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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Timothy Atkins

**Amended Proposed Decision
(Penal Code § 4900)**

Introduction

An in-person hearing on this claim for compensation as an erroneously convicted person was held on December 15-16, 2009, in Sacramento, California, by Kevin Kwong, Hearing Officer, California Victim Compensation and Government Claims Board. The claimant, Timothy Atkins, appeared at the hearing and was represented by Justin Brooks, Mario Conte, Alex Simpson, and Jeff Chinn from the California Innocence Project. The California Attorney General's Office was represented by Kenneth Sokoler and Galen Farris, Deputy Attorneys General (AG). The Board denied Atkins' claim on March 18, 2010. On September 5, 2013, the Court of Appeals remanded this case back to the Board with the orders to conduct a new hearing and issue a new decision.

As explained below, Atkins has not met the statutory requirements to receive compensation under Penal Code section 4900

Procedural Background

On January 1, 1985, Vicente Gonzales and his wife Maria Gonzales were exiting their vehicle when they were approached by armed robbers. Vicente Gonzales was shot and killed and the perpetrators stole a necklace from Maria Gonzales. On January 7, 1985, the Los Angeles Police

1 Department arrested Timothy Atkins and Ricky Evans for this crime. Atkins, who was 17-years-old at
2 the time, was charged with murder and two counts of robbery.

3 Atkins was found guilty of all charges on July 28, 1987, and on February 5, 1988, he was
4 sentenced to 32 years-to-life in prison. On March 6, 2006, Atkins filed a petition for a Writ of Habeas
5 Corpus. An evidentiary hearing was held where, most notably, one witness recanted her prior
6 testimony that implicated Atkins in the murder. On February 8, 2007, the Writ was granted, Atkins'
7 convictions were vacated, and a new trial was ordered. The Los Angeles County District Attorney's
8 Office declined to retry the case and Atkins was released from prison on February 9, 2007. Atkins
9 submitted his claim to the Board under Penal Code section 4900 on August 9, 2007.

10 A hearing on Atkins' claim was held on December 15th and 16th in 2009. The Hearing Officer
11 recommended that Atkins' claim be denied because he did not prove his innocence by a
12 preponderance of the evidence. On March 18, 2010, the Board agreed with the Hearing Officer's
13 conclusion to deny Atkins' claim. The Board, through verbal comments, made additional credibility
14 determinations against Atkins and his witnesses that were not reflected in the Hearing Officer's
15 proposed decision. Thus the proposed decision was not adopted by the Board; only the conclusion
16 that Atkins did not meet his burden of proof was adopted.

17 Atkins filed a Writ of Mandate in the Los Angeles Superior Court. On March 5, 2012, the
18 Superior Court ruled that there was substantial evidence to support the Board's decision to deny
19 Atkins' claim and the Writ of Mandate was denied. Atkins appealed the Superior Court's decision to
20 the Court of Appeals. On September 5, 2013, the Court of Appeals ordered the case remanded back
21 to the Superior Court with the order that the Board hold a new hearing and render a written decision
22 setting forth its factual and legal bases therefor. The Court of Appeals determined that there was not
23 a sufficient written factual and legal basis for the Board's decision since it did not adopt the Hearing
24 Officer's proposed decision. Oral findings by the Board were not a sufficient substitute. The Court of
25 Appeals did not address the issue of the sufficiency of the evidence to support the Board's decision
26 to deny Atkins' claim.

27 On August 6, 2014, while the current matter was pending with the Board, Atkins filed a motion
28 in the Superior Court of Los Angeles to receive a finding of factual innocence pursuant to Penal Code
29 section 1485.55(b). This motion was opposed by the Los Angeles County District Attorney's Office.

1 On August 22, 2014, the Superior Court granted Atkins' motion and he received a finding of factual
2 innocence.

3 Per the order of the Court of Appeals, on June 18, 2015, the Board conducted a new hearing
4 to consider Atkins' claim. The Hearing Officer had written a proposed decision recommending that
5 Atkins' claim be approved.¹ The Board rejected this proposed decision, voted to deny Atkins' claim,
6 and directed staff to write an amended proposed decision that is consistent with its reason for
7 denial.²

8 **Applicable Law**

9 The first issue that must be resolved in this case is whether Atkins' claim should be decided
10 based on the changes in Penal Code section 4900, et al, that took effect on January 1, 2014, or the
11 law as it existed at the time of the filing of the claim. Atkins originally submitted his claim pursuant to
12 Penal Code section 4900 on August 9, 2007. On March 18, 2010, the Board voted to deny Atkins'
13 claim. Atkins challenged this decision first in the Superior Court and then the Court of Appeals.
14 Shortly after the Court of Appeals issued its decision to remand the case back to the Board, the
15 statutes that govern claims filed under Penal Code section 4900 changed. These new statutes,
16 including Penal Code section 1485.55(d), took effect on January 1, 2014. On August 22, 2014,
17 Atkins received a finding of factual innocence by the Los Angeles Superior Court pursuant to Penal
18 Code section 1485.55(b).

19 Penal Code section 1485.55(d) states: "If the court makes a finding that the petitioner has
20 proven his or her innocence by a preponderance of the evidence pursuant to subdivision (b) or (c),
21 the Board shall, without a hearing, recommend to the Legislature that an appropriation be made and
22 the claim paid pursuant to Section 4904."

23 Prior to the change in law, a court's finding of factual innocence was a factor to consider in
24 analyzing a claim pursuant to Penal Code section 4900, but it was not binding. Based on this new
25 statute, Atkins argues that the Board must approve his claim without a hearing. Atkins argues that
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28 ¹ The original proposed decision is attached as Exhibit A.

29 ² Regs., § 619.2(d). All regulations citations are to California Code of Regulations, title 2.

1 Penal Code section 1485.55(d) applies to his claim even though this statute did not exist at the time he
2 submitted his application or when the Board made its original decision to deny his claim.

3 Atkins points to another claim for compensation under Penal Code section 4900 where the
4 claimant filed prior to the change in law. The claim of Francisco Carrillo was received by the Board on
5 October 12, 2011, and decided by the Board on May 15, 2014. In its recommendation to the Board,
6 the AG conceded that the new statutes apply. In its decision, the Board applied sections of the new
7 law. Atkins asserts that even though 1485.55(d) did not apply in the Carrillo claim, the fact that the
8 Board applied relevant sections of the new law shows that the Board believes that the new laws apply
9 to claims filed prior to the change in law. Atkins argues that to not apply the new laws in this case
10 would be inconsistent with a prior determination by the Board. Therefore, Atkins states, with a finding
11 of factual innocence from a court, the Board must approve his claim and recommend payment to the
12 Legislature.

13 The Attorney General argues that the Board cannot follow the new statute and automatically
14 recommend payment to the legislature without a hearing. The AG states the order from the Court of
15 Appeals commands that the Board "conduct a new hearing at which the Board, in the exercise of its
16 discretion, may allow new evidence to be presented." The Board must conduct a new hearing and only
17 has discretion in whether or not to allow new evidence. To not hold a hearing based on 1485.55(d)
18 would mean that the Board is not following an order from the Court of Appeals.

19 Further, the AG argues the new statutes do not apply because no part of the penal code
20 applies retroactively unless it's clearly expressed by the Legislature that retroactive application is
21 intended. There is no retroactivity provision mentioned in 1485.55, or any of the other new sections
22 of the laws.

23 The Hearing Officer finds that the Board is not required to apply the new laws pertaining to
24 Penal Code section 4900 in this matter. In *People v. Ranger Ins. Co.* (1999) 76 Cal.App.4th 326, 330,
25 the Court held that new penal code sections do not apply retroactively "unless expressly so
26 declared." The California Supreme Court has held that in the absence of an express retroactivity
27 provision, a statute will not be applied retroactively unless it is very clear that the Legislature intended
28 such an application. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1209.)

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1 Applying the new statutes would be tantamount to giving them a retroactive effect. Atkins
2 submitted his claim in August of 2007. A two-day evidentiary hearing was held in December 2009.
3 The Board made its original decision on the claim in March 2010. All these decisions were made
4 years before the new statutes ever existed. Additionally, the Court of Appeals determined that there
5 was not a sufficient written factual and legal basis for the Board's decision in 2010 since it did not
6 adopt the Hearing Officer's proposed decision. The return of this matter by the appellate court was
7 based on a technicality regarding the Board's decision and the Hearing Officer's proposed decision.
8 Therefore it is reasonable to apply the same law that existed at the time of the hearing and the
9 decision.

10 The fact that the Board applied the new statutory scheme retroactively once does not make
11 that decision binding. Furthermore, in the claim of Francisco Carrillo, the Board had not yet heard
12 the matter nor had it made a decision in the case prior to the change of the law. Here, as previously
13 noted, the Board had already heard and decided the matter prior to the change in the law.

14 Even if the Board chooses to apply the new laws retroactively, it cannot apply the specifics of
15 Penal Code section 1455.55(d) in this matter. The order from the Court of Appeals is in direct
16 conflict with the new code section. The Court ordered the Board to conduct a new hearing and
17 consider the evidence while Penal Code section 1455.55(d) states that the Board cannot conduct a
18 hearing and must recommend approval of the claim. The Court order preceded the change in the
19 law and there was no provision in the new statutes that stated it supersedes an outstanding court
20 order. Nor has the Court of Appeals modified its order in light of the new statutory scheme.
21 Therefore, the Board must conduct a hearing on this claim because failure to do so would be in
22 violation of the specific order from the Court of Appeals.³

23 This proposed decision is based on the law that was current when the Board made its
24 decision on March 18, 2010.

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28 ³ If a hearing was deemed necessary, both sides agreed to have a hearing on the written record based
29 on the evidence already presented, as well as any new evidence that they chose to submit.

1 **Summary of Evidence**

2 **The Prosecution's Evidence at Trial**

3 Shortly after midnight on January 1, 1985, Vicente and Marla Gonzales left a New Year's Eve
4 concert held at the Los Angeles Convention Center. Around 1:00 a.m., the Gonzales' arrived at 335
5 Brooks Ave. in Venice, CA,⁴ to pick up their children who were with relatives. As they were about to
6 step out of their vehicle, Evans approached Vicente from the driver's side with a shotgun and Atkins
7 approached Maria from behind on the passenger side with a handgun. Atkins placed one of his
8 hands on Maria's face and his other hand was holding his weapon to her head. Evans then shot and
9 killed Vicente while Atkins demanded money from Maria. Since Maria did not have her purse with
10 her, Atkins grabbed the necklace off her neck, held it up to Evans and said "look, look," before the
11 two ran away. The police arrested both Atkins and Evans six days later, and evidence was
12 presented that Atkins attempted to flee the police during the course of his arrest.

13 Atkins and Evans were both documented gang members at the time of their arrest. While in
14 jail and awaiting trial, fellow jailed gang members believed that one of them were "snitching" and
15 ordered them to fight each other. When the gang was not satisfied with their fight, they began
16 beating both Atkins and Evans. Evans died as a result of the beating while Atkins suffered serious
17 injuries.

18 The following testimony was presented by the prosecution:

19 **Denise Powell**

20 The police learned that Powell might have information on robberies that were occurring in the
21 neighborhood. Powell was very reluctant to speak to the police. She said many times during the
22 questioning that she did not want to be involved and that she did not want to testify. She also spoke
23 about retribution or retaliation, seemingly for any information that she might give to the police. The
24 police told her that if she were called to testify and if she refused to answer questions, then she
25 would be arrested for contempt.

26 Eventually, Powell implicated Atkins and Evans for the murder. According to her preliminary
27 hearing testimony, Powell was a passenger in a vehicle driven by Tommy Yates. The two were
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29 ⁴ All future street addresses are in Venice, CA.

1 driving around Venice looking for cocaine at around 8:00 a.m. on January 1, 1985. At this time, they
2 encountered Atkins and Evans on the streets. Atkins and Evans were also looking to buy cocaine so
3 they entered the backseat of the car. About a minute into the ride, the discussion turned to police
4 activity and Atkins asked Yates if he had heard about the "Mexican who got killed the night before."
5 Yates said that he did not hear about the murder and Atkins stated "we offed him." Powell
6 understood "we offed him" to mean that Atkins killed him. Evans did not say anything about the
7 crime and there was no further discussion of any crime related events. After driving around for about
8 10 minutes, the parties did not find any cocaine and Atkins and Evans were dropped off.

9 Powell disappeared before Atkins' criminal trial and could not be located. The trial court
10 determined that all reasonable efforts were made to locate Powell and her preliminary hearing
11 testimony was allowed to be read at trial.

