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8 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
9 **OF THE STATE OF CALIFORNIA**
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11 In the matter of the Claim of:

12 **Karl Landry**

13 Application No. G574375

Proposed Decision

(Penal Code § 4900 et seq.)

14 **Introduction**

15 A hearing on this claim was conducted on March 22, 2010, by Kyle Hedum, the Hearing Officer
16 assigned to hear this matter by the Executive Officer of the Victim Compensation and Government
17 Claims Board.

18 Milford Reynolds, Attorney at Law, represented Karl Landry, who appeared and testified at the
19 hearing. Landry seeks \$136,700.00¹ pursuant to Penal Code section 4900. Ryan McCarroll, Deputy
20 Attorney General, represented the California Department of Justice, Office of the Attorney General.

21 Subsequent to the hearing, it was discovered that the hearing was not recorded due to technical
22 errors. The parties to the hearing were then asked if they would allow the hearing officer to summarize
23 the proceedings after input from both parties. Mr. Reynolds responded in the negative, so a new
24 hearing was set and conducted by telephone on September 21, 2010.

25 After considering all the evidence, it is determined that Landry has not proven by a
26 preponderance of the evidence that he is innocent of the crime for which he was convicted and
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28 ¹ Calculated at the rate of \$100 per day of incarceration (1,367 days) served subsequent to conviction.

1 incarcerated. Therefore, it is recommended that Landry's claim for compensation pursuant to Penal
2 Code section 4900 et seq. be denied.

3 **Background²**

4 Tim O'Connell was working as the desk clerk at a Holiday Inn in San Jose on the morning of
5 January 18, 2002. He left the front desk counter for a moment around 5:30 a.m. Two African-
6 American men were at the counter when he returned, one on either side of it. The men were wearing
7 baggy clothing that was mostly blue, and the lower halves of their faces were covered by bandannas.
8 The man behind the counter was armed with a handgun and the other man also appeared to hold a
9 gun. The man behind the counter pointed his gun at O'Connell, threatened him, and directed him to
10 lay face-down on the floor. O'Connell heard the two men talk about where the security camera and
11 money were located. He also heard things being moved, and people going through cabinets, closet
12 areas, and the cash drawer. Although O'Connell did not actually see a third person, he heard
13 "enough activity and conversation to lead him to believe that there were three people."

14 O'Connell was told that he had 10 minutes to disable the security camera or he would be
15 dead. He told the men where the security system was, but said that he did not know how to disable
16 it. The men asked O'Connell where his things were and O'Connell said that they were in a back
17 room. One of the men brought O'Connell's backpack to him and dumped the contents on the floor in
18 front of him. The men took O'Connell's cell phone, a pager, two credit cards, driver's license, and a
19 small amount of cash. When they saw handcuffs, the men asked O'Connell if he was a policeman.
20 O'Connell responded that he worked store security. The men handcuffed O'Connell's hands behind
21 his back and told him "not to get up" and that "there was someone outside that was waiting to see if
22 he called the police."

23 The men left the back office and closed the door behind them. When O'Connell heard a guest
24 ask for assistance a few minutes after the men left, O'Connell got up and saw that the area was clear.
25 He radioed the only other employee on duty to come to the front desk, he was released from his

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27 ² The background is based on crime reports, investigations, trial testimony, an unpublished opinion, and
28 other case-related documents.

1 handcuffs, and he then called 911. It was later determined that approximately \$1,000.00 had been
2 taken from the hotel cash registers.

3 San Jose Police Officer Inman responded to the report of a robbery at the Holiday Inn. He
4 spoke with O'Connell, who described the suspects as two African-American males in their mid 20's.
5 One was approximately 5 feet 5 inches tall, 150 pounds, wearing a navy blue windbreaker with a
6 hood and holding a revolver. The other was approximately 5 feet 9 inches tall, 160 pounds, with a
7 bald head, wearing dark blue clothing and carrying a semiautomatic handgun. Subsequently,
8 Detective Mitchell reviewed the security tape taken from the Holiday Inn and talked with O'Connell by
9 telephone. The security tape showed that three men were involved in the robbery inside the hotel.

