”²¹⁹ Ultimately, the Board may consider “any other information that it
2 deems relevant to the issue before it,” even if inadmissible under the traditional rules of evidence, so
3 long as “it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct
4 of serious affairs.”²²⁰

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

6 Gentry seeks compensation for his 2018 convictions for voluntary manslaughter and assault by
7 means likely to produce great bodily injury in San Bernadino County Superior Court case number
8 FSB1500023. Neither of these convictions were reversed or vacated by grant of habeas or pursuant to
9 Penal Code section 1473.6 or 1473.7, subdivision (a)(2). As such, the burden-shifting provisions in
10 subdivision (b) of Penal Code section 4900 and subdivision (d) of Penal Code section 4902 do not
11 apply. Moreover, Gentry lacks a finding of factual innocence by any court under Penal Code section
12 1485.55 or 851.865. Thus, Gentry’s claim does not fall within any of the limited statutory exceptions to
13 subdivision (a) of section 4900. Accordingly, subdivision (a) governs the disposition of Gentry’s claim.
14 Gentry therefore bears the burden to demonstrate innocence by a preponderance of the evidence.

15 **B. The Appellate Court’s Findings Are Not Binding on CalVCB**

16 By statute, CalVCB is bound by “factual findings” made and “credibility determinations” rendered
17 during proceedings on a petition for habeas corpus, motion to vacate a judgment pursuant to Penal
18 Code section 1473.6 or 1473.7, subdivision (a)(2), or an application for a certificate of factual
19 innocence.²²¹ Notably, these statutory provisions omit decisions rendered by an appellate court on
20 direct appeal, or during proceedings under any provision not specifically enumerated.²²²

21 _____
22 ²¹⁹ Cal. Code Regs., tit. 2, § 641, subd. (b).

23 ²²⁰ Cal. Code Regs., tit. 2, § 641, subs. (c), (d), and (f).

24 ²²¹ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); see also *Gonzales v. California Victim*
25 *Compensation Board* (2023) 98 Cal.App.5th 427 (defining “factual findings” in this context to exclude
26 “the habeas court’s summary of, observations about, and characterizations of the trial record when the
27 habeas court is not finding facts after entering new evidence”).

28 ²²² *Ibid.*; see also *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1211-1212 (“Appellate courts do not
make factual findings; we review ‘the correctness of a judgment [or order] as of the time of its
rendition’”); *People v. Cervantes* (2020) 46 Cal.App.5th 213, 224 (“appellate courts are not equipped to
accept new evidence and make factual findings”).

1 As a result, CalVCB is not statutorily bound by a resentencing determination under Penal Code
2 section 1172.6, nor by the appellate court's characterization of the evidence in an appeal from the order
3 summarily denying a petition pursuant to Penal Code section 1172.6.²²³ Consequently, neither the
4 appellate court's order reversing the summary denial of Gentry's petition, nor the court's finding he was
5 eligible for relief in a proceeding under Penal Code section 1172.6 are binding for purposes of these
6 proceedings before the Board. Because Gentry's case falls outside the proceedings contemplated in
7 sections 4903, 1485.5, and 1485.55, the appellate court findings are not binding and do not establish
8 Gentry's innocence for purposes of these administrative proceedings.

9 Moreover, the appellate court's decision does not "collaterally estop" the Board from fulfilling its
10 statutory obligation to decide the new and separate issues being litigated here. While an appellate
11 court's determination of legal issues that were, or could have been, raised on direct appeal, may bind
12 CalVCB under the doctrines of res judicata and collateral estoppel, neither doctrine applies in this case,
13 nor precludes consideration of the issues presented in this claim.²²⁴ In general, collateral estoppel
14 precludes a party from relitigating issues litigated and decided in a prior proceeding.²²⁵ However, the
15 issues being litigated in this claim are wholly discreet from the issues considered during the pendency
16 of Gentry's Penal Code section 1172.6 petition. As detailed below, the legal issues previously argued
17 and decided, both on direct appeal and in the 1172.6 proceeding, differ significantly from the legal
18 issues presented before CalVCB.

