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

In the Matter of the Claim of:

Angel Muro

Claim No. G567326

Notice of Decision

On December 18, 2008, 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: December 19, 2008



Tisha Heard
Board Liaison
Victim Compensation and
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 Application of:

Angel Muro

Application No. G567326

Proposed Decision

(Penal Code § 4900 et seq.)

Introduction

A hearing on this claim was conducted on June 11, 2008, by Kyle Hedum, the Hearing Officer assigned to hear this matter by the Executive Officer of the Victim Compensation and Government Claims Board. Claimant Angel Muro seeks \$36,900 in compensation pursuant to Penal Code section 4900.

~~Christopher Hawthorne, Attorney at Law, represented Angel Muro, who did not appear at the~~
hearing. Bob Snyder, Deputy Attorney General (AG), represented the California Department of Justice, Office of the Attorney General.

The record remained open to allow both parties to submit post-hearing summaries because the hearing was not recorded due to technical problems. The summaries were not to exceed 10 pages and were due by July 31, 2008. The deadline was extended until August 29, 2008, at Angel Muro's request. On August 29, 2008, Angel Muro submitted a 19 page post-hearing summary and referenced the AG's earlier filed hearing summary. Both parties were subsequently informed by the

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1 hearing officer that the post-hearing summaries would not be admitted as evidence and would only
2 be used, if necessary, to refresh the hearing officer's memory.

3 After considering all the evidence, it is determined that Angel Muro has not proven by a
4 preponderance of the evidence that (1) he is innocent of the crime for which he was convicted and
5 incarcerated, and (2) he did not by any act or omission on his part, either intentionally or negligently,
6 contribute to the bringing about of the arrest or conviction for the crime. Therefore, it is recommended
7 that Angel Muro's claim for compensation pursuant to Penal Code section 4900 et seq. be denied.
8

9 **Background¹**

10 Angel Muro and Elizabeth J. are the parents of a daughter, Marliisa M., born in 1992. They
11 separated in 1999 or 2000. At some point Marliisa M. lived with her father. When Elizabeth J.
12 sought custody of her daughter in 2002, a bitter custody battle ensued. Elizabeth J.'s house and car
13 were vandalized. Elizabeth J. told the police that she suspected that Angel Muro was responsible,
14 and that Angel Muro had told her that he would destroy her life. Elizabeth J. obtained a restraining
15 order against Angel Muro; however, their joint legal custody agreement required her to notify him of
16 Marliisa M.'s medical appointments.

17 On April 9, 2003, Elizabeth J. took Marliisa M. to morning and afternoon medical
18 appointments. For the morning appointment, she and Marliisa M. met Angel Muro in the lobby of the
19 medical building. As Angel Muro spoke with his daughter, he was interrupted by Elizabeth J.'s
20 attempts to discuss custody issues. Angel Muro allegedly said "Fuck you bitch, I am not talking to
21 you. Mind your own business." Elizabeth J. then took Marliisa M. to her appointment, and after the
22 appointment Elizabeth J. returned to her truck and found the driver's side window had been
23 shattered. A note reading "Fuck you bitch" that was described by Elizabeth J. and Marliisa M. to be in
24 Angel Muro's handwriting was located on the driver's seat. Elizabeth J., who was seven months
25 pregnant at the time, told the police that she was very afraid, and the police instructed her to
26 telephone if she saw Angel Muro.

27 ///

28 ¹ The background is based on police reports, trial testimony, an unpublished appellate opinion, and other case-related documents.

1 When Elizabeth J. and Marliisa M. arrived at the medical building for Marliisa M.'s afternoon
2 appointment, they saw Angel Muro's car in the parking lot. After telephoning the police, Elizabeth J.
3 waited on the sidewalk for officers to arrive while Marliisa M. went to her appointment. Angel Muro
4 pulled up in his car and said to Elizabeth J., "You're lucky I don't got my gun, bitch, or I'd kill you."
5 Angel Muro then drove off. Elizabeth J. immediately called and told the police that she was scared
6 for her life because she believed he would carry out his threat.² When officers arrived on scene,
7 Elizabeth J. was described as being hysterical when she talked to them.

8 Two weeks later, on April 28th, 2003, Angel Muro was detained for carrying ammunition into
9 the courthouse where he and Elizabeth J. were appearing for a custody hearing. According to a
10 follow-up investigation by the Los Angeles Police Department, Angel Muro entered the magnetometer
11 with six to seven rounds of ammunition contained in a clip or magazine inside a soft-sided briefcase.

12 On May 9, 2003, Elizabeth J. went to the police station with evidence of Angel Muro's threats
13 against her. A detective noted:

14 . . . There were 12 letters or notes written by the suspect to victim Elizabeth J. . . There were
15 copies of eight different crime reports involving the suspect, Elizabeth J. . . Multiple photographs
16 sent by Angel Muro depict his hatred of the victim and his desire to harm her. One photo
17 depicts Elizabeth J. with damage to her eyes. Ten photos depict Elizabeth J. with her head cut
18 off, her face slit, and her body slit in half.

