

CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

November 16, 2023
 10:00 a.m.
 400 R Street, Room 330
 Sacramento, CA 95811

BOARD MEETING MATERIALS

Item 1.	Approval of Minutes Minutes of the September 14, 2023, Board Meeting DRAFT Minutes attached	Action Item
Item 2.	Public Comment on Items Not on the Agenda - The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.) No materials for this item	
Item 3.	Executive Officer Statement No materials for this item	Information Item
Item 4.	Legislative Update Copy of Legislative Update attached	Information Item
Item 5.	Contract Update Copy of Contract Report attached	Information Item
Item 6.	Proposed Board Meeting Dates for Calendar Year 2024 Copy attached	Action Item
Item 7.	Shawn Martin (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 9.	Dupree Glass (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 9.	Juan Rayford (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item

ITEM 1

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CALIFORNIA VICTIM COMPENSATION BOARD OPEN MEETING MINUTES SEPTEMBER 14, 2023, BOARD MEETING

The California Victim Compensation Board (Board) convened its meeting in open session upon the call of the Chair, Gabriel Ravel, General Counsel of the Government Operations Agency, acting for, and in the absence of Amy Tong, Secretary of the Government Operations Agency, at 400 R Street, Room 330, Sacramento, California, on Thursday, September 14, 2023, at 10:00 a.m. Also present was Member Evan Johnson, acting for, and in the absence of, Malia Cohen, Controller. Appearing via Zoom was Member Diana Becton, District Attorney.

Executive Officer Lynda Gledhill, and Chief Counsel Kim Gauthier attended in person at 400 R Street, Sacramento, California. Board Liaison, Andrea Burrell, was also present and recorded the meeting.

Item 1. Approval of the Minutes of the July 20, 2023, Board Meeting

Member Johnson moved approval of the Minutes for the July 20, 2023, Board Meeting. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

Item 2. Approval of the Minutes of the August 24, 2023, Board Meeting

Member Johnson moved approval of the Minutes for the August 24, 2023, Board Meeting. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

Item 3. Public Comment

The Board opened the meeting for public comment and Ms. Burrell reminded everyone that, consistent with the Bagley-Keene Open Meeting Act, items not on the agenda may not be discussed at this time but may be put on a future agenda. (Gov. Code, § 11125.7.) No one offered any public comment.

Item 4. Executive Officer Statement

Executive Officer Gledhill updated the Board on a few items:

To start, Ms. Gledhill informed the Board that the Legislature approved new trailer bill language related to the Forced or Involuntary Sterilization Compensation Program (FISCP). The new language was signed by Governor Newsom late yesterday and will take effect immediately. This will make a few significant changes to the Program, which is still set to expire at the end of the calendar year.

First, the new language clarifies that each qualified recipient will receive a second payment of \$20,000. Previously, the law stated that the funds remaining would be equally distributed among the approved survivors. The legislature made this change because it has set aside up

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to \$1 million of the initial FISCP funds to be available for future legislation that may be adopted in 2024. This legislation will be informed by a currently underway report that evaluates the extent to which forced or involuntary sterilizations occurred in the Los Angeles County General Hospital. Now that the final payment is set, CalVCB can start sending the second checks more quickly. At this time, CalVCB has about 100 approved applications.

The new language also clarifies that CalVCB will conclude the Program after all applicants have had the opportunity to appeal, but no later than September 30, 2024.

CalVCB will continue its outreach efforts to try to identify and reach as many potential applicants as possible before the end of the Program.

Ms. Gledhill continued with an update regarding staffing. She noted that CalVCB has 261 budgeted positions and 47 current vacancies. CalVCB's Information Technology Division (IT) has 37 positions and 13 vacancies, which is roughly 35% of the division. CalVCB brought on retired annuitants to mitigate the risks as we actively recruit. These and other vacancies have impacted the ability to maintain daily operations as well as move forward at this time with some of the efforts we have been undertaking with the California Department of Technology. The teams have been directed to prioritize recruitment and hiring.

Next Ms. Gledhill discussed the Annual Report for Fiscal Year 2022-23, which highlights the increased benefit limits that went into effect July 1, 2022. CalVCB has provided \$6 million more in compensation than the previous fiscal year even though application numbers remained the same. The Annual Report also shows CalVCB's accomplishments related to trauma recovery centers, increasing mental health provider rates, simplifying the billing process, the compensation program for those that are erroneously convicted, and the FISCP.

Ms. Gledhill concluded this portion of her report by noting that the Annual Report also highlights CalVCB's significant efforts to improve communication and outreach through improving the website, identifying opportunities to help underserved communities, and connecting more with the Program's partners in-person.

Ms. Gledhill next shared that CalVCB has onboarded Civilian, which will help CalVCB execute the \$3 million, three-year outreach campaign. This campaign will target underserved populations and connect victims with the services they need. To date, CalVCB has shared information with Civilian regarding goals, data that evaluate crime rates, compensation levels across California, and feedback from CalVCB's stakeholders. Also shared was the Board's feedback from the July Board meeting regarding developing measurements for success. Civilian is in the process of developing the initial strategy for review and approval.

The CalVCB has also partnered with other state agencies and members of the CalVCB Advisory Board to share information during Domestic Violence Awareness Month in October.

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The team has prepared a social media toolkit, which will be posted online soon. This toolkit can be used by other organizations for available resources and how to support victims of domestic violence.

Also, on October 24, the Northern California Regional Meeting will take place at McGeorge School of Law. This meeting will give CalVCB an opportunity to share in-person information with partners and stakeholders.

Chairperson Ravel thanked Ms. Gledhill for the updates. Chair Ravel stated he understands about the recruitment and retention issues and acknowledged departments are experiencing similar issues across the state.

Item 5. Legislative Update

The Legislative Update was presented by Deputy Executive Officer Katie Cardenas.

Ms. Cardenas noted that this week marks the end of the legislative session.

Ms. Cardenas updated the Board on the status of several bills of interest to CalVCB:

- AB 1186 by Assembly Member Bonta, which would have required CalVCB to distribute payment of juvenile restitution orders, was placed on the inactive file.

Additionally, three bills were enrolled and will go to the Governor:

- AB 56 by Assembly Member Lackey would expand eligibility for compensation by CalVCB to include solely emotional injuries from certain felony violations.
- AB 1187 by Assembly Member Quirk-Silva would authorize CalVCB to reimburse services provided by Child Life Specialists.
- SB 78 by Senator Glazer would specify when a court shall issue a finding that a claimant is entitled to approval of a claim for compensation under Penal Code section 4900.

Finally, SB 544 by Senator Laird, which would amend the Bagley-Keene Open Meeting Act to remove certain teleconference requirements, was also enrolled and will go to the Governor. The final version of the bill would require at least one member to be physically present at every Board meeting.

Chairperson Ravel thanked Ms. Cardenas for the updates. He also wanted to clarify that SB 78 was the bill to bring equivalency to the standards applied whether claimants went through the District Attorney's office as opposed to the Attorney General's office.

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Ms. Gauthier stated that was correct. It takes SB 446 and makes it applicable in superior court so that those who are innocent can move for a finding in the superior court and if the District Attorney fails to object with clear and convincing evidence, then it would mean automatic compensation when they come to CalVCB.

Chairperson Ravel thanked Ms. Gauthier for the clarification.

Item 6. Contract Update

The Contract Update was presented by Deputy Executive Officer Shawn Ramirez.

Ms. Ramirez stated that the Contract Report was informational only and offered to answer any questions the Board had regarding the items listed in the report.

Chairperson Ravel thanked Ms. Ramirez.

Item 7. Request for Authority to Begin Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 640, et seq.)

The Request for Authority to Begin the Rulemaking Process for Amendments to the California Code of Regulations was presented by Senior Attorney Sara Harbarger.

Ms. Harbarger stated on January 19, 2023, CalVCB received authorization to submit the rulemaking calendar to begin the process of revising these regulations. Ms. Harbarger noted that the need to modify the regulations is twofold; first is to comply with case law and statute and second is as CalVCB staff have processed victim claims, they have seen the need to clarify procedures for victims. The nine regulations that are in the process of being revised are:

- 649.4 - clarifies that a victim who is injured or killed while incarcerated is ineligible to receive compensation pursuant to Government Code section 13956, subdivision (c).
- 649.7 – gives CalVCB the ability to accept digital signatures and allows the Board to accept summary reports from law enforcement, which will improve claim eligibility processing.
- 649.15 - clarifies additional factors staff may consider when determining whether good cause exists to allow a victim to file an application outside of the statutory timeline.
- 649.16 - clarifies that a victim is only eligible as either a direct victim or derivative victim per crime not both, consistent with the statutory compensation limit in Government Code section 13957, subdivision (b), which is \$70,000 per victim per crime at this time.
- 649.18 - clarifies the order in which funeral burial expenses will be paid by staff.
- 649.19 - clarifies the type of evidence that staff may consider when determining if residential security expenses are directly related to the qualifying crime.

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- 649.24 and 649.28 - explain the steps that the Board may take if they determine that a provider should be held accountable due to fraud or audit discrepancies and provide clear due process protections for providers.
- 649.50 - modifies funeral and burial expenses to include all minors who are passengers in a DUI collision instead of just those who are under the age of 14.

Ms. Harbarger continued and explained that during staff discussions there have been other regulations identified that could benefit from clarity, such as CalVCB's income loss regulation, section 649.32. Based on this noted need, CalVCB staff plan to propose additional regulation modifications in the next calendar year.

It was noted that the last time a large regulation packet was promulgated was in 2012 and CalVCB would like to have ongoing updates with shorter gaps in time frames between projects moving forward. The changes in these nine regulations will not only assist the public's understanding of the requirements to obtain victim benefits, but the two regulations will also assist providers in understanding what may happen if there is fraud or audit discrepancies.

Ms. Harbarger concluded by noting the next steps in the rulemaking process:

- The regulation packet will be mailed to the Office of Administrative Law.
- On September 29, 2023, the regulation packet will be posted on the CalVCB website and mailed to interested stakeholders.
- The 45-day comment period will begin and CalVCB will receive comments from the public.
- The comment period will close on November 13, 2023.
- CalVCB staff will review and consider all comments and determine if additional modifications to the regulations will need to be made.
- CalVCB staff will then come back before the Board either to request additional modifications to the regulations or approval to pursue the next steps in the process.

Member Becton asked two questions. First, in addition to mailing the packet to interested stakeholders, is it going to be a notice that it will be on the website? Second, after receiving the public comment and staff has an opportunity to review those comments and bring them back to the Board members, is that process going to happen in a public meeting so that there's additional opportunity for the public to comment on any proposed changes?

Ms. Harbarger responded that the entire regulation packet will be posted on the website on September 29, 2023. Posting will allow access to all members of the public to review the proposed changes and provide comments. The posting will remain on the website for the 45-day period. The Office of Administrative Law requires CalVCB staff to review all comments,

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summarize them, and respond to them. The comments, along with CalVCB responses on whether we agree with the modification or if we do not think it would be appropriate for that regulation, will be provided to the Board. The further modified regulations and summary of comments will be future Board items before the regulations are enacted.

Member Becton asked a third question regarding the response to the public comment and whether it is agreed upon or not and the reasoning, Specifically, she was asking if that would also be placed on the public website?

Ms. Harbarger stated CalVCB will publish on the website the entire packet that will be sent to the Office of Administrative Law because that is all part of the public record of this rulemaking process.

Member Becton thanked Ms. Harbarger for the clarification.