19 Penal Code section 1172.6 allows a person convicted of murder to petition to have the
20 conviction vacated if (1) the complaint allowed the prosecution to proceed under a theory of murder
21 under the natural and probable consequences doctrine, (2) the petitioner was convicted of first- or
22 second-degree murder, and (3) the petitioner could not be convicted of murder after SB 1437's
23 changes to sections 188 and 189, which no longer permit murder convictions based on the natural and
24

25 ²²³ Pen. Code, §§ 851.865, subd. (a), 1485.5, subds. (a)-(b), & (e); 4903, subd. (b).

26 ²²⁴ See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 206
27 (explaining "Res judicata, or claim preclusion, precludes parties or their privies from relitigating a cause
28 of action finally resolved in a prior proceeding" and "Collateral estoppel precludes relitigation of issues
argued and decided in a prior proceeding").

²²⁵ *Tennison v. California Victim Comp. & Government Claims Bd.* (2007) 152 Cal.App.4th 1164, 1174.

1 probable consequences theory.²²⁶ Consequently, the sole issue on appeal was whether Gentry made a
2 prima facie showing that he is 'entitled to relief' under section 1172.6 and was therefore entitled to an
3 evidentiary hearing where the district attorney would have the burden of proving that Gentry was
4 ineligible for resentencing, or otherwise stated, whether Gentry was convicted of manslaughter under
5 the natural and probable consequences doctrine.²²⁷ Stated another way, the legal issue presented in
6 the section 1172.6 proceeding was whether Gentry could be convicted, beyond a reasonable doubt, of
7 manslaughter, as that crime was defined after the passage of SB 1437, e.g., under a theory other than
8 the natural and probable consequences doctrine.²²⁸

9 The issue presented in Gentry's claim under Penal Code section 4900, on the other hand, is
10 whether Gentry can prove by a preponderance of evidence that the crime he was convicted of was not
11 committed at all, or not committed by him, according to the law in effect at the time the crime was
12 committed.²²⁹ In other words, Gentry must prove that he is actually innocent of manslaughter under any
13 plausible theory, including under the natural and probable consequences theory, as that remained a
14 valid theory for conviction at the time this crime was committed. The issue of Gentry's actual innocence
15 was never previously litigated in the superior court, or the appellate court, nor was there a final decision
16 on the merits of Gentry's innocence.

17 Rather, the superior court simply found that, based on a change in legislation, a jury could not
18 find him guilty beyond a reasonable doubt of manslaughter as it is now defined. The court did not,
19 however, issue a finding of factual innocence, establishing that Gentry did not commit the underlying
20 crime. Thus, even if the superior or appellate courts' rulings were binding, they are of no consequence
21 in this administrative proceeding.

22 ///

23 _____
24 ²²⁶ Pen. Code, § 1172.6, subds. (a)(1)-(3).

25 ²²⁷ App. at pp. 3-29.

26 ²²⁸ SB 1437 prohibits a participant in a first-degree murder from being liable for murder unless the
27 person either was the actual killer, aided and abetted the killer with the intent to kill, or was a major
participant in the underlying felony and acted with reckless indifference to human life.

28 ²²⁹ Pen. Code, § 4900.

1 **C. Gentry Bears the Burden of Proof**

2 Under subdivision (a) of section 4900, claimants bear the burden of proving that the crime with
3 which they were convicted either did not occur, or was not committed by them, and that they suffered
4 injury as a result of their erroneous conviction.²³⁰ While “[i]nnocence might well be predicated upon a
5 reasonable doubt of guilt,” the “[CalVCB’s] section 4900 determination is a civil determination of
6 culpability” that requires the claimant to “carry the burden of proof of innocence by a preponderance of
7 the evidence.”²³¹ Consequently, to prevail in this claim, Gentry bears the burden of affirmatively
8 establishing, by a preponderance of the evidence, that he is actually innocent of the crime with which
9 he was erroneously convicted because the charged crime was either not committed at all or not
10 committed by him under the law in effect at the time the crime allegedly occurred.²³² Meaning, Gentry
11 must affirmatively prove that he is actually innocent of manslaughter under any plausible theory of
12 culpability, including as an aider and abettor as the natural and probable consequence of the assault.
13 To satisfy his burden, Gentry must demonstrate it is more likely than not that he did not commit this
14 crime, or that it never occurred.

