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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 Application of:

12 **Rafael Madrigal, Jr.**

13 Application No. G600292

Proposed Decision

(Penal Code § 4900 et seq.)

14 **Introduction**

15 A hearing on this claim for compensation as an erroneously convicted person was conducted
16 on June 3, 2013, by James Reinmiller, the Hearing Officer assigned to hear this matter by the
17 Executive Officer of the Victim Compensation and Government Claims Board. Claimant Rafael
18 Madrigal, Jr. (Madrigal), requests payment of \$281,700.00 as compensation for the 2,817 days he
19 served in prison from the day of his conviction on January 18, 2002, until his release from prison on
20 October 6, 2009. Madrigal appeared and testified at the hearing and was represented by attorney
21 Alexander Simpson. Deputy Attorney General (AG) Sean McCoy represented the California
22 Department of Justice, Office of the Attorney General.

23 After considering all the evidence, it is determined that Madrigal has not proven by a
24 preponderance of the evidence that the crime with which he was charged was not committed by him.
25 Therefore, it is recommended that Madrigal's claim for compensation pursuant to Penal Code section
26 4900 et seq. be denied.

1 **Summary of Procedure and Evidence¹**

2 During the summer of 2000, members of the rival Marianna Maravilla (Marianna) and Ford
3 Maravilla (Ford) gangs of East Los Angeles engaged in a series of retaliatory attacks, leading to the
4 shooting of Ricardo Aguilera (Aguilera). The attacks began on May 27, 2000, when Marianna gang
5 member Steve "Pollo" Romero was shot and killed by unknown Ford gang members. Marianna
6 retaliated, resulting in the shooting death of Ford gang member Marco "Fat Boy" Torres on June 29,
7 2000. The Aguilera shooting followed six days later.

8 On the afternoon of July 5, 2000, Aguilera was visiting Michael and Carlos Moreno in East Los
9 Angeles. Sometime between 3:15 and 3:20 p.m., Michael and Aguilera were outside when a truck
10 and a car slowed in front of the Moreno's apartment. Michael and Aguilera ran inside and Michael
11 told his mother that Ford gang members were outside planning to do something. Michael indicated
12 that "Go-Go" later identified as Francisco Olivares (Olivares), Madrigal's co-defendant, was one of the
13 individuals in the truck.

14 Michael, Carlos and Aguilera went outside to bring in the family's other children. While they
15 were outside, the truck stopped at the apartment's driveway and the passenger repeatedly asked
16 Aguilera, "Where are you from?" Aguilera understood that the passenger was asking for his gang
17 affiliation and replied three times that he was from "nowhere." Aguilera turned and ran towards the
18 apartment. The passenger then fired several shots from the car, one of which hit Aguilera in the back
19 of the head. Aguilera survived the shooting.

20 Shortly after the shooting, Aguilera was shown a photo array containing photographs of 10
21 different individuals, one of whom was Madrigal. Aguilera identified Madrigal and wrote "lighter skin,"
22 because he thought Madrigal looked like the person who shot him only with lighter skin. Aguilera
23 then clarified that the person's photo he identified was the person he thought was the driver of the
24 vehicle used to commit the crime, and not the shooter. In addition, Carlos was shown approximately
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27 ¹ The summary is based on a published appellate opinion, hearing testimony, and claim-related
28 documents provided by Madrigal and the AG.

1 100 photos of members of the Ford gang. Carlos identified Madrigal as the shooter.² Based on
2 these identifications, Madrigal was arrested on July 20, 2000. On January 5, 2001, the state charged
3 Madrigal with the attempted murder of Aguilera. The charges also alleged firearm use and gang
4 enhancement. The state added Olivares as a co-defendant on the same charges, and also charged
5 Olivares with assault with a deadly weapon. On January 18, 2002, after four days of deliberations
6 following a three-day trial, the jury found Madrigal and Olivares guilty of all charges.

