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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 **Bruce Sons**

13 Application No. G562540

**Proposed Decision**

**(Penal Code §§ 4900 *et seq.*)**

14 **Introduction**

15 A hearing on this claim was held on February 5 and 6, 2008, by Kyle Hedum, Hearing Officer,  
16 the hearing officer assigned to hear this matter by the Executive Officer of the Victim Compensation  
17 and Government Claims Board (Board).

18 Orly Elson and Edward Johnson, Attorneys at Law, represented claimant Bruce Sons. Bruce  
19 Sons did not appear at the hearing.

20 Jennifer Poe, Deputy Attorney General (AG), represented the California Department of  
21 Justice, Office of the Attorney General.

22 After considering all the evidence, it is determined that Bruce Sons has failed to prove by a  
23 preponderance of the evidence that he did not commit the crime for which he was incarcerated and  
24 that he did not by any act or omission on his part, either intentionally or negligently, contribute to the  
25 bringing about of the arrest or conviction for the crime. Therefore, it is recommended that Bruce Sons  
26 claim for compensation pursuant to Penal Code 4900 *et seq.* be denied.

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## Procedural Background

On July 11, 1994, Bruce Sons shot and killed California Highway Patrol (CHP) Officer Maxwell. Bruce Sons was charged with the first degree murder<sup>1</sup> of a peace officer, a firearm enhancement, three counts of receiving stolen property, and one count of operating a chop-shop. The prosecution sought the death penalty. On March 3, 1995, the jury determined that Bruce Sons was guilty of the first degree murder of a peace officer, a firearm enhancement, and one count of receiving stolen property. He was found not guilty of the remaining charges. Bruce Sons was sentenced to life in prison without the possibility of parole, plus a concurrent four-year term for the firearm enhancement and a concurrent three-year term for possession of stolen property. According to documents provided by Bruce Sons, he remained incarcerated in the county jail for 304 days after he was convicted before he was transferred to state prison.

Bruce Sons' conviction was vacated on June 3, 2003, on the grounds that his federal constitutional right to a fair trial had been violated because the prosecution suppressed exculpatory information that Officer Maxwell had previously been disciplined for inappropriate conduct during traffic stops.

In subsequent trials, Bruce Sons argued that he shot and killed Officer Maxwell in self-defense. His second and third trials resulted in mistrials. On May 9, 2006, Bruce Sons' fourth trial resulted in his acquittal on the charges of first and second degree murder. However, he was convicted of voluntary manslaughter<sup>2</sup> with a firearm enhancement. The trial court sentenced Bruce Sons to eleven years for the voluntary manslaughter and five years for the firearm allegation, for a total of sixteen years state prison. Based on credits earned while serving the initial sentence for first degree murder with the firearm enhancement, the trial court determined that Bruce Sons had served the equivalent of 22 years in state prison and released him from custody for time served.

On August 24, 2006, Bruce Sons filed a claim for compensation under Penal Code section 4900 et seq. Bruce Sons chose not to appear at the hearing on his claim for compensation. Bruce Sons also did not produce any witnesses in support of his claim. Therefore, the hearing consisted

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<sup>1</sup> First degree murder is the killing of another, with malice aforethought, and involves a willful, deliberate, and premeditated act.

<sup>2</sup> Voluntary manslaughter is the killing of another without malice; upon a sudden quarrel or in heat of passion.

1 solely of argument supplemented with voluminous documentary evidence. Bruce Sons claims that  
2 he was incarcerated for 4,321 days following his conviction for first degree murder of a peace officer.<sup>3</sup>  
3 However, Bruce Sons is seeking compensation in the amount of \$132,500.<sup>4</sup>

#### 4 **Factual Background**<sup>5</sup>

##### 5 **I. Events Preceding the Shooting.**

6 On Saturday, July 9, 1994, a 1965 or 1966 white El Camino was reported as stolen to the  
7 Kern County Sheriff's Department. That night, law enforcement seized a white El Camino from Bruce  
8 Sons' property, believing that it was stolen. The El Camino matched the description of the stolen  
9 vehicle, appeared to have two different vehicle identification numbers, and was started with a key  
10 provided by the person who reported the vehicle as stolen.

11 The next morning, Bruce Sons and his son, Jeremy Sons (Jeremy), discovered that the El  
12 Camino had been taken. They searched and located the El Camino impounded in a tow yard and,  
13 without permission, drove it back to Bruce Sons' home.