Member Johnson asked about the list of stakeholders and whether CalVCB planned to do any outreach and whether there is a point in this process that might trigger another public hearing for the regulations.

Ms. Harbarger stated CalVCB is currently working with its legislative team to discuss prior lists of stakeholders where we have sent regulation packets in 2012 and also last year. As far as another public hearing, there has not been any request from the public to have a hearing, but the public will have the opportunity to request a hearing during the public comment period.

Member Johnson then wanted clarification on proposed section 649.7, subd. (d) regarding the summary report and its impact on the change. Also, proposed section 649.19, subd. (c) on residential security, defining what evidence is needed. Are these new criteria, is it criteria that CalVCB has been using, or is it conforming with new legislation?

Ms. Harbarger responded that in some cases law enforcement has not completed the investigation, but the victims have already applied to the Board, so in order to expedite the eligibility process the officer can write a summary report to be used for the eligibility determination. With regard to residential security, Ms. Harbarger noted that currently in statute and regulation there are no specific criteria that explain what is needed to show that residential security is directly related to the crime. What is in the proposed regulation is criteria that is currently used by staff, but CalVCB wanted to make it fully transparent to the public that these are items that may be considered, but CalVCB is not necessarily limited to only these items.

Chairperson Ravel asked if there has been any stakeholder outreach on the front end, or talking with groups that might be interested in this, and if so, what is the plan?

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Ms. Harbarger relayed that CalVCB has not done any pre-stakeholder outreach for these draft regulations in this case, and we are hoping the many stakeholders will utilize the 45-day comment period and reach out so that we can consider all their thoughts, ideas, and proposed modifications.

Chairperson Ravel thanked Ms. Harbarger.

Member Becton moved to authorize the Executive Officer to begin the rulemaking process for amending sections 649.4, 649.7, 649.15-649.19, 649.24, 649.28, and 649.50 of the California Code of Regulations and to execute and submit any required documents to the Office of Administrative Law. The motion was seconded by Member Johnson. By a unanimous vote of the Board, the motion passed.

Item 8. Jesse Wagner (Pen. Code, §§ 4900, et seq.)

The Penal Code section 4900 claim of Jesse Wagner was presented by Chief Counsel, Kim Gauthier.

On July 11, 2022, Jesse Wagner submitted an application as an erroneously convicted felon to the California Victim Compensation Board. The application is based on his three convictions in 2005 for robbery, false imprisonment, and impersonating a peace officer. The convictions were vacated and dismissed in 2017.

The Attorney General objected to this claim pursuant to Penal Code sections 4900(b) and 4902. The proposed decision recommends denial of this claim as the Attorney General has met its' burden of proving by clear and convincing evidence that Mr. Wagner committed the crimes of robbery, false imprisonment, and impersonating a peace officer.

Mr. Wagner is represented in these proceedings by Stephen Allen, and the Office of the Attorney General is represented by Deputy Attorney General Britton Lacy.

Chair Ravel confirmed that Mr. Allen and Mr. Wagner did not appear at the Board meeting.

Chair Ravel then requested to hear from Ms. Lacy from the Attorney General's Office.

Ms. Lacy stated that the Office of the Attorney General agrees with the proposed decision and requests that the Board deny Mr. Wagner's claim.

Chair Ravel thanked Ms. Lacy for appearing before the Board.

Member Johnson moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Jesse Wagner. The motion was seconded by Member Becton. The

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motion was approved by a unanimous vote of the Board and the Proposed Decision was adopted.

Closed Session

The Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:35 a.m. pursuant to Government Code section 11126, subdivision (e) to discuss pending litigation and pursuant to Government Code Section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1 through 105 of the Victim Compensation Program.

Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 10:57 a.m.

Member Becton moved to approve items 1 through 105 of the Victim Compensation Program. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the proposed decisions were adopted.

Adjournment

Member Johnson moved the adjournment of the July Board meeting. Member Becton seconded the motion. The motion was approved by a unanimous vote of the Board and the meeting was adjourned at 10:59 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, November 16, 2023.

ITEM 2

PUBLIC COMMENT

The Board will receive comments from the public on matters that are not on the agenda.

The Board may not discuss or take any action on any item raised during public comment expect to decide whether to place the matter on a subsequent agenda.

(Gov. Code, § 11125.7.)

ITEM 3

EXECUTIVE OFFICER'S STATEMENT

ITEM 4

CALIFORNIA VICTIM COMPENSATION BOARD
LEGISLATIVE UPDATE
NOVEMBER 16, 2023

AB 56 (Lackey) Victim Compensation: Emotional Injuries

This bill expands eligibility for compensation by CalVCB to include solely emotional injuries from felony violations including, among other crimes, attempted murder, rape and sexual assault, mayhem, and stalking.

Status: Signed by the Governor (Chapter 512, Statutes of 2023)

AB 1187 (Quirk Silva) Victim Compensation: Certified Child Life Specialists

This bill authorizes CalVCB to reimburse mental health counseling services provided by a Certified Child Life Specialist.

Status: Signed by the Governor (Chapter 468, Statutes of 2023)

SB 78 (Glazer) Criminal Procedure: Factual Innocence

This bill provides that, for defendants whose convictions were reversed on habeas and the district attorney fails to object and provide clear and convincing evidence of guilt, the court shall issue a finding that they are entitled to compensation by CalVCB under Penal Code section 4900. The bill also makes statutory changes to conform to CalVCB's new payment process for erroneous conviction claims that was enacted in 2022.

Status: Signed by the Governor (Chapter 702, Statutes of 2023)

SB 104 (Skinner) Budget Acts of 2022 and 2023

This Budget Bill provides that up to \$1 million of the remaining funds appropriated for the Forced or Involuntary Sterilization Compensation Program (FISCP) shall be made available through June 30, 2026, for future legislation which may be adopted in 2024. This legislation would be informed by a report that will evaluate the extent to which forced or involuntary sterilizations occurred in the Los Angeles County General Hospital.

Status: Signed by the Governor (Chapter 189, Statutes of 2023)

SB 143 (Committee on Budget and Fiscal Review) State Government

This Budget Trailer Bill provides that qualified FISCP recipients shall receive a final payment of \$20,000. It also provides that CalVCB shall conclude FISCP after exhaustion of all appeals, but by no later than September 30, 2024.

Status: Signed by the Governor (Chapter 196, Statutes of 2023)

SB 544 (Laird) Bagley-Keene Open Meeting Act: Teleconferencing

This bill amends the Bagley-Keene Open Meeting Act to remove certain teleconference requirements, while ensuring remote public access to state body meetings via audio, online platforms, or physical attendance. It requires a majority of the members of the state body to be physically present at the same location for at least half of the meetings of that state body. The provisions of the bill will be repealed on January 1, 2026.

Status: Signed by the Governor (Chapter 216, Statutes of 2023)

AB 997 (Gipson) Exoneration: Mental Health Services

This bill would require CalVCB to compensate mental health services for individuals with successful erroneous conviction claims.

Status: Held on the Suspense File in the Senate Appropriations Committee

AB 1186 (Bonta) Juveniles: Restitution

This bill would remove provisions that require juvenile offenders to pay restitution, instead requiring them to participate in various restorative justice programs. The courts would determine the amount of restitution owed and transmit it to CalVCB, which would be required to pay the amount to the victim upon appropriation by the Legislature. It would specify that CalVCB shall not pursue reimbursement or recover in a separate action against a person who was adjudicated, or against the person's parent or guardian, for an offense committed while the person was a minor.

Status: Placed on the Senate Inactive File

AB 1551 (Gipson) Vehicular Manslaughter While Intoxicated

This bill would increase from \$70,000 to \$100,000 the limit on support loss that CalVCB may compensate minor derivative victims of a direct victim who was killed by a crime of vehicular manslaughter while intoxicated.

Status: Held on the Suspense File in the Assembly Appropriations Committee

SB 530 (Bradford) Exoneration: Compensation

This bill, effective January 1, 2024, would remove the requirement that erroneous conviction compensation claimants prove injury and instead state that they would be compensated for incarceration served solely as a result of the former erroneous conviction. In addition, it would add to a list of provisions that are scheduled to take effect July 1, 2024, but only if it is determined that sufficient General Fund monies exist, and an appropriation is made. The additional provisions would require compensation of \$70 per day for time that a claimant spent on the sex offender registration list due to an erroneous conviction and compensation of reasonable attorney fees for all successful claimants. The bill would also in certain

circumstances extend the deadline from 30 days to 90 days from the filing of a claim for CalVCB to calculate the compensation for the claimant and approve payment to the claimant.

Status: Held on the Suspense File in the Senate Appropriations Committee

SB 655 (Durazo) Victim Compensation

This bill would make a number of changes to CalVCB statutes, effective January 1, 2024. It would remove reasons for denial, including felony convictions, lack of cooperation with law enforcement and involvement in the events leading to the crime. The bill would allow documentation other than a crime report to be used to verify a qualifying crime. It would shorten the time period for processing of applications and appeals and extend the time period for a victim to provide additional information, appeal a decision, request reconsideration or file a petition for a writ of mandate. It would remove CalVCB's authority to set service limitations for medical and mental health services. It would create a presumption in favor of granting an emergency award for relocation or funeral expenses. It would prohibit denial of relocation reimbursement due to the victim informing the offender of the location of the new residence. It would add requirements for CalVCB's communication of information to claimants.

Status: Held on the Suspense File in the Senate Appropriations Committee

SB 838 (Menjivar) Use of Force by a Law Enforcement Officer

This bill would require CalVCB to compensate individuals who were killed or injured by law enforcement notwithstanding current eligibility requirements. It would add documentation that describes or demonstrates that a person suffered serious bodily injury or death as a result of a law enforcement officer's use of force to the definition of sufficient evidence establishing that the person is a victim eligible for compensation. It would prohibit CalVCB from denying a claim based on a law enforcement officer's use of force due to the victim's involvement in the crime or failure to cooperate with law enforcement. It would require denial of a use of force claim for involvement when the victim is convicted of a violent crime, pursuant to Penal Code section 667.5, or a crime that caused the serious bodily injury or death of another person at the time and location of the incident. Further, the bill would prohibit CalVCB from denying a claim, based on any crime that caused the death of the victim, due to the deceased victim's involvement in the crime or the victim's or a derivative victim's failure to cooperate with law enforcement.

Status: Held on the Suspense File in the Senate Appropriations Committee

AB 433 (Jackson) State- and County-Funded Grants: Advance Payments

This bill would require state and county departments that offer grants to nonprofit organizations to advance a payment of 10 percent of the total grant amount awarded to the nonprofit organization, upon request of the nonprofit administrators.

Status: Failed in the Assembly Accountability and Administrative Review Committee

AB 855 (Jackson) Criminal Procedure: Fines, Fees, and Restitution

This bill would change the annual interest rate on restitution orders and the annual interest rate charged by the Franchise Tax Board on certain delinquent payments, including fines, fees, and restitution, to no more than one percent.

Status: Failed passage in the Assembly Revenue and Tax Committee

AB 330 (Dixon) Domestic Violence: Victim's Information Card

This bill would require the Victims of Domestic Violence card to be a different color than other cards issued by officers, to include a disclaimer, to be available in languages other than English, and to include various information such as the definition of domestic violence and the statute of limitations for domestic violence.

Status: Held on the Suspense File in the Assembly Appropriations Committee

AB 1402 (Dahle) Medical Evidentiary Examinations: Reimbursement

Existing law requires the Office of Emergency Services to establish a protocol for the examination and treatment of victims of sexual abuse and attempted sexual abuse, including child sexual abuse, and the collection and preservation of evidence. This bill prohibits costs for the medical evidentiary portion of a child abuse or neglect examination from being charged directly or indirectly to the victim.