12 Marvin Moore

13 At the time of his declaration and testimony, Moore was imprisoned in County Jail. In July
14 1985, Moore signed each page of a declaration that stated the following. At about 5:00 a.m. on
15 January 1, 1985, Atkins and Evans ran to the back door of his home and stated that they needed a
16 place to stay. Evans stated that "we just blasted a mother fucker." Evans also had dried blood on
17 his right hand and forearm. Later that afternoon, Atkins came back to Moore's home and said that
18 he thought that the police were looking for him.

19 Testimony from police officers stated that Moore, who a month prior to signing the declaration
20 violated his parole by committing a robbery, was not promised anything nor did he ask for anything in
21 return for his declaration. However, in consideration for his testimony at trial, Moore was going to
22 receive a lesser sentence for his robbery charge.

23 Moore spoke to the police and the prosecutor on the day before he was to testify at Atkins'
24 criminal trial. He only responded to a few questions and stated that his family had been threatened.
25 At trial, Moore refused to answer many questions relating to his declaration. Significantly, he stated
26 that none of his statements in his declaration were true and that he only made his declaration to
27 receive a lesser sentence for his robbery charge. Moore refused to answer questions at trial
28 regarding whether or not he was afraid to testify. He did acknowledge that the night before he spoke
29 to the prosecutor where he discussed being threatened.

1 Maria Gonzales

2 Gonzales spoke to the police and testified at trial through a Spanish interpreter. Two days
3 after Vicente's murder, Gonzales was shown two photo six-packs, one at a time. When she viewed
4 the first six-pack, she became visibly broken-up and upset. She then identified Atkins as the one
5 who robbed her. Gonzales then viewed the second six-pack, became emotional again, and picked
6 out Evans as the person who shot Vicente. At trial, Gonzales identified Atkins as the person who
7 stole her necklace.

8 On cross-examination, the defense raised numerous questions regarding the reliability of
9 Gonzales' identification of Atkins as the perpetrator. First, Gonzales described the man with the gun
10 to her head as a little over five feet tall and weighing between 135-145 pounds. Both of these
11 attributes did not match Atkins' physical description because, at the time of the crime, Atkins was
12 approximately six feet tall and weighed 175 pounds. Second, the defense questioned if Gonzales
13 ever really got a good view of the perpetrator because Gonzales testified that she only saw the face
14 of the person who took her necklace for about a second, during the time that the perpetrator said
15 "look, look" as he held up her necklace. Third, Gonzales' description of the perpetrator having a thin,
16 gaunt face with a two-inch, natural haircut did not match Atkins' features. Finally, the six-pack that
17 Gonzales viewed contained a picture of Atkins when he was 14-years-old. At the time of the crime,
18 Atkins was 17-years-old.

19 Atkins' Defense Evidence at Trial

20 Tommy Yates

21 At the time of the trial, Yates was serving a prison sentence for cocaine possession. He also
22 had a previous conviction for cocaine possession and a burglary. He testified that he was driving a
23 vehicle with Powell as the passenger. After picking up Atkins and Evans, Atkins did not admit to
24 killing anybody. Atkins only said that the police were around and that it was because somebody had
25 been killed.

26 Kelly Lane Simpson

27 Simpson was Denise Powell's neighbor and testified that she talked with Powell on January 2,
28 1985, about Powell's knowledge of muggings and robberies occurring in the neighborhood. Powell
29 told Simpson that the other night she was at a party and heard Buster Young and Dunna Burns

1 bragging about killing somebody near 4th and Brooks. Simpson testified that she was never told by
2 Powell that Atkins committed the murder.

3 Larry Pitre

4 Pitre, who was in jail at the time of trial, testified that he spoke to Moore while in a holding cell
5 at the courthouse. Moore told him that he got out of jail by making a deal with the police in the Atkins
6 case. Pitre testified that Moore told him that he lied to the police in the Atkins case and that two
7 other people were responsible for the murder.

8 Julie Davis

9 At the time of the trial, Davis was dating Lee Dewberry, Atkins' uncle, and was imprisoned in
10 county jail. She testified that shortly before midnight on December 31, 1984, she saw Atkins
11 standing outside her sister's home holding a small stereo. Just after midnight, she and Atkins walked
12 to the Fourth and Brooks crime scene because they heard that a murder had occurred.

13 Laura Boney

14 Boney was Atkins' grandmother and testified that she believes that Atkins returned home
15 around 12:30 a.m. to 1:00 a.m. on the morning of January 1, 1985. She did not see Atkins but heard
16 his voice.

17 Debbie Dresser

18 Dresser was a police detective who worked on the murder case. Sylvester Gus Henderson
19 was a suspect in other robbery cases and had been confronted by Dresser on three prior occasions,
20 but was unable to be apprehended in all three situations. Dresser believed that the description of the
21 suspect in the Gonzales murder matched Henderson's description. Henderson was subsequently
22 killed when he resisted arrest.

23 Other Evidence That Was Not Presented At Trial

24 After Atkins' arrest, the following individuals spoke to police detective Roger Niles. Neither a
25 transcript, recording, nor other official report of these interviews was submitted at any proceeding.
26 However, Niles took notes of these interviews and the following is a summary of Niles' notes.
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1 Atkins' statement to the police

2 Atkins stated that he was in the laundry room at 410 Indiana Avenue⁵ trying to sell a stolen
3 car stereo so he could buy cocaine. While there, he saw three guys running down the alley behind
4 the building. Cecil Bowens was the first man and he was carrying a shotgun in his hands. The
5 second man was Ricky Powell⁶ and he was carrying a .38 caliber handgun. Powell told Atkins that
6 he better go home because "we just did a move."⁷ Atkins was unsure who the third individual was,
7 but he had a wallet in his hands. Atkins said that he left and went home, but when he returned the
8 next day he saw a women's purse in the laundry room.

9 Atkins stated that he was with Ricky Evans for most of the night except between 12:30 a.m.
10 and 2:00 a.m. Atkins left Evans during this period so that he could sell the car stereo. At the end of
11 the interview, Atkins states that Evans was the third suspect who was carrying the wallet.

12 Ricky Evans' statement to the police

13 Evans told the police that he went to a New Year's Eve party on 7th and Broadway Street at
14 approximately 10:30 p.m. or 11:00 p.m. He first told the police that he stayed at this party until 5:00
15 p.m. on New Year's Day. He then said that he stayed at the party until 5:00 a.m. on New Year's Day.
16 At the party, Evans first said that he only knew one person there but later said that Atkins and Atkins'
17 sister were present. Evans laughed when asked if he committed the murder.

18 Inmate A.'s statement to the police

19 Inmate A. is a prisoner whose name was not disclosed due to concerns about his safety. On
20 February 19, 1985, Inmate A. told the police that he spoke to Atkins while they were waiting to be
21 transported to court on February 13, 1985, which was the date of Atkins' preliminary hearing. Atkins
22 told Inmate A. that on New Year's Eve he needed money to buy cocaine and that he and Ricky
23 Evans robbed a Mexican man and woman on Brooks Avenue. They stole the woman's necklace and
24 shot the man. Atkins stated that he held the shotgun and that Evans held the handgun. Inmate A.
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26 ⁵ According to Google Maps, this address is approximately one tenth of a mile from the murder scene.

27 ⁶ No evidence was presented of a blood or family relationship between Denise Powell and Ricky
28 Powell.

29 ⁷ The quote appears in Niles' notes of the interview.

1 also spoke to Atkins the following day, and Atkins told him that a female testified at the preliminary
2 hearing that she heard Atkins talking about the shooting.

3 Inmate A. refused to testify at trial because the prosecution would not reduce his sentence in
4 exchange for his testimony.

5 Lee Dewberry's statement to the police

6 Lee Dewberry is Atkins' uncle and he spoke to the police on May 13, 1985. He was in jail at
7 the time of the interview but stated that he had seen Atkins off and on during New Year's Eve. He
8 was reluctant to answer many questions but stated that he saw Atkins with a stereo and a necklace
9 at some point on either December 31, 1984, or January 1, 1985. At trial, this information was not
10 disclosed during Dewberry's direct examination and the court did not allow this information to be
11 raised during rebuttal.

12 Atkins' Habeas Corpus Hearing

13 On March 6, 2006, Atkins filed a Writ of Habeas Corpus.⁸ His Writ was primarily based upon
14 new evidence from Denise Powell, who appeared in-person to testify at this hearing.

15 Denise Powell

16 Before Powell testified at the Habeas hearing, she was required to speak with an attorney
17 appointed by the court regarding the crime of perjury since she was going to contradict her prior
18 preliminary hearing testimony implicating Atkins. Powell agreed to testify regardless of any future
19 legal implications.

20 Powell had spent eight to ten of the prior 20 years in prison for prostitution and drug crimes.
21 She grew up and has lived in Venice for her entire life and was close with Atkins' family. She also
22 testified that she considered Atkins to be a friend and that she had no reason to cause him trouble.

23 Powell testified that she did not know who committed the robberies in the neighborhood. She
24 only told Simpson that she knew the perpetrators because she wanted to brag and look tough.
25 When she was brought into the police station for questioning a few days after the murder she felt
26 scared and wanted to go home. However, Detective Niles told her that she would not be able to go
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29 ⁸ The judge who presided over the Habeas hearing was the same judge who presided over the criminal
trial and later the factual innocence proceeding.

1 home until she provided the information to the police. The police threatened to charge her as an
2 accessory if she did not disclose the information. The police said they only wanted to know the
3 names of the perpetrators and that she would not have to testify about her knowledge of the crime.

4 Powell testified that she lied to the police when she told them that Atkins and Evans were
5 responsible for the murder. While it was true that Atkins and Evans entered the vehicle to ride
6 around and look for cocaine, Atkins never said "we offed him" when he asked Yates if he had heard
7 about the murder. Powell stated that she implicated Atkins and Evans because they were fresh in
8 her mind from being in the car a few days earlier and that she thought the police investigation would
9 eventually show that Atkins and Evans did not commit the crime. At the preliminary hearing, Powell
10 continued with her fabricated story because she was already "in it so deep."

11 In the late 1980's, Powell wrote a letter to Atkins' mother and a letter to his father stating that
12 her preliminary hearing testimony was a lie. In 2005, Powell wrote an apology letter to Atkins.
13 Powell also tried to deliver a letter to Atkins' criminal defense attorney but was unsuccessful because
14 he had since been appointed as a Los Angeles Superior Court judge. Powell stated that she was
15 coming forward now because she believed Atkins is innocent and she felt bad about what she had
16 done. Powell also stated that she was available at the time of the criminal trial but was never
17 contacted by the prosecution after her preliminary testimony hearing.

18 Roger Niles

19 In rebuttal to Powell's testimony, Niles testified that he never threatened to charge Powell as
20 an accessory and never told her that she would not have to testify. Niles also stated that he was
21 unable to locate Powell after her preliminary hearing testimony.

22 The Habeas Ruling

23 In granting Atkins' Habeas petition and ordering a new trial, the court believed Powell's
24 testimony that she lied at the preliminary hearing and that her testimony at the Habeas hearing was
25 truthful. The court stated that Powell's Habeas testimony was corroborated by the criminal trial
26 testimony from Simpson and Yates. The court also questioned its prior ruling allowing Powell's
27 preliminary hearing testimony to be admitted at the criminal trial because the prosecution probably
28 could had done more to monitor Powell to ensure her availability for the criminal trial since Powell
29 was clearly reluctant to testify since her first interview with the police.

1 The court found Powell's preliminary hearing testimony to be a significant factor in the jury's
2 conviction of Atkins. Had Powell testified at the criminal trial, the court stated that in all probability a
3 jury would have determined that Powell was lying. Without the evidence of Atkins saying "we offed
4 him," Atkins would not have been convicted. The court gave no credibility to Marvin Moore's
5 statements and stated that Maria Gonzales' eyewitness identification was highly questionable due to
6 her inconsistencies and because Atkins' physical attributes significantly differed from Gonzales'
7 identification.

8 **Penal Code Section 4900 Hearing**

9 On December 15th and 16th in 2009, a hearing was held to determine if Atkins was eligible for
10 compensation under Penal Code Section 4900. The following witnesses were presented.

11 **Dr. Mitchell Eisen**

12 Dr. Eisen is an expert in the field of eye-witness identification. He testified about some of the
13 reasons why eye witness identification has a low level of reliability. Cross racial identification, stress
14 forced upon a victim from the presence of a weapon, and the passage of time are some of the
15 factors that can lead to inaccurate identifications.