14 On July 11, 1994, Bruce Sons called the sheriff's department to tell them he had retrieved his  
15 El Camino. The first person he reached was Elizabeth M., a secretary in the sheriff's office.  
16 According to Elizabeth M., Bruce Sons was very angry when the call began, but after she asked him  
17 twice to calm down, he did so. She then obtained his name and a telephone number at which he  
18 could be contacted.

19 After speaking with Elizabeth M., Bruce Sons called deputy sheriff Bill Williams. Deputy  
20 Williams told Bruce Sons that if he brought his paperwork to the sheriff's office, he would be glad to  
21 go over it with him. According to Deputy Williams, Bruce Sons was initially calm but began yelling, at  
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24 <sup>3</sup> Bruce Sons is including the time he spent in-custody awaiting his multiple trials. However, this in-  
25 custody time was not subsequent to a conviction and is thus not compensable under Penal Code  
sections 4900 et seq.

26 <sup>4</sup> This compensatory amount is calculated by Bruce Sons under the assumption that had he been  
27 convicted of voluntary manslaughter in 1995 and been sentenced to 16 years state prison, he would  
28 have been released after serving eight years, or 2,996 days, including credits. Thus, Bruce Sons  
argued that the additional time he served in prison should be compensated at the rate of 1,325 days  
at \$100 per day, equaling \$132,500.

<sup>5</sup> The factual background is based on police reports, trial testimony, appellate pleadings, and other  
case-related documents.

1 which point Deputy Williams terminated the phone call. Jeremy, who was with his father during the  
2 call, characterized his father's demeanor as upset and stern, but not out of control.

3 Officer Maxwell began his July 11, 1994, shift by attending a CHP briefing at 5:45 a.m. The  
4 briefing included updates on stolen cars. Later that morning, at approximately 9:05 a.m., Officer  
5 Maxwell encountered Bruce Sons and Jeremy, who were driving the white El Camino to the home of  
6 Bruce Sons' father, James Sons. En route to the home, Bruce Sons took a shortcut through an alley  
7 and emerged from the alley into the path of Officer Maxwell's vehicle. Emily F., who was a passenger  
8 in a car driving behind Officer Maxwell, saw Officer Maxwell come to an abrupt stop just short of the  
9 alley and saw the El Camino come to a brief stop before turning onto the street in front of Officer  
10 Maxwell.

11 After Bruce Sons passed, Officer Maxwell made a three-point turn and headed northbound in  
12 the direction taken by Bruce Sons. Officer Robison, an off-duty sheriff's deputy and friend of Officer  
13 Maxwell, was driving nearby and saw Officer Maxwell turn around. He did not notice that Officer  
14 Maxwell had his overhead lights or siren on. According to the CHP's radio traffic log, the first radio call  
15 Officer Maxwell made concerning his contact with Bruce Sons was at 9:05:18, when he radioed,  
16 "Bakersfield, 51 [his unit number], have an El Camino not yielding at Cedarcrest." Eleven seconds  
17 later, Officer Maxwell radioed, "Send another unit to Mignonette and Cedarcrest." According to  
18 several CHP officers, a "failure to yield" refers to a situation where a police officer turns on his or her  
19 overhead lights and a vehicle fails to stop.

## 20 **II. Shooting at James Sons' Home**

21 When Bruce Sons reached his father's home, he pulled into the driveway, parked, and he and  
22 Jeremy got out of the car. Officer Maxwell arrived and parked his CHP cruiser farther down the  
23 driveway. According to a witness, Officer Maxwell got out of his cruiser and called out to Bruce Sons,  
24 "just a minute, I want to talk to you." Another witness heard Bruce Sons and Officer Maxwell  
25 exchange words. She heard Bruce Sons ask Officer Maxwell, "What are you doing? What do you  
26 want?" Jeremy said that his father walked back down the driveway towards where the CHP cruiser  
27 was parked and he heard his father tell Officer Maxwell that if it was about the El Camino, he had the  
28 paperwork to show that the vehicle was not stolen. Shortly after the initial contact, witness  
statements indicate that Officer Maxwell was attempting to search or handcuff Bruce Sons near the  
front of the CHP cruiser. Jeremy approached and tried to prevent Officer Maxwell from restraining his