Status: Signed by the Governor (Chapter 841, Statutes of 2023)

AB 1215 (Carrillo) Pets Assistance with Support Grant Program

This bill would require the Department of Housing and Community Development to develop and administer the Pets Assistance With Support Grant Program (PAWS), to award grants to qualified homeless shelters and qualified domestic violence shelters. It would require grant recipients to meet certain availability and service requirements as they relate to the pets of people experiencing homelessness and people escaping domestic violence. The bill would provide that the program would only become operative upon appropriation by the Legislature.

Status: Vetoed by the Governor

SB 86 (Seyarto) Crime Victims: Resource Center

Existing law requires the establishment of a resource center that operates a statewide, toll-free information service, consisting of legal and other information, for crime victims and providers of services to crime victims, as defined. This bill would require the resource center to additionally provide the information through an internet website and to the families of crime victims. The bill would require that the internet website include a summary of victims' rights and resources.

Status: Signed by the Governor (Chapter 105, Statutes of 2023)

ITEM 5

CALIFORNIA VICTIM COMPENSATION BOARD
CONTRACT REPORT
NOVEMBER 16, 2023

The Board has delegated to the Executive Officer the authority to execute contracts with county victim centers for the verification of victim compensation program applications; contracts with counties for assistance in the effective collection of restitution from offenders; contracts for the review and adjustment of medical bills received by the California Victim Compensation Program; and contracts for the maintenance of the Board’s information technology system.

Further, the Board has delegated to the Executive Officer the authority to execute all other contracts in an amount not to exceed \$200,000. All contracts in excess of \$200,000 require Board approval prior to execution.

For all contracts for which the Executive Officer has delegated authority, the Executive Officer reports to the Board the substance and amount of the contract at the meeting following execution of the contract.

Contractor Name and PO/Contract Number	Contract Amount and Contract Term	Good or Service Provided
Approval		
No approvals requested.		
Informational		
Contractor Name: County of Los Angeles Contract Number: S23-003	Contract Amount: \$0.00 Term: 8/31/2023 – 6/30/2026	The Contractor shall establish a process by which the Contractor may pay expenses, through the Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made. Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor’s Scope of Work. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol

		1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of San Luis Obispo Contract Number: S23-013	Contract Amount: \$0.00 Term: 9/07/2023 – 6/30/2026	<p>The Contractor shall establish a process by which the Contractor may pay expenses, through the Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made.</p> <p>Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor’s Scope of Work.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).</p>
Contractor Name: Merced County, District Attorney’s Office Contract Number: S23-022	Contract Amount: \$236,649.00 Term: 9/27/2023 – 6/30/2026	<p>The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).</p>
Contractor Name: Tulare County, District Attorney’s Office Contract Number: S23-038	Contract Amount: \$227,901.00 Term: 8/23/2023 – 6/30/2026	<p>The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol</p>

		1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of Shasta Contract Number: S21-024 A1	Contract Amount: \$1,426,939.11 Term: 7/1/2021 – 6/30/2024	The Contract was amended to increase the dollar amount for FY 23-24 from \$415,517.41 to \$595,904.29. The original contract was for \$1,245,552.23. The Contractor shall provide immediate help to crime victims and process applications expediently, with access to crime reports and other information to verify the crime due to their proximity with the District Attorney’s offices and advocates. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Grant Name: Napa Solano SANE SART Grant Number: G23-018	Grant Amount: \$2,500,000.00 Term: 9/12/2023 – 6/30/2025	The Grantee shall open and operate two Regional Trauma Recovery Center (TRC) Pilot Programs in Northern California. Assembly Bill 178, Budget Act of 2022, section 214 (Provision 3) allocated funds to establish Regional Trauma Recovery Center Pilot Programs in Northern and Central California.
Contractor Name: OPTM WEST PO Number: PO 3061	Contract Amount: \$184,171.14 Term: 9/27/2023 – 9/26/2024	This procurement is to renew the premium support and subscription for four Palo Alto Network firewalls. These network appliances are critical as they provide cyber threat protection, application security, and web filtering. This was procured utilizing Statewide Contract #1-19-70-19P.

<p>Contractor Name: OPTM West</p> <p>PO Number: PO 3074</p>	<p>Contract Amount: \$163,706.78</p> <p>Term: N/A</p>	<p>This procurement is for a cloud data management storage appliance in order to expand the storage capacity of CalVCB's backup systems.</p> <p>This was procured utilizing Statewide Contract #1-19-70-19R.</p>
<p>Contractor Name: NWN Corporation</p> <p>PO Number: PO 3090</p>	<p>Contract Amount: \$99,601.06</p> <p>Term: N/A</p>	<p>This procurement is for laptops, docking stations, and laptop bags for CalVCB staff to maintain inventory for incoming staff. This procurement supports work in a post-pandemic environment, providing secure access to CalVCB networks both onsite and when teleworking.</p> <p>This was procured utilizing Mandatory Contract #1-22-70-30.</p>

ITEM 6

CALIFORNIA VICTIM COMPENSATION BOARD
PROPOSED BOARD MEETING DATES FOR CALENDAR YEAR 2024
NOVEMBER 16, 2023

Action Required

Staff proposes the Board approve Board meeting dates for calendar year 2024.

Background

Government Code section 13915 provides:

The board shall hold regular meetings in Sacramento and may hold other meetings at the times and places within the state as a majority of the board directs. At any meeting the board may transact any business and perform all duties imposed upon it.

Currently, the Board meetings are scheduled on the third Thursday of every other month.

If necessary in order to comply with statutorily mandated deadlines (e.g., erroneously convicted felon matters pursuant to Penal Code sections 4900, et seq.), the Board may schedule and conduct additional meetings throughout the year with ten days' notice in compliance with the Bagley Keene Open Meeting Act.

The proposed meeting dates for calendar year 2024 are:

- Thursday, January 18, 2024
- Thursday, March 21, 2024
- Thursday, May 16, 2024
- Thursday, July 18, 2024
- Thursday, September 19, 2024
- Thursday, November 21, 2024

ITEM 7

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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**

8
9 In the Matter of:

10 **Shawn Martin**

11 Claim No. 21-ECO-21

Proposed Decision

(Penal Code § 4900, subd. (a))

12 **I. Introduction**

13 On September 14, 2021, Shawn Martin (Martin) submitted a claim to the California Victim
14 Compensation Board (CalVCB) as an erroneously convicted person pursuant to Penal Code section
15 4900. The claim is based upon Martin's 2017 convictions for murder and shooting at an occupied
16 vehicle, which were reversed on direct appeal for instructional error, and for being a felon in
17 possession of a firearm, which remains valid. Martin seeks compensation in the amount of \$358,820
18 for the duration of his imprisonment for all three felony convictions, which he calculates as 2,563 days.
19 The Attorney General objected to the claim on July 19, 2022, arguing that the evidence fails to prove
20 Martin's innocence and, alternatively, any compensation amounts to \$256,900 for 1,835 days, after
21 subtracting for the sentence imposed for Martin's still-valid firearm conviction. CalVCB Senior
22 Attorney Laura Simpton held a hearing on January 31, 2023, at which both parties appeared. After
23 receipt of post-hearing briefing, the record closed on March 2, 2023. Throughout these proceedings,
24 Martin represented himself, and the Attorney General was represented by Deputy Attorney General
25 Kathryn Althizer.

26 After considering all the evidence in the record, the claim is recommended for denial because
27 Martin has failed to prove by a preponderance of the evidence that he did not commit the challenged
28 offenses. The inculpatory evidence includes Martin's admission that he twice shot the victim in the

1 head while she sat in her vehicle, as confirmed by a ballistic match with Martin's revolver. By
2 comparison, the exculpatory evidence largely consists of Martin's unpersuasive claim of self-defense.
3 Overall, the proffered exculpatory evidence fails to satisfy Martin's burden under subdivision (a) of
4 Penal Code section 4900 to show that he is more likely innocent than guilty of the charged crimes.

5 **II. Procedural Background**

6 Martin was arrested on April 23, 2014, and subsequently charged with murder and shooting at
7 an occupied vehicle in Alameda County Superior Court case number 175083.¹ Martin was also
8 charged with being a felon in possession of a firearm due to his prior convictions for marijuana sales
9 in 2002 and possessing a firearm in 2005.² Enhancements were further alleged for personal use of a
10 firearm causing great bodily injury.³ Following a jury trial, Martin was convicted on April 11, 2017, of
11 murder in the second-degree plus all remaining charges. The court sentenced Martin on June 9,
12 2017, to an aggregate term of 40 years to life. In addition, the court imposed a \$10,000 restitution fine
13 and a \$1,541.71 restitution order.⁴

14 Martin appealed to the First Appellate District of the California Court of Appeal. On July 2,
15 2020, the appellate court reversed Martin's convictions for murder and shooting at an occupied
16 vehicle due to an instructional error involving self-defense.⁵ Otherwise, the appellate court affirmed
17 Martin's sole remaining conviction for possession of a firearm.⁶

18 Upon remand to the trial court, the prosecution retried Martin for murder and shooting at an
19 occupied vehicle. The jury ultimately acquitted Martin of both charges on April 28, 2021.⁷

21 ¹ Pen. Code, §§ 187, 246.

22 ² Pen. Code, § 29800.

23 ³ Pen. Code, § 12022.53.

24 ⁴ Martin Application (App.) at p. 2; Attorney General Response Letter (AGRL) at p. 2; AGRL Exhibits
25 (Exs.) at 3 at pp. 684-685; Claimant's Prehearing Brief at pp. 27.

26 ⁵ AGRL Ex. 4 at p. 706.

27 ⁶ AGRL Ex. 5 at p. 729.

28 ⁷ Docket for *People v. Martin*, Alameda County Superior Court case number 175083, available online
<https://www.alameda.courts.ca.gov/online-services/criminal-case-portal>; see also Cal. Code Regs., tit.
2, § 617.8 (official notice.)

1 Accordingly, on April 29, 2021, the court resentenced Martin on the sole remaining conviction for
2 possession of a firearm to a term of two years imprisonment (i.e., 730 days).⁸ Martin was released
3 from custody the next day on April 30, 2021, after having been confined a total of 2,565 days since his
4 arrest on April 23, 2014.⁹ Thus, of Martin's total confinement for this case, 1,835 days were solely
5 attributable to his vacated convictions for murder and shooting at an occupied vehicle, while the
6 remaining 730 days were due to his still-valid conviction for possessing a firearm.

7 By fax received September 14, 2021, Martin timely submitted a claim to CalVCB seeking
8 compensation as an erroneously convicted offender pursuant to Penal Code section 4900. On
9 September 23, 2021, after confirming compliance with Penal Code sections 4900 and 4901, CalVCB
10 deemed the claim filed and requested a response from the Attorney General within 60 days.¹⁰
11 Following multiple extensions for demonstrated good cause, the Attorney General timely submitted a
12 response letter on July 19, 2022, along with 13 exhibits spanning over 3,000 pages.¹¹

13 The assigned Hearing Officer, Senior Attorney Laura Simpton, held a hearing on January 31,
14 2023, at which both parties appeared remotely by videoconference. Martin testified subject to cross-
15 examination by the Attorney General. Martin also elicited testimony from two witnesses, who also
16 appeared by videoconference. At the conclusion of the hearing, the record was left open until March
17 2, 2023, for the parties to submit an optional post-hearing brief.¹² Only the Attorney General
18 submitted a post-hearing brief, which was timely received on February 28, 2023.

