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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
7 **OF THE STATE OF CALIFORNIA**
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9 In the Matter of the Claim of:

10 **Quedellis Ricardo Walker**

11 Claim No. G537834

Proposed Decision
(Penal Code § 4900 et seq.)

12 A hearing on this claim was held on September 8, 2003, in Sacramento, California, by
13 David R. Shaw, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the
14 Victim Compensation and Government Claims Board (Board).¹

15 The claimant, Quedellis Walker, is represented by Alison M. Tucher, Attorney, Morrison &
16 Foerster, LLP. Ms. Tucher waived her appearance, waived 15 days' notice of the hearing pursuant to
17 Penal Code section 4902 and agreed to have an informal hearing conducted by the hearing officer upon
18 the written record. Mr. Walker did not attend the hearing.

19 Deputy Attorney General Michael Farrell represented the Attorney General in this matter.
20 Mr. Farrell also waived his appearance, waived 15 days' notice of the hearing pursuant to Penal Code
21 section 4902, and agreed to have an informal hearing conducted by the hearing officer upon the written
22 record.

23 **Findings of Fact**

24 1. On January 10, 1991, the body of Lisa Hopewell was discovered in the guest bedroom
25 of a Cupertino, California, home she shared with Robert Goforth. Forensic investigation disclosed
26 evidence that Ms. Hopewell had been bound and suffocated with duct tape and also stabbed.

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29 ¹ The parties waived the requirement of Penal Code section 4902 that the Board provide at least 15 days' notice of a hearing on a claim.

1 Mr. Walker was eventually arrested by the Santa Clara Sheriff's Department and subsequently charged
2 with Ms. Hopewell's murder.

3 2. Santa Clara County Sheriff's officers investigating the Hopewell murder scene
4 collected 31 latent fingerprints, cigarette butts, and the tip from a glove. Investigators subsequently
5 matched latent fingerprints located on the duct tape removed from Ms. Hopewell's body to a drug
6 dealer named Rahsson Bowers. Detectives arrested Mr. Bowers on March 7, 2001. No fingerprints or
7 other forensic evidence was discovered on Ms. Hopewell's body or at the crime scene that linked
8 Mr. Walker to the murder.

9 3. Upon being questioned by Santa Clara County Sheriff's detectives following his arrest,
10 Mr. Bowers initially denied any involvement in the murder and denied ever touching any duct tape.
11 The detectives then confronted Mr. Bowers with the fact that his fingerprints were recovered from the
12 duct tape on Ms. Hopewell's body and informed that the murder was a capitol crime. Mr. Bowers then
13 broke down and admitted his involvement in the murder and named Mr. Walker as his co-participant.
14 Mr. Bowers told the detectives that Ms. Hopewell came to East Palo Alto to talk to Mr. Walker, who
15 previously had a romantic relationship with Ms. Hopewell. Mr. Bowers claimed that Ms. Hopewell
16 located Mr. Walker while Mr. Bowers looked on and then all three went to Ms. Hopewell's house.
17 Bowers also claimed that Mr. Walker asked him to come along to Ms. Hopewell's house "in case
18 things got riled up." Mr. Bowers told detectives that upon arrival at Ms. Hopewell's house, two white
19 men armed with handguns jumped out of the closet and assisted Mr. Walker in killing Ms. Hopewell.
20 Mr. Bowers admitted that he participated in the murder but claimed that he was forced to do so by
21 Mr. Walker.

22 4. Following his confession naming Mr. Walker as the key actor in the crime, Mr. Bowers
23 was given a polygraph examination by a California Department of Justice polygraph examiner.
24 During the examination, Mr. Bowers changed his story and dropped his claim about the two white men
25 jumping out of the closet and stated that only he and Mr. Walker participated in the killing. No
26 polygraph examination was given to Mr. Bowers following his second version of events. Mr. Bowers
27 later at trial said that he invented the story about the two men jumping from the closet to take some of
28 the heat off him and Mr. Walker.