10 Based on information obtained from O'Connell that a female named Star Winters³ and one of
11 the suspects in the robbery had previously rented a room at the Holiday Inn, Detective Mitchell and
12 Detective Gutierrez went to her San Jose address on January 18, 2002, at approximately 3:00 p.m.,
13 in an unmarked car. When they arrived, they saw an African-American male sitting inside a black
14 Chevrolet Cavalier in front of the residence, and another African-American male walking towards the
15 car from the front of the residence as he talked on a cell phone. The officers made a U-turn so that
16 they could see the license plate on the Cavalier, and the man on the cell phone entered the
17 passenger side of the car and they drove off. The detectives pulled up behind the vehicle, which then
18 turned abruptly onto a sidewalk. Both men got out of the vehicle, leaving the doors open and the
19 engine running, and leaped over a six-foot concrete wall. The officers stayed with the Cavalier and
20 radioed other units in the area for assistance. Officers located O'Connell's driver's license on the
21 front passenger seat of the vehicle. Also inside the Cavalier was an Enterprise car rental agreement
22 for the vehicle in the name of Paul Dawson. Attached to the agreement was an addendum adding
23 Todd Sweat as a driver.

24 The impounded Cavalier was dusted for fingerprints on February 4, 2002. Lorenzo
25 Fosselman's, Todd Sweat's, and Karl Landry's prints were found on the vehicle. On February 9, 2002,

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28 ³ Winters was 18-years-old at the time of the robbery.

1 Detective Mitchell showed O'Connell the hotel security video recording of the robbery, stills taken from
2 the video, and photographic lineups. In one photographic lineup, O'Connell identified one of the
3 suspects as a person he had had problems with prior to the robbery.⁴

4 Detective Mitchell spoke with Winters and she told him that Fosselman sometimes stayed with
5 her at her home and sometimes the two of them rented a room at the Holiday Inn in her name.
6 Sweat would sometimes stay at the hotel with them. On January 17, 2002, Fosselman called Winters
7 at home and asked her for \$100.00. He arrived at her house between midnight and 2:00 a.m. on
8 January 18, 2002. While they were standing at the front door talking, Winters saw a black car outside
9 with three men inside it. She recognized Sweat, who was sitting in the front seat. She identified
10 Lewis as the person who was sitting behind the front passenger seat, but said that at that time she
11 had never seen or talked to him before and she did not know his name. She did not get a good look
12 at the fourth person, but she told Detective Mitchell that he was an older black gentleman.

13 Later on the afternoon of January 18, 2002, Fosselman went to see Winters at her home. She
14 was outside and down the block when she saw Fosselman run from her home and get into a car with
15 Sweat. They drove past Winters without stopping. Shortly after, Winters saw the Cavalier with police
16 around it and police in the vicinity of her home. Fosselman called her cell phone and said that he
17 was with Sweat and that they were hiding from the police. She agreed to meet them. Fosselman's,
18 Sweat's and Lewis's cell phone records also indicated that there were multiple calls made between
19 their phones and to Landry's phone in the hours before and after the robbery.

20 Winters, Fosselman, and Sweat stayed at a Motel 6 that night. Fosselman and Sweat
21 bragged that they had robbed a Holiday Inn with "Pep." Winters was told that a fourth person was
22 involved, but that he did not go inside the hotel. They said that nobody was at the front counter when
23 they arrived. They only had one gun, so they passed it back and forth between them. The clerk was
24 handcuffed with handcuffs they found in his backpack, and they took about \$2,000. Winters was also

25 ⁴ On January 6, 2002, O'Connell was approached at the front desk by an African-American man who
26 asked to receive some of his room deposit back. O'Connell told the man that he would not be able to
27 give the deposit back until the man checked out, and that most of the deposit had been spent on
28 room charges and movie rentals for the room, which was registered to Star Winters. This African-
American male was subsequently determined to be Fosselman.

1 told that they had the desk clerk's driver's license, but that the license fell out of Sweat's pocket when
2 he pulled out a gun as he ran from the car. After jumping over a wall, Sweat threw the gun in a
3 nearby dumpster.

4 Fosselman and Winters then went to Stockton and stayed at a hotel for a couple of nights.
5 There, Winters met both "Pep" and another guy for the first time. She identified this fourth person at
6 trial as Landry, but stated that she did not know him by name. She testified that Fosselman always
7 referred to Landry as "Slick," and to Lewis as "Pep." She further testified that while they were in
8 Stockton, Fosselman repeatedly bragged about the Holiday Inn robbery. However, he did not do so
9 in front of either Lewis or Landry. Fosselman told Winters that Landry was at the robbery and that he
10 was the fourth person involved. Winters stayed with Fosselman in Stockton until March 8, 2002,
11 when she returned home to San Jose. During her time in Stockton, she saw Landry and Lewis
12 together three or four times, and Landry alone one other time.