24 ⁸ AG Post-Hearing Brief Ex. 1 (Abstract of Judgment). Though the calculation is unclear, the court
25 awarded Martin credit for 1,144 days actually served, which would have commenced March 12, 2018.

26 ⁹ Martin App. at p. 2; AGRL Ex. 6 at pp. 2734-2735; AG Post-Hearing Brief at p. 6.

27 ¹⁰ Cal. Code Regs., tit. 2, § 640, subds. (d)-(e).

28 ¹¹ AGRL at pp. 1-22 Exs. 1-13.

¹² Cal. Code Regs., tit. 2, §§ 641, subds. (a)-(d), & (k), 645, subd. (a).

1 **III. Factual Summary**

2 **A. Fatal Shooting**

3 On April 23, 2014, at approximately 9:30 p.m., Martin fatally shot his neighbor Melissa M.
4 (Melissa).¹³ Specifically, Martin fired two bullets from his .38 special revolver, pausing roughly two
5 seconds in between shots.¹⁴ One bullet entered Melissa's upper forehead at a downward angle of 60
6 degrees, traveling through her skull into her brain.¹⁵ The other bullet entered Melissa's lower chin at a
7 downward angle of 45 degrees, traveling through her mandible, throat, and spine vertebra.¹⁶ Both
8 bullets were fired at close range, as stippling was present. Melissa was just 21 years old and stood
9 five-feet five-inches tall.¹⁷ Martin, by comparison, was 38 years old and six-feet five-inches tall.¹⁸

10 The shooting occurred while Melissa was seated inside her car, which was parked on the
11 street next to the Oakland home she shared with her parents and girlfriend. Martin lived next door in a
12 ground floor apartment. A fence with pedestrian gate separated the apartment property from the
13 public sidewalk, and Melissa's car was parked directly in front of that gate.¹⁹ The street in front of both
14 their homes was fairly dark without a nearby streetlight.²⁰ Immediately after shooting Melissa, Martin
15 ran to his apartment, and, at 9:32 p.m., he called 911, claiming to have just heard a shooting.²¹

16 Meanwhile, Melissa's father William P. (William) was at home when he heard gunshots.
17 William went outside to check on Melissa, but then he quickly returned home and told his wife Virginia
18 M. (Virginia) and Melissa's girlfriend Joanna C. (Joanna) that Melissa had been shot. All three ran
19 outside, and, at 9:33 p.m., Virginia called 911.

20
21 _____
22 ¹³ The victim's last name is omitted in an effort to protect her and her family members' privacy.

23 ¹⁴ AGRL Exs. 2 at p. 590; 4 at p. 710; 5 at pp. 742, 751; 7 at p. 1015; 7-2 at p. 1133.

24 ¹⁵ AGRL Exs. 7-2 at pp. 1110-1111, 8 at pp. 1294-1295.

25 ¹⁶ AGRL Exs. 7-2 at pp. 1110-1111, 8 at pp. 1233, 1294-1295.

26 ¹⁷ AGRL Ex. 6 at pp. 866, 878.

27 ¹⁸ AGRL at p. 6; AGRL Ex. 8 at pp. 1432-1433, 1480-1481.

28 ¹⁹ AGRL Ex. 5 at p. 735.

²⁰ AGRL at pp. 2-4; AGRL Exs. 4 at pp. 706-710; 7 at pp. 1007-1008, 1205-1207.

²¹ AGRL Ex. 10 at p. 1773.

1 The threesome found Melissa seated in the driver's seat, her bloodied head tilted back, and
2 left leg hanging out of the car. Her car door was open, but the engine was still running. On the
3 dispatcher's instruction, William removed Melissa's nonresponsive body from the car onto the ground.
4 Paramedics and police soon arrived at 9:43 p.m., less than 15 minutes after the shooting. Melissa
5 was officially pronounced dead at the hospital.²²

6 Martin initially remained inside his apartment after calling 911. He hid his revolver inside a
7 shoe bag and stashed it in the bushes of his backyard. After police arrived, Martin walked out of his
8 apartment to his car, which was parked on the street, and drove off. Police eventually located Martin's
9 revolver, which had his DNA. The bullets from Martin's firearm were linked to the bullets recovered
10 from Melissa's body.²³

11 Significantly, no weapon was found on Melissa's person or inside her car. When speaking to
12 police, Melissa's parents denied seeing a firearm in Melissa's possession.²⁴ A neighbor from across
13 the street, who watched from her window, did not see anyone remove anything from Melissa's car.²⁵
14 At trial, Joanna also denied removing any items from Melissa's car and further denied seeing
15 Melissa's parents doing so. However, Joanna initially told police, falsely, that Melissa did not own a
16 gun, even though Melissa did own one, which she normally carried inside a small, black or dark-
17 colored backpack. Joanna last saw Melissa with her gun several days before the shooting.²⁶

18 When searching Melissa's car, police found a firearm magazine, ammunition, and a green
19 canvas gun bag, but no firearm. In Melissa's home, police found a plastic firearm holster, the butt
20 stock off a BB gun, and a gun case. The gun case contained miscellaneous items, such as a grocery
21 store card and coin rolling paper, but no firearm. Days later, police located a black backpack from
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23
24 ²² AGRL Exs. 4 at p. 707; 5 at pp. 731-736; 6 at pp. 915-920.

25 ²³ AGRL at pp. 4-6; AGRL Exs. 4 at pp. 706-710; 7 at pp. 1007-1008, 1205-1207.

26 ²⁴ AGRL Ex. 5 at p. 748.

27 ²⁵ AGRL at p. 4; AGRL Ex. 7 at p. 1021.

28 ²⁶ AGRL at pp. 4, 6; AGRL Exs. 1 at 182, 4 at p. 710; 5 at pp. 749-750, 6 at pp. 914, 933-935, 934, 967-968, 981-982; Ex. 8 at pp. 1210, 1241.

1 Melissa's bedroom with the assistance of Melissa's parents, but the backpack was completely empty.
2 In the end, Melissa's firearm was never found.²⁷

3 **B. Prior Confrontation**

4 Several weeks before the fatal shooting, on or about April 1, 2014, Martin confronted Melissa
5 by pointing a gun in her face.²⁸ Earlier that day, Martin was arguing with his landlord while standing in
6 the common area in front of his apartment. Melissa's mother Virginia joined in the argument to
7 support the landlord. Martin called Virginia a "bitch" and retreated inside his apartment.

8 Later that night, when Melissa and her girlfriend Joanna were returning home, they observed
9 Martin walk out of his apartment to his car parked on the street nearby, approximately 24 feet away.
10 Melissa yelled out, "Let them call my mom a bitch again," adding that the "next time ... it's going to be
11 bad."²⁹ In response, Martin approached Melissa and Joanna and, while standing about four or five
12 feet away, pointed a gun directly at Melissa's face. Melissa and Joanna remained quiet. Then Martin
13 quipped, "Oh, you're a female," evidently realizing Melissa, who had short hair and wore masculine
14 clothes, was a woman. Martin subsequently walked away.³⁰

15 **C. Martin's Inconsistent Statements**

16 After the fatal shooting, Martin provided inconsistent statements, commencing with his 911
17 call, his subsequent police interview and interrogation, and his trial testimony. Each is detailed below.

18 **1. 911 Call**

19 At 9:32 p.m., Martin called 911. His call was the first one to report the shooting to police.
20 Martin initially claimed that he heard two or three shots near his front door while he was in the back of
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22
23 ²⁷ AGRL at pp. 4, 6; AGRL Exs. 1 at p. 181; 4 at p. 710; 5 at pp. 736, 749-750, 7 at pp. 1202, 1210, 8 at
24 pp. 1231-1232, 1241, 1259-1260, 9 at 1506.

25 ²⁸ Martin was not charged with assault with a deadly weapon, evidently due to the absence of evidence
26 that the gun was loaded. (Pen. Code, § 245; *People v. Rodriguez* (1999) 20 Cal.4th 1, 11 fn.3 ["A long
27 line of California decisions holds that an assault is not committed by a person's merely pointing an
(unloaded) gun in a threatening manner at another person".])

27 ²⁹ AGRL Exs. 4 at p. 706, 6 at pp. 908-913.

28 ³⁰ AGRL Exs. 4 at pp. 706-707, 6 at pp. 908-914.

1 his apartment. He added that someone was “sitting in a car right now.”³¹ Martin initially denied seeing
2 the shooting and claimed to be unsure whether he heard any vehicles speed away. But then Martin
3 claimed that his ears were still ringing and that the shots had blown out his eardrums. Martin provided
4 his first and last name to the dispatcher, who promised officers were on the way.³²

5 **2. Initial Interview**

6 Around 11:30 p.m., two hours after the shooting, Martin arrived at a nearby substation to
7 provide a follow up statement.³³ Martin told the officers that he left his apartment shortly after police
8 arrived and “started driving wild,” evidently to avoid being seen speaking to police in his own
9 neighborhood. Martin visited two friends, whom he did not identify by name, and then had one of
10 them drop him off at the substation. Martin denied any involvement in the shooting. In contrast to his
11 911 call, he claimed to have been in his front yard when he heard two or three gunshots, after which
12 he immediately ran inside his apartment and called 911. Martin denied seeing the shooting. He
13 claimed that he first observed the victim while paramedics were tending to her. He denied knowing
14 Melissa or ever having spoken to her.³⁴

15 As the interview continued, Martin complained about his landlord and alleged that she had
16 tried to shoot him over their ongoing disagreements. Martin mentioned that, during one such
17 disagreement, the victim’s mother had sided with the landlord, despite Martin’s previous claim that he
18 did not know Melissa. Martin accused Melissa’s mother of colluding with the landlord to damage his
19 car. Then, without any prompting by the officers, Martin identified Melissa’s car and described her
20 appearance as masculine.³⁵

21 Contrary to his initial version of events, Martin now claimed that he had seen the shooter,
22 whom he described as male wearing a beige jacket. Martin stated that the shooter fired after
23

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25 ³¹ AGRL Ex. 11 at p. 1848.

26 ³² AGRL at pp. 3-4; AGRL Exs. 5 at 737-378, 10 at p. 1773; 11 at pp. 1848-1849.

27 ³³ AGRL Exs. 4 at p. 707, 5 at p. 735, 6 at p. 854; 7 at pp. 1052-1060, 8 at pp. 1233-1235.

28 ³⁴ AGRL at pp. 4-6; AGRL Exs. 4 at pp. 707-708; 10 at pp. 1768-1846.

³⁵ AGRL Exs. 4 at p. 708, 10 at pp. 1768-1846.

1 Melissa's car door swung open "like she was about to say something to somebody and shit fire...."³⁶

2 Martin started to approach but then he "heard shots" and saw her car "get lit ... up."³⁷

3 The officers tested Martin's hands for gunshot residue (GSR), which was positive. At
4 approximately 1:45 a.m. on April 24, 2014, which was just over two hours after his interview
5 commenced, Martin was transported to the downtown police station for further interrogation by the
6 investigating detectives.³⁸

7 **3. Interrogation**

8 Almost 12 hours later, at approximately 2:00 p.m. on the afternoon of April 24, 2014, Martin's
9 interrogation commenced and lasted four hours.³⁹ During the first two hours, Martin continued to deny
10 any involvement in the shooting, but he also added new details to the version of events that he
11 supposedly witnessed. For example, Martin claimed that he heard a male voice call out to the victim.
12 Martin also denied owning a gun. When confronted with the positive GSR test, Martin claimed to have
13 lit fireworks. But during that last two hours, after police informed Martin that they had found his gun
14 and "knew everything," Martin finally admitted that he shot Melissa, claiming for the first time that she
15 had pulled a gun on him first.⁴⁰ Throughout his interview and interrogation, Martin never told police
16 that he allegedly saw Melissa's father remove her firearm from her car and stash it near trees on their
17 property, although that night he suggested it during a recorded telephone call to a friend.⁴¹

18 **4. Trial Testimony**

19 At trial, Martin testified that he shot Melissa in self-defense. According to Martin, he was inside
20 his apartment when he heard a noise outside, as if someone had opened the fence gate, so he
21 walked outside to investigate. He was armed with his revolver, as he had previously been shot twice

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23 ³⁶ AGRL Ex. 4 at p. 708.