7 In subsequent appellate hearings, Madrigal testified that Manuel Mendoza, a gang member,
8 did not actually admit to shooting Aguilera. In addition, Madrigal testified that Olivares had told him
9 who Olivares had borrowed the truck used in the shooting from. Further, a transcript of a
10 surreptitiously taped jailhouse conversation that occurred between Olivares and Olivares's girlfriend
11 was submitted into evidence. In the conversation, Olivares told his girlfriend that Madrigal had
12 enlisted his brother, Victor, to "find out who really did it," i.e., who really shot Aguilera. This angered
13 Olivares, who believed this to be "none of [Madrigal's] business. Olivares also said that Madrigal
14 "looks at me or he looks at Dreamer [Manuel Mendoza's³ gang moniker] you know what I'm saying?
15 So he either already knows but...he don't know shit you know, he don't know what happened..."
16 Finally, Victor Madrigal, Madrigal's brother, testified that because of the 4th of July holiday, Madrigal
17 did not clock out and that Madrigal had told him he would have his boss correct the mistake.

18 Madrigal brought a writ of habeas corpus in federal court based on ineffective assistance of
19 counsel. On September 3, 2009, the District Court granted the writ and required that Madrigal be
20 brought to retrial within sixty (60) days of the date the judgment or alternatively be discharged from
21 the adverse consequences of the conviction and judgment in this case. The District Attorney began
22 investigating the case and requested and received several continuances in deciding whether to re-try
23 Madrigal. On July 29, 2011, when the District Attorney made another request for a continuance due
24 to follow-up investigation, the Court denied the request and dismissed Madrigal's charges.

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26 ² However Carlos later failed to identify Madrigal as the shooter at a live lineup in which Madrigal
27 participated.

28 ³ Manuel Mendoza is a fellow gang member of Madrigal and Olivares.

1 On February 11, 2011, while the District Attorney was investigating the case for possible re-
2 trial, a Deputy District Attorney interviewed Olivares in prison. During the interview Olivares stated
3 that Madrigal was involved in the Aguilera shooting. In addition, Olivares reported that Madrigal had
4 retrieved the gun used to shoot Aguilera from Madrigal's sister's home because members of the gang
5 often stored things there. Finally, Olivares told the District Attorney that Madrigal overheard him tell
6 his girlfriend about an incident where someone attempted to shoot at a fellow gang member and not
7 about the Aguilera shooting.

8 **Trial Testimony**

9 **Carlos Moreno**

10 Moreno identified Madrigal at trial as the shooter. Moreno testified that when the shooting
11 occurred, he was standing approximately 18 feet away from the shooter. Moreno described the
12 shooter as a "little gang banger" in his early twenties – certainly no older than 25 years of age – who
13 had a mustache and dark goatee, wore a baseball cap with an orange brim, and appeared to have a
14 cleanly shaved head. Moreno also testified that he did not see a gun at the time of the shooting and
15 never saw the shooter holding or firing a gun.

16 **Salvador Huevo**

17 Huevo testified that he was approximately 25 feet away when he saw the shooter lean out
18 with a gun. He ducked and then ran away when he saw the gun; consequently he did not see the
19 shooter fire the gun. Huevo testified that he saw the shooter's face and identified Madrigal in court as
20 the shooter. Huevo also testified that he had identified Madrigal in a photo line-up⁴ and that the
21 shooter had a goatee.⁵ Huevo further described the shooter as having a shaved head, but did not
22 recall the shooter or anyone else wearing a white baseball cap with an orange brim.

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26 ⁴ During subsequent trial testimony, evidence was provided that Huevo did not participate in a photo
line-up that included Madrigal's photo.

27 ⁵ According to Huevo's description of the shooter's facial hair, the shooter did not have a goatee, but
28 rather a long mustache, often referred to as a "Fu Manchu" mustache.

1 Michael Delmuro

2 Los Angeles County Sheriff's Detective Michael Delmuro, an expert on East Los Angeles
3 gangs who had investigated the Aguilera shooting, testified that, as of July 5, 2000, Madrigal was a
4 Ford gang member with the nickname "Mugsy." In addition, Delmuro testified that it was common for
5 a single weapon, such as the .38 caliber revolver used in the Aguilera shooting, to be passed among
6 members of the same gang. Finally, Delmuro testified that Madrigal had put his life and the well-
7 being of his family in jeopardy by implicating Mendoza.