1 5. On March 9, 1991, Mr. Walker was interviewed and subsequently arrested by Santa
2 Clara County Sheriff's detectives. Mr. Walker denied any involvement in Ms. Hopewell's murder and
3 stated that he was with Jacqui Miller at a motel on the night of the crime. On March 14, 1991,
4 however, Jacqui Miller told detectives that she was not with Mr. Walker on the night of the crime.

5 6. In August 1991, Mr. Bowers and Mr. Walker were jointly tried for the murder of
6 Ms. Hopewell in the California Superior Court, Santa Clara County. Following three weeks of jury
7 trial and near to the close of the People's case, the prosecution announced a surprise plea agreement
8 with Mr. Bowers. In exchange for his promise of truthful testimony against Mr. Walker, Mr. Bowers
9 was allowed to plead guilty to second-degree murder. At the moment of his plea, Mr. Bowers was the
10 only one of the two connected to Ms. Hopewell's murder by any physical evidence and by his
11 confession. Mr. Walker, in contrast, had steadfastly maintained his innocence and was only implicated
12 in Ms. Hopewell's murder by the accusation made by Mr. Bowers and that of a supporting witness,
13 Sarah Dunbar.

14 7. Following his plea bargain, Mr. Bowers testified at trial that Mr. Walker and
15 Ms. Hopewell had an argument over something after which Mr. Walker ran and kicked Ms. Hopewell
16 in the back. Mr. Bowers also stated that Mr. Walker threw him a roll of duct tape and told him to tear
17 off a strip because he was going to kill Ms. Hopewell. Mr. Bowers testified that they both taped Ms.
18 Hopewell because he thought that Mr. Walker would kill him if he didn't help. When Ms. Hopewell
19 stopped moving, Mr. Bowers testified, Mr. Walker drew a knife out of his back pocket and stabbed her
20 twice. At trial, Sarah Dunbar testified that Mr. Walker was a violent person and had previously
21 threatened her with a knife and a gun.

22 8. At trial, the defense maintained that Mr. Walker did not commit the murder and was not
23 present at the crime scene. The defense presented the alibi testimony of Jacqui Miller who
24 contradicted her earlier statement to detectives. She testified that she and Mr. Walker were together
25 for a three-day period, including the day preceding the crime, the day of the crime and the following
26 day. Ms. Miller told the jury that she initially lied to the detectives because she believed that her
27 husband had sent them. Ms. Miller further explained that she afraid of what her husband would think
28 if he found out that she had spent several days with Walker at a motel. Room service records from a
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1 Holiday Inn confirmed that two persons, including Ms. Miller, occupied the motel room over a three-
2 day period, including the day of Ms. Hopewell's murder.

3 9. On December 10, 1991, the jury convicted Mr. Walker of the first-degree murder (Penal
4 Code section 187) of Ms. Hopewell and found true the special enhancement of personally using a
5 deadly weapon during the commission of the offense (Penal Code section 12022 (b)). On April 3,
6 1992, Mr. Walker was sentenced to a term of imprisonment of 26 years to life and remanded to the
7 custody of the California Department of Corrections.

8 10. In the years following Mr. Walker's conviction and incarceration, new evidence has
9 been developed which puts this case in an entirely new light. Several credible witnesses have surfaced
10 who state that Mark Swanson, not Mr. Walker, assisted Mr. Bowers in killing Ms. Hopewell.
11 Furthermore, conclusive evidence has been developed that the two key witnesses in the case presented
12 perjured testimony against Mr. Walker. Forensic evidence tests unavailable at the time of the
13 Hopewell murder and trial have recently been conducted, showing conclusively that Mr. Swanson was
14 present at the murder scene. Finally, no physical evidence has ever been developed to link Mr. Walker
15 to the Hopewell murder.

16 11. A witness that did not testify at the trial, Darryl Pugh, signed a declaration in 1992
17 stating that Mr. Swanson had admitted to him that he had assisted Mr. Bowers in killing
18 Ms. Hopewell, related precise details of the crime, and had said that Mr. Walker was innocent. When
19 Mr. Pugh was re-interviewed on October 10, 2000, by Santa Clara County District Attorney
20 Investigator Ray Medved, he confirmed the original information given in the 1992 statement.