24 ³⁷ AGRL Ex. 4 at pp. 708-709; see also Ex. 5 at pp. 1780-1781.

25 ³⁸ AGRL at pp. 5-6; AGRL Exs. 4 at p. 709, 5 at pp. 737-738; 10 at pp. 1768-1846.

26 ³⁹ AGRL Exs. 4 at p. 709; 5 at pp. 744-746. The record does not include a complete transcript of this
27 interrogation.

27 ⁴⁰ AGRL at pp. 5-6; AGRL Ex. 4 at p. 709.

28 ⁴¹ AGRL at p. 9; AGRL Exs. 5 at p. 746 (jail call at 9:25 p.m. on April 24, 2014); 9 at pp. 1530, 1535.

1 and lived in a rough neighborhood. He next heard a door open and spotted Melissa seated inside the
2 driver's seat of her parked car. Melissa started to exit her car and yelled, "What are you looking at?"
3 By then, Martin had approached the front bumper of her car, with his hands in his pocket, allegedly
4 afraid for his life with nowhere else to run. According to Martin, Melissa's hands were moving, as if
5 digging for a weapon, and then she partially pulled a gun out of her pocket with her right hand. In
6 response, Martin pulled out his gun, reached over the car door, which he claimed was more than
7 halfway open, and fired one shot. Melissa's right elbow supposedly moved, so Martin fired a second
8 shot. Then he ran back to his apartment and called 911. Martin also claimed, for the first time
9 publicly, that he observed Melissa's father William rummage in her car and then walk towards some
10 trees in the yard, suggesting that William had removed and hidden Melissa's gun from the crime
11 scene. Once the first responders arrived, Martin hid his own gun and left the area.⁴²

12 During cross-examination, Martin made several damaging admissions. He admitted failing to
13 tell police about supposedly seeing William hide Melissa's gun at any time during his six-hour
14 interview and interrogation. He also admitted previously telling police that Melissa's car door was
15 barely open, as if she was merely getting some air and not exiting her car. He further admitted that he
16 stepped or skipped around Melissa's car towards the driver's side door, moving a little faster than [he]
17 needed to...."⁴³ Significantly, he admitted that he "didn't notice no gun" before shooting Melissa,
18 adding that he did not know for certain whether she was armed but did not want to wait to find out. He
19 also admitted telling police that he had "whipped out" his firearm while Melissa was "curled up away
20 from the door with her hands down by her side."⁴⁴ Martin acknowledged that he had "really fucked
21 up," repeated that he had "fucked up royally" and acted "in [s]tupid haste...."⁴⁵ He "made the biggest
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25 ⁴² AGRL at pp.8-9; AGRL Ex. 4 at pp. 712-713.

26 ⁴³ AGRL Exs. 4 at p. 712; 9 at pp. 1601, 1613-1614.

27 ⁴⁴ AGRL Exs. 4 at p. 712; 9 at pp. 1601, 1613-1614.

28 ⁴⁵ AGRL at p. 9; AGRL Exs. 4 at pp. 712-713; 9 at pp. 1611, 1620-1627, 1634.

1 mistake of [his] life.”⁴⁶ Tellingly, Martin added, “I felt that I would not have hurt that person as badly if
2 ... I paid more attention [to] what the hell I was doing....”⁴⁷

3 As for his prior confrontation with Melissa several weeks earlier, Martin admitted that he had
4 “whipped out” his gun and pointed it at her because she had been rude and disrespectful.⁴⁸ He
5 admitted telling police that Melissa was not a threat to him during the prior altercation and that he had
6 never seen Melissa with a firearm.⁴⁹ He further admitted that, on the night of the shooting, Melissa
7 had reason to be afraid of him as he approached her with his hand in his pocket because he had
8 previously pulled a gun on her.⁵⁰

9 **D. Melissa’s Character**

10 To bolster Martin’s claim of self-defense at trial, the defense presented impeaching evidence
11 of Melissa’s character in an effort to show a propensity for violence. As stipulated at trial, Melissa had
12 methamphetamine in her system at the time of her death. The amount was enough to render a
13 person highly intoxicated, which, in turn, may cause the person to become agitated or suspicious or
14 suffer hallucinations. But people who frequently use methamphetamine may not experience these
15 symptoms if they have developed some tolerance.⁵¹ Moreover, Melissa had a history of domestic
16 violence with her girlfriend Joanna. In particular, Melissa had previously punched, kicked, and even
17 stabbed Joanna with a pocketknife. Joanna sometimes initiated their fights and once sprained
18 Melissa’s wrist during an altercation. Melissa never threatened Joanna with a gun.⁵²

19 **E. Closing Argument and Instruction**

20 At the conclusion of the trial, the prosecutor argued that Martin was guilty of murder, even if he
21 shot Melissa while she had a firearm pointed at him, because she was entitled to defend herself from
22

23 ⁴⁶ AGRL at p. 9; AGRL Exs. 4 at p. 713; 9 at pp. 1620-1627.

24 ⁴⁷ AGRL at p. 9; AGRL Exs. 4 at p. 713; 9 at pp. 1583-1587, 1628.

25 ⁴⁸ AGRL at p. 9; AGRL Exs. 4 at p. 712; 9 at pp. 1568-1570.

26 ⁴⁹ AGRL at p. 9; AGRL Ex. 9 at pp. 1583-1587.

27 ⁵⁰ AGRL at pp. 6-9; AGRL Ex. 4 at pp. 710-713

28 ⁵¹ AGRL at 10; AGRL Ex. 8 at pp. 1369, 13981-1390.

⁵² AGRL Ex. 6 at pp. 900-901.

1 Martin after he had previously pointed a firearm at her. The prosecutor incorrectly urged the jury to
2 consider Melissa’s state of mind when evaluating Martin’s claim of self-defense. At one point during
3 the four-day deliberation, the jury sent a note to the judge inquiring whether Martin had forfeited his
4 right to self-defense. The court provided standard instructions on self-defense without clarifying that
5 the victim’s state of mind was irrelevant to determining whether Martin reasonably believed he was in
6 imminent danger when he fired the fatal shots. The jury ultimately rejected Martin’s claim of self-
7 defense and found him guilty of all charges.⁵³

8 **F. Martin’s Other Bad Acts**

9 Unbeknownst to the jury, in February 2014, Martin’s landlord Deborah H. sought a temporary
10 restraining order against Martin after he repeatedly called her a “fucking bitch” when requesting his
11 rent money. In March 2014, Deborah reported that Martin had threatened to kill her if she did not get
12 away from his car. That same month, Deborah reported that Martin had followed her around the
13 neighborhood in violation of the restraining order.⁵⁴

14 Years later, while incarcerated for Melissa’s murder, Martin assaulted a fellow inmate on three
15 separate occasions (i.e., December 8, 2017, December 11, 2017, and September 10, 2018). The first
16 two assaults were committed against the same victim, who was alone when the attack occurred, while
17 Martin was joined by one or more fellow inmates. The third assault was committed against a different
18 inmate, who was also alone, while Martin was joined by two fellow inmates. In all three instances,
19 Martin claimed he was merely defending himself or his friends.⁵⁵

20 **G. Appellate Court Reversal**

21 Meanwhile, Martin appealed the jury’s verdict. He claimed reversible error based upon the trial
22 court’s instructions on self-defense, combined with the prosecutor’s closing argument to consider the
23 victim’s state of mind. According to Martin, the jury may have improperly concluded that he had
24 forfeited his right to self-defense on the night of the fatal shooting, even if Melissa had threatened him
25

26 ⁵³ AGRL Ex. 4 at pp. 714, 726.

27 ⁵⁴ AGRL at p. 5; AGRL Ex. 5 at pp. 752-753.

28 ⁵⁵ AGRL at pp. 12-15.

1 with a gun, solely based upon his prior confrontation with Melissa when he had pointed a gun at her.
2 The appellate court agreed, concluding that the trial court erred by failing to provide additional
3 instruction to alleviate this confusion. The appellate court found the error was not harmless as to
4 Martin’s convictions for murder and shooting at an occupied vehicle because, inter alia, the jury’s
5 deliberations for more than four days “suggests this was a close case.” Accordingly, the appellate
6 court reversed both of these convictions. Nonetheless, the appellate court affirmed Martin’s sole
7 remaining conviction for being a felon in possession of a firearm, as the instructional error was
8 irrelevant to the jury’s determination of guilt for that particular offense.⁵⁶

9 **H. Second Trial Acquittal**

10 Neither claimant nor the Attorney General presented any evidence from the second jury trial.
11 The jury ultimately found Martin “not guilty” of murder and shooting at an occupied vehicle on April 28,
12 2021.⁵⁷

13 **I. CalVCB Hearing**

14 At the CalVCB hearing, testimony was presented from Martin and his two witnesses, neither of
15 whom were percipient witnesses to the shooting.⁵⁸ Each witness’s testimony is summarized below.

16 **1. Tina Flores**

17 Tina Flores (Flores), who described herself as a “Health and Safety Instructor,” testified that
18 she met Martin in 2021, after his release from prison for the challenged offenses. Martin was
19 homeless, and Flores hired Martin as a handyman for her office. She found him to be a hard worker.
20 Martin also volunteered for her outreach team for COVID-19 testing. Citing Penal Code section 4904,
21 which provides \$140 per day in compensation for approved claims for erroneously convicted persons,
22 Flores opined that it was unfair that Martin remained homeless and without any retirement funds.
23 According to Flores, Martin had previously earned \$75 per hour as a journeyman, but after this
24

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26 ⁵⁶ AGRL Ex. 4 at pp. 714, 721-729.

27 ⁵⁷ AGRL at p. 10.

28 ⁵⁸ CalVCB Hearing Recording, MP3 audio file, through 2:16:30; CalVCB Hearing Video, MPF video file, through 2:09:36; Claimant Prehearing Statement at p. 1; Attorney General Hearing Exhibit 1.