8 Steve Finley

9 Finley, Madrigal's direct supervisor, testified that Madrigal was employed at Proactive
10 Packaging in Rancho Cucamonga, CA, where Madrigal operated a lamination machine. Finley
11 testified that if Madrigal had left before 3:00 p.m. on July 5, 2000, production would have stopped.
12 Since production had not stopped, Madrigal must have been at work at the time of the shooting.
13 However, production documents from July 5, 2000, produced at trial showed ongoing production on
14 Madrigal's laminating machine only until 1:40 p.m.; therefore Madrigal could have left work and
15 production would have not stopped.

16 Finley also testified that Madrigal and his brother, Victor Madrigal, carpooled to work every
17 day, clocked in and clocked out at the same time, and that Victor had clocked out at 3:30 p.m. on July
18 5, 2000. Finley testified that he did not specifically remember whether Madrigal and Victor left
19 together on July 5, 2000. Instead, Finley signed Madrigal's time card, most likely on July 6, 2000,
20 indicating Madrigal had been at work on July 5, 2000, until 3:32 p.m. Finley believed that he signed
21 Madrigal's time card at Victor's request.

22 Finley also testified that an employee could leave up to one hour before the end of their shift
23 without Finley noticing the absence; consequently he could not be absolutely certain that Madrigal
24 had in fact worked his entire shift that day.

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1 Ricardo Pimienta

2 Ricardo Pimienta, Madrigal's cousin, testified that Madrigal did not have a goatee when he
3 attended his wedding on July 1, 2000, four days before the Aguilera shooting.⁶

4 Veronica Madrigal

5 Veronica Madrigal, Madrigal's wife, testified that she believed the picture of Madrigal used in
6 the photo line-ups depicted how Madrigal looked when he was about sixteen-years-old. Veronica
7 also testified that, although he had been a Ford gang member in high school, Madrigal was no longer
8 a gang member. Finally, Veronica testified that, at a birthday party at Madrigal's sister's house in
9 May 2000, Madrigal had spoken to Ford gang members.

10 Habeas Corpus Writ Testimony and Court Findings

11 Rafael Madrigal, Jr.

12 Madrigal testified that in May 2000, he saw Manuel Mendoza and other Ford gang members
13 at his sister's home in East Los Angeles, where he often visited on weekends. Madrigal testified that
14 Mendoza had a gun and left with some other gang members. Mendoza returned after 20 minutes
15 and reportedly told Madrigal to get off the street because he had just "lit up a dude [Steve "Pollo"
16 Romero] from Marianna at Baby's." Madrigal testified that he was again at his sister's home in June
17 2000 when he saw Mendoza and another gang member who told Madrigal to leave because "they
18 had just blasted at Largo," a.k.a. "Froggy," a former Ford gang member who had become a Marianna
19 gang member. Madrigal testified that he was also at his sister's home on the day that Marco "Fat
20 Boy" Torres, a Ford gang member, was killed. Mendoza and several other Ford gang members
21 whom Madrigal saw there reportedly discussed Torres's killing as retaliation for Romero's killing.

22 Madrigal then testified about his interactions in jail with Mendoza and Olivares. Madrigal
23 testified that, sometime between July and December 2000, he was present during a conversation
24 between Mendoza and Olivares in which they discussed a gun Mendoza had hidden and that
25 Madrigal later believed to be the gun used in the Aguilera shooting. Madrigal further testified that,

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27 ⁶ Pimienta authenticated several pictures of Madrigal taken at the wedding, which Pimienta described
28 as depicting Madrigal without a goatee.

1 sometime in the summer or fall of 2001, he observed Mendoza and Olivares arguing about the gun.
2 Olivares reportedly reproached Mendoza for getting arrested with the .38 caliber revolver after he told
3 Mendoza to get rid of it.⁷ Madrigal also testified that Mendoza later told Olivares that if he had known
4 that Olivares was "going to act this way [about the gun] [Mendoza] would have never done nothing
5 with him." Madrigal interpreted this as an admission by Mendoza that he shot Aguilera.