1 father. Officer Maxwell responded by deploying pepper spray on Bruce Sons and by attempting to  
2 pepper spray Jeremy. Bruce Sons broke free and began rubbing his eyes with his t-shirt. During the  
3 struggle with Bruce Sons and Jeremy, Officer Maxwell radioed his location to his dispatcher, and then  
4 shortly after he radioed two requests for assistance. Officer Maxwell's final radio broadcast consisted  
5 of the message "148 times two."<sup>6</sup>

6 Witnesses describe that during this struggle, Jeremy went to the El Camino and withdrew a  
7 Winchester shotgun, subsequently determined to be unloaded. Jeremy later told investigators that he  
8 was going to put the shotgun in his grandfather's home. Officer Maxwell saw Jeremy with the  
9 shotgun and, while ordering Jeremy to put the gun down, approached with his baton. When Jeremy  
10 did not place the shotgun on the ground, Officer Maxwell swung his baton several times as Jeremy  
11 deflected the blows with the shotgun. While Officer Maxwell was involved with Jeremy, Bruce Sons  
12 moved towards the garage where a Jaguar was parked. The evidence indicates that Bruce Sons  
13 retrieved a second shotgun, an Ithaca 12 gauge, from the El Camino and took it with him as went to  
14 the garage. When Jeremy heard his father yell at him to get down, Jeremy fell to the ground and then  
15 heard gunfire.

16 Officer Maxwell ultimately fired all twelve shots from his handgun, while Bruce Sons fired three  
17 shots from his shotgun. Although Bruce Sons was not struck with any of the bullets, Officer Maxwell  
18 was struck three times by the shotgun – one shot grazed his shoulder; one grazed his face and  
19 shooting hand; and the final, fatal shot hit him in the chest, mostly above his Kevlar protective vest.

20 Forensic evidence indicates that Officer Maxwell may have fired at least three shots before  
21 Bruce Sons returned fire. It also appears that Officer Maxwell advanced northwards across the  
22 opening of the garage, towards Bruce Sons' position in the back corner of the garage. After firing  
23 three shots from the front area of the garage, Officer Maxwell fired another four shots upward from a  
24 position on the ground partially behind the brick fascia separating the garage from the carport. Officer  
25 Maxwell fired an additional four shots from a standing position from an area next to the brick fascia,  
26 but slightly farther back. Officer Maxwell's blood was found in this area, indicating that he fired at

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<sup>6</sup> The number 148 is an apparent reference to Penal Code section 148, Resisting, Delaying, or  
Obstructing Officer. The phrase "times two" likely refers to the fact that Officer Maxwell was dealing  
with two individuals.

1 least some of those four shots after Bruce Sons had returned fire. Officer Maxwell's final shot was  
2 from a seated position even farther back, and was consistent with a reflexive shot that was not aimed.

3 Bruce Sons' three shots were all fired from the garage and directed towards the area of the  
4 brick fascia. Bruce Sons fired the first shot from the back corner of the garage, and it struck the  
5 opposite wall of the garage with two pellets striking Officer Maxwell in the shoulder. Bruce Sons then  
6 moved forward and fired the next shot while standing behind the hood of a Jaguar that was parked  
7 near the front of the garage, hitting Officer Maxwell in the shooting hand and also grazing his face.  
8 Bruce Sons continued advancing towards Officer Maxwell and he fired again, from a distance of 12-  
9 14 feet, striking Officer Maxwell in the chest and slightly above the bullet proof vest worn by Officer  
10 Maxwell. This third shot resulted in Officer Maxwell's death.

11 The evidence establishes that after the shooting, Bruce Sons fled out the back of the garage.  
12 He hid the Ithaca shotgun in a shed at the back of the property. Bruce Sons then ran through several  
13 backyards and attempted to hide by crawling under a neighbor's vehicle. While sitting in a police car  
14 following his arrest, Bruce Sons told an officer that he did not know anything about the shooting, and  
15 that he had been looking at a lawnmower when he was thrown to the ground by officers and arrested.  
16 Bruce Sons also denied hiding the shotgun in the shed and stated that he had placed it in the shed  
17 several days earlier. Jeremy was later arrested at the home of a relative.

### 18 **III. Citizen Complaints Against Officer Maxwell**

19 Officer Richard Maxwell started working for the CHP in 1989. In his five years as a CHP  
20 officer, nine citizen complaints were filed against him alleging misconduct during the course of  
21 performing his duties as an officer. After investigation, a complaint is sustained, exonerated, or  
22 determined to have "no finding." Approximately 75-80 percent of the complaints filed against CHP  
23 officers are determined to be either "no finding" or "exonerated."