15 **D. Gentry Remains Validly Convicted of Aggravated Assault**

16 Gentry remains validly convicted of felony assault by means likely to produce great bodily
17 injury.²³³ On February 3, 2023, the district attorney conceded that the sole theory of Gentry’s liability for
18 murder was the natural and probable consequences doctrine, and that he could not now be convicted
19 of murder under the amendments to Penal Code sections 188 and 189 made by Senate Bills 1437 and
20 775.²³⁴ Accordingly, the San Bernadino County Superior Court found Gentry was entitled to relief under
21 Penal Code section 1172.6 and vacated his manslaughter conviction.²³⁵ The court found that Gentry
22 was “not liable for homicide or attempted homicide or manslaughter under the newly enacted Penal
23

24 ²³⁰ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 ²³¹ *Diola v. State Bd. of Control* (1982) 135 Cal.App.3d 580, 588 n.7.

26 ²³² Pen. Code, § 4900.

27 ²³³ Pen. Code, § 245, subd. (a)(1).

28 ²³⁴ App. at pp. 9-10.

²³⁵ AGRL Exs. at pp. 95-100.

1 Code 189,” and therefore vacated Gentry’s conviction.²³⁶ The court went on to say, “So, Mr. Gentry,
2 that means that basically wipes out your conviction.”²³⁷ However, the court did not mention vacating the
3 assault conviction and, in his final statement to Gentry, the judge used the word “conviction,” in the
4 singular form.²³⁸

5 While the minute order reflects that the court vacated *both* the manslaughter conviction and the
6 assault by means likely to produce great bodily injury convictions, evidence in the record
7 overwhelmingly establishes that this was a clerical error.²³⁹ Here, the reporter’s transcript from the date
8 of the hearing reflects that the court asked the district attorney to confirm whether there were any
9 underlying charges, to which the district attorney answered, “No.”²⁴⁰ The court then reasoned that
10 because there were no underlying charges, resentencing would not be appropriate and vacated
11 Gentry’s manslaughter conviction, with no mention of the underlying aggravated assault conviction.²⁴¹ It
12 also stands to reason that the trial court did not vacate the underlying aggravated assault conviction
13 because Gentry did not raise it in his resentencing petition, presumably because Senate Bill 1437 does
14 not apply outside the context of murder and manslaughter.

15 Nevertheless, as a general rule, when there is a discrepancy between the minute order and the
16 oral pronouncement of judgment, the oral pronouncement controls.²⁴² “The California Supreme Court
17 has also stated that a ‘record that is in conflict will be harmonized if possible, but if the reporter’s
18 transcript and the clerk’s transcript - the minute order in this case - cannot be reconciled, we do not
19 automatically defer to the reporter’s transcript, but rather adopt the transcript that should be given
20 greater credence under the circumstances of the particular case.’”²⁴³

21
22 ²³⁶ AGRL Exs. at pp. 98-99.

23 ²³⁷ AGRL Exs. at p. 99.

24 ²³⁸ *Id.*

25 ²³⁹ App. at pp. 9-10.

26 ²⁴⁰ AGRL Exs. at p. 98.

27 ²⁴¹ AGRL Exs. at p. 98.

28 ²⁴² AGRL at p. 3; see *People v. Contreras* (2015) 237 Cal.App.4th 868, 880.

²⁴³ *People v. Harrison* (2005) 35 Cal.4th 208, 226.

1 As such, the evidence sufficiently demonstrates that Gentry remains validly convicted of
2 aggravated assault.

3 **E. Gentry Has Failed to Satisfy His Burden**

4 Gentry bore the burden to show that he is actually innocent of the crimes with which he was
5 erroneously convicted.²⁴⁴ Penal Code section 4900 requires an affirmative showing of factual
6 innocence, not simply the absence of evidence of culpability. In this administrative proceeding, Gentry
7 failed to affirmatively demonstrate, by a preponderance of the evidence, that he is innocent of
8 manslaughter as an aider and abettor under the natural and probable consequence doctrine, which was
9 still valid in 2015. Thus, he has failed to meet his burden. Having failed to prove that he did not commit
10 manslaughter or that manslaughter was not committed at all, Gentry’s claim for compensation must
11 therefore be denied.