16 Repeated identifications can also lead to inaccuracy. Each time that a witness speaks about
17 the identification, that identification becomes part of the witnesses' new memory. Thus, for each new
18 reporting, the witness is not necessarily reporting on their initial perception during the crime, they are
19 instead recollecting their most recent identification memory. This is one of the reasons why
20 identifications can change over time. Overall, witnesses remember the big picture or specific
21 features, and look to fill in the gaps through inferences that can change over time.

22 Finally, Dr. Eisen cautioned that confidence in an identification does not equal accuracy in the
23 identification. A witness will generally become more confident in their identification over time,
24 especially when they are told or given other forms of assurance that they made the correct
25 identification.

26 Dr. Eisen testified that he never interviewed Maria Gonzales nor did he view the police six-
27 packs that were shown to Gonzales when she picked out Atkins and Evans as the perpetrators.
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1 Timothy Atkins

2 Atkins testified that on December 31, 1984, he left his home at around 5:00 p.m. to 6:00 p.m.
3 to go to 5th and Broadway Street.⁹ This was the area that he, his friends, and fellow gang members
4 including Evans used to hang out. His purpose for the night was to "get high" and not to celebrate
5 the New Year. After a few hours at 5th and Broadway, Atkins broke into a car and stole its stereo so
6 that he could sell it to buy drugs.

7 Atkins gave the stereo to a friend named Billy Clark and asked him if he wanted to buy it or if
8 he could sell it. Clark took the stereo to try and sell it. Atkins told Clark how much he wanted for the
9 stereo and then waited in a basement hallway in a building at 410 Indiana Avenue for many hours.
10 From this hallway he had a view of the alley behind the building. He saw three individuals running
11 through the alley. He recognized two of these individuals as fellow gang members Cecil Bowens and
12 Ricky Powell. Atkins did not know the third individual. Powell then told Atkins that he better leave
13 because "they had just done a move." Atkins understood this saying to mean that the men had just
14 done something wrong but he was unsure of what they did. He believes that the men ran into the
15 wash house after going through the alley.

16 Atkins did not leave the 410 Indiana location because he did not do anything wrong and
17 because he wanted his money from the stereo. He could not remember if he received the money,
18 but Atkins said that it would not be like him to not get his money. Later, he saw Julie Davis outside in
19 the alley and heard a lot of sirens around the corner. The two walked together to the area and, from
20 about one block away, Atkins could see the area roped off and a dead person hanging out of the car.
21 Atkins spent approximately 25 minutes witnessing the crime scene.

22 Atkins returned to 5th and Broadway because he was still looking for drugs. Here he met up
23 again with Evans. Yates then pulled up in a vehicle with Powell in the passenger seat. Yates was in
24 his late 30's, was a friend of Atkins' mother, and Atkins had known him all his life. Atkins had never
25 met Powell, but he knew of her through Powell's brother, and also because Atkins' mother was
26 friends with her. Atkins and Evans sat in the back seat and there was no conversation in the car
27 about being involved in any murder.

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29 ⁹ According to Google Maps, this site is approximately two tenths of a mile from the murder scene.

1 At the time of his arrest, Atkins was on probation for prior convictions of stealing a car stereo
2 and receiving stolen goods. Atkins testified that he was violating his probation because he was not
3 going to school. Although he tried to avoid police because he was violating probation, he did not run
4 when the police came to arrest him for murder.

5 Although he might have told the police that Evans was the third guy he saw running down the
6 alley, Atkins testified that he was sure that Evans was not the third guy. During the police interview
7 Atkins was pressured, scared, yelled at, and grabbed. He believes he said Evans' name because the
8 police wanted a name. Atkins denied being at a New Year's Eve party with Evans and said he only
9 saw him at 5th and Broadway before and after he sold the stereo. Atkins testified that he is no longer
10 a gang member and currently works with youths to prevent them from joining gangs.

11 Roger Niles

12 Niles testified that he created two separate photo six-packs for Maria Gonzales to view.
13 Before she viewed the six-packs she read and signed the standard admonishments about photo
14 lineups. Gonzales identified both Atkins and Evans in the six-packs.

15 Declaration of Judge David Wesley

16 At the hearing, Atkins submitted a declaration from Judge David Wesley, who was his criminal
17 defense attorney prior to becoming a judge at the Los Angeles County Superior Court. Judge
18 Wesley stated in his declaration that he believed that Atkins was innocent of the crimes for which he
19 was convicted.

20 Declaration of Lee Dewberry

21 At the hearing, Atkins submitted a declaration from Lee Dewberry stating that he never saw
22 Atkins with a necklace on New Years Eve 1984.

23 The following arguments were submitted at the 4900 hearing:

24 Atkins' Arguments

25 During the hearing, Atkins made the following arguments to support the finding that he did not
26 commit the crimes for which he was charged.

- 27 • Powell recanted her prior testimony implicating Atkins, and the recantation was determined to
28 be credible by the Habeas court. Thus, there are no credible witnesses implicating Atkins to
29 the murder. Moore testified that his declaration was a lie and that he only implicated Atkins to

1 receive a deal from the prosecution. Pitre confirmed Moore's testimony that he lied to make a
2 deal. Inmate A.'s declaration should not be given any consideration because he is an
3 unnamed person who did not testify at any proceeding and never was subjected to cross-
4 examination. Additionally, some of the details he gave of the murder were wrong.

- 5 • Powell's truthful testimony at the Habeas hearing, Yates' testimony at the criminal trial, and
6 Atkins' testimony at the 4900 hearing are all similar and corroborate each other, thus they are
7 reliable statements.
- 8 • Maria Gonzales' eye witness identification is unreliable. In addition to all the unreliability
9 factors cited by Dr. Eisen, Gonzales testified that the perpetrator was a little over five feet tall
10 and weighed 135 to 145 pounds. This physical description is not close to matching the
11 physical description of the six foot tall, 175 pound Atkins. Gonzales only caught a short
12 glimpse of the man's face, which lasted for about one second during the time that he said
13 "look, look." She also described the perpetrator's face as thin and gaunt and that does not
14 match Atkins' face. Finally, the Habeas court found Gonzales' identification unreliable.
- 15 • Atkins testimony at the 4900 hearing is credible. It would not make sense for Atkins to use as
16 an alibi that he was committing a different crime only one block away from the murder when it
17 occurred. Most suspects who create a false alibi place themselves far away from the crime
18 scene and do not admit to committing a crime. Additionally, if Atkins was the perpetrator, it
19 does not make sense for him to go back to the murder scene and watch the police activity for
20 25 minutes.

21 The AG's Arguments

22 The AG offered the following arguments to support the finding that Atkins has not proven by a
23 preponderance of the evidence that he is innocent of the crime with which he was charged.

- 24 • Gonzales identified Atkins as the perpetrator and she has not recanted. Gonzales was visibly
25 broken up and upset when she saw Atkins picture in the six-pack. She immediately identified
26 Atkins as the perpetrator, and also identified him at the preliminary and criminal proceedings.
- 27 • Gonzales' physical description of the size of the perpetrator is not an issue. First, Gonzales
28 was sitting in her car when the crime occurred and thus could not judge height accurately.
29 Second, according to the LAPD "area broadcast" of the crime, one of the suspects was

1 reported to be five feet six inches to five feet ten inches. This is a much closer description to
2 Atkins' actual height. Finally, alleged suspects Bowens and Ricky Powell were both over five
3 feet ten inches tall, thus even if Atkins' testimony were to be believed it would only prove that
4 Gonzales was a bad judge of height.

- 5 • Gonzales' identification of both Atkins and Evans is also significant because those are the
6 same two people implicated by Powell. It would be too large of a coincidence for Gonzales to
7 have mistakenly identified, in two separate six-packs, the same two individuals implicated by
8 Powell.
- 9 • Powell's recantation of her preliminary hearing testimony is questionable. Powell had
10 connections to Atkins' family and the Venice community. She made statements about being
11 afraid of retaliation. Her Habeas testimony about the police interview was inconsistent with
12 what actually happened during the police interview. Finally, Powell's Habeas testimony that
13 she just gave the police a name and that she believed that the police would discover the truth
14 is not credible. Powell told the police that she did not want to testify and there would be no
15 reason to be concerned about testifying if she actually gave the police the name of an
16 innocent person.
- 17 • Moore was threatened before trial and his declaration implicating Atkins is credible. In
18 addition to telling the prosecutor that his family was threatened, there would be no reason for
19 him to give information implicating Atkins in exchange for a lighter sentence, and then change
20 his story at the very last moment.
- 21 • Inmate A.'s declaration is credible because it contains many correct details about the crime.
22 Significantly, it contains details about Powell's testimony in the preliminary hearing that
23 Inmate A. likely would not have known about unless he had actually spoken to Atkins.
- 24 • Atkins' alibi witnesses are not credible. Julie Davis stated that she and Atkins went to the
25 murder scene just after midnight, but the crime did not occur until after 1:00 a.m. On New
26 Year's Eve, a person would know the difference between midnight and 1:00 a.m. because of
27 the festivities. Atkins also implicated Evans during his interview with the police when he said
28 that Evans was the third man with Bowens and Powell. This contradicts Evans story that the
29

1 two were at a party together, but more importantly supports Gonzales' eyewitness
2 identification of Evans, which would then support her eyewitness identification of Atkins.

3 Atkins' Contribution to His Own Conviction¹⁰

4 The AG argued that Atkins contributed to his own conviction by fleeing from the police when
5 the came to arrest him. By running, Atkins provided evidence of his consciousness of guilt and "a
6 jury is entitled to infer consciousness of guilt from flight."¹¹

7 Atkins stated that he was on probation at the time of his arrest and was in violation of his
8 probation by not attending school. Thus, Atkins did not want to get caught violating his probation and
9 tried to run from the police. Additionally, there is no evidence that the jury inferred any guilt from
10 Atkins' flight, nor was any jury instruction given regarding allowable inferences from a suspect's flight
11 from police. Finally, it is questionable if Atkins really did flee or attempt to flee from the police
12 because police documents state that Atkins was arrested without incident.

13 New Evidence Received After Atkins' Successful Writ of Mandamus

14 On August 6, 2014, over seven years after his release from prison, Atkins filed a motion in the
15 Superior Court of Los Angeles to receive a finding of factual innocence pursuant to Penal Code section
16 1485.55(b). This motion was opposed by the Los Angeles County District Attorney's Office. On
17 August 22, 2014, the court granted Atkins' motion and made a finding of factual innocence.
18 The court's decision was based on Gonzales' testimony being unreliable, Moore's statements being
19 unreliable, and Powell's recantation being credible.

20 **Determination of Issues**

21 A person erroneously convicted and imprisoned for a felony may submit a claim to the Board for
22 pecuniary injury sustained as a result of his erroneous conviction and imprisonment.¹² Penal Code
23 section 4903 provides that in order to state a successful claim for compensation, the claimant must
24 prove the following by a preponderance of the evidence:¹³

25
26 ¹⁰ Contributing to one's own arrest or conviction was eliminated from the Penal Code in 2013.

27 ¹¹ *People v. Mason* (1991), 52 Cal.3d 909, 943.

28 ¹² Pen. Code, § 4900.
29

- 1 1. That the crime with which he was charged was either not committed at all, or, if committed,
- 2 was not committed by him;
- 3 2. That he did not by any act or omission on his part, intentionally contribute to the bringing
- 4 about of the arrest or conviction for the crime; and
- 5 3. That he sustained a pecuniary injury through his erroneous conviction and imprisonment.

6 If the claimant meets his burden of proof, the Board shall recommend to the legislature that an
7 appropriation of \$100.00 per day of incarceration served subsequent to conviction be made for the
8 claimant.¹⁴ Here, Atkins has failed to prove by a preponderance of the evidence that he did not commit
9 the crimes with which he was charged.

10 The Board considered final arguments from Atkins' attorney and the AG before it voted two-to-
11 one¹⁵ to reject Atkins' claim because he failed to meet his burden of proving his innocence.¹⁶ First, the
12 Board determined that the law that existed at the time of the filing of the claim is applicable based on
13 the reasons articulated previously in this proposed decision. Thus, Atkins' receipt of a finding of factual
14 innocence did not automatically require the Board to approve his claim and the Board was able to hold
15 a hearing to consider the evidence presented by both parties.

16 While considering the evidence, the Board acknowledged the factual innocence finding.
17 However, the majority of the Board stated that while a finding of factual innocence is generally given
18 great weight, in this case there were limitations placed on the judge. Additional evidence was
19 submitted at the Penal Code 4900 hearing and before this Board that was not available to be viewed
20 and seen at the factual innocence proceeding.¹⁷

21
22 ¹³ *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation*
23 *and Government Claims Board* (2000) 152 Cal. App. 4th 1164. Preponderance of the evidence means
24 "evidence that has more convincing force than that opposed to it." (*People v. Miller* (1916) 171 Cal.
25 649, 652.)

