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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
8 **OF THE STATE OF CALIFORNIA**
9

10 In the Matter of the Claim of:

11 **Brian Banks**

Notice of Decision

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14 On March 19, 2015, the California Victim Compensation and Government Claims Board
15 adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced
16 matter.
17

18 Date: March 20, 2015



19 Tisha Heard
20 Board Liaison
21 California Victim Compensation and
22 Government Claims Board
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8 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
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11 In the Matter of the Claim of:

12 **Brian Banks**

Proposed Decision

(Penal Code § 4900)

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15 **Introduction**

16 This claim for compensation as an erroneously convicted person was decided based on the
17 written record by considering all the evidence submitted and without a telephonic or in-person hearing.
18 Kevin Kwong was assigned to hear this matter by the Executive Officer of the California Victim
19 Compensation and Government Claims Board. The claimant, Brian Banks, was represented by
20 attorney Alissa Bjerkhoel from the California Innocence Project. The California Attorney General's
21 Office was represented by Larenda Delaini, Deputy Attorney General (AG).

22 As explained below, Banks has met the statutory requirements to receive compensation under
23 Penal Code section 4900 because he has proved by a preponderance of the evidence that he did not
24 commit the crimes with which he was charged. Banks is entitled to \$142,200 in compensation for
25 being incarcerated for 1,422 days after conviction.¹
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29 ¹ Banks was sentenced on October 8, 2003, and was released from prison on August 29, 2007.

Procedural Background

On July 8, 2002, Brian Banks was a student attending Polytechnic High School in Long Beach, California. Shortly after 11:45 a.m., he met with classmate Wanetta G. and the two had a sexual encounter in a secluded stairwell inside a school building. Later that evening Banks was arrested by the police for crimes that included raping Wanetta G.

On January 22, 2003, the Los Angeles County District Attorney's Office charged Banks with forcible rape, forcible sodomy, and kidnapping. Banks, who was 16 years-old at the time of the incident, was charged as an adult and faced 41 years-to-life in prison. On August 20, 2003, Banks pled no contest to the charge of forcible rape and was sentenced to six years in prison with a 90-day diagnostic evaluation pursuant to Penal code section 1203.03.² After the diagnostic evaluation, the Department of Corrections and Rehabilitation recommended that Banks be granted probation. However, at Banks' sentencing hearing on October 8, 2003, the court denied probation and ordered Banks to serve the rest of his six-year sentence, with credit for time served. Banks filed a petition for Writ of Habeas Corpus on May 12, 2006. The court denied the petition for vagueness, failure to state a claim, and failure to raise issues on direct appeal. On August 29, 2007, Banks was released from prison on probation and was required to register as a sex offender.

After Wanetta G. seemingly recanted her accusation of being raped, Banks filed a petition for Writ of Habeas Corpus in the California Superior Court on August 15, 2011. The District Attorney's Office conceded that this petition should be granted. The court granted the petition in the interests of justice on May 24, 2012, reversing his rape conviction and all charges were immediately dismissed by the District Attorney's Office.³ On or about January 21, 2014, Banks filed his claim for compensation under Penal Code section 4900 with the Board.

Summary of Evidence

In the summer of 2002, Brian Banks was attending school at Polytechnic High School in Long Beach, California. Banks was about to enter his senior year and was a star football player. He

² Banks plea of no contest was made pursuant to *People v. West* (1970) 3 Cal.3d 595. The California Supreme Court has described a *West* plea as one where the defendant professes belief in his innocence and does not admit a factual basis for the plea.

³ No finding of factual innocence was made by the court.

1 received numerous letters of interest from colleges across the country due to his football skills. He
2 also received a full football scholarship to attend the University of Southern California (USC). Banks
3 stated in his declaration that he would have accepted the scholarship to attend USC. On July 8,
4 2002, at approximately 11:45 a.m., Banks was in the hallway after asking for permission to leave the
5 classroom so that he could use his phone. His teacher gave him some papers to drop off at the main
6 office while he was outside.

7 Wanetta G. was a student at Polytechnic High School about to enter her sophomore year.
8 She left her classroom in the 900 building and headed for the bathroom in the 700 building. On the
9 way she encountered Banks, whom she had known for several years. After a short conversation the
10 two entered the 700 building together. While Wanetta G. was using the bathroom Banks waited
11 outside. The two then took an elevator to the second floor of the building and walked down a hall to
12 access a stairwell. Here, the two engaged in sexual activities.