21 12. On January 3, 2001, DA Investigator Medved interviewed inmate Ronald Davis in the
22 Salinas Valley State Prison. Mr. Davis stated that he was at Mr. Bower's residence on the day of the
23 Hopewell murder and heard Mr. Bowers say that he and Mark Swanson were driving to Cupertino
24 after asking him for a roll of duct tape. Mr. Davis stated that when Mr. Bowers and Mr. Swanson
25 returned later that evening, he saw some of Ms. Hopewell's property in their vehicle. Mr. Davis said
26 that he had been inside of Ms. Hopewell's home on prior occasions and recognized some of the
27 property that Mr. Bowers and Mr. Swanson returned with.

28 13. On March 12, 2003, DA Investigators Medved and Rimer interviewed Michael Black,
29 an inmate at the Lassen County Jail. Mr. Black, a cousin of Mr. Walker, stated that Ms. Hopewell was

1 a heavy drug user that had owed Mr. Bowers a large drug debt. He said that he saw Mr. Bowers and
2 Mr. Swanson leave Mr. Bowers' house at dusk on the day of the murder and return later that night with
3 several items, including appliances, lamps, dishes, and household items. Mr. Black also said that Mr.
4 Swanson told him that they went off to do a simple burglary and that Bowers flipped out.

5 14. On March 24, 2003, DA Investigator Medved interviewed Sammy Daniels, an inmate at
6 Vacaville State Prison. Mr. Daniels stated that he was a close friend of Mr. Bowers and that
7 Mr. Bowers had told him that Mr. Walker had nothing to do with the Hopewell murder. Mr. Daniels
8 stated that Mr. Swanson had told him one day following the murder that he was relieved that
9 Mr. Bowers had not implicated him in the murder and expressed shock that Mr. Bowers had instead
10 named Mr. Walker in the murder. In concluding the interview, Mr. Daniels said that "[Mr. Walker]
11 was 100% innocent."

12 15. The prosecution's only other non-law enforcement witness to testify against
13 Mr. Walker at trial, Sarah Dunbar, has recanted her testimony and admitted that she received a reduced
14 sentence on a drug charge to testify against Mr. Walker during trial. In a statement to DA Investigator
15 Medved on May 23, 2003, Ms. Dunbar said that she does not believe that Mr. Walker was ever violent
16 toward her; she was just angry at the time she testified because Mr. Walker left her for Ms. Hopewell.
17 Ms. Dunbar has also stated that she was a heavy drug user at the time of Mr. Walker's trial, that she
18 knew Ms. Hopewell around the time of the murder, and that Ms. Hopewell was scared of Mr. Bowers
19 because she owed him money.

20 16. On June 3, 2002, the Santa Clara County Crime Laboratory ran a test on the cigarette
21 butts collected from the Hopewell murder scene in 1991 and on a blood sample taken from
22 Mr. Swanson in 2002. The forensic tests, unavailable at the time of the 1991 trial, disclosed that
23 Mark Swanson was the source of the DNA recovered from trace saliva left on one of the cigarette
24 butts. No other possible explanation for Mr. Swanson's saliva being on cigarette butts located at the
25 murder scene has been produced as Mr. Swanson denied knowing Ms. Hopewell (or Mr. Bowers for
26 that matter).

27 17. On June 9, 2003, the Honorable Kevin J. Murphy, judge of the Santa Clara County
28 Superior Court ordered Mr. Walker's release into the custody of D.A. Investigator Medved from Mule
29 Creek State Prison, Ione, California.

1 18. On June 16, 2003, Assistant District Attorney Karen Sinunu of the Santa Clara District
2 Attorney's Office in responding to an "Order to Show Cause re Habeas Corpus" conceded "that (1)
3 newly discovered evidence establishes that [Mr. Walker] is actually and factually innocent of the crime
4 of which he was convicted and (2) the prosecutions key witness, Rahsson Bowers, and corroborating
5 witness Sarah Dunbar provided perjured testimony against [Mr. Walker] at trial and (3) the
6 prosecution did not inform the defense that the prosecution had promised a benefit to witness
7 Sarah Dunbar regarding an unrelated drug charge in exchange for her testimony."