26 ¹⁴ Pen. Code, § 4904.

27 ¹⁵ Board members Michael Ramos and Richard Chivaro (proxy for State Controller Betty Yee) voted to
28 reject Atkins' claim. Chairperson Marybel Batjer voted to approve the claim.

29 ¹⁶ The full transcript of the Board's decision is attached as Exhibit B.

¹⁷ At the Board meeting, the AG stated that at the factual innocence hearing the judge limited the
evidence to that presented at trial and at the habeas corpus hearing. The judge did not consider

1 Additionally, the majority of the Board noted that Denise Powell indicated that Atkins was a part
2 of this murder. She testified to this fact at the preliminary hearing. She told everybody that she was
3 scared and then she left. There is no testimony from her at trial where she could have been cross-
4 examined because she could not be found.

5 Maria Gonzales identified Atkins as the perpetrator from a photo-lineup the very next day. She
6 cried when she saw the picture and has never recanted her identification. The majority of the Board
7 found the fact that Gonzales and Powell both identified Atkins as very strong evidence. Gonzales and
8 Powell never spoke to each other and are from different worlds and environments. The odds are
9 tremendous that the victim identified the same exact person whom Powell had just implicated.¹⁸ Based
10 on these identifications Atkins has not met his burden of proof. Even though Atkins had an
11 identification expert, this expert never interviewed Gonzales nor looked at the photo lineup himself. His
12 testimony was more about the generalities of identification.

13 Further, the Board determined that Atkins did not contribute to his own arrest or conviction.
14 There is no evidence that flight was considered by the jury since a jury instruction was not given
15 regarding allowable inferences from a suspect's flight from police.

16 In dissent and in support of granting Atkins' claim, the Chairperson of the Board stated that she
17 found the judge's decision to grant Atkins his factual innocence very persuasive. She had concerns
18 about Gonzales' identification because of the emotional stress placed on her, the picture of Atkins that
19 was used in the photo lineup, and problems with lighting at the crime scene. She also had questions
20 regarding Powell and other unreliable witnesses. She was not persuaded by the arguments by the AG.

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27 additional evidence such as Atkins' own statements, or statements by Ricky Evans, Lee Dewberry, or
28 Inmate A.

29 ¹⁸ Of note, the odds are even more tremendous as both Powell and Gonzales also identified Evans as
the second suspect.

1 The majority of the Board, by a two-to-one vote, find that Atkins has not met his burden of proof
2 for his claim for compensation under Penal Code section 4900. This claim is denied.

3
4 Dated: July 24, 2015

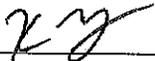
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6 _____
7 Kevin D. Kwong
8 Hearing Officer
9 California Victim Compensation and
10 Government Claims Board
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EXHIBIT A

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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Timothy Atkins

**Proposed Decision
(Penal Code § 4900)**

Introduction

An In-person hearing on this claim for compensation as an erroneously convicted person was held on December 15-16, 2009, in Sacramento, California, by Kevin Kwong, Hearing Officer, California Victim Compensation and Government Claims Board. The claimant, Timothy Atkins, appeared at the hearing and was represented by Justin Brooks, Mario Conte, Alex Simpson, and Jeff Chinn from the California Innocence Project. The California Attorney General's Office was represented by Kenneth Sokoler and Galen Farris, Deputy Attorneys General (AG). The Board denied Atkins' claim on March 18, 2010. On September 5, 2013, the Court of Appeals remanded this case back to the Board with the orders to conduct a new hearing and issue a new decision.

As explained below, Atkins has met the statutory requirements to receive compensation under Penal Code section 4900. He is entitled to \$713,700 for being incarcerated from July 28, 1987, until February 9, 2007.

1 **Procedural Background**

2 On January 1, 1985, Vicente Gonzales and his wife Maria Gonzales were exiting their vehicle
3 when they were approached by armed robbers. Vicente Gonzales was shot and killed and the
4 perpetrators stole a necklace from Maria Gonzales. On January 7, 1985, the Los Angeles Police
5 Department arrested Timothy Atkins and Ricky Evans for this crime. Atkins, who was 17-years-old at
6 the time, was charged with murder and two counts of robbery.

7 Atkins was found guilty of all charges on July 28, 1987, and on February 5, 1988, he was
8 sentenced to 32 years-to-life in prison. On March 6, 2006, Atkins filed a petition for a Writ of Habeas
9 Corpus. An evidentiary hearing was held where, most notably, one witness recanted her prior
10 testimony that implicated Atkins in the murder. On February 8, 2007, the Writ was granted, Atkins'
11 convictions were vacated, and a new trial was ordered. The Los Angeles County District Attorney's
12 Office declined to retry the case and Atkins was released from prison on February 9, 2007. Atkins
13 submitted his claim to the Board under Penal Code section 4900 on August 9, 2007.

14 A hearing on Atkins' claim was held on December 15th and 16th in 2009. The Hearing Officer
15 recommended that Atkins' claim be denied because he did not prove his innocence by a
16 preponderance of the evidence. On March 18, 2010, the Board agreed with the Hearing Officer's
17 conclusion to deny Atkins' claim. The Board, through verbal comments, made additional credibility
18 determinations against Atkins and his witnesses that were not reflected in the Hearing Officer's
19 proposed decision. Thus the proposed decision was not adopted by the Board; only the conclusion
20 that Atkins did not meet his burden of proof was adopted.

21 Atkins filed a Writ of Mandate in the Los Angeles Superior Court. On March 5, 2012, the
22 Superior Court ruled that there was substantial evidence to support the Board's decision to deny
23 Atkins' claim and the Writ of Mandate was denied. Atkins appealed the Superior Court's decision to
24 the Court of Appeals. On September 5, 2013, the Court of Appeals ordered the case remanded back
25 to the Superior Court with the order that the Board hold a new hearing and render a written decision
26 setting forth its factual and legal bases therefor. The Court of Appeals determined that there was not
27 a sufficient written factual and legal basis for the Board's decision since it did not adopt the Hearing
28 Officer's proposed decision. Oral findings by the Board were not a sufficient substitute. The Court of
29

1 Appeals did not address the issue of the sufficiency of the evidence to support the Board's decision
2 to deny Atkins' claim.

3 On August 6, 2014, while the current matter was pending with the Board, Atkins filed a motion
4 in the Superior Court of Los Angeles to receive a finding of factual innocence pursuant to Penal Code
5 section 1485.55(b). This motion was opposed by the Los Angeles County District Attorney's Office.
6 On August 22, 2014, the Superior Court granted Atkins' motion and he received a finding of factual
7 innocence.

8 **Applicable Law**

9 The first issue that must be resolved in this case is whether Atkins' claim should be decided
10 based on the changes in Penal Code section 4900, et al, that took effect on January 1, 2014, or the
11 law as it existed at the time of the filing of the claim. Atkins originally submitted his claim pursuant to
12 Penal Code section 4900 on August 9, 2007. On March 18, 2010, the Board voted to deny Atkins'
13 claim. Atkins challenged this decision first in the Superior Court and then the Court of Appeals.
14 Shortly after the Court of Appeals issued its decision to remand the case back to the Board, the
15 statutes that govern claims filed under Penal Code section 4900 changed. These new statutes,
16 including Penal Code section 1485.55(d), took effect on January 1, 2014. On August 22, 2014,
17 Atkins received a finding of factual innocence by the Los Angeles Superior Court pursuant to Penal
18 Code section 1485.55(b).

19 Penal Code section 1485.55(d) states: "If the court makes a finding that the petitioner has
20 proven his or her innocence by a preponderance of the evidence pursuant to subdivision (b) or (c),
21 the Board shall, without a hearing, recommend to the Legislature that an appropriation be made and
22 the claim paid pursuant to Section 4904."

23 Prior to the change in law, a court's finding of factual innocence was a factor to consider in
24 analyzing a claim pursuant to Penal Code section 4900, but it was not binding. Based on this new
25 statute, Atkins argues that the Board must approve his claim without a hearing. Atkins argues that
26 Penal Code section 1485.55(d) applies to his claim even though this statute did not exist at the time he
27 submitted his application or when the Board made its original decision to deny his claim.

28 Atkins points to another claim for compensation under Penal Code section 4900 where the
29 claimant filed prior to the change in law. The claim of Francisco Carrillo was received by the Board on

1 October 12, 2011, and decided by the Board on May 15, 2014. In its recommendation to the Board,
2 the AG conceded that the new statutes apply. In its decision, the Board applied sections of the new
3 law. Atkins asserts that even though 1485.55(d) did not apply in the Carrillo claim, the fact that the
4 Board applied relevant sections of the new law shows that the Board believes that the new laws apply
5 to claims filed prior to the change in law. Atkins argues that to not apply the new laws in this case
6 would be inconsistent with a prior determination by the Board. Therefore, Atkins states, with a finding
7 of factual innocence from a court, the Board must approve his claim and recommend payment to the
8 Legislature.

9 The Attorney General argues that the Board cannot follow the new statute and automatically
10 recommend payment to the legislature without a hearing. The AG states the order from the Court of
11 Appeals commands that the Board "conduct a new hearing at which the Board, in the exercise of its
12 discretion, *may* allow new evidence to be presented." The Board must conduct a new hearing and only
13 has discretion in whether or not to allow new evidence. To not hold a hearing based on 1485.55(d)
14 would mean that the Board is not following an order from the Court of Appeals.

15 Further, the AG argues the new statutes do not apply because no part of the penal code
16 applies retroactively unless it's clearly expressed by the Legislature that retroactive application is
17 intended. There is no retroactivity provision mentioned in 1485.55, or any of the other new sections
18 of the laws.

19 The Hearing Officer finds that the Board is not required to apply the new laws pertaining to
20 Penal Code section 4900 in this matter. In *People v. Ranger Ins. Co.* (1999) 76 Cal.App.4th 326, 330,
21 the Court held that new penal code sections do not apply retroactively "unless expressly so
22 declared." The California Supreme Court has held that in the absence of an express retroactivity
23 provision, a statute will not be applied retroactively unless it is very clear that the Legislature intended
24 such an application. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1209.)

25 Applying the new statutes would be tantamount to giving them a retroactive effect. Atkins
26 submitted his claim in August of 2007. A two-day evidentiary hearing was held in December 2009.
27 The Board made its original decision on the claim in March 2010. All these decisions were made
28 years before the new statutes ever existed. Additionally, the Court of Appeals determined that there
29 was not a sufficient written factual and legal basis for the Board's decision in 2010 since it did not

1 adopt the Hearing Officer's proposed decision. The return of this matter by the appellate court was
2 based on a technicality regarding the Board's decision and the Hearing Officer's proposed decision.
3 Therefore it is reasonable to apply the same law that existed at the time of the hearing and the
4 decision.

5 The fact that the Board applied the new statutory scheme retroactively once does not make
6 that decision binding. Furthermore, in the claim of Francisco Carrillo, the Board had not yet heard
7 the matter nor had it made a decision in the case prior to the change of the law. Here, as previously
8 noted, the Board had already heard and decided the matter prior to the change in the law.

9 Even if the Board chooses to apply the new laws retroactively, it cannot apply the specifics of
10 Penal Code section 1455.55(d) in this matter. The order from the Court of Appeals is in direct
11 conflict with the new code section. The Court ordered the Board to conduct a new hearing and
12 consider the evidence while Penal Code section 1455.55(d) states that the Board cannot conduct a
13 hearing and must recommend approval of the claim. The Court order preceded the change in the
14 law and there was no provision in the new statutes that stated it supersedes an outstanding court
15 order. Nor has the Court of Appeals modified its order in light of the new statutory scheme.
16 Therefore, the Board must conduct a hearing on this claim because failure to do so would be in
17 violation of the specific order from the Court of Appeals.¹

18 This proposed decision is based on the law that was current when the Board made its
19 decision on March 18, 2010.

20 Summary of Evidence

21 The Prosecution's Evidence at Trial

22 Shortly after midnight on January 1, 1985, Vicente and Maria Gonzales left a New Year's Eve
23 concert held at the Los Angeles Convention Center. Around 1:00 a.m., the Gonzales' arrived at 335
24 Brooks Ave. in Venice, CA,² to pick up their children who were with relatives. As they were about to
25 step out of their vehicle, Evans approached Vicente from the driver's side with a shotgun and Atkins
26

27
28 ¹ If a hearing was deemed necessary, both sides agreed to have a hearing on the written record based
on the evidence already presented, as well as any new evidence that they chose to submit.