19 On May 20, 2003, a detective met with the parties' custody mediator. According to the
20 mediator, Marliisa M, had reported repeatedly hearing her father threaten to kill her mother, and that he
21 specifically said "I will kill that fucking bitch. I hate her." According to the detective's report, the
22 mediator stated that he feared for Elizabeth J. and Marliisa M., and he believed that Angel Muro was
23 capable of carrying out his threats against Elizabeth J.

24 On June 4, 2003, Angel Muro called Elizabeth J. to make sure she would be in court for their
25 child custody case on June 9, 2003. Elizabeth J. told the police that Angel Muro's tone and demeanor
26 made her fear coming to court. She also told the police that she had received a letter from Angel Muro
27
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² A gun enthusiast, Angel Muro attended gun shows and collected various types of weapons over the years. On at least one occasion, he carried a gun in the glove compartment of his car, as witnessed by his daughter, Marliisa M.

1 on June 1, 2003, accusing her of causing his termination from his job with the fire department. On
2 June 6, 2003, Elizabeth J. again contacted the police and told the investigating detective that Angel
3 Muro had told her, in a telephone call she recorded, that he blamed her for causing him to be arrested
4 in 1997.³

5 On June 9, 2003, a judge signed an arrest warrant for Angel Muro and a search warrant for
6 Angel Muro's car and home and set bail at \$100,000.⁴ Angel Muro was arrested at the courthouse
7 where he and Elizabeth J. were appearing. When Angel Muro's car was searched, officers recovered a
8 heavy metal martial arts throwing star with 24 sharp edges, a knife hidden in a small cylinder, a
9 slingshot wrapped in a grocery bag, and a chipped white ceramic-and-metal spark plug. A detective
10 testified at Angel Muro's trial that ceramic chips from broken spark plugs are often used with sling shots
11 to break windows in vehicles and that Angel Muro's slingshot could have been used to do such an act.

12 On June 11, 2003, officers executed a search warrant at Angel Muro's home. They found a
13 .38-caliber revolver and a .380-caliber semi-automatic pistol, both registered to Angel Muro, and the
14 following unregistered weapons: (1) .38-caliber revolver, (2) nine-millimeter semi-automatic pistol,
15 and (3) twelve-gauge pump shotgun. The police also located a .357-caliber revolver that had been
16 reported stolen in Alabama in 1996, a portable police-emergency band scanner, a bulletproof vest,
17 two samurai swords, and approximately 1,000 rounds of ammunition. Angel Muro was subsequently
18 charged with a violation of California Penal Code section 422, criminal threats.⁵

19 After his arrest, Angel Muro allegedly made several more verbal and written statements to
20 Elizabeth J. In discussing the act of vandalism that occurred on April 9, 2003, Angel Muro wrote to
21

22
23 ³ It is not known why Angel Muro was arrested or the disposition of this arrest.

24 ⁴ The warrants were issued as a result of Angel Muro's alleged criminal threats made on April 9, 2003.

25 ⁵ A criminal threat is committed when a person willfully threatens to commit a crime which will result in
26 death or great bodily injury to another person, with the specific intent that the statement is to be taken
27 as a threat and which, on its face and under the circumstances in which it is made, is so unequivocal,
28 unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and
an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in
sustained fear for his or her own safety or for his or her immediate family's safety.

1 Elizabeth J. "That doesn't even sound like me to threaten a pregnant person and to write a note. I
2 guess you got Marlissa to forge my handwriting."

3 On July 14, 2004, Angel Muro was convicted of making criminal threats, and he was
4 sentenced to two years state prison. Angel Muro was paroled on July 17, 2005, after serving 343
5 days in the California State Prison at Delano. On June 12, 2006, the California Court of Appeal,
6 Second Appellate District, acquitted the claimant of the charged offense when it determined that there
7 was insufficient evidence to support Angel Muro's conviction. The court decided that Angel Muro's
8 comment, "You're lucky I don't got my gun, bitch, or I'd kill you," considered in conjunction with his
9 access to guns and obvious anger, was unsettling but did not rise to the level of a criminal threat
10 because the comment did not refer to any future conduct or suggest any retaliation against Elizabeth
11 J.

12 In its analysis of Angel Muro's claim, the AG agreed with the Court of Appeal that there was
13 insufficient evidence to support Angel Muro's conviction. However, the AG argued in its analysis and
14 at the hearing that Angel Moro's conduct prior to and after the incident of April 9, 2003, clearly
15 contributed to the bringing about of his arrest or conviction for the crime. Thus, the AG recommended
16 that Angel Muro's claim be denied.