13 Sweat, Lewis, and Karl Landry were charged with second degree robbery⁵ and false
14 imprisonment.⁶ In addition, it was alleged that all three defendants⁷ committed the offenses for the
15 benefit of a criminal street gang⁸ and that Sweat personally used a handgun and that Lewis and
16 Landry were armed with a handgun.⁹ Lastly, it was alleged that both Sweat and Lewis had served a
17 prior prison term¹⁰ and that Landry had three prior serious felony convictions and four prior strikes.¹¹

18 Detective Sass testified at trial as an expert on African-American criminal street gangs. She
19 testified that the "408 MOB" gang is an ongoing criminal street gang, with the primary activities of
20 robbery, assault with a deadly weapon, possession of drugs for sale, and vehicle theft. She testified
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22 ⁵ Penal Code sections 211, 212.5(c).

23 ⁶ Penal Code sections 236, 237.

24 ⁷ Lorenzo Fosselman was also implicated in the robbery, and his case was resolved separately.

25 ⁸ Penal Code section 186.22(b)(1).

26 ⁹ Penal Code sections 12022.53(b), (e)(1); 12022(a)(1).

27 ¹⁰ Penal Code section 667.5(b).

28 ¹¹ Penal Code section 667(a), 1170.12.

1 that Fosselman and Dawson (the primary renter of the Cavalier) are members of the gang and that
2 they also have prior gang convictions. She testified that Sweat is also an admitted member of the
3 408 MOB, and that members and associates of the 408 MOB wear blue clothing. In January of 2002,
4 the gang had approximately 20 validated members.

5 Detective Sass also testified that Landry was one of the original founders of the "Swamp
6 Boys" gang in San Jose, which later became known as "El Rancho Verde." El Rancho Verde is
7 another ongoing criminal street gang affiliated with the "Crips," whose members also wear blue-
8 colored clothing. According to Sass, Lewis is a member of "4400 Block," a subset of the "North Side
9 Gangster Crips," a criminal street gang situated in Stockton. Detective Sass testified that, in her
10 expert opinion, the robbery at the Holiday Inn was committed in association with and for the benefit of
11 a criminal street gang.

12 On February 11, 2004, defendants Sweat, Landry, and Lewis were found guilty of second
13 degree robbery and false imprisonment. Sweat and Lewis were also convicted of possession of a
14 firearm by a felon. In addition to the convictions, the jury determined that the defendants committed
15 the offenses for the benefit of a criminal street gang, a principal personally used a handgun in the
16 commission of the robbery, and that Sweat and Lewis personally used a handgun in the commission
17 of the false imprisonment. The court also determined that both Sweat and Lewis had served a prior
18 prison term and that Landry had three prior serious felony convictions and four prior strikes. On May
19 11, 2004, the court sentenced Landry to a prison sentence of 55 years to life, Lewis to 24 years in
20 prison, and Sweat to 26 years in prison.

21 In an unpublished opinion, the Court of Appeal in the Sixth Appellate District determined that
22 Landry's conviction should be reversed because there was insufficient evidence to support a
23 conviction for the robbery under the prosecution's theory that Landry was an aider and abettor. Other
24 than the testimony of Star Winters that Sweat told her that there was a fourth person involved, and
25 Fosselman saying that Landry was "there," the prosecution presented no evidence that Landry was
26 involved in the Holiday Inn robbery. The court noted that the surveillance tape from the Holiday Inn
27 showed only three perpetrators of the robbery, that Sweat named only three people involved in the
28 robbery (himself, Fosselman, and Lewis).

1 The court also held that the evidence used to convict Landry was problematic from two
2 perspectives. First, it was inadmissible as statements by a codefendant and an accomplice and
3 because the statements do not fall within an exception to the hearsay rule. In addition, even if the
4 statements were admissible against Landry, when viewed in the light most favorable to the
5 prosecution, the evidence was not sufficient to support Landry's robbery conviction. Landry was
6 convicted by little more than innuendo and guilt by association. Without Fosselman's statements
7 implicating Landry, the record contains very little evidence linking Landry with the crimes. Indeed, the
8 totality of the evidence is and can be summed up as follows: there were telephone calls from
9 Fosselman, Sweat, and Lewis, to Landry in the hours before and after the hotel robbery; Winters saw
10 Lewis and a fourth person, an older gentleman, in the Cavalier with Fosselman and Sweat just a few
11 hours before the hotel robbery, but did not identify that person as Landry; as Fosselman, Sweat and
12 Lewis were leaving the hotel after the robbery, one of them told the clerk not to call the police
13 because somebody was outside watching to see if he did; the hotel clerk's driver's license was found
14 inside the Cavalier and Landry's fingerprint was found on the Cavalier, which was abandoned by
15 Sweat and Fosselman just hours after the robbery occurred; and Landry is Lewis's uncle.