13 **I. Wanetta G.'s statements as to what occurred**

14 Wanetta G. reported later that day that she was raped by Banks and Banks was subsequently
15 arrested. Over time, Wanetta G. has told numerous different accounts of the incident.⁴

16 **Note to Sherell Washington**

17 After returning to class, Wanetta G. wrote a note and passed it to her classmate, Sherell
18 Washington. Washington stated that Wanetta G. did not appear upset when she returned to class.
19 Wanetta G.'s note stated that she went to the bathroom in the 700 building and Banks was there. He
20 picked her up, put her in the elevator, took her down stairs, pulled her pants off, and raped her.
21 Banks did not use a condom and Wanetta G. had now lost her virginity. Washington read this note
22 but did not speak to Wanetta G. about it.

23 According to a declaration written by Washington on June 26, 2011, she and Wanetta G. had
24 a verbal confrontation during the school year after the incident. Here, Wanetta G. stated that the
25 rape accusation was false and that she only made the accusation because she did not want her
26 mother to know that she was sexually active.

27
28 ⁴ Wanetta G.'s numerous statements are repeated to show her inconsistencies, namely in how she
29 entered the elevator, what happened inside the elevator, and what happened during the sexual
encounter.

1 Statement to Ericka Rhodes

2 Ericka Rhodes is Wanetta G.'s sister. After school ended at around 12:30 p.m., the two met
3 and Rhodes could tell that something was wrong because Wanetta G.'s face was very red. Rhodes
4 asked Wanetta G. multiple times what was wrong but Wanetta G. would only respond by saying
5 "nothing." After the two passed Banks outside the school, Wanetta G. stated to Rhodes that Banks
6 made her have sex with him. Rhodes told Wanetta G. that they needed to tell somebody about the
7 incident and they returned to school.

8 Statements to Sheryal Walther, Gwen Mack, and Shawn Ashley

9 Wanetta G. told assistant principal Sheryal Walther that she met Banks in the 700 building.
10 Here he pulled up her shirt and felt her breasts. He then turned her around, pulled down her pants,
11 and "did it." Wanetta G. then spoke to co-principal Gwen Mack. She told Mack that she used the
12 restroom in the 700 building and ran into Banks. He pulled her into the elevator and the two ended
13 up in the bottom of the stairwell. Banks fondled her and pulled down her pants. Once her pants
14 were down they "did it."

15 The incident was then reported to principal Shawn Ashley. Wanetta G. told Ashley that she
16 was in the 700 building and ran into Banks, who asked Wanetta G. if he could help her with
17 something in the bathroom. Wanetta G. then got water from the nearby drinking fountain when
18 Banks approached from behind, lifted her up, and put her in the elevator. Inside he started touching
19 her abdominal area and Wanetta G. told him to stop. When they exited the elevator, Banks led her
20 down the hallway as the two were holding hands. They walked down the stairwell and once they
21 reached the bottom they began to have sexual intercourse. At some point during intercourse, Banks
22 told Wanetta G. to be quiet because there was somebody at the top and she would hear them.
23 Wanetta G. looked up and saw a female standing at the top of the stairs talking on her phone. After
24 they finished, Banks exited through the doors at the bottom of the stairs while Wanetta G. walked up
25 the stairs, cleaned up in the bathroom, and returned to class without reporting the rape to anybody.

26 Statements to Law Enforcement

27 Police arrived at the school to take Wanetta G.'s statement. She told police that she left class
28 to use the bathroom in the 700 building. Here, she saw Banks and Banks asked her if she needed
29 any help in the bathroom. After using the bathroom she went to the water fountain. Banks then told

1 Wanetta G. to "come over here" and was motioning to the elevator. Wanetta G. told Banks that she
2 did not want to go towards him, but when the elevator doors opened Banks grabbed Wanetta G. by
3 the shoulders with both hands and placed her inside the elevator.