12 **1. Manslaughter as Defined in 2015**

13 Under the law at the time of the crime, a defendant could be convicted of murder and
14 manslaughter under the natural and probable consequences doctrine. Under the natural and probable
15 consequences doctrine as it applied to aiding and abetting murder, “a defendant can be found guilty of
16 murder if he or she aids and abets a crime (i.e., the target crime) and murder (i.e., the nontarget crime)
17 is a natural and probable consequences of that target crime”²⁴⁵ Liability for unintentional, nontarget
18 offenses is known as the “natural and probable consequences doctrine.”²⁴⁶

19 Manslaughter is statutorily defined as the “unlawful killing of a human being without malice.”²⁴⁷
20 Voluntary manslaughter is manslaughter committed “upon a sudden quarrel or heat of passion.”²⁴⁸ A
21 defendant is guilty of manslaughter as an aider and abettor under the natural and probable
22 consequences doctrine, if the defendant (1) with knowledge of a co-participant’s unlawful purpose; (2)
23 with the intent of committing, encouraging, or facilitating the commission of any target crimes (here, one

24
25 ²⁴⁴ Pen. Code, § 4900, subd. (a).

26 ²⁴⁵ *People v. Chavez* (2018) 22 Cal.App.5th 663, 683.

27 ²⁴⁶ *People v. Williams* (2015) 61 Cal.4th 1244, 1268.

28 ²⁴⁷ Pen. Code, § 192.

²⁴⁸ Pen. Code, § 192, subd. (a).

1 target crime was aggravated assault); (3) aided, promoted, encouraged, or instigated the commission
2 of the target crimes; (4) the defendant's confederate committed an offense other than the target crimes;
3 and (5) the offense committed by the confederate was a natural and probable consequence of the
4 target crimes that the defendant encouraged or facilitated.²⁴⁹ A natural and probable consequence is
5 one that a reasonable person would know is likely to happen if nothing unusual intervenes. The intent
6 of an aider and abettor with respect to the murder is irrelevant.²⁵⁰ Instead, the accomplice need only
7 intend to facilitate a crime ("the target offense"), such as an aggravated assault, which foreseeably led
8 to another's commission of murder. Under this theory of culpability, Gentry must show that he did not
9 actually aid, promote, encourage, or instigate, the target crime of aggravated assault which naturally,
10 probably, and foreseeably led to the victim's death.

11 After careful consideration of all the evidence, Gentry fails to demonstrate by a preponderance
12 that he is innocent of aiding and abetting the aggravated assault that naturally and probably led to
13 Richard's death.

14 **2. Gentry Plead Guilty to Manslaughter and Aggravated Assault and Thereby**
15 **Admitted to All Prerequisite Facts**

16 The fact that Gentry pleaded guilty to voluntary manslaughter and assault by means likely to
17 produce great bodily injury and admitted the additional allegation that a principal used a firearm,
18 thereby admitting every element of the charged crimes is not insignificant. A "guilty plea is more than a
19 confession which admits that the accused did various acts. It is an 'admission that he committed the
20 crime charged against him.'"²⁵¹ Here, Gentry stipulated that the preliminary hearing transcripts provided
21 the factual basis for entering the plea.²⁵² Gentry's plea therefore includes all of the factual and legal
22 elements necessary to sustain a binding, final judgment of guilt and a lawful sentence. Gentry expressly
23 confirmed that his plea was freely and voluntarily made after having sufficient time to discuss it with his
24

25 ²⁴⁹ CALCRIM 402; see also *People v. Chiu* (2014) 59 Cal.4th 155, 161, 171-172.

26 ²⁵⁰ *People v. Chiu* (2014) 59 Cal.4th 155, 164.

27 ²⁵¹ *U.S. v. Broce* (1989) 488 U.S. 563, 570 (internal citations omitted).

28 ²⁵² AGRL Exs. at p. 71.

1 attorney.²⁵³ Thus, the record overwhelmingly demonstrates the validity of the plea, for which Gentry
2 received the benefit of his bargain.