16 **Hearing Testimony**

17 Landry testified to the following information at his hearing for compensation. He was not
18 involved in the robbery of the Holiday Inn. He also was not in the vicinity of the Holiday Inn at the
19 time it was being robbed. He testified that he has no gang affiliations and that he was not a gang
20 "shot caller" as he was described in his criminal trial. Landry does not know why Fosselman told
21 Winters that he was involved in the robbery. Landry also suspects that Winters implicated him in the
22 Holiday Inn robbery because she was facing drug and other charges at or about the time of the
23 robbery. According to the appellate record, Winters was facing drug and fraudulent check charges at
24 the time she testified at Landry's trial.

25 Landry testified that he believes his fingerprint was on the Cavalier because he had been
26 given a ride to his home in Modesto from Stockton about two days after the robbery. In response to a
27 follow-up question about the Cavalier, Landry stated that "that car was not in the robbery." When
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1 questioned as to his knowledge of this fact, he corrected himself and said that he believes that the
2 Cavalier was not used in the robbery.

3 Landry also testified that his numerous tattoos had nothing to do with gang affiliation. The
4 tattoos included "Karl," "Slick," a few symbols, and "Swamp Boys." The "Swamp Boys" tattoo was
5 obtained when he was 13 or 14 years old and living in Louisiana. Landry said that this tattoo also
6 had no gang connection. However, his denial flew in the face of Detective Sass who testified at
7 Landry's criminal trial that Landry was one of the original founders of the "Swamp Boys" gang in San
8 Jose, which later became known as "El Rancho Verde." She explained that "El Rancho Verde" is
9 another ongoing criminal street gang affiliated with the "Crips," whose members also wear blue-
10 colored clothing.

11 **Attorney General's Argument**

12 The Attorney General argued that the evidence from Landry's criminal trial clearly supported
13 the prosecution's theory that Landry was an aider and abettor to the Holiday Inn robbery. The
14 evidence indicated that Landry was the lookout and "getaway" driver for the robbery, waiting in a car
15 while the robbery took place. The record showed that telephone calls were made back and forth
16 between Fosselman, Sweat, and Lewis, and from them to Landry in the hours before and after the
17 hotel robbery. Winters testified that she saw Lewis and a fourth person, an older African American
18 gentleman, in the Cavalier with Fosselman and Sweat just a few hours before the hotel robbery.

19 The hotel clerk's driver's license was found inside the rented Cavalier and Landry's fingerprint
20 was found on the Cavalier, abandoned by Sweat and Fosselman just hours after the robbery
21 occurred. Fosselman and Sweat bragged to Winters shortly after the robbery, and before they were
22 arrested, that they committed the robbery with Lewis. They told Winters how they committed the
23 robbery and that a fourth person was involved in the robbery who did not go inside the hotel. Their
24 statements about the robbery were consistent with the victim's testimony and the hotel security
25 videotape. Winters also testified that Fosselman told her that Landry was with him at the robbery and
26 that Landry was the fourth person.

27 During cross-examination by the AG, Landry admitted that he had previously been convicted
28 of assault with a deadly weapon in 1980, car theft in 1985, first degree burglary in 1986, two counts of

1 attempted robbery in 1988, drug offenses in 1984, 1991, and 1996, and evading a peace officer in
2 1993.

3 The AG also presented evidence¹² that on the evening of August 15, 2009, a police officer
4 observed Landry driving a vehicle with the headlights off.¹³ When the officer tried to tell Landry to
5 turn on his headlights, Landry drove his vehicle into a parking lot of an apartment complex and
6 Landry got out of his vehicle and fled the area on foot. Landry's shoe became stuck in a fence,
7 allowing the officer to get another look at him prior to Landry fleeing the area. A search of the area
8 for Landry was not successful.

9 Landry's vehicle was searched, and the officer located the work order in addition to an open
10 container of beer and a zip-lock bag containing five smaller bags. The contents of the smaller bags
11 tested positive for methamphetamines.

12 On December 3, 2009, Landry was apprehended at his residence on a felony warrant relating
13 to the August 15, 2009, incident.¹⁴ However, the apprehension did not occur smoothly. Once Landry
14 was handcuffed, the officer removed one handcuff so that Landry could give his watch to his daughter
15 prior to being taken to jail. Once his wrist was freed, he broke free and ran. An officer deployed a
16 Taser that was not effective, but after a foot chase, Landry was taken into custody.