29 ² All future street addresses are in Venice, CA.

1 approached Marla from behind on the passenger side with a handgun. Atkins placed one of his
2 hands on Maria's face and his other hand was holding his weapon to her head. Evans then shot and
3 killed Vicente while Atkins demanded money from Maria. Since Marla did not have her purse with
4 her, Atkins grabbed the necklace off her neck, held it up to Evans and said "look, look," before the
5 two ran away. The police arrested both Atkins and Evans six days later, and evidence was
6 presented that Atkins attempted to flee the police during the course of his arrest.

7 Atkins and Evans were both documented gang members at the time of their arrest. While in
8 jail and awaiting trial, fellow jailed gang members believed that one of them were "snitching" and
9 ordered them to fight each other. When the gang was not satisfied with their fight, they began
10 beating both Atkins and Evans. Evans died as a result of the beating while Atkins suffered serious
11 injuries.

12 The following testimony was presented by the prosecution:

13 Denise Powell

14 The police learned that Powell might have information on robberies that were occurring in the
15 neighborhood. Powell was very reluctant to speak to the police. She said many times during the
16 questioning that she did not want to be involved and that she did not want to testify. She also spoke
17 about retribution or retaliation, seemingly for any information that she might give to the police. The
18 police told her that if she were called to testify and if she refused to answer questions, then she
19 would be arrested for contempt.

20 Eventually, Powell implicated Atkins and Evans for the murder. According to her preliminary
21 hearing testimony, Powell was a passenger in a vehicle driven by Tommy Yates. The two were
22 driving around Venice looking for cocaine at around 8:00 a.m. on January 1, 1985. At this time, they
23 encountered Atkins and Evans on the streets. Atkins and Evans were also looking to buy cocaine so
24 they entered the backseat of the car. About a minute into the ride, the discussion turned to police
25 activity and Atkins asked Yates if he had heard about the "Mexican who got killed the night before."
26 Yates said that he did not hear about the murder and Atkins stated "we offed him." Powell
27 understood "we offed him" to mean that Atkins killed him. Evans did not say anything about the
28 crime and there was no further discussion of any crime related events. After driving around for about
29 10 minutes, the parties did not find any cocaine and Atkins and Evans were dropped off.

1 Powell disappeared before Atkins' criminal trial and could not be located. The trial court
2 determined that all reasonable efforts were made to locate Powell and her preliminary hearing
3 testimony was allowed to be read at trial.

4 Marvin Moore

5 At the time of his declaration and testimony, Moore was imprisoned in County Jail. In July
6 1985, Moore signed each page of a declaration that stated the following. At about 5:00 a.m. on
7 January 1, 1985, Atkins and Evans ran to the back door of his home and stated that they needed a
8 place to stay. Evans stated that "we just blasted a mother fucker." Evans also had dried blood on
9 his right hand and forearm. Later that afternoon, Atkins came back to Moore's home and said that
10 he thought that the police were looking for him.

11 Testimony from police officers stated that Moore, who a month prior to signing the declaration
12 violated his parole by committing a robbery, was not promised anything nor did he ask for anything in
13 return for his declaration. However, in consideration for his testimony at trial, Moore was going to
14 receive a lesser sentence for his robbery charge.

15 Moore spoke to the police and the prosecutor on the day before he was to testify at Atkins'
16 criminal trial. He only responded to a few questions and stated that his family had been threatened.
17 At trial, Moore refused to answer many questions relating to his declaration. Significantly, he stated
18 that none of his statements in his declaration were true and that he only made his declaration to
19 receive a lesser sentence for his robbery charge. Moore refused to answer questions at trial
20 regarding whether or not he was afraid to testify. He did acknowledge that the night before he spoke
21 to the prosecutor where he discussed being threatened.

22 Maria Gonzales

23 Gonzales spoke to the police and testified at trial through a Spanish interpreter. Two days
24 after Vicente's murder, Gonzales was shown two photo six-packs, one at a time. When she viewed
25 the first six-pack, she became visibly broken-up and upset. She then identified Atkins as the one
26 who robbed her. Gonzales then viewed the second six-pack, became emotional again, and picked
27 out Evans as the person who shot Vicente. At trial, Gonzales identified Atkins as the person who
28 stole her necklace.

29

1 On cross-examination, the defense raised numerous questions regarding the reliability of
2 Gonzales' identification of Atkins as the perpetrator. First, Gonzales described the man with the gun
3 to her head as a little over five feet tall and weighing between 135-145 pounds. Both of these
4 attributes did not match Atkins' physical description because, at the time of the crime, Atkins was
5 approximately six feet tall and weighed 175 pounds. Second, the defense questioned if Gonzales
6 ever really got a good view of the perpetrator because Gonzales testified that she only saw the face
7 of the person who took her necklace for about a second, during the time that the perpetrator said
8 "look, look" as he held up her necklace. Third, Gonzales' description of the perpetrator having a thin,
9 gaunt face with a two-inch, natural haircut did not match Atkins' features. Finally, the six-pack that
10 Gonzales viewed contained a picture of Atkins when he was 14-years-old. At the time of the crime,
11 Atkins was 17-years-old.

12 Atkins' Defense Evidence at Trial

13 Tommy Yates

14 At the time of the trial, Yates was serving a prison sentence for cocaine possession. He also
15 had a previous conviction for cocaine possession and a burglary. He testified that he was driving a
16 vehicle with Powell as the passenger. After picking up Atkins and Evans, Atkins did not admit to
17 killing anybody. Atkins only said that the police were around and that it was because somebody had
18 been killed.

19 Kelly Lane Simpson

20 Simpson was Denise Powell's neighbor and testified that she talked with Powell on January 2,
21 1985, about Powell's knowledge of muggings and robberies occurring in the neighborhood. Powell
22 told Simpson that the other night she was at a party and heard Buster Young and Dunna Burns
23 bragging about killing somebody near 4th and Brooks. Simpson testified that she was never told by
24 Powell that Atkins committed the murder.

25 Larry Pitre

26 Pitre, who was in jail at the time of trial, testified that he spoke to Moore while in a holding cell
27 at the courthouse. Moore told him that he got out of jail by making a deal with the police in the Atkins
28 case. Pitre testified that Moore told him that he lied to the police in the Atkins case and that two
29 other people were responsible for the murder.

1 Julie Davis

2 At the time of the trial, Davis was dating Lee Dewberry, Atkins' uncle, and was imprisoned in
3 county jail. She testified that shortly before midnight on December 31, 1984, she saw Atkins
4 standing outside her sister's home holding a small stereo. Just after midnight, she and Atkins walked
5 to the Fourth and Brooks crime scene because they heard that a murder had occurred.

6 Laura Boney

7 Boney was Atkins' grandmother and testified that she believes that Atkins returned home
8 around 12:30 a.m. to 1:00 a.m. on the morning of January 1, 1985. She did not see Atkins but heard
9 his voice.

10 Debbie Dresser

11 Dresser was a police detective who worked on the murder case. Sylvester Gus Henderson
12 was a suspect in other robbery cases and had been confronted by Dresser on three prior occasions,
13 but was unable to be apprehended in all three situations. Dresser believed that the description of the
14 suspect in the Gonzales murder matched Henderson's description. Henderson was subsequently
15 killed when he resisted arrest.

16 **Other Evidence That Was Not Presented At Trial**

17 After Atkins' arrest, the following individuals spoke to police detective Roger Niles. Neither a
18 transcript, recording, nor other official report of these interviews was submitted at any proceeding.
19 However, Niles took notes of these interviews and the following is a summary of Niles' notes.

20 Atkins' statement to the police

21 Atkins stated that he was in the laundry room at 410 Indiana Avenue³ trying to sell a stolen
22 car stereo so he could buy cocaine. While there, he saw three guys running down the alley behind
23 the building. Cecil Bowens was the first man and he was carrying a shotgun in his hands. The
24 second man was Ricky Powell⁴ and he was carrying a .38 caliber handgun. Powell told Atkins that
25

26
27 ³ According to Google Maps, this address is approximately one tenth of a mile from the murder scene.

28 ⁴ No evidence was presented of a blood or family relationship between Denise Powell and Ricky
29 Powell.

1 he better go home because "we just did a move."⁶ Atkins was unsure who the third individual was,
2 but he had a wallet in his hands. Atkins said that he left and went home, but when he returned the
3 next day he saw a women's purse in the laundry room.

4 Atkins stated that he was with Ricky Evans for most of the night except between 12:30 a.m.
5 and 2:00 a.m. Atkins left Evans during this period so that he could sell the car stereo. At the end of
6 the interview, Atkins states that Evans was the third suspect who was carrying the wallet.

7 Ricky Evans' statement to the police

8 Evans told the police that he went to a New Year's Eve party on 7th and Broadway Street at
9 approximately 10:30 p.m. or 11:00 p.m. He first told the police that he stayed at this party until 5:00
10 p.m. on New Year's Day. He then said that he stayed at the party until 5:00 a.m. on New Year's Day.
11 At the party, Evans first said that he only knew one person there but later said that Atkins and Atkins'
12 sister were present. Evans laughed when asked if he committed the murder.

13 Inmate A.'s statement to the police

14 Inmate A. is a prisoner whose name was not disclosed due to concerns about his safety. On
15 February 19, 1985, inmate A. told the police that he spoke to Atkins while they were waiting to be
16 transported to court on February 13, 1985, which was the date of Atkins' preliminary hearing. Atkins
17 told Inmate A. that on New Year's Eve he needed money to buy cocaine and that he and Ricky
18 Evans robbed a Mexican man and woman on Brooks Avenue. They stole the woman's necklace and
19 shot the man. Atkins stated that he held the shotgun and that Evans held the handgun. Inmate A.
20 also spoke to Atkins the following day, and Atkins told him that a female testified at the preliminary
21 hearing that she heard Atkins talking about the shooting.

22 Inmate A. refused to testify at trial because the prosecution would not reduce his sentence in
23 exchange for his testimony.

24 Lee Dewberry's statement to the police

25 Lee Dewberry is Atkins' uncle and he spoke to the police on May 13, 1985. He was in jail at
26 the time of the interview but stated that he had seen Atkins off and on during New Year's Eve. He
27 was reluctant to answer many questions but stated that he saw Atkins with a stereo and a necklace
28

29 ⁶ The quote appears in Niles' notes of the interview.

1 at some point on either December 31, 1984, or January 1, 1985. At trial, this information was not
2 disclosed during Dewberry's direct examination and the court did not allow this information to be
3 raised during rebuttal.

4 Atkins' Habeas Corpus Hearing

5 On March 6, 2006, Atkins filed a Writ of Habeas Corpus.⁶ His Writ was primarily based upon
6 new evidence from Denise Powell, who appeared in-person to testify at this hearing.

7 Denise Powell

8 Before Powell testified at the Habeas hearing, she was required to speak with an attorney
9 appointed by the court regarding the crime of perjury since she was going to contradict her prior
10 preliminary hearing testimony implicating Atkins. Powell agreed to testify regardless of any future
11 legal implications.

12 Powell had spent eight to ten of the prior 20 years in prison for prostitution and drug crimes.
13 She grew up and has lived in Venice for her entire life and was close with Atkins' family. She also
14 testified that she considered Atkins to be a friend and that she had no reason to cause him trouble.

15 Powell testified that she did not know who committed the robberies in the neighborhood. She
16 only told Simpson that she knew the perpetrators because she wanted to brag and look tough.
17 When she was brought into the police station for questioning a few days after the murder she felt
18 scared and wanted to go home. However, Detective Niles told her that she would not be able to go
19 home until she provided the information to the police. The police threatened to charge her as an
20 accessory if she did not disclose the information. The police said they only wanted to know the
21 names of the perpetrators and that she would not have to testify about her knowledge of the crime.

22 Powell testified that she lied to the police when she told them that Atkins and Evans were
23 responsible for the murder. While it was true that Atkins and Evans entered the vehicle to ride
24 around and look for cocaine, Atkins never said "we offed him" when he asked Yates if he had heard
25 about the murder. Powell stated that she implicated Atkins and Evans because they were fresh in
26 her mind from being in the car a few days earlier and that she thought the police investigation would
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29 ⁶ The judge who presided over the Habeas hearing was the same judge who presided over the criminal trial and later the factual innocence proceeding.

1 eventually show that Atkins and Evans did not commit the crime. At the preliminary hearing, Powell
2 continued with her fabricated story because she was already "in it so deep."