1 “blemish” on his record, he was unable to obtain employment. Flores characterized Martin as a
2 valuable community member, who was still trying to reestablish himself. On cross-examination,
3 Flores acknowledged that she lacked any personal knowledge about the fatal shooting. Flores also
4 acknowledged that, in 1983, she was convicted of misdemeanor welfare fraud in exchange for
5 dismissal of a perjury charge. Flores insisted that her prior criminal act, which she claimed was
6 necessary to care for her sister’s abandoned children, was not relevant to evaluating her credibility in
7 this administrative proceeding.⁵⁹

8 Notably, Flores obtained power of attorney over Martin’s assets effective July 1, 2023. The
9 notarized durable power of attorney was personally signed by Martin on May 19, 2023. Flores
10 forwarded the executed power of attorney to CalVCB from Martin’s email account on June 21, 2023.⁶⁰

11 **2. Scott Donahue**

12 Scott Donahue (Donahue), who described himself as a public artist and former Mayor and
13 Councilmember for Emeryville, testified that he had known Martin since 1993. Donahue had
14 employed Martin, off-and-on, for almost eight years to assist with fabrication and installation of his art
15 projects. Donahue found Martin to be a hard worker, even when Donahue was absent from the site.
16 Donahue compensated Martin at the top of his pay scale. At Donahue’s suggestion, Martin pursued
17 employment in the trades for better pay, but Martin missed out on work opportunities while
18 incarcerated. Donahue opined that \$140 per day in compensation as provided by Penal Code section
19 4904 is significantly less than Martin’s worth, but it would help him get reestablished.⁶¹

25 ⁵⁹ CalVCB Hearing Video at 18:01 through 27:19; Claimant Prehearing Statement at p. 1; Attorney
26 General Hearing Exhibit at p. 1.

27 ⁶⁰ Email from Martin, entitled “Power of Attorney for Shawn Martin,” sent at 8:32 a.m. on June 21, 2023;
see also Cal. Code of Regs., tit. 2, § 644, subd. (o) (discretion to reopen administrative record).

28 ⁶¹ CalVCB Hearing Video at 08:21 through 17:45; Claimant Prehearing Statement at p. 2.

1 **3. Martin’s Testimony**

2 Though often evasive, Martin testified that he shot Melissa in self-defense.⁶² According to
3 Martin, he was inside his apartment when he heard the fence gate slam. He immediately went
4 outside, armed with his revolver, but found the gate was open and no one nearby. He spotted Melissa
5 seated inside her car, which was parked directly in front of his apartment, when she opened her car
6 door. Martin felt that Melissa had been waiting for him after purposefully slamming his gate. While
7 still clutching her steering wheel, Melissa shouted to Martin in a threatening manner, “You say
8 something?” Then Melissa stepped out of the car, with the car door halfway open, and added, “I’m
9 about to – ” That was the last thing Martin heard her say. Martin believed Melissa was armed
10 because of her aggressive comments to him, despite her comparatively small stature. Melissa
11 inexplicably “plopped” back down in her car seat, at which point Martin allegedly saw a gun in her right
12 hand, which she had raised above the center console. At that time, Martin claimed he was standing in
13 front of Melissa’s car. Allegedly afraid that he would be shot in the back if he ran away, Martin
14 approached Melissa’s opened door, with his gun drawn, and shot her. Martin shot Melissa a second
15 time because her right elbow moved. Martin added, inconsistently, that Melissa’s hand was tangled in
16 her jacket pocket when he shot her. He further added, inconsistently, that he did not see a gun, but
17 knew the shape of one, and claimed a gun was in Melissa’s pocket.⁶³

18 Martin testified that he called 911 in order to obtain medical help for Melissa. He denied
19 knowing the extent of her injuries. He admitted hiding his gun, leaving the scene, and lying to the
20 police, all in order to steer the investigation away from him. Martin denied these actions were the
21 result of a guilty conscience, as argued by the Attorney General. He claimed, instead, that these
22 actions resulted from his fear that he would not be believed as a Black man in America who had shot
23 someone.

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27 ⁶² Four times, the Hearing Officer redirected Martin to describe details of the shooting during his hour-
long testimony.

28 ⁶³ CalVCB Hearing Video at 27:50 through 1:30:32 and 1:49:35 through 2:05:02.

1 Throughout the hearing, Martin extensively discussed his landlord, whom he blamed for
2 “dragging” Melissa’s parents into their dispute. Much of the dispute focused on Martin’s car, which he
3 usually parked on the street in front of his apartment. To prevent it from being towed, Martin would
4 chain his car to the apartment fence, even though the chain blocked the sidewalk. Martin also posted
5 signs on his car stating that it had been driven in an effort to prevent it from being towed. Martin
6 acknowledged his landlord had obtained a temporary restraining order against him, but he insisted it
7 was “cancelled” after he showed that the landlord had impermissibly recorded the inside of his car.
8 Martin alleged that the landlord had hired someone to threaten him with a gun. He further alleged,
9 citing various transcripts of police interviews, that Melissa’s mother and father had verbally threatened
10 him after Martin had called Virginia a “bitch.”⁶⁴

11 Martin attacked Melissa’s character. He asserted that Melissa was “high” on
12 methamphetamine and had a propensity for violence, as shown by Melissa’s assaults of her girlfriend
13 Joanna. Martin denied that he had a propensity for violence, noting that he had lived in the apartment
14 for four years without any incident with his neighbors. Martin admitted pointing his gun at Melissa a
15 few weeks before the shooting, supposedly in fear that Melissa might shoot him, but he ultimately
16 declined to fire it after concluding that Melissa no longer posed a threat to him. Martin admitted that
17 he once had a prior altercation with his own daughter’s mother, but he emphasized that she had told
18 police that Martin did not cause the abrasion on her arm. Martin also admitted that he had battered an
19 inmate three times while in prison, but he maintained he did so in self-defense. Martin added that
20 prison is an ugly place where you have to fight and cannot walk away. He noted that he did not
21 engage in any other illegal conduct while in prison, such as possessing drugs or weapons.

22 Martin complained that he was the victim of the judicial system, despite having been acquitted
23 by a jury of his peers. Martin stated that neither he, nor Melissa’s parents, deserved what happened,
24 but he had no choice but to defend himself. Martin added that Melissa’s parents had not apologized
25 to him for his loss. Martin complained that he was homeless and unable to obtain employment as a
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28 ⁶⁴ Claimant Prehearing Statement at pp. 29-45.

1 union journeyman, evidently due to his still-valid conviction for possessing a firearm. Martin also
2 claimed that he had lost approximately \$12,000 in restitution payments before the appellate court
3 reversed his convictions.⁶⁵ In closing, Martin urged the Board to do the right thing.⁶⁶

4 **IV. Determination of Issues**

5 Penal Code section 4900, subdivision (a), allows a person, who has been erroneously
6 convicted and imprisoned for a felony offense that they did not commit, to submit a claim for
7 compensation to CalVCB for the injury sustained.⁶⁷ Under subdivision (a) of section 4900, claimants
8 bear the burden to prove by a preponderance that (1) the crime with which they were convicted either
9 did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous
10 conviction.⁶⁸ Once such a claim is received and filed, Penal Code section 4902 requires the Attorney
11 General to submit a written response pursuant to Penal Code section 4902.⁶⁹ Thereafter, under Penal
12 Code section 4903, an informal administrative hearing before a hearing officer ensues, at which the
13 claimant and Attorney General may present evidence concerning innocence and injury.⁷⁰ Upon the
14 requisite showing of innocence and injury, then pursuant to Penal Code section 4904, CalVCB shall
15 approve payment for the purpose of indemnifying the claimant for the injury sustained if sufficient funds
16 are available, upon appropriation by the Legislature, at a rate of \$140 per day for their erroneous
17 imprisonment.⁷¹

20 ⁶⁵ Claimant's Prehearing Statement at pp. 25-27. Incidentally, the Hearing Officer informed Martin that,
21 in general, a restitution refund may be requested by filing a government claim with the Department of
22 General Services. The Hearing Officer expressly declined to opine whether such a refund might be
23 warranted in Martin's case, especially considering his still-valid conviction for possessing a firearm.
The Hearing Officer explained that claims for a restitution refund are separate and unrelated to claims
for erroneously convicted persons under Penal Code section 4900.

24 ⁶⁶ CalVCB Hearing Video at 27:50 through 1:30:32 and 1:49:35 through 2:05:02.

25 ⁶⁷ Pen. Code, § 4900.

26 ⁶⁸ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

27 ⁶⁹ Pen. Code, § 4902, subd. (a).

27 ⁷⁰ Pen. Code, § 4903, subd. (a).

28 ⁷¹ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

1 In limited circumstances, a different procedure may apply for claimants whose convictions have
2 been reversed. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court
3 finding of factual innocence during a proceeding that resulted in either a grant of habeas relief or
4 vacated conviction pursuant to Penal Code section 1473.6, then CalVCB must automatically approve
5 the claim, within 30 days and without a hearing, pursuant to Penal Code section 4904 for the injury
6 sustained.⁷² Second, under subdivision (b) of Penal Code section 4900, if the claimant's conviction
7 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,
8 subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney General
9 declines to object with clear and convincing proof of guilt, then CalVCB must approve the claim within
10 60 days pursuant to Penal Code section 4904 for the injury sustained.⁷³ Unless one of these narrow
11 statutory exceptions applies, then the claimant bears the burden to prove innocence and injury by a
12 preponderance of the evidence under subdivision (a) of Penal Code section 4900.

13 When determining whether the claimant has satisfied their burden of proof, the Board may
14 consider the "claimant's denial of the commission of the crime; reversal of the judgment of conviction;
15 acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the
16 crime...."⁷⁴ The Board may also "consider as substantive evidence the prior testimony of witnesses
17 [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for
18 which claimant had an opportunity to object."⁷⁵ Ultimately, the Board may consider "any other
19 information that it deems relevant to the issue before it," even if inadmissible under the traditional rules
20 of evidence, so long as "it is the sort of evidence on which reasonable persons are accustomed to rely
21 in the conduct of serious affairs."⁷⁶

24 ⁷² Pen. Code, §§ 851.865; 1485.55, subd. (a), 4902, subd. (a); see also Cal. Code of Regs., tit. 2, § 640,
25 subds. (e)(1)-(2), eff. Jan. 1, 2023.

26 ⁷³ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

27 ⁷⁴ Cal. Code Regs., tit. 2, § 641, subd. (a).

28 ⁷⁵ Cal. Code Regs., tit. 2, § 641, subd. (b).

⁷⁶ Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

1 CalVCB’s broad authority to consider all relevant evidence when deciding a claimant’s
2 application for compensation may be limited by various court decisions during the criminal proceedings.
3 By statute, CalVCB is bound by “factual findings” and “credibility determinations” rendered by a court
4 during proceedings on a petition for habeas corpus, motion to vacate judgment pursuant to Penal Code
5 section 1473.6 or 1473.7, subdivision (a)(2), or an application for a certificate of factual innocence.⁷⁷
6 Notably, these statutory provisions omit any decision rendered by an appellate court on direct appeal.⁷⁸
7 Nonetheless, an appellate court’s determination of legal issues that were, or could have been, raised
8 on direct appeal, may bind CalVCB under the doctrines of res judicata and collateral estoppel.⁷⁹
9 Moreover, a claim under Penal Code section 4900 may not be denied solely because the claimant
10 failed to obtain a court finding of factual innocence.⁸⁰ But absent a finding of factual innocence, the
11 claimant continues to bear the burden of proof to demonstrate innocence by a preponderance of the
12 evidence.⁸¹

13 **A. Penal Code Section 4900, subdivision (a), Governs Martin’s Claim**

14 Martin seeks compensation for all three of his convictions in case number 175083, two of which
15 were reversed on direct appeal, and one which remains valid. None of these convictions were reversed
16 or vacated by grant of habeas or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2).
17 As such, the burden-shifting provision in subdivision (b) of Penal Code section 4900 does not apply.
18 Moreover, Martin lacks a finding of factual innocence by any court under Penal Code section 1485.55
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20 ⁷⁷ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c).

21 ⁷⁸ *Ibid.*; see also *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1211-1212 (“Appellate courts do not
22 make factual findings; we review ‘the correctness of a judgment [or order] as of the time of its
23 rendition’”); *People v. Cervantes* (2020) 46 Cal.App.5th 213, 224 (“appellate courts are not equipped to
accept new evidence and make factual findings”).