8 19. On June 20, 2003, the Santa Clara County District Attorney's Office presented an
9 "Order Pursuant to a Petition for a Judicial Finding of Factual Innocence" to the Superior Court of the
10 State of California, County of Santa Clara, in which the District Attorney conceded that Mr. Walker
11 was factually innocent in the Hopewell murder.

12 20. On June 20, 2003, the Honorable Kevin J. Murphy, Judge of the Superior Court of
13 California, County of Santa Clara, issued an "Order of Writ of Habeas Corpus" and a "Order for
14 Finding of Factual Innocence" making the judicial determination that Mr. Walker was factually
15 innocent in the Hopewell murder.

16 21. On July 29, 2003, the Santa Clara County Grand Jury indicted Mark Anthony Swanson,
17 for the 1991 murder of Lisa Hopewell. Mr. Walker was one of 21 witnesses called by the Grand Jury
18 to testify.

19 22. On August 8, 2003, Deputy Attorney General Michael Farrell wrote to the Board on
20 behalf of the California Department of Justice. Mr. Farrell's letter details that he has reviewed the
21 Walker claim pursuant to Penal Code section 4900 and states that the Attorney General's Office has no
22 objection to Mr. Walker's claim.

23 23. Mr. Walker filed a timely claim under Penal Code section 4900 et seq. with the Board
24 on July 1, 2003, within six months of his release from imprisonment.

25 24. Mr. Walker was arrested for the Hopewell murder on or about March 9, 1991, and held
26 in continuous custody in the Santa Clara County Jail until he was ordered into the custody of the
27 Director of the Department of Corrections at the conclusion of his sentencing hearing held on April 3,
28 1992. Mr. Walker was in continuous State custody from April 3, 1992, until he was discharged from
29 the Department of Corrections on June 20, 2003.

1 25. Mr. Walker was self-employed as an auto mechanic at the time of his arrest in 1991 and
2 has since returned to his vocation after his release from prison in 2003. Upon his release from prison,
3 Mr. Walker was essentially penniless and homeless.

4 **Determination of Issues**

5 1. A person convicted and imprisoned for a felony may submit a claim to the Board for
6 pecuniary injury sustained through his erroneous conviction and imprisonment. (Pen. Code, § 4900.)
7 The claim must be filed within six months after release from imprisonment. (Pen. Code, § 4901.)
8 Mr. Walker's claim is timely.

9 2. The claimant must prove the following: (1) that the crime with which he was charged
10 was either not committed at all, or, if committed, was not committed by him; (2) that he did not by any
11 act or omission on his part, either intentionally or negligently, contribute to the bringing about of the
12 arrest or conviction for the crime; and (3) he sustained pecuniary injury through the erroneous
13 conviction and imprisonment. (Pen. Code, § 4903.) The Board may consider any information that it
14 deems relevant to the issues. (Cal. Code Regs., tit. 2, § 641.) The claimant has the burden of proving
15 his innocence by a preponderance of the evidence. (*Diola v. Board of Control* (1982) 135 Cal.App.3d
16 580, 588 fn 7, 185 Cal.Rptr.2d 511, 516 fn 7.)

17 3. A finding of factual innocence shall not be made unless the court finds that no
18 reasonable cause exists to believe that the person committed the offense. (Pen. Code, § 851.8(b).) To
19 obtain a finding of factual innocence, the person must establish that facts exist that "... would lead no
20 person of ordinary care and prudence to believe or conscientiously entertain any honest and strong
21 suspicion . . ." that the person is guilty of the charged crimes. (*People v. Mathews* (1992) 7
22 Cal.App.4th 1052, 1056, 9 Cal.Rptr.2d 348, 350, citing *People v. Scott M.* (1985) 167 Cal.App.3d 688,
23 699, 213 Cal.Rptr. 456.)