3 In the late 1980's, Powell wrote a letter to Atkins' mother and a letter to his father stating that
4 her preliminary hearing testimony was a lie. In 2005, Powell wrote an apology letter to Atkins.
5 Powell also tried to deliver a letter to Atkins' criminal defense attorney but was unsuccessful because
6 he had since been appointed as a Los Angeles Superior Court judge. Powell stated that she was
7 coming forward now because she believed Atkins is innocent and she felt bad about what she had
8 done. Powell also stated that she was available at the time of the criminal trial but was never
9 contacted by the prosecution after her preliminary testimony hearing.

10 Roger Niles

11 In rebuttal to Powell's testimony, Niles testified that he never threatened to charge Powell as
12 an accessory and never told her that she would not have to testify. Niles also stated that he was
13 unable to locate Powell after her preliminary hearing testimony.

14 The Habeas Ruling

15 In granting Atkins' Habeas petition and ordering a new trial, the court believed Powell's
16 testimony that she lied at the preliminary hearing and that her testimony at the Habeas hearing was
17 truthful. The court stated that Powell's Habeas testimony was corroborated by the criminal trial
18 testimony from Simpson and Yates. The court also questioned its prior ruling allowing Powell's
19 preliminary hearing testimony to be admitted at the criminal trial because the prosecution probably
20 could had done more to monitor Powell to ensure her availability for the criminal trial since Powell
21 was clearly reluctant to testify since her first interview with the police.

22 The court found Powell's preliminary hearing testimony to be a significant factor in the jury's
23 conviction of Atkins. Had Powell testified at the criminal trial, the court stated that in all probability a
24 jury would have determined that Powell was lying. Without the evidence of Atkins saying "we offed
25 him," Atkins would not have been convicted. The court gave no credibility to Marvin Moore's
26 statements and stated that Maria Gonzales' eyewitness identification was highly questionable due to
27 her inconsistencies and because Atkins' physical attributes significantly differed from Gonzales'
28 identification.

1 Penal Code Section 4900 Hearing

2 On December 15th and 16th in 2009, a hearing was held to determine if Atkins was eligible for
3 compensation under Penal Code Section 4900. The following witnesses were presented.

4 Dr. Mitchell Eisen

5 Dr. Eisen is an expert in the field of eye-witness identification. He testified about some of the
6 reasons why eye witness identification has a low level of reliability. Cross racial identification, stress
7 forced upon a victim from the presence of a weapon, and the passage of time are some of the
8 factors that can lead to inaccurate identifications.

9 Repeated identifications can also lead to inaccuracy. Each time that a witness speaks about
10 the identification, that identification becomes part of the witnesses' new memory. Thus, for each new
11 reporting, the witness is not necessarily reporting on their initial perception during the crime, they are
12 instead recollecting their most recent identification memory. This is one of the reasons why
13 identifications can change over time. Overall, witnesses remember the big picture or specific
14 features, and look to fill in the gaps through inferences that can change over time.

15 Finally, Dr. Eisen cautioned that confidence in an identification does not equal accuracy in the
16 identification. A witness will generally become more confident in their identification over time,
17 especially when they are told or given other forms of assurance that they made the correct
18 identification.

19 Dr. Eisen testified that he never interviewed Maria Gonzales nor did he view the police six-
20 packs that were shown to Gonzales when she picked out Atkins and Evans as the perpetrators.

21 Timothy Atkins

22 Atkins testified that on December 31, 1984, he left his home at around 5:00 p.m. to 6:00 p.m.
23 to go to 5th and Broadway Street.⁷ This was the area that he, his friends, and fellow gang members
24 including Evans used to hang out. His purpose for the night was to "get high" and not to celebrate
25 the New Year. After a few hours at 5th and Broadway, Atkins broke into a car and stole its stereo so
26 that he could sell it to buy drugs.

27
28
29 ⁷ According to Google Maps, this site is approximately two tenths of a mile from the murder scene.

1 Atkins gave the stereo to a friend named Billy Clark and asked him if he wanted to buy it or if
2 he could sell it. Clark took the stereo to try and sell it. Atkins told Clark how much he wanted for the
3 stereo and then waited in a basement hallway in a building at 410 Indiana Avenue for many hours.
4 From this hallway he had a view of the alley behind the building. He saw three individuals running
5 through the alley. He recognized two of these individuals as fellow gang members Cecil Bowers and
6 Ricky Powell. Atkins did not know the third individual. Powell then told Atkins that he better leave
7 because "they had just done a move." Atkins understood this saying to mean that the men had just
8 done something wrong but he was unsure of what they did. He believes that the men ran into the
9 wash house after going through the alley.

10 Atkins did not leave the 410 Indiana location because he did not do anything wrong and
11 because he wanted his money from the stereo. He could not remember if he received the money,
12 but Atkins said that it would not be like him to not get his money. Later, he saw Julie Davis outside in
13 the alley and heard a lot of sirens around the corner. The two walked together to the area and, from
14 about one block away, Atkins could see the area roped off and a dead person hanging out of the car.
15 Atkins spent approximately 25 minutes witnessing the crime scene.

16 Atkins returned to 5th and Broadway because he was still looking for drugs. Here he met up
17 again with Evans. Yates then pulled up in a vehicle with Powell in the passenger seat. Yates was in
18 his late 30's, was a friend of Atkins' mother, and Atkins had known him all his life. Atkins had never
19 met Powell, but he knew of her through Powell's brother, and also because Atkins' mother was
20 friends with her. Atkins and Evans sat in the back seat and there was no conversation in the car
21 about being involved in any murder.

22 At the time of his arrest, Atkins was on probation for prior convictions of stealing a car stereo
23 and receiving stolen goods. Atkins testified that he was violating his probation because he was not
24 going to school. Although he tried to avoid police because he was violating probation, he did not run
25 when the police came to arrest him for murder.

26 Although he might have told the police that Evans was the third guy he saw running down the
27 alley, Atkins testified that he was sure that Evans was not the third guy. During the police interview
28 Atkins was pressured, scared, yelled at, and grabbed. He believes he said Evans' name because the
29 police wanted a name. Atkins denied being at a New Year's Eve party with Evans and said he only

1 saw him at 5th and Broadway before and after he sold the stereo. Atkins testified that he is no longer
2 a gang member and currently works with youths to prevent them from joining gangs.

3 Roger Niles

4 Niles testified that he created two separate photo six-packs for Maria Gonzales to view.
5 Before she viewed the six-packs she read and signed the standard admonishments about photo
6 lineups. Gonzales identified both Atkins and Evans in the six-packs.

7 Declaration of Judge David Wesley

8 At the hearing, Atkins submitted a declaration from Judge David Wesley, who was his criminal
9 defense attorney prior to becoming a judge at the Los Angeles County Superior Court. Judge
10 Wesley stated in his declaration that he believed that Atkins was innocent of the crimes for which he
11 was convicted.

12 Declaration of Lee Dewberry

13 At the hearing, Atkins submitted a declaration from Lee Dewberry stating that he never saw
14 Atkins with a necklace on New Years Eve 1984.

15 The following arguments were submitted at the 4900 hearing:

16 Atkins' Arguments

17 During the hearing, Atkins made the following arguments to support the finding that he did not
18 commit the crimes for which he was charged.

- 19 • Powell recanted her prior testimony implicating Atkins, and the recantation was determined to
20 be credible by the Habeas court. Thus, there are no credible witnesses implicating Atkins to
21 the murder. Moore testified that his declaration was a lie and that he only implicated Atkins to
22 receive a deal from the prosecution. Pitre confirmed Moore's testimony that he lied to make a
23 deal. Inmate A.'s declaration should not be given any consideration because he is an
24 unnamed person who did not testify at any proceeding and never was subjected to cross-
25 examination. Additionally, some of the details he gave of the murder were wrong.
- 26 • Powell's truthful testimony at the Habeas hearing, Yates' testimony at the criminal trial, and
27 Atkins' testimony at the 4900 hearing are all similar and corroborate each other, thus they are
28 reliable statements.

- 1 • Marla Gonzales' eye witness identification is unreliable. In addition to all the unreliability
2 factors cited by Dr. Eisen, Gonzales testified that the perpetrator was a little over five feet tall
3 and weighed 135 to 145 pounds. This physical description is not close to matching the
4 physical description of the six foot tall, 175 pound Atkins. Gonzales only caught a short
5 glimpse of the man's face, which lasted for about one second during the time that he said
6 "look, look." She also described the perpetrator's face as thin and gaunt and that does not
7 match Atkins' face. Finally, the Habeas court found Gonzales' identification unreliable.
- 8 • Atkins testimony at the 4900 hearing is credible. It would not make sense for Atkins to use as
9 an alibi that he was committing a different crime only one block away from the murder when it
10 occurred. Most suspects who create a false alibi place themselves far away from the crime
11 scene and do not admit to committing a crime. Additionally, if Atkins was the perpetrator, it
12 does not make sense for him to go back to the murder scene and watch the police activity for
13 25 minutes.

14 The AG's Arguments

15 The AG offered the following arguments to support the finding that Atkins has not proven by a
16 preponderance of the evidence that he is innocent of the crime with which he was charged.

- 17 • Gonzales identified Atkins as the perpetrator and she has not recanted. Gonzales was visibly
18 broken up and upset when she saw Atkins picture in the six-pack. She immediately identified
19 Atkins as the perpetrator, and also identified him at the preliminary and criminal proceedings.
- 20 • Gonzales' physical description of the size of the perpetrator is not an issue. First, Gonzales
21 was sitting in her car when the crime occurred and thus could not judge height accurately.
22 Second, according to the LAPD "area broadcast" of the crime, one of the suspects was
23 reported to be five feet six inches to five feet ten inches. This is a much closer description to
24 Atkins' actual height. Finally, alleged suspects Bowens and Ricky Powell were both over five
25 feet ten inches tall, thus even if Atkins' testimony were to be believed it would only prove that
26 Gonzales was a bad judge of height.
- 27 • Gonzales' identification of both Atkins and Evans is also significant because those are the
28 same two people implicated by Powell. It would be too large of a coincidence for Gonzales to
29

1 have mistakenly identified, in two separate six-packs, the same two individuals implicated by
2 Powell.

- 3 • Powell's recantation of her preliminary hearing testimony is questionable. Powell had
4 connections to Atkins' family and the Venice community. She made statements about being
5 afraid of retaliation. Her Habeas testimony about the police interview was inconsistent with
6 what actually happened during the police interview. Finally, Powell's Habeas testimony that
7 she just gave the police a name and that she believed that the police would discover the truth
8 is not credible. Powell told the police that she did not want to testify and there would be no
9 reason to be concerned about testifying if she actually gave the police the name of an
10 innocent person.
- 11 • Moore was threatened before trial and his declaration implicating Atkins is credible. In
12 addition to telling the prosecutor that his family was threatened, there would be no reason for
13 him to give information implicating Atkins in exchange for a lighter sentence, and then change
14 his story at the very last moment.
- 15 • Inmate A.'s declaration is credible because it contains many correct details about the crime.
16 Significantly, it contains details about Powell's testimony in the preliminary hearing that
17 Inmate A. likely would not have known about unless he had actually spoken to Atkins.
- 18 • Atkins' alibi witnesses are not credible. Julie Davis stated that she and Atkins went to the
19 murder scene just after midnight, but the crime did not occur until after 1:00 a.m. On New
20 Year's Eve, a person would know the difference between midnight and 1:00 a.m. because of
21 the festivities. Atkins also implicated Evans during his interview with the police when he said
22 that Evans was the third man with Bowens and Powell. This contradicts Evans story that the
23 two were at a party together, but more importantly supports Gonzales' eyewitness
24 identification of Evans, which would then support her eyewitness identification of Atkins.

1 Atkins' Contribution to His Own Conviction⁸

2 The AG argued that Atkins contributed to his own conviction by fleeing from the police when
3 the came to arrest him. By running, Atkins provided evidence of his consciousness of guilt and "a
4 jury is entitled to infer consciousness of guilt from flight."⁹

5 Atkins stated that he was on probation at the time of his arrest and was in violation of his
6 probation by not attending school. Thus, Atkins did not want to get caught violating his probation and
7 tried to run from the police. Additionally, there is no evidence that the jury inferred any guilt from
8 Atkins' flight, nor was any jury instruction given regarding allowable inferences from a suspect's flight
9 from police. Finally, it is questionable if Atkins really did flee or attempt to flee from the police
10 because police documents state that Atkins was arrested without incident.