24 ⁷⁹ See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 206
25 (explaining “Res judicata, or claim preclusion, precludes parties or their privies from relitigating a cause
of action finally resolved in a prior proceeding” and “Collateral estoppel precludes relitigation of issues
argued and decided in a prior proceeding”).

26 ⁸⁰ Pen. Code, § 1485.55, subd. (d); Cal. Code of Regs., tit. 2, § 645, eff. Jan. 1, 2023.

27 ⁸¹ Pen. Code, §§ 4900, subd. (a), 4904; *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 588
28 n.7 (“To prevail claimant must carry the burden of proof of innocence by a preponderance of the
evidence”); Cal. Code of Regs., tit. 2, § 644, subd. (b)(1), eff. Jan. 1, 2023.

1 or 851.865. Thus, Martin's claim does not fall within either of the limited statutory exceptions to
2 subdivision (a) of section 4900. Accordingly, subdivision (a) governs the disposition of Martin's claim.
3 He therefore bears the burden to demonstrate innocence by a preponderance of the evidence.

4 **B. Binding Court Determinations**

5 Neither party addresses whether any aspect of the appellate court's opinion is binding. By
6 statute, it does not appear that any portion of the appellate court's decision on direct appeal is binding,
7 as appellate courts do not make factual findings or credibility determinations.⁸² But in an abundance of
8 caution, CalVCB assumes that the appellate court's determination of legal issues is binding.⁸³ CalVCB
9 similarly accepts the appellate court's characterization of the evidence presented during the first trial.
10 Alternatively, even if none of the appellate court's conclusions or characterizations are binding, CalVCB
11 may still consider them as relevant evidence in this administrative proceeding.⁸⁴ No presumption is
12 made as a result of Martin's failure to obtain a finding of factual innocence.⁸⁵

13 **C. Insufficient Proof of Innocence**

14 After considering all of the evidence and argument presented by the parties, along with the
15 appellate court's reversal and second jury's acquittal on remand, Martin has failed to satisfy his burden
16 to demonstrate his innocence by a preponderance. On balance, the weight of the inculpatory evidence
17 far exceeds the exculpatory evidence. As detailed below, the record fails to show that Martin likely
18 acted in self-defense when he killed Melissa, twice shooting her while she sat in her car, all while being
19 a felon in possession of a firearm. Having failed to prove that the charged crimes for which he was
20 imprisoned either did not occur or were not committed by him, Martin's claim for compensation must be
21 denied.

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25 ⁸² Pen. Code, §§ 1485.5, subds. (c) & (d), 4903, subd. (c); *Jack v. Ring, supra*, 91 Cal.App.5th at pp.
1211-1212; *People v. Cervantes, supra*, 46 Cal.App.5th at p. 224.

26 ⁸³ See *Central Delta Water Agency v. Department of Water Resources, supra*, 69 Cal.App.5th at p. 206
(explaining doctrines of res judicata and collateral estoppel).

27 ⁸⁴ Cal. Code Regs., tit. 2, § 641, subd. (f).

28 ⁸⁵ Pen Code, § 1485.55, subd. (d).

1 **1. Self-Defense Overview**

2 Murder is defined as the unlawful killing of a human being with malice aforethought. Malice may
3 be express, such as when the killer specifically intended to kill. Alternatively, malice may be implied
4 when the killer intentionally committed an act, knowing the natural and probable consequences of that
5 act were dangerous to human life, and deliberately acted with conscious disregard to life.⁸⁶

6 However, no murder occurs, even if the killing was committed with intentional or implied malice,
7 so long as the killer acted in self-defense. In that scenario, the killing was not unlawful and, therefore,
8 no crime occurred. But for self-defense to apply, (1) the killer must have reasonably believed he was in
9 imminent danger of suffering great bodily injury or death, (2) the killer must have also reasonably
10 believed that immediate use of deadly force was necessary to defend against that danger, and (3) the
11 killer must have used no more force than was reasonably necessary to defend against that danger.

12 When evaluating the reasonableness of the killer’s beliefs, the trier of fact must consider what a
13 reasonable person in the killer’s situation, with knowledge of all circumstances known to the killer,
14 would have believed. So long as the killer’s beliefs were reasonable, self-defense applies, even if the
15 perceived danger did not actually exist. When applicable, the killer is not required to retreat; he may
16 stand his ground to defend himself and may even pursue the perceived assailant until the danger has
17 passed.⁸⁷ The right to use force in self-defense continues only as long as the danger exists or
18 reasonably appears to exist.⁸⁸

19 The crime of shooting at an occupied vehicle occurs when a person willfully shoots a firearm at
20 an occupied vehicle without acting in self-defense.⁸⁹ Thus, no crime occurs if the shooter acted in self-
21 defense. In this context, self-defense applies if (1) the shooter reasonably believed he was in imminent
22 danger of suffering bodily injury, (2) the shooter also reasonably believed that the immediate use of
23 force was necessary to defend against that danger, and (3) the shooter used no more force than was

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25 ⁸⁶ Pen. Code, §§ 187, 188 (defining murder and degrees); CALCRIM 520 (jury instruction defining
26 murder).

27 ⁸⁷ CALCRIM 505 (defining self-defense for homicide).

28 ⁸⁸ CALCRIM 3474 (jury instruction limiting self-defense).

⁸⁹ Pen. Code, § 246; CALCRIM 965 (defining shooting at an occupied vehicle).

1 reasonably necessary to defend against that danger. When evaluating the reasonableness of the
2 shooter's beliefs, the trier of fact must consider what a reasonable person in the shooter's situation,
3 with knowledge of all circumstances known to the shooter, would have believed. So long as the
4 shooter's beliefs were reasonable under this standard, self-defense applies, even if the perceived
5 danger did not actually exist.⁹⁰

6 The crime of being a felon in possession of a firearm occurs when a person has previously been
7 convicted of a felony yet nevertheless knowingly possesses a firearm.⁹¹ Possession may be justified,
8 however, if the felon confiscated the firearm from someone else who was committing a crime against
9 the felon, and the felon possessed the firearm no longer than was necessary to deliver the firearm to
10 law enforcement. Possession may also be justified if the felon's possession was only momentary and
11 solely for the purpose of disposing the firearm. Otherwise, the felon's possession is unlawful.⁹²

12 In a criminal trial where self-defense is raised, the burden rests upon the prosecution to
13 disprove, beyond a reasonable doubt, any justification for the underlying act.⁹³ For a murder
14 conviction, the prosecution must therefore prove, beyond a reasonable doubt, that the killing did not
15 result from the killer's reasonable belief in the need for immediate use of deadly force to defend against
16 imminent danger of great bodily injury.⁹⁴ If the prosecution fails to carry its burden, the jury must acquit
17 the killer by returning a not-guilty verdict for murder, even if the jury remains uncertain whether self-
18 defense likely applied. Similarly, the jury must find the shooter not guilty of shooting at an occupied car
19 if the jurors had a reasonable doubt as to whether the shooter reasonably believed he was in imminent
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21 ⁹⁰ CALCRIM 3470 (defining right to self-defense for non-homicide charges).

22 ⁹¹ Pen. Code, § 29800.

23 ⁹² CALCRIM 2510 (defining crime and applicable defenses for possessing firearm).

24 ⁹³ See *People v. Schuller* (2023) 15 Cal.5th 237, 253 ("given how California has chosen to structure its
25 homicide laws, when imperfect self-defense is at issue in a murder case, the People must prove the
26 absence of that circumstance 'beyond a reasonable doubt ... in order to establish the ... element of
malice"); see also *People v. Flood* (1998) 18 Cal.4th 470, 481 ("prosecution has the burden of proving
beyond a reasonable doubt each essential element of the crime").

27 ⁹⁴ CALCRIM 505 (confirming the "People have the burden of proving beyond a reasonable doubt that
28 the [] killing was not justified" as self-defense), 3470 (confirming the "People have the burden of
proving beyond a reasonable doubt that the defendant did not act in lawful [] self-defense").

1 danger that required such immediate force to defend against, even if the jurors believed such a
2 scenario was unlikely.⁹⁵ Thus, a jury's acquittal in these circumstances reflects a reasonable doubt as
3 to whether self-defense applied, rather than a determination that it likely did.⁹⁶

4 As explained below, the overall evidence fails to show by a preponderance that Martin acted in
5 self-defense when he fatally shot Melissa, with his own firearm, as she sat inside her car. To the
6 contrary, it appears more likely that Martin lacked a reasonable belief that Melissa posed an imminent
7 danger of bodily injury or that immediate use of force was necessary. It further appears that Martin
8 used more force than necessary to defend himself. Accordingly, none of Martin's criminal acts amount
9 to self-defense.

10 **2. Inculcating Evidence**

11 Most significantly, Martin shot Melissa twice in the head. One bullet entered her forehead, the
12 other her chin. Both were fired in closed range and at a steep downward trajectory, one passing
13 through Melissa's skull into her brain, the other through her mandible, throat, and spine vertebra. To
14 inflict these fatal injuries, Martin must have been standing nearby, with his gun held above Melissa's
15 head, while she was seated in her car. As the Attorney General persuasively argued,⁹⁷ these
16 circumstances suggest Melissa was caught off guard when the shooting occurred, rather than posing
17 any threat to Martin.

18 Not only is the nature of Melissa's wounds highly incriminating, but so is the number. Two
19 separate gunshots to the head far exceeded the amount of force necessary to defend against any
20 potential danger posed by Melissa. Just one of these gunshots would have sufficed to neutralize any
21 conceivable threat, yet Martin still fired a second time. Whether the first bullet entered Melissa's

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24 ⁹⁵ CALCRIM 965 (listing the absence of self-defense as an element of the crime for shooting at an occupied vehicle).

25 ⁹⁶ *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 587 n.7 (recognizing that "a person
26 erroneously imprisoned for justifiable homicide is not per se ineligible for compensation pursuant to
27 Penal Code sections 4900 et seq." but emphasizing, nevertheless, that "even an acquittal on this
ground would alone be insufficient for recovery" as the "claimant must carry the burden of proof of
innocence by a preponderance of the evidence").

28 ⁹⁷ CalVCB Hearing Video at 1:46:46 through 1:47:30.

1 forehead or her chin, she could not have reasonably posed enough of a threat thereafter to warrant a
2 second bullet. The excessiveness of Martin's use of force is further demonstrated by their size
3 disparity, as Martin was a foot taller than Melissa. Accordingly, at least one shot was fired after any
4 possible danger ceased to exist.

5 Also incriminating is the fact that Melissa was unarmed. No weapon was found on Melissa's
6 person or car. This omission confirms that Melissa did not actually threaten Martin with deadly force,
7 contrary to some of Martin's inconsistent statements that Melissa first pulled a gun on him. While
8 Martin's claim of self-defense is not necessarily defeated by Melissa's lack of a weapon, so long as he
9 reasonably believed she possessed one and would use it imminently, its absence nevertheless
10 undermines the persuasiveness of such a defense. In other words, it is unlikely Martin reasonably
11 believed Melissa was about to shoot him when she was actually unarmed, especially given Martin's
12 own admissions that he had never before seen Melissa with a firearm. Indeed, had Melissa been
13 armed, she likely would have reached for her gun from within the backpack where she normally kept it,
14 rather than her pockets as Martin alleges. Overall, the record shows by a preponderance that Melissa
15 was unarmed.