3 **3. Gentry's Vacated Conviction Does Not Establish Innocence**

4 Neither the appellate court's order, directing the trial court to hold a resentencing hearing, nor
5 the order vacating Gentry's conviction, establish his innocence for purposes of this administrative
6 proceeding.

7 Gentry's manslaughter conviction was vacated under section 1172.6, solely due to a change in
8 the law that narrowed accomplice liability for manslaughter. However, a claim solely based upon a
9 vacated conviction due to a change in the law is not entitled to relief under sections 4900 and 4901.²⁵⁴
10 Rather, the claim must allege that the claimant is innocent of the crime with which they were
11 erroneously convicted because the charged crime was either not committed at all or not committed by
12 the claimant under the law in effect at the time the charged crime allegedly occurred.²⁵⁵ Simply put,
13 Gentry cannot rely on the fact that his manslaughter conviction was vacated, but rather, he must
14 affirmatively show that he is innocent of mansluaghter as it was defined in 2015.

15 **4. Insufficient Proof of Innocence**

16 The evidence in the administrative record that supports Gentry's innocence is minimal. In his
17 original application, Gentry did not provide a statement of factual innocence, as required.²⁵⁶ Instead,
18 Gentry attached a 52-page case summary for Ezekiel's criminal case, with "Section F. Statement of
19 Factual Innocence" handwritten at the top of the page.²⁵⁷ Once CalVCB notified him that this was
20 insufficient, he supplemented his claim with a revised claim form, simply alleging, "I Adrian D. Gentry Jr.
21 did not commit the crime I was charged with. I had no knowledge of or any participation in the crime
22 which was committed."²⁵⁸ Yet, he did not expand on his alleged lack of knowledge and participation.

23
24 ²⁵³ AGRL Exs. at pp. 68-73.

25 ²⁵⁴ Cal. Code Regs., title 2, § 642, subd. (a)(3).

26 ²⁵⁵ Cal. Code Regs., title 2, § 642, subd. (a)(3).

27 ²⁵⁶ Cal. Code Regs., tit. 2, § 640.

28 ²⁵⁷ *People v. Ezekiel George*, San Bernadino County case number FSB1500023-2.

²⁵⁸ Supp. at p. 4.

1 For instance, he never denied knowing there were loaded guns inside the white sedan on the
2 night of the crime. He never denied knowing about Ezekiel and Maurice's plan to shoot Richard, nor did
3 he deny actively participating in the planning of the shooting on the walk back to the vehicle. He never
4 denied aiding, promoting, or encouraging the shooting. He never explained who he walked back to the
5 white sedan with, what conversations he overheard, if any, and what conversations took place once the
6 group got into the white sedan to leave. He never explained what he was doing the moment the driver,
7 Topaz, turned off the headlights and Ezekiel and Maurice grabbed the loaded guns. Gentry never
8 refutes the Cal Skate employees' eye-witness accounts: first, that Gentry was the "loudmouth" and
9 "instigator" during the altercation inside and outside the skating rink, and second, more importantly, that
10 Gentry threatened to shoot the victim, shortly before the victim was shot.

11 Gentry also failed to provide any reliable, independent evidence to support his contention that
12 he lacked knowledge of nor participated in the aggravated assault that naturally and probably led to
13 Richard's death. Instead, he focused almost exclusively on the fact that Ezekiel and Maurice were the
14 two actual shooters, while he remained in the front passenger seat during the shooting. Although
15 Gentry provided documentation to establish that Ezekiel and Maurice were the actual shooters, he
16 failed to provide any supporting documentation establishing *his* actual innocence. In fact, Gentry only
17 provided the following documents in support of his claim: (1) Change of Plea form, filed with the San
18 Bernadino County Superior Court on August 9, 2018, (2) minute order from the Penal Code section
19 1172.6 hearing, (2) a 52-page case summary for Ezekiel, (3) excerpts from the San Bernadino County
20 Sheriff's Department's crime report, reflecting Ezekiel and Maurice's police interviews, which included
21 their confessions to being the actual shooters, and (4) an email from Racheal Rhoades, LMFT,
22 confirming Gentry participated in five therapy sessions.