17 **Trial Testimony – Marlissa M.**

18 Marlissa M., who was 12, testified to the following information at her father's trial. She was
19 concerned about her mother's safety after hearing her father make threats against her mother
20 because her father owned several guns. She saw various guns in her father's residence as well as a
21 pistol in the glove-box of his vehicle. After her father told her that he would not rest until her mother
22 was dead and that her mother was going to get what she deserved later on, she told her mother
23 because she was afraid that her father might hurt her mother.

24 She spoke with her father before her morning medical appointment on April 9, 2003, without
25 interruption from her mother. Also, her father never said he would see her at her afternoon
26 appointment. When she and her mother came out of the medical building after her morning
27 appointment, she saw that her mother's new truck had a broken driver's-side window. On the driver's
28 seat was a piece of paper with "fuck you" written on it in her father's handwriting.

1 She and her mother went to her afternoon medical appointment in a different part of town. As
2 her mother drove into the medical complex, she saw her father in his vehicle pulling into the medical
3 complex's parking lot. She became nervous when she saw her father because she believed that he
4 had broken the truck's window and placed the note in her mother's truck. Her mother drove to an
5 adjacent store and used a payphone to call the police. She and her mother then went to the medical
6 building. Her mother went inside to confirm her appointment and Marlissa M. stayed outside the
7 building to wait for the police. When she saw the police and raised her hand to catch their attention,
8 she noticed her father drive away in his vehicle. The police did not see her and left the area. She
9 then went inside for her appointment and her mother remained outside the medical building.

10 Trial Testimony – Elizabeth J.

11 Elizabeth J. testified to the following at Angel Muro's trial. She and Angel Muro were involved
12 in a nine-year relationship that ended sometime in 2002 or 2003. They were never married. When
13 she sought custody of Marlissa M., Angel Muro threatened her with physical injury on many
14 occasions. The threats became so intolerable that she obtained a restraining order against Angel
15 Muro in 2002 or 2003.

16 Their acrimonious relationship came to a head when Angel Muro threatened to kill her on
17 April 9, 2003, during Marlissa M.'s afternoon medical appointments. For the morning appointment,
18 she and Marlissa M. met Angel Muro in the lobby of the medical building. When she tried to speak
19 with Angel Muro about custody arrangements for the upcoming Easter holiday, he said "Fuck
20 you bitch, I am not talking to you. Mind your own business." She then took Marlissa M. to her
21 appointment, and after the appointment she and Marlissa M. returned to her truck and found the
22 driver's side window had been shattered. A note written in Angel Muro's handwriting read, "Fuck you
23 bitch," and was located was on the driver's seat. She called and told the police that she was very
24 afraid, and the police instructed her to telephone if she saw Angel Muro.

25 When Elizabeth J. and Marlissa M. arrived at the medical building for Marlissa M.'s afternoon
26 appointment, Elizabeth J. saw Angel Muro's car in the parking lot. After telephoning police, she
27 waited on the sidewalk for officers to arrive while Marlissa M. went to her appointment. Angel Muro
28 pulled up in his car and told her, "You're lucky I don't got my gun, bitch, or I'd kill you." Angel Muro

1 then drove off. She immediately called and told the police that she was scared for her life because
2 she knew that he owned various firearms and she believed he would carry out his threat.

3 **Trial Testimony – Angel Muro**

4 Angel Muro testified at his trial to the following information. He was present at Marliisa M.'s
5 morning medical appointment on April 9, 2003, but decided to leave after Elizabeth J. interfered with
6 his efforts to speak with his daughter. He told Marliisa M. that he would see her at the afternoon
7 appointment. While he was waiting in his car at the medical clinic, he saw Elizabeth J. arrive. She
8 was about a half-hour late for Marliisa M.'s 2:30 p.m. appointment. When she drove past him into
9 the parking lot, he motioned to his watch, threw up his hands, and left the area. He denied speaking
10 to her before he drove away. He also denied breaking Elizabeth J.'s car window and leaving the note
11 on the front seat of her truck.

12 Angel Muro admitted that he had made angry statements about Elizabeth J. in the presence of
13 his daughter, but he never said he wanted to harm or kill Elizabeth J. He believed that Elizabeth J.
14 coached Marliisa M. into testifying that she heard him threaten to hurt or kill Elizabeth J.

15 **Hearing Testimony – Angel Muro**

16 Angel Muro chose not to appear and testify at his hearing before the Board. As a result, he
17 avoided being questioned in the context of this administrative hearing. Angel Muro's absence also
18 prevented the hearing officer from making a determination as to his credibility.