6 Madrigal testified that prior to trial, he had told his attorney that Mendoza was Aguilera's
7 shooter, but had not informed his attorney why he believed this. Madrigal testified that he had failed
8 to inform his attorney because: (1) Olivares threatened that Madrigal would be stabbed if he did so,
9 and (2) Madrigal was at work at the time of the shooting, was demonstrably innocent, and therefore
10 had no reason to implicate anybody else for the crime. Madrigal testified that he finally informed his
11 attorney of the jailhouse conversations and arguments between Mendoza and Olivares in March
12 2003.

13 Robert Howards

14 Robert Howards, the manager of the plant Madrigal worked at, testified that Madrigal was at
15 work at least until 3:00 p.m. on July 5, 2000. Howards explained the mechanics of Madrigal's job and
16 interpreted Madrigal's production sheet for July 5, 2000. Madrigal was assigned as a laminating
17 machine operator. Howards explained that the records for July 5, 2000, showed that Madrigal
18 stopped laminating boxes for one order at 1:20 p.m. and then began pre-folding boxes for another
19 order from 1:50 p.m. until 3:00 p.m., approximately 15 minutes before the shooting occurred.

20 Madrigal would not have stopped working on an order in the absence of a supervisor's instructions.
21 The production sheet was required to be filled out and turned in by the person who operated the
22 machine. Further, Howards characterized himself as a "hands on" manager. He stated that he was
23 on the production floor a couple of times an hour and if there was a problem, he was there all of the
24 time. He also described a series of controls which governed employee behavior and attendance,
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27 ⁷ On June 8, 2001, Mendoza was found to be in possession of the .38 caliber revolver that was used in
28 the Aguilera shooting.

1 including time cards, the production sheets, the small number of employees, termination for leaving a
2 shift early, and direct supervision by Finley.

3 Victor Madrigal

4 Victor Madrigal, Madrigal's brother, testified that he carpoled with Madrigal every day to work
5 and that he worked as Madrigal's assistant on the laminating machine. Victor further testified that
6 Madrigal drove him to work on July 5, 2000, and drove him home after work, leaving Proactive
7 Packaging around 3:30 p.m.

8 Court Findings

9 Madrigal's habeas corpus petition was based on ineffective assistance of counsel for failure to
10 investigate and present exculpatory evidence. Following the hearing, the District Court found that
11 Madrigal's attorney at trial failed to present highly reliable and exculpatory evidence in support of a
12 defense that someone else committed the shooting. The Court further determined that there was a
13 reasonable probability that the verdict would have been different had the attorney introduced such
14 evidence at trial. It was also found that Madrigal was prejudiced by his attorney's failure to call him as
15 a witness after promising the jury in the opening statement that he would testify. Additionally, the
16 Court found that Madrigal was prejudiced by his attorney's failure to interview and call Howards as a
17 witness and by his failure to call Victor Madrigal as a witness to corroborate Madrigal's alibi.

18 In making these factual findings in regards to ineffective assistance of counsel, the District
19 Court also made the following findings regarding witness credibility:

- 20 1. Madrigal's testimony at his habeas corpus proceeding that he was at work at the
21 time of the shooting was credible.
- 22 2. Bob Howards' (Madrigal's supervisor) testimony at the habeas corpus proceeding
23 was certain and credible. Specifically, the court found Howards' reasons for
24 knowing Madrigal was at work until at least 3:00 p.m. to be credible.
- 25 3. Despite Victor being Madrigal's brother, Victor's testimony at the habeas corpus
26 proceeding was nevertheless highly corroborative of Madrigal's alibi, and it would
27 have clearly undermined the prosecution's relatively weak case against Madrigal.

1 The District Court did not make any factual findings that negated the testimony of the
2 prosecution's witnesses at Madrigal's criminal trial. Nor did the Court go so far as to declare Madrigal
3 to be factually innocent. Following the habeas corpus petition, the District Court required that
4 Madrigal be brought to retrial within sixty (60) days of the date the judgment or alternatively be
5 discharged from the adverse consequences of the conviction and judgment in this case. The District
6 Attorney elected not to re-try the case.