24 Four of the nine complaints against Officer Maxwell were sustained. The four sustained  
25 complaints were:

- 26 • In 1990, Officer Maxwell stopped a motorist for failure to stop at a temporary road closure.  
27 The CHP determined that Officer Maxwell used poor judgment, made some inappropriate  
28 remarks, and that his actions were not in keeping with the standards demanded of CHP  
officers.

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- 2 • In 1992, Officer Maxwell stopped a motorist for reckless driving. Officer Maxwell approached the vehicle with his gun out. The CHP concluded that Officer Maxwell was unprofessional, discourteous, made belittling remarks, and was not justified in having his weapon drawn.
  - 3
  - 4 • In 1993, Officer Maxwell arrived at a residence to investigate a vehicle that he believed matched one he had attempted to stop but had eluded him. The CHP determined that Officer Maxwell had used profanity and censured Officer Maxwell. The censure stated that Officer Maxwell had developed a pattern of complaints that center on verbal discourtesy.
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  - 7 • In 1994, Officer Maxwell stopped a motorist for speeding. The CHP determined that the motorist was not fully informed of the reason for the stop.

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### Argument

9 Bruce Sons' attorneys argued that Bruce Sons was unlawfully forced to serve a prison term  
10 beyond the time he would have served had his constitutional rights not been violated. The attorneys  
11 argued that because Bruce Sons was ultimately convicted of voluntary manslaughter and was  
12 sentenced to state prison for 16 years (5,840 days), he would have been released, after receiving the  
13 applicable custody credits, after serving 2,996 days in local custody and state prison following his  
14 conviction. Instead, he served 4,321 days. Thus, Bruce Sons requests compensation in the amount  
15 of \$132,500.

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### Findings

17 A preponderance of the evidence supports the following findings:

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- 19 1. Officer Maxwell did not exceed his authority when he stopped Bruce Sons for a traffic  
20 offense on July 11, 2004.
  - 21 2. During the course of this traffic stop, Bruce Sons obtained an Ithaca shotgun.
  - 22 3. Bruce Sons used this shotgun to shoot and kill Officer Maxwell.
  - 23 4. Officer Maxwell was justified in drawing his weapon and firing at Bruce Sons.

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### Determination of Issues

25 Penal Code section 4903 establishes the requirements for a successful claim for an  
26 erroneously convicted felon. A person convicted and imprisoned for a felony may submit a claim to  
27 the Board for pecuniary injury sustained as a result of his erroneous conviction and imprisonment.<sup>7</sup>

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<sup>7</sup> Pen. Code, § 4900.

1 The claim must be filed within six months after judgment of acquittal or discharge, granting of a  
2 pardon, or release from imprisonment.<sup>8</sup> Bruce Sons' claim was timely filed.

3 In order to be successful, the claimant must prove:

- 4 (1) that the crime with which he was charged was either not committed at all, or, if committed,  
5 was not committed by him;
- 6 (2) that he did not by any act or omission on his part, either intentionally or negligently,  
7 contribute to the bringing about of the arrest or conviction for the crime; and
- 8 (3) that he sustained a pecuniary injury through his erroneous conviction and imprisonment.<sup>9</sup>

9 If the claimant meets his burden of proof, the Board shall recommend to the legislature that an  
10 appropriation of \$100 be made for the claimant for each day of incarceration served subsequent to  
11 the claimant's conviction.<sup>10</sup> The claimant has the burden of proving the necessary elements of his  
12 claim by a preponderance of the evidence.<sup>11</sup> Preponderance of the evidence means evidence that  
13 has more convincing force than that opposed to it.<sup>12</sup>

14 In reaching its determination of the merits of the claim, the Board may consider the following  
15 factors:

- 16 (1) claimant's mere denial of commission of the crime for which he was convicted;
- 17 (2) reversal of the judgment of conviction on appeal;
- 18 (3) acquittal of claimant on retrial; or
- 19 (4) the failure of the prosecuting authority to retry claimant for the crime.<sup>13</sup> However, these

20 factors will not be deemed sufficient evidence to warrant the Board's recommendation that the  
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23 <sup>8</sup> Pen. Code, § 4901.