23 However, none of these documents support his contention that he is actually innocent of aiding
24 and abetting the aggravated assault that naturally and probably led to Richard's death. Notably, Gentry
25 did not provide a copy of the full crime report, only attaching pages 4, 6 and 23 to his revised claim.
26 Also omitted were pages referencing his own police interview, or any other witnesses' police interviews
27 for that matter. While he may have provided sufficient evidence to show Ezekiel and Maurice were the
28 actual shooters, this fact alone is insufficient to establish his innocence, as he was convicted as an

1 aider and abettor under the natural and probable consequences doctrine, which does not require him to
2 have been one of the actual shooters.

3 Moreover, he had ample opportunity to provide not only evidence in support of his innocence,
4 but simply a detailed account of what happened on the night of the crime. CalVCB's May 18, 2023,
5 letter itemized all the deficiencies in his claim, including his lack of a statement of factual innocence,
6 and gave him an additional 30 days to respond. Yet, in his timely response, which included a revised
7 claim form, he still only provided a one-sentence, blanket denial that he did not commit the crime he
8 was charged with nor did he have any knowledge of or participation in the crime which was
9 committed.²⁵⁹ The CalVCB hearing was subsequently scheduled nearly six months out, allowing him
10 more than enough time to gather additional evidence and prepare for the hearing. In fact, Gentry had
11 the opportunity to submit an optional pre-hearing brief on or before September 13, 2024. Gentry did not
12 submit a pre-hearing brief. The parties were also ordered to submit a mandatory pre-hearing statement
13 on or before September 18, 2024, listing all witnesses the parties intended to call at the hearing, every
14 exhibit to be offered into evidence at the hearing, and the estimated length of time to present their case
15 at the hearing. The DAG complied, but Gentry did not.

16 Even after being notified of the hearing date on three separate occasions, including three days
17 prior, Gentry failed to appear, and to date, has not called to explain why or to request a continuance. As
18 a result of his failure to appear at the hearing, CalVCB was authorized to base its decision on
19 previously submitted evidence.²⁶⁰

20 Gentry's innocence does not appear to be more likely than not based on the evidence provided.
21 While it is possible that Gentry may have been entirely unaware of Maurice and Ezekiel's actions, that
22 possibility is not persuasive. Rather, it appears to be more likely than not that Gentry aided and abetted
23 the aggravated assault. A witness identified Gentry as the "loudmouth" of the group while another
24 witness heard Gentry threaten to shoot Richard shortly before he was killed. Moreover, the driver of the
25 vehicle, Gentry's brother, turned the headlights off as they approached Richard. This, coupled with
26

27 ²⁵⁹ Supp. at p. 4.

28 ²⁶⁰ Cal. Code Regs., tit. 2, § 644, subd. (g).

1 Gentry's threat to shoot Richard just prior to the shooting leads to a reasonable inference that Gentry
2 was not only aware of Maurice and Ezekiel's plan to shoot Richard while they were exiting the parking
3 lot, but that he encouraged it and helped facilitate it. More importantly, Gentry's bald assertion that he
4 had no knowledge of the crimes and did not participate in the crimes does not carry his burden of
5 innocence.

6 **F. Overall Evidence Fails to Demonstrate Innocence**

7 After considering the evidence provided by the parties, as detailed above, Gentry failed to prove
8 he is more likely than not innocent of voluntary manslaughter as it was defined in 2015.

9 The burden rests upon Gentry to affirmatively demonstrate that he did not commit this offense,
10 or that it never occurred. To that end, it is Gentry's burden to show that, on the night of the crime, he
11 did not know Maurice and Ezekiel intended to commit assault with a deadly weapon and that before or
12 during the commission of the crime, he did not intend to aid and abet Maurice and Ezekiel in the
13 assault.²⁶¹ Accordingly, Gentry entirely fails to meet his burden on this record, for all of the reasons
14 detailed above.

15 **V. Conclusion**

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

20
21 Date: April 21, 2025

Kristen Sellers

22 Kristen Sellers
23 Hearing Officer
24 California Victim Compensation Board

25
26
27 _____
28 ²⁶¹ CALCRIM 401.