4 Inside the elevator Banks tried to unbuckle Wanetta G.'s pants several times but she pushed
5 his hand away each time and told him to stop. When the elevator door opened Banks grabbed her
6 hand and led her down the hallway. They passed two classrooms that had opened doors and
7 students inside. They entered the stairwell and went to the bottom. Wanetta G. tried to make a
8 noise because she saw a female on the top balcony area. However, each time she tried to make a
9 noise Banks told her to be quiet. Banks pushed her into a corner and grabbed both of her hands with
10 only one of his hands. He began playing with her upper area and then told Wanetta G. to pull down
11 her pants. She said "no," but Banks was able to unbuckle her belt and pull her pants down. Banks
12 then made her have sex with him and that "he did it in the front, then in the back." After, Banks told
13 Wanetta G. to not tell anybody and to go back the way that she came. Wanetta G. stopped off in the
14 bathroom, wiped her vaginal area with a tissue, and flushed the tissue down the toilet.

15 While waiting for a sexual assault examination at the hospital later in the day, Wanetta G.
16 spoke with a different police officer. She stated that Banks forced her into the elevator and then led
17 her to the stairwell. Once Banks had taken off her pants he pulled down his pants and exposed his
18 penis. He placed one of Wanetta G.'s hands on his penis and held it down, making her stroke it back
19 and forth. Wanetta G. was forced to stroke Banks' penis for about two to four minutes. She tried to
20 stop but he continued to hold her hand and prevent her from moving it. Banks eventually lifted
21 Wanetta G.'s shirt and began to suck and kiss her breasts, as well as her neck and mouth.

22 Banks then turned Wanetta G. around, leaned her up against the wall, and told her to bend
23 over. Wanetta G. refused. Banks was able to insert his penis into Wanetta G.'s vagina but "just a
24 little bit." Wanetta G. said that it hurt and she told Banks to stop. Banks turned Wanetta G. around
25 and tried to insert his penis again. Wanetta G. stated that less of his penis entered the second time
26 and a little bit of his penis entered her anus. Banks finally let Wanetta G. go and told her to go up the
27 stairwell so that they would not be seen together. Wanetta G. went to the bathroom and wiped off
28 "white and slimy wet stuff" off her vagina.
29

1 Preliminary Hearing Testimony

2 On January 8, 2003, Wanetta G. testified at Banks's preliminary hearing. Wanetta G. had left
3 class and walked to the 700 building to use the bathroom. She saw Banks and he asked her if she
4 needed help in the bathroom and she said no. After using the bathroom she went to the water
5 fountain. Banks did not say anything to her, instead the elevator door opened and Banks took her
6 hand and pushed her into the elevator. Inside the elevator Banks lifted up her shirt and started
7 sucking on her breasts. She told Banks to stop and tried to push him away.

8 When the elevator doors opened Banks grabbed her wrist and led her down the hallway,
9 which had one open classroom door. They entered the stairwell and Banks began unbuckling her
10 belt. Wanetta G. saw a girl at the top of the stairs but did not call for help because the girl was
11 speaking Spanish on her cell phone. Banks unbuckled Wanetta G.'s belt, pulled down her pants,
12 and then pulled down his pants. He grabbed her hand and had her stroke his penis. Banks then
13 kissed her neck and mouth and touched her vagina. Banks then inserted his penis into her vagina.

14 Banks also tried to insert his penis into Wanetta G.'s anus. Wanetta G. stated that he got it in
15 a little and that it hurt. Banks then told Wanetta G. to turn around and bend over. Wanetta G. said
16 "no" but still turned around and bent over. Banks penetrated her vagina again for two to four
17 minutes. Wanetta G. said that she repeatedly said "stop Brian" and that Banks responded by saying
18 "stop saying my name."

19 Civil Deposition Testimony

20 On May 20, 2004, Wanetta G. was deposed in relation to a civil lawsuit against the school
21 district.⁵ Wanetta G. testified that after coming out of the bathroom she got a drink of water at the
22 fountain and Banks was behind her. She asked Banks what he was doing and he did not respond.
23 He then grabbed her right wrist, pulled it behind her back, and pushed her into the open elevator.
24 Wanetta G. was not yelling but getting loud, and Banks told her to be quiet. Inside the elevator
25 Banks continued to hold her wrist, and he lifted her shirt and touched and sucked her breasts.

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29 ⁵ Wanetta G.'s mother sued the Long Beach Unified School District in 2003, generally alleging a lack of proper security at the school. The claim was settled and Wanetta G.'s mother received \$750,000.