19 **Findings**

20 A preponderance of the evidence supports the following findings:

- 21 1. Angel Muro threatened Elizabeth J. with physical harm.
- 22 2. Angel Muro owned multiple legal and illegal firearms, ammunition, and weapons.
- 23 3. Angel Muro broke Elizabeth J.'s truck window on April 9, 2003, leaving behind a
24 vulgar note.
- 25 4. On July 14, 2004, Angel Muro was convicted of violating Penal Code section 422, criminal
26 threats.
- 27 5. Angel Muro was released from prison on parole.
- 28 6. Angel Muro's conviction was overturned for insufficiency of the evidence.
7. Angel Muro served 369 days in prison subsequent to conviction.

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Determination of Issues

Penal Code section 4903 establishes the requirements for a successful claim for an erroneously convicted felon. A person erroneously convicted and imprisoned for a felony may submit a claim to the Board for pecuniary injury sustained as a result of his erroneous conviction and imprisonment.⁶ In order to be successful on such a claim, a claimant must prove the following, by a preponderance of the evidence:

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

"Preponderance of the evidence" means evidence that has more convincing force than that opposed to it.⁸ If a claimant meets his burden of proof, the Board shall recommend to the legislature that an appropriation of \$100 be made for each day of incarceration served subsequent to the claimant's conviction.⁹

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

⁶ Pen. Code, § 4900.

⁷ 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* (2000) 152 Cal. App. 4th 1164.

⁸ *People v. Miller* (1916) 171 Cal. 649, 652.

⁹ Pen. Code, § 4904.

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
3 may also consider any information that it may deem relevant to the issue before it.¹¹

4 **Did Angel Muro Commit the Crime?**

5 On June 12, 2006, the Court of Appeal reversed Angel Muro's conviction due to insufficiency
6 of the evidence. Because the court in *Tennison v. Victim Compensation and Government Claims*
7 *Board* held that a reversal based on insufficiency of the evidence is the functional equivalent of an
8 acquittal at trial,¹² it is determined that the Board can consider Angel Muro's acquittal in reaching its
9 determination of the merits. However, the acquittal will not be deemed sufficient evidence to warrant
10 the Board's recommendation that a claimant be indemnified in the absence of substantial
11 independent corroborating evidence that the claimant is innocent of the crime charged.¹³

12 Angel Muro did not provide any substantial, independent corroborating evidence that he did
13 not make a criminal threat or threats to Elizabeth J. Angel Muro did not produce any witnesses to
14 testify on his behalf, with the only evidence in the hearing consisting entirely of police reports, various
15 transcripts, trial testimony and appellate pleadings.

16 However, because the AG agreed with the Court of Appeal that there was insufficient
17 evidence to support Angel Muro's conviction, it is determined that Angel Muro has proven by a
18 preponderance of the evidence that he is innocent of the crime for which he was convicted and
19 incarcerated.

20 **Did Angel Muro Contribute to his Arrest?**

21 Angel Muro made serious written and verbal threats towards Elizabeth J., witnessed by both
22 Elizabeth J. and by his daughter, Marlissa M. Angel Muro owned legal and illegal firearms and he
23 possessed ammunition for those firearms. He also owned several other weapons. The threat made
24 to Elizabeth J. the afternoon of April 9, 2003, inferred that if he had one of his guns at that particular
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26 ¹¹ Cal. Code Regs., tit. 2, § 641.

27 ¹² *Tennison v. Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4th 1164,
28 1179.

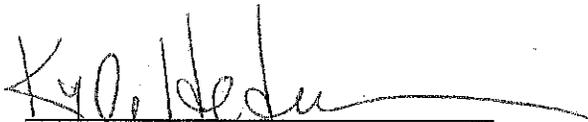
¹³ Cal. Code Regs., tit. 2, § 641.

1 time, he would kill Elizabeth J. Finally, Angel Muro left what could be construed as a threatening note
2 in Elizabeth J.'s truck after breaking the truck's window, a note confirmed to be in his handwriting by
3 both Elizabeth J. and Marlissa M.

4 A reasonable person could conclude that the statement he made to Elizabeth J. on the
5 afternoon of April 9, 2003, in conjunction with the broken truck window and the note left on the seat of
6 her truck, was a threat designed to instill fear in Elizabeth J. Elizabeth J. was aware of Angel Muro's
7 feelings towards her, and she had knowledge that he possessed guns and ammunition. Even though
8 the Court of Appeal found that Angel Muro's statement did not technically qualify as a violation of
9 Penal Code section 422, it is determined that his egregious and offensive conduct clearly contributed
10 to the police arresting him and the jury convicting him of making a criminal threat. Thus, it is
11 determined that Angel Muro failed to prove by a preponderance of the evidence that he did not by
12 any act or omission on his part, either intentionally or negligently, contribute to the bringing about of
13 the arrest or conviction for the crime.
14

15 Angel Muro's claim under Penal Code section 4900 et seq. is denied.
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18 Date: November 3, 2008

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