24 <sup>9</sup> Pen. Code, § 4903.

25 <sup>10</sup> Pen. Code, § 4904.

26 <sup>11</sup> *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation*  
27 *and Government Claims Board* (2000) 152 Cal. App. 4<sup>th</sup> 1164, 1191.

28 <sup>12</sup> *People v. Miller* (1916) 171 Cal. 649, 652.

<sup>13</sup> Cal. Code Regs., tit. 2, § 641.



1 claimant be indemnified in the absence of substantial independent corroborating evidence that the  
2 claimant is innocent of the crime charged:

3         The Board may consider as substantive evidence testimony of witnesses whom the claimant  
4 had an opportunity to cross-examine, and evidence to which the claimant had an opportunity to  
5 object, which was admitted in prior proceedings relating to the claimant and the crime with which he  
6 was charged. The Board may also consider any information that it deems relevant to the issue  
7 before it.<sup>14</sup>

8         Bruce Sons chose not to appear and testify at his hearing for compensation. For a claimant  
9 who is seeking \$132,500, his failure to testify is significant. Because he did not appear, he failed to  
10 provide evidence that would have supported his burden of proof of showing that he did not commit  
11 the crime and that he did not intentionally or negligently contribute to his arrest or conviction. Bruce  
12 Sons also did not produce any witnesses to testify on his behalf. The evidence consisted entirely of  
13 prior proceedings, including police reports, transcripts, trial testimony and appellate pleadings.

14         Bruce Sons does not deny that he shot and killed Officer Maxwell. He claimed that he did  
15 nothing to provoke Officer Maxwell and that he was merely attempting to get Officer Maxwell to leave  
16 his property. His argument at the hearing was that the shooting of Officer Maxwell was justified  
17 because Officer Maxwell started shooting at him for no apparent reason. However, his argument of  
18 self-defense is determined to be not credible because it is not supported by the evidence. Instead of  
19 complying with the lawful orders of Officer Maxwell during a traffic stop, Bruce Sons decided to resist.  
20 Bruce Sons struggled with Officer Maxwell, and after breaking free, he went into the garage and  
21 armed himself with the Ithaca shotgun. He then shot and killed Officer Maxwell.

22         Notwithstanding the actions of the prosecutor in suppressing Officer Maxwell's disciplinary  
23 history in the first trial, there is no evidence that Officer Maxwell's conduct on the morning of July 11,  
24 1994, was improper. During a routine traffic stop which quickly became volatile, Officer Maxwell first  
25 attempted to restrain Bruce Sons without using deadly force. After Jeremy intervened and attempted  
26 to assist his father, who was by then engaged in a physical altercation with Officer Maxwell, Officer


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28 <sup>14</sup> Cal. Code Regs., tit. 2, § 641.

1 Maxwell responded with non-lethal pepper spray. When Jeremy removed a shotgun from the El  
2 Camino, Officer Maxwell ordered him to drop the shotgun, and when Jeremy did not comply, Officer  
3 Maxwell utilized his nightstick and pepper spray in an effort to disarm Jeremy. Again, Officer Maxwell  
4 resorted to non-lethal means in order to protect himself and to induce compliance with his lawful  
5 orders. Officer Maxwell only drew his weapon after Bruce Sons went into the garage, armed with the  
6 Ithaca shotgun. Contrary to Bruce Sons' claim of self-defense, he did not try to hide or escape once  
7 gunfire was exchanged. Instead, Bruce Sons advanced towards Officer Maxwell and Bruce Sons  
8 intentionally fired the final, fatal shot from a distance of 12-14 feet. Bruce Sons' actions were  
9 offensive, and not defensive, in nature. Therefore, Bruce Sons was not acting in self defense when  
10 he shot and killed Officer Maxwell.

11 Therefore, it is determined that Bruce Sons did not prove, by a preponderance of the evidence,  
12 that he did not murder Officer Maxwell and that he did not, either intentionally or negligently, contribute  
13 to his arrest or conviction for those offenses. Because it has been determined that Bruce Sons did not  
14 meet his burden of proving that he was erroneously convicted, the issue of pecuniary injury is rendered  
15 moot.

16 Bruce Sons' claim under Penal Code sections 4900 *et seq.* is denied.

17  
18 Date: July 18, 2008

19   
20 Kyle Hedum  
21 Hearing Officer  
22 Victim Compensation and  
23 Government Claims Board