1 The elevator doors opened and Banks grabbed Wanetta G.'s hand and pulled her down the
2 hallway. Wanetta G. saw a girl come out of an open classroom and go to the top of the stairwell
3 while talking on the phone. Wanetta G. did not think to scream. At the bottom of the stairwell, Banks
4 closed all the doors and told Wanetta G. that nobody could enter from the outside. She said "stop,
5 Brian" and Banks told her to "stop saying my name." Banks was able to take Wanetta G.'s pants off
6 and he proceeded to kiss her on the neck but not on the lips. He also touched her breasts and
7 rubbed her vagina. Banks was holding Wanetta G.'s wrist and tried to get her to play with his penis
8 but she pulled her hand away. Eventually he inserted about half of his penis into her vagina. She
9 told Banks to stop and Banks again said "stop saying my name." They had intercourse for a couple
10 of minutes and Wanetta G. felt some "slimy stuff." Banks then tried to insert his penis into Wanetta
11 G.'s anus but she moved and pushed Banks away.

12 **II. SART Exam and DNA Results**

13 Wanetta G. underwent a SART exam about three hours after the incident. Wanetta G. told
14 sexual assault nurse, Jane Hare, that Banks penetrated her vagina on two occasions and inserted
15 his penis into her anus a little bit. She also stated that Banks kissed her on her neck and mouth and
16 ejaculated into her vagina. Wanetta G. did not mention that she was assaulted in the elevator.

17 The examination showed that there was a moderate amount of "white, thick secretions" in
18 Wanetta G.'s vagina but that the material could have been discharged from Wanetta G. herself and
19 that it was not definitively semen. This secretion was never tested and never linked to an individual.
20 Wanetta G. also had a few tears around her gentiles with most of them on the outer areas of the
21 vagina. Hare stated that the injuries could have been from consensual intercourse although injuries
22 from consensual intercourse usual occur in one area rather than multiple areas. No semen or any
23 other bodily fluids were found on Wanetta G.'s body. Additionally, she did not have any bruising on
24 her skin or tearing on her clothes and her physical description was described as "within normal
25 limits."

26 A criminologist conducted a DNA test on the sexual assault kit and Wanetta G.'s clothing. He
27 did not detect any sperm in his vaginal or rectal tests. He also tested for P30, which is a protein
28 common to semen and may be found even if sperm is not present. There were no findings of P30 in
29 the vaginal or rectal regions as well. However, Wanetta G.'s underwear had stains that tested

1 positive for P30. The stained portions were further tested and it revealed that only Wanetta G.'s skin
2 DNA was on this part of her underwear. Banks' skin DNA was not on the stained part.

3 **III. Banks' statements as to what occurred**

4 Banks' statements to law enforcement, his civil deposition, and his statement to the AG's
5 office for this hearing are similar. They are summarized below.

6 Banks was arrested at his home at 6:23 p.m. on the day of the incident. He stated that he
7 saw Wanetta G. coming out of the bathroom in the 700 building and asked her to come over and talk
8 to him. He then asked Wanetta G. to go into the elevator with him and she complied. He did not
9 push, pull, or grab Wanetta G. to get her to come into the elevator. Banks stated that he wanted to
10 take Wanetta G. to an area near the stairwell so that they could "mess around" and that he wanted to
11 have intercourse but "was going to just see what happened."

12 Inside the elevator Banks had his arm around Wanetta G. but he did not kiss or touch her.
13 When the doors opened they stepped out together and he was not holding her hand as they walked
14 past the open classrooms. Once inside the stairwell the two began kissing. Banks slid his hand
15 underneath Wanetta G.'s shirt and played with her breasts. He kissed and sucked on her breasts
16 while Wanetta G. stroked his penis, first on the outside of his clothing, and then he pulled it out of his
17 pants. Banks put Wanetta G.'s hands on his exposed penis and she was rubbing it on her own for
18 one to two minutes.