7 **PC 4900 Hearing Evidence**

8 Madrigal argued at his PC 4900 hearing that there was no physical evidence tying him to the
9 crime. Specifically, he was not found with the gun used in the crime nor did he have any connections to
10 the vehicle used in the shooting. In addition, the eyewitnesses who testified were contradictory,
11 unreliable, and provided a description of the shooter which did not match Madrigal's physical
12 appearance at the time of the crime. More specifically, at the time of the shooting, Madrigal was 25-
13 years-old and did not have a goatee four days before the shooting and 15 days after the shooting.
14 However, all of the witnesses described the shooter as having a goatee at the time of the crime.
15 Further, Madrigal argued that he was at work when the crime occurred. In support of this argument
16 Madrigal referred to the testimony of his supervisor and the plant manager who both testified that he
17 was at work until 3:30 p.m. the day of the crime. In addition, Madrigal referred to his production log and
18 timecard for the day of the crime as corroborating proof that he was at work when the crime occurred.
19 Finally, Madrigal argued that Mendoza, his fellow gang member, was the person who shot Aguilera.

20 When Mendoza was arrested, the weapon used in the Aguilera shooting was found in his
21 possession. Further, Mendoza told Olivares that if he had known Olivares was "going to act this way
22 [about the gun] [Mendoza] would have never done anything with him." Madrigal argued that this was
23 an admission by Mendoza that he shot Aguilera. Mendoza also matched the description of the shooter
24 given by Carlos Moreno. Olivares, on a recorded phone call with his girlfriend, confirmed Madrigal's
25 innocence.

26 The AG argued that the evidence shows that Madrigal was the shooter. Madrigal was identified
27 as the shooter by Aguilera, Salvador, and Carlos, selecting him from a series of ten photographs that
28 also included Mendoza. In addition, at Madrigal's trial, Carlos and Salvador identified Madrigal as the

1 shooter. Further, Madrigal had an opportunity to commit the crime by leaving work early and meeting
2 with Olivares, who was less than two miles away. Guns are passed around within a gang, and by his
3 own admission, before the shooting, Madrigal had knowledge that at least one gun was stored at the
4 home of a fellow gang member who lived next to his sister. He knew that Olivares borrowed the truck
5 used in the crime, and he knew from whom Olivares borrowed it. In addition, the jury at Madrigal's trial
6 was able to consider evidence of the three eye witness identifications, the circumstances under which
7 they were made, and the credibility of Aguilera, Carlos, and Salvador. Additionally, Olivares confirmed
8 that Madrigal participated in the crime with him and was the shooter.

9 **Determination of Issues**

10 Penal Code section 4903 establishes the requirements for a successful claim for those
11 individuals who claim to have been imprisoned as a result of an erroneous conviction. In order to be
12 successful on such a claim, a claimant must prove, by a preponderance of the evidence, that the
13 crime with which he was charged was either not committed at all, or, if committed, was not committed
14 by him and that he sustained a pecuniary injury through his erroneous conviction and imprisonment.⁸
15 "Preponderance of the evidence" means evidence that has more convincing force than that opposed
16 to it.⁹

17 In reaching its determination of the merits of the claim, the Board may consider the claimant's
18 mere denial of the commission of the crime for which he was convicted, the reversal of the judgment of
19 conviction on appeal, the acquittal of the claimant on retrial, or the failure of the prosecuting authority
20 to re-try the claimant for the crime. However, those factors will not be deemed sufficient evidence to
21 warrant the Board's recommendation that a claimant be indemnified in the absence of substantial
22 independent corroborating evidence that the claimant is innocent of the crime charged.¹⁰ The Board
23 may also consider as substantive evidence testimony of witnesses the claimant had an opportunity to

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25 ⁸ Pen. Code, § 4903, *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v.*
Victim Compensation and Government Claims Board (2006) 152 Cal. App. 4th 1164.