17 Findings

18 A preponderance of the evidence supports the following findings:

- 19 1. The Cavalier was impounded by the police in the afternoon on January 18, 2002.
- 20 2. The Cavalier was dusted for fingerprints on February 4, 2002, and Fosselman's, Sweat's,
21 and Landry's prints were found on the vehicle.
- 22 3. Fosselman and Sweat told Winters that they had robbed a Holiday Inn with
23 Lewis, whose nickname is "Pep."

24 ¹² San Jose Police Department crime report dated August 15, 2009.

25 ¹³ The officer subsequently determined that the driver of the vehicle was Landry after the vehicle was
26 searched and a smog check work order in the name of Karl Landry was located. The officer verified
27 Landry's identity by looking at Landry's booking photograph that showed visible tattoos on his neck that
were the same as seen when the officer first made contact.

28 ¹⁴ San Jose Police Department crime report dated December 4, 2009.

- 1 4. Fosselman told Winters that Landry or "Slick" was the fourth person in the robbery of the
- 2 Holiday Inn.
- 3 5. Landry's nickname is "Slick."
- 4 6. Landry's testimony was not credible.
- 5 7. Landry was convicted of robbery on February 11, 2004.
- 6 8. Landry was sentenced to state prison on May 11, 2004.
- 7 9. Landry's conviction was overturned for insufficiency of the evidence.
- 8 10. Landry was released from prison on November 9, 2007.
- 9 11. Landry served 1,367 days in prison subsequent to conviction.

10 **Determination of Issues**

11 Penal Code section 4903 establishes the requirements for a successful claim for an
12 erroneously convicted felon. A person erroneously convicted and imprisoned for a felony may submit
13 a claim to the Board for pecuniary injury sustained as a result of his erroneous conviction and
14 imprisonment.¹⁵ In order to be successful on such a claim, a claimant must prove the following, by a
15 preponderance of the evidence:

- 16 (1) that the crime with which he was charged was either not committed at all, or, if committed,
- 17 was not committed by him;
- 18 (2) that he did not by any act or omission on his part, intentionally contribute to the bringing
- 19 about of the arrest or conviction for the crime; and
- 20 (3) that he sustained a pecuniary injury through his erroneous conviction and imprisonment.¹⁶

21 "Preponderance of the evidence" means evidence that has more convincing force than that opposed
22 to it.¹⁷ If a claimant meets his burden of proof, the Board shall recommend to the legislature that an
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25 ¹⁵ Pen. Code, § 4900.

26 ¹⁶ Pen. Code, § 4903, *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v.*
27 *Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4th 1164.

28 ¹⁷ *People v. Miller* (1916) 171 Cal. 649, 652.

1 appropriation of \$100 be made for each day of incarceration served subsequent to the claimant's
2 conviction.¹⁸

3 In reaching its determination of the merits of the claim, the Board may consider the claimant's
4 mere denial of commission of the crime for which he was convicted, reversal of the judgment of
5 conviction on appeal, acquittal of claimant on retrial, or the decision of the prosecuting authority to
6 retry claimant for the crime. However, those factors will not be deemed sufficient evidence to warrant
7 the Board's recommendation that a claimant be indemnified in the absence of substantial
8 independent corroborating evidence that the claimant is innocent of the crime charged.¹⁹ The Board
9 may also consider as substantive evidence testimony of witnesses the claimant had an opportunity to
10 cross-examine, and evidence to which the claimant had an opportunity to object, admitted in prior
11 proceedings relating to the claimant and the crime with which he was charged. Finally, the Board
12 may also consider any information that it may deem relevant to the issue before it.²⁰

13 On or about July 17, 2007, the Court of Appeal, Sixth Appellate District, reversed Landry's
14 conviction, citing insufficiency of the evidence. Because the court in *Tennison*²¹ held that a reversal
15 based on insufficiency of the evidence is the functional equivalent of an acquittal at trial, it is
16 determined that the Board can consider Landry's "acquittal" in reaching its determination of the
17 merits.²² However, an acquittal will not be deemed sufficient evidence to warrant the Board's
18 recommendation that a claimant be indemnified in the absence of substantial independent
19 corroborating evidence that the claimant is innocent of the crime charged.²³

20 Landry testified at the hearing for compensation that he was not involved in the robbery of the
21 Holiday Inn. He testified that he was not waiting outside the Holiday Inn while the hotel was being

22 ¹⁸ Pen. Code, § 4904.