19 Banks then turned Wanetta G. around so that she was facing away from him and proceeded
20 to unzip her pants. Banks then pulled down his pants and told Wanetta G. to bend over. Wanetta G.
21 told Banks that she did not want to do it like that and then turned around to face Banks. Wanetta G.
22 then straddled Banks while he leaned against the wall. Banks' penis was between Wanetta G.'s legs
23 and rubbing against her vagina but had not penetrated it. Banks then smelled something bad coming
24 from Wanetta G.'s vagina and decided not to have intercourse because he was turned off by the
25 smell. They continued to touch and kiss for a few minutes and his penis was rubbing between
26 Wanetta G.'s legs. Banks then heard a lady at the top of the stairs and they became scared.
27 Wanetta G. said that she wanted to leave so they pulled up their pants and left in different directions.

28 Banks has repeatedly stated that he never had intercourse with Wanetta G., that he never
29 forced her into the elevator or stairwell, and that she never indicated a desire for him to stop when

1 they began fondling each other. He states that he only took the plea bargain because he was scared
2 and felt forced to take the deal. He was told by his attorney that a large, African-American kid,
3 charged with rape did not look favorable in front a jury comprised of white people. He did not want to
4 risk 41 years-to-life in prison and his attorney told him that he could be out of prison after his 90-day
5 diagnostic, or no more than a three-year sentence.

6 **IV. Prior Sexual Assault Allegations Against Banks**⁶

7 Accuser T.L.

8 A few weeks after Banks was arrested, Wanetta G.'s mother placed law enforcement in
9 contact with T.L., a minor who also alleged that Banks sexually assaulted her. T.L. stated that in
10 September 2000, Banks grabbed her breasts by reaching over her head while he was sitting in the
11 row behind her on a school bus.

12 Later that school year, Banks held her hand and they walked to the third floor of the science
13 building. Here, Banks lifted her blouse and started sucking her breasts. He then told her to close her
14 eyes and open her mouth. Banks proceeded to place his penis inside her mouth and used his hands
15 to push her head forward.

16 Law enforcement asked T.L. if this encounter was consensual. T.L. paused and made a
17 facial gesture "as if she was not sure." She said that she never told Banks that she did not want to
18 do anything because she was afraid that he would get mad. In her own mind she did not want to do
19 it, although she never communicated her refusal to Banks and did not resist or give him the
20 impression to stop.

21 Banks has repeatedly denied knowing anybody named T.L. He states that these allegations
22 are not true and he only learned of them while looking at his case file in prison. He speculates that
23 Wanetta G.'s mother was just trying to recruit females to make up stories about him.

24 Accuser M.S.

25 During Wanetta G.'s civil lawsuit, a minor female student named M.S. testified about her
26 encounter with Banks. In November 2001, M.S. used the bathroom and saw Banks in the hall.
27

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29 ⁶ In sexual offense cases, evidence that the defendant committed other sexual offenses is admissible
in evaluating credibility. (*People v. Falsetta* (1999) 21 Cal.4th 903, 911, 922), Evid. Code, § 1108.

1 Banks asked her to come over and she did. M.S. felt special because Banks was a popular football
2 player at school. The two walked into the stairwell of a building that M.S. could not remember. After
3 some small talk, Banks told her that he was "going to show her something" and that it would not hurt.
4 M.S. stated that she did not want to learn anything. Banks then put her head "down there" and M.S.
5 told him to stop but Banks kept forcing it. Banks' penis entered her mouth for just a little bit. M.S.
6 then ran away.

7 M.S. went back to class and eventually saw a school counselor later that day. She did not go
8 into details with the counselor but was told that she should report the incident. M.S. then reported
9 the incident and the school called the police and her father. M.S. told police that she did not want to
10 press charges, did not want to testify, and was worried about retaliation. No charges were ever filed.

11 Banks stated that he and M.S. flirted back and forth and after M.S. used the bathroom they
12 walked to the stairwell in the 700 building. Banks stated that he believed that they were going to
13 have sex, but M.S. stated told him that she was on her period and that she could not have sex.
14 Instead, M.S. willingly performed oral sex on Banks until he ejaculated.

15 Banks denied forcing M.S. to perform any sexual act on him. He guessed that M.S. may have
16 been scared that Banks would have boasted about this incident to the school so she tried to beat him
17 to the punch by saying it was nonconsensual. Banks stated that due to this incident he was
18 suspended by the school for the first round of his football team's playoff game and he had to attend
19 counseling about how to deal with sexual urges.