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27 ⁹ *People v. Miller* (1916) 171 Cal. 649, 652.

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¹⁰ Cal. Code Regs., tit. 2, § 641.

1 cross-examine, and evidence to which the claimant had an opportunity to object, admitted in prior
2 proceedings relating to the claimant and the crime with which he was charged. Finally, the Board may
3 also consider any information that it may deem relevant to the issue before it.¹¹

4 The factual findings and credibility determinations establishing the court's basis for granting a
5 writ of habeas corpus, a motion for new trial, or an application for a certificate of factual innocence
6 shall be binding on the Attorney General, the fact-finder, and the Board.¹²

7 Section 1485.5 specifically applies to writs or motions granted by the court that are not
8 contested. Section 1485.5, subdivision (a) states: "If the district attorney or Attorney General
9 stipulates to or does not contest the factual allegations underlying one or more of the grounds for
10 granting a writ of habeas corpus or a motion to vacate a judgment, the facts underlying the basis for
11 the court's ruling or order shall be binding on the Attorney General, the factfinder, and the California
12 Victim Compensation and Government Claims Board." Section 1485.5, subdivision (c) states in
13 relevant part: "The express factual findings made by the court, including credibility determinations, in
14 considering a petition for habeas corpus, a motion to vacate judgment...or an application for a
15 certificate of factual innocence, shall be binding on the Attorney General, the factfinder, and the
16 California Victim Compensation and Government Claims Board."

17 Finally, if the evidence shows that the crime with which the claimant was charged was either
18 not committed at all, or, if committed, was not committed by the claimant, and that the claimant has
19 sustained pecuniary injury through his or her erroneous conviction and imprisonment, the California
20 Victim Compensation and Government Claims Board shall report the facts of the case and its
21 conclusions to the next Legislature, with a recommendation that an appropriation be made by the
22 Legislature for the purpose of indemnifying the claimant for the pecuniary injury. The amount of the
23 appropriation recommended shall be a sum equivalent to one hundred dollars (\$100) per day of
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26 ¹¹ Cal. Code Regs., tit. 2, § 641.

27 ¹² Pen. Code, § 4903.
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1 incarceration served subsequent to the claimant's conviction and that appropriation shall not be treated
2 as gross income to the recipient under the Revenue and Taxation Code.¹³

3 Madrigal argues that Penal Code section 1485.5, subdivision (c)¹⁴ is applicable to this claim and
4 thus the Board is bound by the many express factual findings made by the district court that granted the
5 claimant's habeas petition. As a result of these factual findings, Madrigal argues the Board should
6 grant the claimant's request for compensation. The AG argues that Penal Code section 1485.5,
7 subdivision (c) is inapplicable because this section's reference to "a petition for habeas corpus" refers
8 only to state habeas proceedings and does not extend to federal court grants in proceedings under
9 federal law.

10 Penal Code section 1485.5 pertains to a court proceeding wherein the parties stipulate to or
11 do not contest the factual allegations underlying one or more of the grounds for granting a writ of
12 habeas corpus or a motion to vacate a judgment. Madrigal's hearing for writ of habeas corpus was
13 contested by the Office of the Attorney General. Following Madrigal's successful petition in federal
14 court, the judge ordered that the claimant be brought to retrial within sixty days or alternatively be
15 discharged from the adverse consequences of the conviction and judgment in this case. The court
16 did not make a factual finding of innocence. Thus, because the habeas corpus proceeding was
17 contested, Madrigal is not eligible for relief under this section and the Board is not bound by the District
18 Court's findings regarding credibility of witnesses.

19 Madrigal argues that that the eyewitnesses who testified were contradictory, unreliable, and
20 provided a description of the shooter which did not match Madrigal's physical appearance at the time
21 of the crime. However, Salvador Huevo and Carlos Moreno each positively identified Madrigal in
22 court as the person who shot Aguilera. In addition, Carlos Moreno identified Madrigal in the photo
23 book one week after the shooting. Further, although Aguilera would not, or could not, identify Madrigal
24 as the shooter in court, he identified the photograph of Madrigal two weeks after the shooting.