24 4. Paragraphs 8, 11- 16, and 18 - 21 of the Findings of Fact provide sufficient evidence
25 that Mr. Walker did not commit the crimes for which he was convicted.

26 5. Paragraphs 8, 11, 12 - 16, and 18 - 21 of the Findings of Fact provide sufficient
27 evidence that Mr. Walker did not by any act or omission on his part contribute to the bringing about of
28 his arrest or conviction for the crimes at issue.

1 6. Paragraph 25 of the Findings of Fact provide sufficient evidence that Mr. Walker
2 sustained pecuniary injury through his erroneous conviction and imprisonment.

3 7. If a claimant meets the requirement of Penal Code section 4903, the Board shall report
4 the facts of the case and its conclusion to the Legislature with a recommendation that the Legislature
5 make an appropriation to indemnify the claimant for his pecuniary injury. (Pen. Code, § 4904.) The
6 appropriation recommended shall be a sum equal to \$100 per day of incarceration served after the
7 claimant's conviction. (*Ibid.*)

8 8. Mr. Walker was incarcerated a total of 4,095 days from the conclusion of his sentencing
9 hearing and entry of judgment until his release from state prison on June 20, 2003. At \$100 per day,
10 this amounts to a total of \$409,500. Mr. Walker has requested a total of \$428,000 to additionally
11 compensate him for the time he spent in local custody prior to his sentencing hearing for a total period
12 of incarceration of 4,280 days. Penal Code section 4904 states that the amount of the appropriation
13 recommended shall "be a sum equivalent to one hundred dollars (\$100) per day of incarceration served
14 subsequent to the claimant's conviction" It is generally accepted that a conviction in a criminal
15 case in California only becomes complete upon the conclusion of the sentencing hearing and entry of
16 judgment, see generally Penal Code sections 1191 and 1202. However, it should be noted that a small
17 number of California decisions have allowed guilty jury verdicts and guilty pleas to be used *against*
18 criminal defendants for impeachment and penalty enhancements purposes in subsequent felony trials,
19 despite the fact that sentencing had not yet occurred. A plain reading of Penal Code section 4900
20 however indicates that the statute is designed to compensate a previously convicted person who was
21 (1) wrongly convicted and (2) incarcerated in a State prison. By necessity, these two events can only
22 occur once the sentencing hearing in the criminal case has been concluded and the defendant has been
23 remanded to the California Department of Corrections. Thus, it appears that Mr. Walker should only
24 be entitled to compensation for the post-conviction incarceration that he spent in State prison custody,
25 or 4,095 days for a total of \$409,500. Should the Board consider compensating Mr. Walker for the
26 time spent in local custody after the jury verdict, the calculation would run from December 10, 1991,
27 to June 20, 2003, a period of 4,210 days, for a total compensation amount of \$421,000. A reasonable
28 argument can be made that Mr. Walker should be entitled to be compensated for an additional 115
29 days from the jury verdict to the sentencing hearing. During this unusually lengthy period of local

1 incarceration, Mr. Walker's defense attorney filed a new trial motion based on some of the new
2 evidence that eventually exonerated him. Had Mr. Walker not sought to challenge his erroneous
3 conviction during this period of time between verdict and sentencing, he would have been transported
4 to state prison in a more expedited fashion and the appropriate number of days for compensation
5 would not be at issue.

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

12 The Board shall recommend that the Legislature make an appropriation in the amount of
13 \$409,500 to indemnify Mr. Walker for pecuniary injury sustained through his erroneous conviction
14 and imprisonment.
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17 Date: September 9, 2003

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19 DAVID R. SHAW
20 Hearing Officer
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7 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
8 **OF THE STATE OF CALIFORNIA**
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10 In the Matter of the Claim of:

11 **Quedellis Ricardo Walker**

12 Claim No. G537834
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Notice of Decision

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15 On September 19, 2003, the California Victim Compensation and Government Claims
16 Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-
17 referenced matter. The Decision became effective on September 19, 2003.
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19 Date: September _____, 2003

20 _____
21 JUDITH A. KOPEC
22 Supervising Staff Counsel
23 California Victim Compensation
24 and Government Claims Board
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