20 **V. Meetings with Wanetta G. after Banks was Released From Prison**

21 On February 28, 2011, Wanetta G. sent Banks a friend request on Facebook. Banks did not
22 accept the request but asked Wanetta G., via Facebook message, why she had made up so many
23 lies about him. Wanetta G. said that she did not want to talk about that, that both their lives had
24 changed and she wanted to move on. She said that she did not hate Banks and both should say
25 sorry to each other.

26 On March 2, 2011, Banks and Wanetta G. had a face-to-face meeting. When discussing the
27 rape accusation Wanetta G. said that it was not true and that if it was true she would not have met
28 him today. She said that she would help Banks but that she didn't want to have to repay the money
29 that she received in her civil lawsuit. The following day, Banks and Wanetta G. met again. Also

1 included in this meeting was private investigator Fred Parish. Wanetta G. stated that she and Banks
2 were making out and that it was consensual. She further stated that Banks did not force her to have
3 intercourse, did not rape her, and did not kidnap her. A school security guard was the one who told
4 Wanetta G. that Banks had raped her after Wanetta G. told her the story of what happened.
5 Wanetta G. stated that the adults blew things way out of proportion and made her say and believe
6 things that did not happen. A lot of the accusations were false but she was told not to say anything.
7 Parish asked Wanetta G. if she would sign a document stating that Banks did not kidnap or rape her.
8 Wanetta G. wanted to think about it and then asked if she would have to pay the money back that
9 she received in her civil lawsuit. Wanetta G. never signed a declaration because she said that her
10 attorneys informed her that a recantation could result in having to pay back her civil lawsuit
11 settlement.

12 After Banks filed his habeas petition, Wanetta G. met with the Los Angeles County District
13 Attorney's Office. Here, she stated that Banks told her to say that he did not rape or kidnap her. He
14 even offered her money for her to recant. She wanted Banks to leave her alone and maintained that
15 Banks raped her. She also stated that the video of her meeting with Parish where she recanted was
16 edited. Wanetta G. stated that the incident started off consensual and that she consented to the
17 touching and making out. Then Banks pulled down her pants, she pulled them back up, and he
18 pulled them down again. She said to herself in her own mind that she was not going to fight him and
19 "do what you gotta do and leave me alone." She stated that she never told Banks "no" even though
20 in many of her previous statements she said that she told Banks to stop.

21 Arguments

22 The AG states that it does not find Wanetta G. credible and finds Banks to be credible. Thus,
23 both the AG and Banks' attorneys make similar arguments as to why Banks has met his burden of
24 proof.

25 Wanetta G. has wavered as to whether the sexual encounter was consensual or
26 nonconsensual. These inconsistent statements cast doubt on her credibility. Wanetta G. originally
27 stated that she was forced to the stairwell and then raped. However, the following school year she
28 told Sherell Washington that the allegation was false and was done so that her mother would not
29 know that she was sexually active. In the two face-to-face meetings with Banks, Wanetta G. stated

1 that the accusations were false and everything was consensual. Following these statements,
2 Wanetta G. told the District Attorney's Office that she voluntarily went to the stairwell. Here, the
3 touching and kissing were consensual but then Banks raped her, although she never actually told
4 Banks "no" after their pants came off. The fact that Wanetta G. now admits that she never told
5 Banks "no" also contradicts many of her earlier statements.

6 Wanetta G. has also made numerous contradictory statements in the details of the event
7 which is another reason why she lacks credibility. Some of the contradictory details include whether
8 and how she was forced into the elevator; what was said and what occurred inside the elevator; how
9 they walked down the hallway; parts of the body that were touched and kissed; whether Banks forced
10 her to stroke his penis; and whether sodomy occurred. While some of these inconsistencies are
11 minor details, the inconsistencies taken as a whole make it seem as if Wanetta G. had trouble
12 recalling prior versions of the story rather than simply not remembering details. These
13 inconsistencies are especially troubling in light of her wavering statements about what was and was
14 not consensual.

15 It is also unclear whether Banks and Wanetta G. even had sexual intercourse. In addition to
16 their conflicting statements, Wanetta G. underwent a SART exam three hours after the incident but
17 the physical evidence does not show that there was sperm in Wanetta G.'s vagina despite her
18 statements that Banks ejaculated inside her. There were also no bodily fluids on Wanetta G.'s body.