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26 ¹³ Pen. Code, § 4904.

27 ¹⁴ This is a new law that became effective January 1, 2014.
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1 Therefore, based on eyewitness testimony, it is determined that Madrigal has not shown by a
2 preponderance of the evidence that he was not the shooter.

3 Madrigal also argues that he was at work at the time of the crime. In support of this contention,
4 he offered Howards' and Finley's testimony that he was working on a production line in Rancho
5 Cucamonga at the time of the shooting in East Los Angeles. Madrigal's argument is not convincing.
6 Specifically, Howards testified, in essence, that there would have been a stop in production if Madrigal
7 was not working and no such production stoppage was reflected in the production log for the day of the
8 crime. However, the production log that Howards uses in support of his statement that Madrigal must
9 have been at work was a log maintained by Madrigal and was not independently verified by anyone
10 else at the worksite; consequently the production log cannot account for Madrigal's whereabouts after
11 approximately 1:40 p.m. the day of the crime. In addition, Howards testified that Finley would have
12 informed him if Madrigal had left work early that day and that Finley did not tell him that. Further, Finley
13 testified that Madrigal and Victor carpooled home every day after work; consequently if Madrigal had
14 left work early, Victor would have been stranded at work and Finley did not remember Victor being
15 stranded at work after his shift was over. However, Finley also testified that it was possible for Madrigal
16 to have left work as much as one hour before the end of his shift without Finley noticing.

17 Madrigal cited his timecard as proof that he was at work until approximately 3:30 p.m. on the
18 day of the crime. However, Madrigal did not clock out at the end of his shift using the time clock;
19 instead Madrigal's timecard was corrected by hand after the crime occurred. Therefore, there is not a
20 preponderance of the evidence that Madrigal was at work when the crime occurred.

21 Although the District Court found parts of the testimony of Madrigal, Howards, and Victor
22 Madrigal to be credible at the habeas corpus proceeding, this was in the context of granting a new trial
23 based on ineffective assistance of counsel. The Court did not find this testimony to be so persuasive to
24 prove Madrigal's innocence.

25 Finally, Madrigal argues that Mendoza shot Aguilera. In support of his argument he pointed out
26 that Mendoza was arrested while in possession of the gun that was used to shoot Aguilera. In addition,
27 Madrigal testified that Mendoza admitted to committing the crime. Madrigal stated that Olivares, while
28 on the phone with his girlfriend, admitted that Madrigal did not commit the crime. Madrigal's argument

1 is questionable. Although Mendoza was arrested while in possession of the gun used to shoot
2 Aguilera, it does not prove that Mendoza shot Aguilera. Specifically, Madrigal and Mendoza were
3 members of the same gang and, as law enforcement testified, it is common for gang members to share
4 guns used in prior crimes to commit future crimes; consequently Mendoza's possession of the gun
5 does not show that Madrigal was not the shooter. In addition, although Madrigal originally testified that
6 Mendoza admitted to shooting Aguilera, Madrigal later recanted his testimony and admitted that
7 Mendoza never made any such statement. Finally, Olivares never stated during the phone
8 conversation that he was discussing the shooting of Aguilera with his girlfriend and in fact later stated
9 he was discussing a different shooting. Therefore, there is not a preponderance of the evidence that
10 Mendoza shot Aguilera.

11 After careful evaluation of all the evidence and based on the above analysis, it is determined
12 that there is not a preponderance of the evidence that Rafael Madrigal, Jr. has proven, by a
13 preponderance of the evidence, that he is innocent of the crime of attempted murder.

14 Rafael Madrigal, Jr.'s claim under Penal Code section 4900 et seq. is denied.

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16 Date: February 14, 2014

17 _____
18 James Reinmiller
19 Hearing Officer
20 Victim Compensation and
21 Government Claims Board
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**BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
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In the matter of the Application of:

Rafael Madrigal, Jr.

Application No. G600292

Notice of Decision

On March 20, 2014, 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: March 24, 2014

Tisha Heard
Board Liaison
Victim Compensation and
Government Claims Board