11 New Evidence Received After Atkins' Successful Writ of Mandamus

12 On August 6, 2014, over seven years after his release from prison, Atkins filed a motion in the
13 Superior Court of Los Angeles to receive a finding of factual innocence pursuant to Penal Code section
14 1485.55(b). This motion was opposed by the Los Angeles County District Attorney's Office. On
15 August 22, 2014, the court granted Atkins' motion and made a finding of factual innocence.
16 The court's decision was based on Gonzales' testimony being unreliable, Moore's statements being
17 unreliable, and Powell's recantation being credible.

18 **Determination of Issues**

19 A person erroneously convicted and imprisoned for a felony may submit a claim to the Board for
20 pecuniary injury sustained as a result of his erroneous conviction and imprisonment.¹⁰ Penal Code
21 section 4903 provides that in order to state a successful claim for compensation, the claimant must
22 prove the following by a preponderance of the evidence:¹¹

23
24 ⁸ Contributing to one's own arrest or conviction was eliminated from the Penal Code in 2013.

25 ⁹ *People v. Mason* (1991), 52 Cal.3d 909, 943.

26 ¹⁰ Pen. Code, § 4900.

27 ¹¹ *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation*
28 *and Government Claims Board* (2000) 152 Cal. App. 4th 1164. Preponderance of the evidence means
29 "evidence that has more convincing force than that opposed to it." (*People v. Miller* (1916) 171 Cal.
649, 652.)

- 1 1. That the crime with which he was charged was either not committed at all, or, if committed,
- 2 was not committed by him;
- 3 2. That he did not by any act or omission on his part, intentionally contribute to the bringing
- 4 about of the arrest or conviction for the crime; and
- 5 3. That he sustained a pecuniary injury through his erroneous conviction and imprisonment.

6 If the claimant meets his burden of proof, the Board shall recommend to the legislature that an
7 appropriation of \$100.00 per day of incarceration served subsequent to conviction be made for the
8 claimant.¹² Here, Atkins has proven by a preponderance of the evidence that he did not commit the
9 crimes with which he was charged.

10 At a recent court hearing, Atkins received a finding of factual innocence pursuant to Penal Code
11 section 1495.55(b). During that proceeding, the court also determined that Powell's recantation was
12 credible and that Moore's statements were not credible. Although Gonzales never testified in-person at
13 the habeas hearing or the factual innocence proceeding, the court nonetheless determined that her
14 testimony was highly questionable and unreliable. This is still a credibility determination because the
15 court commented on the reliability of her testimony.

16 The testimony and evidence from Atkins, Gonzales, and Powell are the three most important
17 pieces of evidence in this claim. The one piece of evidence that is the hardest for Atkins to overcome
18 in a finding of innocence by this Board is the eye-witness testimony of Maria Gonzales. As the only
19 surviving eye witness of her husband's murder, Gonzales testified at trial that Atkins was present and
20 acting in concert with Ricky Evans who shot and killed her husband. Although her description of Atkins
21 was considerably different in height and weight, she picked out both Atkins and Evans from a photo
22 lineup soon after the murder and never wavered regarding who she saw kill her husband. When
23 finding that Atkins was factually innocent, the Superior Court found Gonzales' identification to be
24 unreliable. Although the Board is not bound by the court's findings, it is persuasive evidence of Atkins'
25 innocence.

28 ¹² Pen. Code, § 4904.

1 Based on the court's findings, there is little evidence showing that Atkins committed the crime
2 other than statements from Inmate A. and Dewberry. Their statements implicating Atkins lack the
3 conviction and believability that Gonzales' testimony possessed. Comparatively, Atkins' innocence has
4 become stronger with the court's credibility determinations and his receipt of a finding of factual
5 innocence. Thus, there is a preponderance of the evidence that Atkins did not commit the crime.

6 Further, Atkins did not contribute to his own arrest or conviction. There is no evidence that
7 flight was considered by the jury since a jury instruction was not given regarding allowable inferences
8 from a suspect's flight from police. Additionally, Atkins could have fled from the police because he was
9 currently violating his probation. Thus, it is determined that Atkins did not contribute to his own arrest
10 or conviction.

11 Finally, Atkins has suffered a pecuniary loss. Due to his arrest he was unable to graduate high
12 school. Upon his release from prison he had difficulty earning a degree and finding employment.
13 Therefore Atkins claim for compensation should be approved and it is recommended the Legislature
14 appropriate \$713,700 to the claimant pursuant to Penal Code section 4904.

15
16 Dated: April 8, 2015

17 _____
18 Kevin D. Kwong
19 Hearing Officer
20 California Victim Compensation and
21 Government Claims Board
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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
OF THE STATE OF CALIFORNIA**

In the Matter of the Claim of:

Notice of Decision

Susan Mellen

On January 15, 2015, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: January 16, 2015



Tisha Heard
Board Liaison
California Victim Compensation and
Government Claims Board

EXHIBIT B

1 TRANSCRIPTION OF RECORDED MEETING
2 OF THE
3 VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
4

5 JUNE 18, 2015
6 SACRAMENTO, CALIFORNIA
7
8

9 Board Members Present:

10 MARYBEL BATJER

11 RICHARD CHIVARO

12 MICHAEL RAMOS

13 VCGCB Executive Staff Present:

14 JULIE NAUMAN, EXECUTIVE OFFICER

15 WAYNE STRUMPFER, CHIEF COUNSEL

16 Also Present:

17 ALEXANDER SIMPSON, CALIFORNIA INNOCENCE PROJECT

18 KENNETH SOKOLER, ATTORNEY GENERAL'S OFFICE

19 Transcribed by:

20 Carol S. England,

21 Foothill Transcription Company

22 June 21, 2015

23 Elk Grove, California

24 --o0o--

25

1 **Ms. Batjer:** Item Number 10 is Penal Code Section
2 4900 claim of Timothy Atkins that will be presented by
3 Chief Counsel Wayne Strumpfer. Wayne?

4 **Mr. Strumpfer:** Thank you, Madam Chair. Mr. Atkins
5 was convicted by a jury of one count of murder and two
6 counts of robbery stemming from a shooting death of
7 Vicente Gonzales on January 1, 1985. Mr. Atkins was
8 sentenced to 32 years to life in prison in February of
9 1988. In 2006, he filed a writ of habeas corpus based
10 mainly on a recanting witness. The Los Angeles County
11 Superior Court granted the writ. LA DA declined to retry
12 the case and Mr. Atkins was released from prison on
13 February 9, 2007 after serving 7,137 days incarceration.
14 This matter first came to the Board in March of 2010 when
15 the Board denied Mr. Atkins' original claim. After a
16 writ and appeal by Mr. Atkins of that decision, the Court
17 of Appeals remanded the case to us with orders to conduct
18 a new hearing and issue a new decision. This was ordered
19 because the Court found that the Board, through verbal
20 comments, made additional credibility determinations
21 against Mr. Atkins and other witnesses that were not
22 reflected in the Hearing Officer's proposed decision. So
23 therefore, the written proposed decision did not reflect
24 the Board's final ruling. While this matter was on
25 appeal, Mr. Atkins returned to Los Angeles County

1 Superior Court and received a finding of factual
2 innocence from a judge in August of 2014. The issues
3 raised today with Mr. Atkins' claim are: (1) what law
4 applies to this case: Penal Code 4900 through 4904 as it
5 was in 2010 or as it is written today; and (2) has Mr.
6 Atkins met his burden to prove by a preponderance of the
7 evidence that he is innocent of the crimes for which he
8 was incarcerated. The proposed decision determines that
9 the charges to Penal Code -- I'm sorry -- that the
10 changes to Penal Code Section 4900 to 4904 were not
11 retroactive and therefore, the law was in effect in 2010
12 rules the Board's decision today. Furthermore, the
13 proposed decision finds that the additional facts that
14 the Superior Court finding last year of Mr. Atkins'
15 factual innocence and the eyewitness testimony of Maria
16 Gonzales being unreliable, lead to the determination that
17 Mr. Atkins has proven his innocence by a preponderance of
18 the evidence. Here today for the claimant is Alex
19 Simpson of the Innocence Project and appearing for the
20 Attorney General is Kenneth Sokoler.

21 Ms. Batjer: Thank you, Wayne. Good morning,
22 gentlemen.

23 Mr. Simpson: Morning.

24 Mr. Sokoler: Good morning, Board Members.

25 Ms. Batjer: I know you've been introduced by Wayne.

1 I'd like you to introduce yourself if you would for the
2 record, sir.

3 Mr. Sokoler: Kenneth Sokoler for the Attorney
4 General.

5 Mr. Simpson: Alex Simpson, Associate Director of
6 the California Innocence Project appearing on behalf of
7 Mr. Atkins.

8 Ms. Batjer: Thank you. Could you please make your
9 statement.

10 Mr. Simpson: Thank you and good morning, Board
11 members.

12 Mr. Ramos: Good morning.

13 Mr. Simpson: This -- Mr. Strumpfer, I think you
14 have excellently reduced years of litigation on this case
15 and he is absolutely correct that this claim comes before
16 the Board again after a prior determination. And there
17 were a number of proceedings that succeeded that
18 determination, the most important of which, I believe,
19 was as discussed in the proposed decision, the
20 determination, not just by a judge in the Superior Court
21 finding Timothy Atkins innocent by a preponderance of the
22 evidence, but the judge who heard the original trial and
23 reversed the conviction. That Judge, Michael Tynan, had
24 the opportunity to review everything in the case and was,
25 without question, the best person to make a determination

1 as to whether or not Timothy Atkins was innocent by a
2 preponderance of the evidence. Excuse me. Last year,
3 Judge Tynan considered the case again this time not from
4 the perspective of whether there -- the prosecution had
5 proved his case -- proved its case beyond a reasonable
6 doubt as the Judge had presided over the original trial,
7 nor whether Timothy Atkins was entitled to reversal of
8 his conviction, but from the perspective of whether
9 Timothy Atkins had established that he was innocent by a
10 preponderance of the evidence as stated in Section
11 1485.55. And after hearing from me, the Los Angeles
12 District Attorney's Association, and from Mr. Sokoler
13 from the Attorney General's Office, the Court came to the
14 conclusion that Timothy Atkins had met his burden. I
15 think my point is that the Judge had every opportunity to
16 determine everything about the case. There were some
17 comments that the Attorney General's Office had made in
18 the response to the proposed decision such that Judge
19 Tynan's analysis was in some way more circumscribed than
20 what this Board's determination is, but that's simply not
21 true. The Court had the opportunity to hear from all of
22 the parties before it made its decision. And -- and we
23 argued the case exhaustively before Judge Tynan. Now we
24 have a finding from a sitting Superior Court judge. That
25 finding says that Tim is innocent under the same standard

1 this Board has to make, whether Timothy Atkins is
2 innocent by a preponderance of the evidence. That's what
3 makes this hearing different from the prior hearing in I
4 believe it was 2010. You know, we may disagree about
5 whether 1485.55 is binding on this Board or whether it is
6 merely persuasive, the finding of innocence, but I think
7 under either analysis, the difference is this finding. I
8 think that Timothy Atkins has the right to claim
9 compensation for his years, more than 20 years of
10 wrongful incarceration. And I ask this Board to make
11 that recommendation.

12 Ms. Batjer: Okay. Thank you, sir. The AG, please
13 present.

14 Mr. Sokoler: Good morning again, Board members. We
15 agree with the Hearing Officer's conclusion that the new
16 provisions enacted in January 2014 don't apply to this
17 case. Where we disagree is on the effect of Judge
18 Tynan's 2014 ruling. When this case was last heard
19 before the Board in March 2015, it did not appear as if
20 the Court -- the Board regarded it as a particularly
21 close case. The Board -- the case was sent back by the
22 Court of Appeal. However, for one reason and one reason
23 only, which was that the Board had not accompanied its
24 decision with the requisite written findings. The only
25 other thing of potential significance that has happened

1 during that -- since the last hearing is Judge Tynan's
2 finding of last August under Section 48 -- 1485.55. And
3 the question before the Board is whether that decision
4 changes anything. Whether that decision is so persuasive
5 that the Board should reach a different conclusion than
6 it reached in 2010. And I would submit that while the
7 Board can and should look at the Judge's decision, it is
8 not persuasive and doesn't carry the weight to cause the
9 Board to change its decision. Most significantly, Judge
10 Tynan considered a different question than that before
11 the Board. Judge Tynan, in deciding the innocence claim,
12 limited himself to the evidence that had been presented
13 at trial and to the evidence which he had previously heard
14 at the habeas corpus hearing. And he made a comment on
15 page 21 of the transcript of that hearing, saying he
16 wasn't considering the evidence because he had decided
17 this case already on habeas corpus. The issue
18 before -- before the Board is whether Mr. Atkins has
19 proven his claim based on the trial evidence, the habeas
20 evidence, and all the additional evidence that was
21 presented to the Board in 2009 and 2010 in the 4900
22 hearing. There was significant additional evidence
23 presented in this proceeding that Judge Tynan did not
24 consider. That -- that some of that evidence was
25 discussed explicitly in March 2010 at this Board meeting.