23 ¹⁹ Cal. Code Regs., tit. 2, § 641.

24 ²⁰ Cal. Code Regs., tit. 2, § 641.

25 ²¹ *Tennison v. Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4th 1164,
26 1179.

27 ²² Cal. Code Regs., tit. 2, § 641.

28 ²³ Cal. Code Regs., tit. 2, § 641.

1 robbed. He claimed that he did not do anything to warrant his arrest and subsequent conviction. He
2 denied any affiliation with criminal street gangs. He also claimed that that his fingerprint on the
3 Cavalier was incidental and occurred when he was given a ride to Stockton from Modesto. Landry
4 testified that he believes that he was given this ride about two days after the robbery. This belief is
5 obviously in error because the Cavalier was impounded by police the afternoon of the Holiday Inn
6 robbery. When he was questioned by the AG on the issue of his fingerprint on the Cavalier, Landry
7 issued the spontaneous statement that "that car was not in the robbery."

8 Landry has multiple felony-strike convictions for crimes of assault with a deadly weapon, first
9 degree burglary, attempted robbery, automobile theft, and drug offenses. Although many of these
10 prior felonies occurred a number of years ago, Landry continues to be convicted of new crimes, the
11 most recent being the evasion of a peace officer that resulted in a misdemeanor conviction in 2009.

12 On August 15, 2009, following what might have been just a simple traffic stop, Landry drove
13 his vehicle into a parking lot of an apartment complex, got out of his vehicle, and fled the area on foot.
14 Landry's vehicle was searched, and a work order in Landry's name was discovered in the glove box.
15 In addition, an open container of beer and a zip-lock bag containing five smaller bags was in the
16 vehicle. The contents of the smaller bags subsequently tested positive for methamphetamines.

17 On December 3, 2009, Landry was apprehended at his residence on a felony warrant relating
18 to the August 15, 2009, incident. When an officer removed one handcuff so that Landry could give
19 his watch to his daughter prior to being taken to jail, he broke free and ran. After a foot pursuit,
20 Landry was taken into custody. This evidence of past and present criminal activity clearly
21 demonstrates Landry's lack of accountability for his wrongful acts.

22 Landry also did not produce any witnesses to testify on his behalf. He could have presented
23 testimony or other evidence attesting to his good character or to other traits or characteristics that
24 could lead to a determination that his testimony was truthful. The only affirmative evidence presented
25 by Landry at the hearing was his testimony that he was innocent of the crime for which he was
26 imprisoned. Landry did not produce any evidence as to his whereabouts at or about the time of the
27 crime. He did not produce any evidence that Fosselman and Sweat were not telling the truth when
28 they claimed that Landry was the fourth person involved in the Holiday Inn robbery. He did not

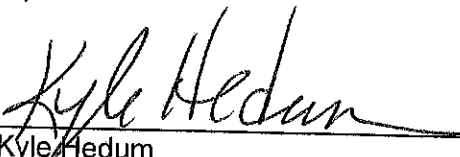
1 present evidence, other than that Winters was facing criminal charges herself, that Winters lied when
2 she testified about Landry's connection to the robbery. He did not provide proof that she was
3 rewarded for implicating him in the robbery.

4 Landry's testimony is determined to be not credible based on his criminal history and based
5 on his spontaneous statement that the Cavalier was not used in the robbery, a statement he quickly
6 corrected once it was questioned by the hearing officer. Since Landry's testimony is given little if any
7 weight, his self-serving testimony cannot be construed to be substantial, independent corroborating
8 evidence supporting his assertion of innocence.

9 Thus, it is determined that Landry has not met his burden of proving by a preponderance of
10 the evidence that he did not commit the crime for which he was incarcerated. Whether he
11 intentionally contributed to the bringing about of his arrest or conviction for the crime or whether he
12 incurred pecuniary injury as a result of his conviction is rendered moot by the determination that
13 Landry did not meet his burden of proving by a preponderance of the evidence that he did not commit
14 the crime for which he was incarcerated. Therefore, these additional factors need not be addressed.

15 Landry's claim under Penal Code section 4900 et seq. is denied.

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17 Date: November 18, 2010


18 Kyle Hedum
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:

Karl Landry

Claim No. G574375

Notice of Decision

On January 20, 2011, 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 20, 2011



Tisha Heard
Board Liaison
Victim Compensation and
Government Claims Board