19 The AG states that even if intercourse occurred, Banks was under the reasonable belief that
20 Wanetta G. was still consenting to the act.⁷ Wanetta G.'s latest statement shows that she voluntarily
21 went to the stairwell to touch and kiss Banks, including touching his exposed penis. Wanetta G. also
22 stated that she never said "no" to intercourse. Even though she pulled up her pants once, in light of
23 her other actions it is reasonable that Banks had the erroneous belief of consent. Since the sexual
24 encounter was not accomplished by fear or threat of injury, Banks had no way to know that Wanetta
25 G. was no longer consenting to intercourse based on Wanetta G.'s cooperation up to this point. A
26

27 ⁷ A woman who initially consents to intercourse may change her mind during the act. If she changes
28 her mind, and intercourse still occurs, it is without her consent if (1) she communicated through words
29 or acts that she no longer consented, (2) a reasonable person would have understood her words or
actions as a lack of consent, and (3) the defendant continued intercourse despite her objection. (Pen.
Code § 261.6 and CALCRIM No. 1000).

1 reasonable person would not have understood Wanetta G.'s lack of consent, thus Banks did not
2 commit rape.

3 The AG does not believe that the prior sexual assault allegations are harmful to Banks' claim.
4 Even if these allegations were proven to be true, Wanetta G.'s multiple varying statements in the
5 details of the event, whether intercourse even occurred, and the issue of consent, cast doubt on
6 whether anything she said can be believed. Her lack of credibility, coupled with Banks being
7 credible, overcomes any credibility doubts that his prior sexual assault allegations may show.

8 Additionally, Banks argues that he suffered a pecuniary loss. Banks received a full
9 scholarship to USC and would have majored in psychology and journalism, in addition to playing on
10 the football team.⁸ Banks was denied his opportunity to play in the National Football League (NFL).
11 After his exoneration, Banks tried out for numerous NFL teams in 2013. Banks did not make any
12 NFL roster and played on a United Football League team for a few months before that league folded.
13 Banks later received an NFL training camp invitation from the Atlanta Falcons and played pre-season
14 games, but he was released before the regular season began. Banks was said to have lost a lot in
15 training by being in prison and not playing football for a top college football program.

16 In addition to his lost football dreams, Banks had to register as a sex offender upon release
17 from prison. This affected his ability to gain employment. Finally, Banks suffered the separation
18 from his family and the mental anguish of being in prison as a rapist.

19 **Determination of Issues**

20 A person erroneously convicted and imprisoned for a felony may submit a claim to the Board for
21 pecuniary injury sustained as a result of his erroneous conviction and imprisonment.⁹ Penal Code
22 section 4903 provides that in order to state a successful claim for compensation, the claimant must
23 prove the following by a preponderance of the evidence:¹⁰

24
25 ⁸ USC had one of the best college football programs in the country at this time. They won the National
26 Championship in 2003 and 2004, and were runners-up in 2005. Banks presumably would have been
on these teams.

27 ⁹ Pen. Code, § 4900.

28 ¹⁰ *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation*
29 *and Government Claims Board* (2000) 152 Cal. App. 4th 1164. Preponderance of the evidence means

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; and

3 2. That he sustained a pecuniary injury through his erroneous conviction and imprisonment.

4 If the claimant meets his burden of proof, the Board shall recommend to the legislature that an
5 appropriation of \$100.00 per day of incarceration served subsequent to conviction be made for the
6 claimant.¹¹ A claimant's mere denial of the commission of the crime, or reversal of the judgment of
7 conviction on appeal may be considered by the Board, but it will not be sufficient evidence to carry the
8 claimant's burden in the absence of substantial independent corroborating evidence that the claimant is
9 innocent of the crime charged.¹² Here, Banks' claim should be approved because there is a
10 preponderance of the evidence that he did not commit the crime with which he was charged.

11 Most importantly, Wanetta G. has wavered as to whether or not she was raped. Wanetta G.
12 twice told Banks that she was not raped and that her accusations were false. One of these instances
13 was recorded on video and was told with a private investigator in the room. Wanetta G. thought about
14 putting her recantation in writing, but hesitated when she thought that she may have to repay her
15 \$750,000 civil settlement.¹³ Thus, she had a financial motivation to continue with her claim of being
16 raped. In her most recent statement to authorities, she still alleged that she was raped but recanted
17 her other accusations that she was forced into the elevator and stairwell and that the entire sexual
18 encounter was nonconsensual. The District Attorney's Office believed these recantations and did not
19 oppose Banks' habeas petition.