1 It included Atkins' own statement to the police shortly
2 after the crime in which he placed himself a couple of
3 minutes, walk away from the murder at the time of the
4 murder, and he identified Codefendant Ricky Evans as one
5 of the assailants who ran up to him right after the
6 murder and said they had just done a move. It
7 also -- the new -- the evidence that Judge Tynan didn't
8 consider also included Evans' own statement to the police
9 in which he admitted being with Atkins on the night of
10 the murder. And to regress a bit, Atkins had also
11 admitted to the police that he had spent part of the
12 night of the murder in the company of Codefendant Evans.
13 Evans -- and Evans, and that was significant because in
14 addition to identifying Mr. Atkins as one of the
15 assailants, the surviving victim, Maria Gonzales, had
16 identified Ricky Evans from a photo six-pack. Another
17 item that was presented to this Board that Judge Tynan
18 didn't consider was the statement of Mr. Atkins' cousin,
19 Lee Dewberry, who had stated to police that on December
20 31st or January 1st -- this crime occurred on New Year's
21 Eve -- he had seen Mr. Atkins in possession of a
22 necklace. That was significant because Maria Gonzales
23 had testified that Atkins -- Mr. Atkins ripped a necklace
24 from her neck during the robbery, so it corroborated her
25 identification. Additionally, one other item that the

1 Board appeared to consider significant at the last
2 meeting was the statement of the confidential jailhouse
3 informant who had made a statement about an admission
4 that Mr. Atkins made to him in jail. That statement was
5 notable because it included numerous accurate details of
6 the crime, including the color and make of the victim's
7 car, the location where the crime occurred, the kinds of
8 weapons used, the fact a necklace was taken and I think
9 most significantly, the fact that the murder victim,
10 Vicente Gonzales, was chubby. While informant's
11 statements are looked at very carefully, this informant
12 had numerous accurate details about the crime. He also
13 related Atkins -- he said he had had these conversations
14 while they were waiting to go to -- to be transported to
15 court. He also related accurately Atkins' statements
16 about what had happened on those court dates, which was
17 the preliminary hearing in which Denise Powell had
18 testified against Atkins. So as the Board appeared to
19 find at the previous hearing, the informant's statements
20 were also quite persuasive and they were not considered
21 by Judge Tynan, who limited his consideration to the
22 evidence presented at the habeas hearing and at trial.
23 So the way we see it, judges -- the Judge Tynan's
24 decision isn't legally binding on this Court and it's not
25 persuasive because it didn't consider the full range of

1 evidence. Moreover, it didn't tell the Board anything
2 that the Board was unaware of in 2010. When the Board
3 decided this case in 2010, it was well aware that Judge
4 Tynan found Denise Powell's recantation to be credible
5 and that Judge Tynan didn't describe much weight to the
6 eyewitness identification by Maria Gonzales. But the
7 Board seemed to reach different conclusions as reflected
8 in the Board's comments and for good reason, we believe.
9 So for these reasons, we believe that nothing significant
10 has changed since the Board previous rejected this claim.
11 And the Board should again reject it based on the wide
12 scope of evidence that has been presented in this
13 proceeding. Thank you.

14 Ms. Batjer: Thank you. Well, one thing has
15 changed. I'm a new Board member. Any questions of
16 either --

17 Mr. Ramos: Yeah. I have -- I have a question for
18 counsel for the Innocence Project. Good to see you
19 again.

20 Mr. Simpson: And you as well, Mr. Ramos.

21 Mr. Ramos: The -- the hearing that was conducted in
22 front of the judge in LA County, you indicated it was the
23 Los Angeles County District Attorney's Association that
24 was present. Was it the trial lawyer or just
25 representing the DA's office?

1 Mr. Simpson: It was the -- the representative was
2 the District Attorney who handled the habeas petition and
3 the reversal in '07.

4 Mr. Ramos: Okay. But not the actual attorney that
5 did the trial?

6 Mr. Simpson: I don't know that that person was
7 still available.

8 Mr. Sokoler: Don't think so.

9 Mr. Simpson: I'm not sure, but --

10 Mr. Ramos: Okay.

11 Mr. Simpson: -- in an '85 trial, I don't even know
12 if there was still a DA.

13 Mr. Ramos: Okay.

14 Mr. Sokoler: It was a member of their habeas unit.

15 Mr. Ramos: Got it. Okay. So it was their appellate
16 unit and my office is who it would be. Okay.

17 Ms. Batjer: All right. This is just a curiosity of
18 me. Was the gold necklace ever entered in as evidence in
19 the case, in the original trial?

20 Mr. Simpson: No.

21 Mr. Sokoler: I don't believe so.

22 Mr. Simpson: Yeah. I don't believe it was ever
23 recovered.

24 Ms. Batjer: It was just talked about and never
25 presented as evidence.

1 Mr. Sokoler: It was referred to in police reports
2 and talked about.

3 Mr. Simpson: If it helps to specify, there wasn't
4 any evidence that Ms. Gonzales described a necklace or
5 the necklace and that Lee Dewberry's comments also
6 matched that description or anything like that.

7 Ms. Batjer: It was just a curiosity that I had in
8 reading the case. Okay. Any other questions?

9 Mr. Ramos: No.

10 Ms. Batjer: All right. I will accept a motion.

11 Mr. Ramos: I'm trying to figure out the Robert's
12 Rules of Order.

13 Ms. Batjer: You've got --

14 Mr. Ramos: So we make a motion then we can have a
15 discussion?

16 Ms. Batjer: Yep.

17 Mr. Ramos: Okay. I'm going to move that we oppose
18 staff's recommendation.

19 Mr. Chivaro: I'll second the motion.

20 Ms. Batjer: It is moved and seconded that we reject
21 staff's recommendation. Is there any discussion?

22 Mr. Ramos: Yes. Let me -- let me give you my
23 analysis on why I feel that way. And believe me, I did a
24 lot of work on this case for several days as I discussed
25 with Wayne before the hearing. And great work by all of

1 the attorneys involved. The Innocence Project, the
2 Attorney General staff both have the highest integrity.
3 They work in the State of California and of course, the
4 Los Angeles District Attorney's Association that I have
5 much respect for as well. We as prosecutors take this
6 very serious and are seeking justice to not only hold the
7 guilty accountable but protect the innocent. As I went
8 through the -- the issues, the first two issues, I will
9 agree with -- I think everybody agrees that the factual
10 innocence is not binding upon this Board, however, it
11 should give us great persuasion and weight to our
12 analysis that we have back in front of us again and it
13 does. I have a lot of respect for the bench. I have a
14 lot of respect for the DA's office that was there and
15 their appellate unit in the Attorney General's Office
16 that was there. I also understand the limitations that
17 were placed on the judge, whether or not they were placed
18 on him specifically by himself or others or the appellate
19 process, but he did -- he was the trial judge, which is
20 huge, habeas corpus, which was huge, but did not have the
21 opportunity to view and see what we have seen on the
22 Board, the additional evidence presented here after this
23 individual was convicted and I should say by a jury
24 trial. I don't believe it was a bench trial and if I'm
25 mistaken by that, please let me know.

1 Mr. Simpson: No. That's correct.

2 Mr. Ramos: Okay. So you have 12 citizens that we
3 have a justice system that we put the evidence before
4 them and they found this individual guilty. Now I
5 understand now the second issue is the presumption of
6 innocence and the preponderance of evidence is a
7 different standard than the jury trial had beyond a
8 reasonable doubt -- a lower standard. So I go back
9 through everything and I'm not going to rephrase and
10 restate what I said in the original hearing because I
11 still feel that about what was indicated in the original
12 hearing, but I don't want to go outside the bounds of the
13 factors that we have presented before us at the hearing
14 officer because I don't want this coming back for those
15 issues. But in looking at those statements, I still feel
16 the same way regarding the statements and then one thing
17 that actually stood out for me and when I have these
18 difficult -- very difficult decisions -- I always lean
19 towards the victims. We have a victim that has been
20 murdered. We have the wife that was there at the time
21 her husband was shot and murdered, who suffered a
22 significant emotional event. And it can be argued both
23 ways regarding identification of the suspect. But here's
24 what I can't get past. You have Beverly or excuse me,
25 Denise Powell, who indicated this defendant was part of

1 the murder. She goes to the preliminary hearing to
2 testify. She tells everybody she's scared and then she
3 leaves. And we don't have her testimony at trial, which
4 could have been cross-examined. I'm not going to get
5 into the issues of how hard they tried to look for her,
6 but I'm going to guess you don't present in front of a
7 judge that you couldn't find a witness when you really
8 didn't do everything you could to find that witness. But
9 here's the situation. You have this individual that
10 right after the murder says this is the person that
11 killed -- was involved in the murder and you have Mrs.
12 Gonzales as the victim, who the next day identifies him
13 in a photo lineup. She didn't talk to Beverly -- Denise
14 Powell. They're in different worlds. Denise Powell grew
15 up in this whole different environment. She is the
16 victim. And she cried when she saw his picture and she
17 has never ever said that was not the person. So the odds
18 of that occurring are absolutely tremendous to me. How
19 is it that our victim identified the same person? That
20 this individual who truly testified in Court under oath
21 said he was the one involved in the murder. Now, people
22 may say, well, you have the identification expert. I get
23 that. They are very good at what they do and they have
24 been in the past. What concerned me about this
25 identification expert, which is in the records, is he

1 didn't bother to interview Mrs. -- Mrs. Gonzales, the
2 victim and/or look at the photo lineup himself. He
3 talked about generalities and the concept of the problems
4 with eyewitness identification. So for those reasons, I
5 still believe that the burden hasn't been proved that he
6 has proved himself innocent in this situation and I will
7 again reiterate that I am -- and I have to give staff a
8 ton of credit. They did a great job on this case. That
9 I oppose staff's recommendation. Thank you.

10 Ms. Batjer: Okay. Rick --

11 Mr. Chivaro: No.

12 Ms. Batjer: I have a couple comments. I found
13 Judge Tynan's arguments and decision very persuasive. I
14 had some questions about the situation of the
15 eyewitnesses and the testimony of the -- what we call at
16 times unreliable witnesses. So therefore, I did accept
17 Judge Tynan's arguments. I have some concerns about Mrs.
18 Gonzales' selection of the picture and what picture she
19 was looking at. I believe there was a question about the
20 picture that was provided in the six-pack I think it's
21 called. Whether it was a picture of Mr. Atkins taken
22 when he was 13. So I -- and I was somewhat persuaded
23 by -- even though I agree with Mr. Ramos that the expert
24 witness on the reliability of eyewitnesses did not
25 interview Mrs. Gonzales, but I do understand and have

1 some appreciation for the questions of an eyewitness when
2 they're under the kind of emotional distress that Mrs.
3 Gonzales obviously was and the difficulty in -- in how
4 she first identified the said murderer in terms of height
5 and weight and whether the crime scene was illuminated
6 properly. I know the police report said it was, but
7 there's enough doubt there that I have some real concerns
8 about her testimony and -- and that of Ms. Powell as
9 well. So I -- I was, as I said earlier, not to repeat
10 myself, I was persuaded by the judge, the original and
11 the -- in that he was the original judge. I think that
12 has some incredible weight for me as well. And I was not
13 persuaded by the argument set forth by the Attorney
14 General's Office. But I have no further questions. So
15 is there any other discussion on the motion to reject or
16 not accept I guess -- not accept the staff
17 recommendation? Okay. All in favor of the motion that's
18 before us not to accept the staff recommendation on the
19 Victim's Compensation case of Timothy
20 Atkins -- Government Claims Board -- excuse
21 me -- Government Claims case of Timothy Atkins.

22 Mr. Ramos: Aye.

23 Ms. Batjer: No.

24 Mr. Chivaro: Aye.

25 Ms. Batjer: Thank you all very much.

1 TRANSCRIBER'S CERTIFICATE

2

3

4 STATE OF CALIFORNIA)

5) ss.

6 COUNTY OF SACRAMENTO)

7

8 This is to certify that I transcribed the
9 foregoing pages 1 to 18 to the best of my ability from an
10 audio recording provided to me by Victim Compensation
11 Government Claims Board.

12 I have subscribed this certificate at Elk
13 Grove, California, this 21st day of June 2015.

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