20 Wanetta G. has made numerous statements and each time details of the incident differ. While
21 some of these inconsistencies are minor and can be considered reasonable if she was a trauma victim,
22

23 "evidence that has more convincing force than that opposed to it." (*People v. Miller* (1916) 171 Cal.
24 649, 652.)

25 ¹¹ Pen. Code, § 4904.

26 ¹² Cal. Code of Regs., title 2, § 641. All regulations citations are to California Code of Regulations, title
27 2.

28 ¹³ In 2013, the Long Beach Unified School District obtained a default judgment against Wanetta G. for
29 \$2.6 million dollars, which constitutes the repayment of the settlement amount plus fees. Although
details of this case and judgment are unknown, it likely indicates that the court determined that
Wanetta G. lied when she accused Banks of kidnapping and raping her.

1 others are more serious. These include larger details such as whether sodomy occurred, whether she
2 stroked Banks' penis, whether she was pushed, pulled, or carried into the elevator, and what occurred
3 inside the elevator. These inconsistencies are more troubling in light of her wavering statements as to
4 whether or not she was raped.

5 The physical evidence does not conclusively show that intercourse occurred the way Wanetta
6 G. sometimes described it. Wanetta G. stated, in a few of her versions of the events, that Banks
7 ejaculated inside her vagina. However, even after undergoing a SART exam a few hours later that
8 day, no semen or P30 was found inside her vagina. There were also no bodily fluids found on Wanetta
9 G.'s body. While there could be plausible scientific reasons why semen was not found in Wanetta G.,
10 in light of her other inconsistencies, this raises more doubts on her credibility.

11 Based on Wanetta G.'s wavering statements regarding consent, her inconsistent statements
12 regarding details of the incident, the physical evidence, the District Attorney's Office conceding the
13 habeas petition, and the AG's conclusion that Wanetta G. is not credible, it is determined that Wanetta
14 G.'s story of being raped is not credible.


15 Further, even if intercourse occurred, Wanetta G. did not reasonably communicate an indication
16 that she did not consent to intercourse. Wanetta G.'s most recent statements were that she voluntarily
17 went with Banks to the secluded stairwell and she consented to touching and kissing. This included
18 touching his penis and him touching her breasts. Wanetta G. said that she never told Banks "no" when
19 he pulled down her pants, although she did pull up her pants the first time Banks pulled them down.
20 Having consented in the sexual encounter up to this point, it is unlikely that Banks had any reason to
21 believe that Wanetta G. did not consent to intercourse when he pulled Wanetta G.'s pants down.
22 These facts assist Banks in meeting his burden that he did not commit rape even if intercourse
23 occurred.

24 Based on the totality of the evidence, Banks has met his burden of proving that he did not
25 commit rape. Wanetta G.'s lack of credibility nullifies her testimony of being raped by Banks. Since
26 the SART exam and DNA evidence is inconclusive that intercourse occurred, there is a preponderance
27 of the evidence that Banks is innocent of the crime.
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29

1 Banks also suffered a pecuniary loss. Despite his statements and his NFL tryouts, it is purely
2 speculative, and statistically unlikely, that Banks would have become an NFL player had he not gone to
3 prison.¹⁴ However, Banks would have had the opportunity to play for, and further develop his skills, on
4 a prestigious college football team. This could have led to a pecuniary gain even if he did not make the
5 NFL. Additionally, attending USC would have assisted him in gaining employment. Based on these
6 factors, there is a preponderance of the evidence that Banks suffered a pecuniary loss due to his
7 imprisonment.

8 Banks' claim is approved and he is entitled to \$142,200 in compensation.

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10 Dated: February 9, 2015



Kevin D. Kwong
Hearing Officer
California Victim Compensation and
Government Claims Board

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28 ¹⁴ According to the National Collegiate Athletic Association, the governing body of college sports, only
29 1.6 percent of college football players are ever drafted into the NFL, and .08 percent of students who
ever play high school football are drafted into the NFL.

(https://www.ncaa.org/sites/default/files/Probability-of-going-pro-methodology_Update2013.pdf)