16 In an effort to avoid this result, Martin claimed at trial and again at the CalVCB hearing that
17 Melissa's parents retrieved her gun from the scene and hid it from police. However, this suggestion is
18 not credible. Both of Melissa's parents expressly denied removing anything from her car when
19 questioned by police, and Joanna and a neighbor corroborated their denial when testifying at trial.
20 Joanna expressly denied hiding Melissa's gun, which she last saw in Melissa's possession a few days
21 before the shooting.⁹⁸ By comparison, Martin failed to mention to police during his six-hour police
22 interview and interrogation that he observed Melissa's parents remove an object from her car.
23 Moreover, Martin's suggestion is not objectively plausible, as it would have required Melissa's parents
24 to have the presence of mind to retrieve her gun from her person or car upon discovering her bloody
25 body and then hide it somewhere away from the scene as she lay dying, all within the 15-minute
26 window before police and paramedics arrived. Overall, such actions by emotional parents upon finding

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28 ⁹⁸ AGRL Ex. 6 at pp. 925, 934.

1 their mortally wounded daughter are not reasonable. Rather, on this record, it is more likely that
2 Melissa was unarmed at the time of the shooting.

3 Another highly incriminating circumstance is Martin's prior confrontation with Melissa. While
4 Melissa initially yelled at Martin from a distance for calling her mother an expletive, only Martin
5 approached and threatened Melissa with imminent and deadly harm. Specifically, Martin pointed his
6 silver revolver in Melissa's face, with his arm fully extended, while standing just four feet away.⁹⁹
7 Significantly, Melissa remained entirely silent in response Martin's sudden aggression. Eventually, after
8 ridiculing Melissa's appearance, Martin walked away. Though Martin inconsistently claimed that
9 Melissa moved her hands as if reaching for a gun, he admitted to police that he did not view Melissa as
10 a threat. These circumstances, in which only Martin threatened physical violence and Melissa reacted
11 passively, must be considered when evaluating the reasonableness of Martin's claim of self-defense.
12 Viewed in context, these circumstances undermine the reasonableness of any belief by Martin that he
13 was in imminent danger of suffering great bodily injury from Melissa when he twice shot her.

14 Martin's own admissions further undermine his claim of self-defense. He admitted that he
15 "whipped out" his gun while Melissa was curled up, away from the door, with her hands down by her
16 side.¹⁰⁰ He "didn't notice no gun" and had never before seen her with a gun.¹⁰¹ He "would not have
17 hurt [her] as badly if [he] had paid more attention" to what he was doing.¹⁰² Ultimately, he made "the
18 biggest mistake of [his] life."¹⁰³ Combined, these admissions tend to show that Martin knowingly lacked
19 any reasonable belief in the need for deadly force when he fatally shot Melissa.

20 Martin's actions and inconsistent statements immediately after the shooting are likewise
21 incriminating. Martin fled the scene, hid his gun, and provided multiple inconsistent and false accounts
22 of what occurred to 911 and police. Though insufficient by itself to convict, a person's false statements
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25 ⁹⁹ AGRL Ex. 6 at pp. 912-914, 975-978.

26 ¹⁰⁰ AGRL at p. 20; AGRL Ex. 9 at pp. 1601, 1613-1614.

27 ¹⁰¹ AGRL at p. 20; AGRL Ex. 9 at pp. 1611, 1620-1624, 1634.

28 ¹⁰² *Ibid.*

¹⁰³ *Ibid.*

1 concerning a crime tend to show consciousness of guilt, as does flight from the scene of the crime and
2 attempts to suppress evidence.¹⁰⁴ Martin attributes these actions to his fear of not being believed.
3 However, this explanation does not entirely negate the inference of guilt under the totality of
4 circumstances.

5 Also, as urged by the Attorney General, Martin has a pattern of claiming self-defense after
6 initiating violence.¹⁰⁵ Shortly before the fatal shooting, Martin's landlord reported that he had
7 threatened to kill her, but Martin insisted to police and during the CalVCB hearing that the landlord had
8 tried to kill him. After the fatal shooting, while in prison, Martin was thrice cited for fighting another
9 inmate, and all three times he claimed that he did so in self-defense or defense of others. He also
10 claimed self-defense for fatally shooting Melissa, even though she was unarmed and had never before
11 threatened him with a weapon, not even after he had pointed a gun at her head a few weeks earlier. It
12 appears statistically unlikely that all of these incidents may be justified by self-defense.¹⁰⁶ Though of
13 relatively minimal inculpatory weight, this factor is incriminating.¹⁰⁷

14 Finally, Martin remains validly convicted of being a felon in possession of a firearm. This
15 conviction was affirmed on direct appeal and remains intact. Throughout the trial and administrative
16 proceedings, Martin admitted possessing the gun that was used to twice shoot Melissa, which was
17 found in his own yard with his DNA. Though not necessarily determinative in this administrative
18 proceeding, this fact overwhelmingly demonstrates Martin's guilt for at least this particular offense.

19 Overall, the record contains convincing evidence of Martin's guilt for murder, shooting at an
20 occupied vehicle, and possessing a firearm.

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24 ¹⁰⁴ CALCRIM 362, 371, 372, & 378 (jury instructions describing consciousness of guilt).

25 ¹⁰⁵ AGRL at pp. 18-19.

26 ¹⁰⁶ *People v. Spector* (2011) 194 Cal.App.4th 1335, 1379 (explaining "doctrine of chances" requires
27 consideration of "the objective improbability of a coincidence in assessing the plausibility of a
defendant's claim that ... [he] was accidentally enmeshed in suspicious circumstances").

28 ¹⁰⁷ Even if this factor is excluded, the result of this decision remains the same given the overall record.

1 **3. Proffered Exculpating Evidence**

2 By comparison, Martin’s proffered exculpating evidence largely consists of his own claims of
3 self-defense. It also includes testimony from his character witnesses, Flores and Donahue, plus
4 impeachment evidence of Melissa’s character, as well as the appellate court’s reversal and second
5 jury’s acquittal. Following a careful and thorough review, none of the proffered evidence persuasively
6 demonstrates Martin’s innocence.

7 Martin testified, both in the first trial and the CalVCB hearing, that he shot Melissa in self-
8 defense. However, Martin’s testimony is not credible. His version of events has shifted significantly
9 over time, and key portions are refuted by physical evidence. For example, Martin denied witnessing
10 the shooting or knowing the victim’s identity in his 911 call, but then several hours later during his police
11 interview, he claimed to have observed a male wearing a beige jacket shoot Melissa. Later that
12 afternoon, Martin further claimed that he heard the male shooter call out to Melissa, but then eventually
13 Martin admitted that he actually shot the victim. Martin denied owning a firearm, even after the GSR
14 test was positive, and only admitted owning one after learning that police had found it. At trial, Martin
15 inconsistently testified that he saw Melissa partially pull a gun out of her pocket with her right hand, but
16 then he later admitted he did not actually see a gun and never saw her with one. During the CalVCB
17 hearing, Martin was evasive about the details of the shooting. When pressed, he once claimed to have
18 seen Melissa holding a firearm above the center console, while he was standing in front of her car,
19 which appears to be logistically unlikely due to the line of sight. But even assuming otherwise, Martin
20 later stated that he did not see a gun, only the shape of one still inside her pocket. However, as
21 determined above, Melissa was unarmed when Martin twice fatally shot her.

22 Overall, Martin’s account of what happened continues to change, not just from the initial 911 call
23 to the police interview and police interrogation in 2014, but also from the first trial in 2017 to the CalVCB
24 hearing in 2023. Considering the significant inconsistencies, as well as Martin’s admissions that
25 shooting Melissa was a “mistake” and he “would not have hurt [her] as badly” had he “paid more
26 attention,”¹⁰⁸ Martin’s claim of self-defense is not persuasive.

27 _____
28 ¹⁰⁸ AGRL Ex. 4 at pp. 712-713.

1 Martin's attacks on Melissa's character are likewise unconvincing. Citing Melissa's past
2 incidents of domestic violence and her positive toxicology test for methamphetamine, Martin insists that
3 Melissa had a propensity for violence. However, Melissa's prior bad acts involving her romantic partner
4 and ongoing drug use are of little probative value when determining her actions in the moments before
5 her death. By comparison, Melissa's passive behavior during the prior altercation with Martin is a more
6 reliable indicator of her likely response to Martin threatening her, again, with a gun to her head. Thus,
7 the more likely scenario, as Martin once admitted, is that Melissa was curled up away from the door
8 with her hands down by her side when he fatally shot her.

9 As for Martin's own character witnesses, Flores and Donahue both testified that he was a hard
10 worker who lost potential earnings as a result of his overturned conviction for Melissa's murder. But
11 neither Flores nor Donahue were present when the shooting occurred. Considering the lack of
12 percipient knowledge, their testimony is largely irrelevant and fails to persuade that Martin acted in self-
13 defense.

14 The appellate court's reversal of Martin's convictions for murder and shooting at an occupied
15 car, as well as the second jury's acquittal upon retrial, similarly fail to demonstrate his innocence. The
16 appellate court determined that prejudicial instructional error required a new trial on both charges
17 because the length of the jury's deliberation "suggests this was a close case." Even accepting this
18 characterization of the record, it fails to prove innocence, only that the instructional error was not
19 harmless. Similarly, the second jury's acquittal reflects a reasonable doubt that Martin was not acting in
20 self-defense when he fatally shot Melissa.¹⁰⁹ Neither adjudication reflects an affirmative finding that
21 Martin likely shot Melissa in self-defense.

22 4. Analysis

23 On balance, the evidence fails to prove that Martin is more likely innocent, than guilty, of the
24 challenged convictions for murder, shooting at an occupied vehicle, and being a felon in possession of
25

26
27 ¹⁰⁹ See *Diola v. State Board of Control*, *supra*, 135 Cal.App.3d at p. 587 n.7 (confirming that acquittal on
28 the basis of self-defense, alone, fails to satisfy affirmative burden of proof to prove innocence by a
preponderance for relief under Pen. Code, § 4900).

1 a firearm. The inculpatory evidence is compelling. It includes the nature and number of Melissa's fatal
2 injuries, which were inflicted at close range by Martin's gun, just a few weeks after Martin had
3 confronted Melissa by pointing a gun at her head. Melissa was unarmed, possibly distracted, when
4 Martin approached her car and fatally shot her. It also includes Martin's admissions, though
5 inconsistent, that he never saw Melissa with a gun, not even after he had pointed a gun to her head a
6 few weeks earlier. It further includes Martin's admissions that shooting Melissa was his "biggest
7 mistake" and he "would not have hurt [her] that badly if [he] had paid more attention...."¹¹⁰ In addition,
8 Martin's flight from the scene, attempt to hide his gun, and extensive lies to police tend to suggest guilt,
9 as does the statistically unlikely number of times that Martin has claimed self-defense. Finally, Martin
10 remains validly convicted of possessing the firearm that he used to fatally shoot Melissa.

11 By comparison, Martin's testimonial claims of self-defense are inconsistent, at times evasive
12 and contradicted by the physical evidence, and ultimately unpersuasive. Martin's non-percipient
13 character witnesses fail to prove otherwise. Melissa's drug use and acts of violence against her
14 girlfriend are similarly unconvincing, especially given Melissa's demonstrated passive response to
15 Martin aiming a gun at her head a few weeks earlier. The appellate court decision merely found
16 prejudicial instructional error, and the second jury's acquittal simply reflects a reasonable doubt as to
17 Martin's guilt.

18 All in all, the evidence fails to prove that Martin is more likely innocent, than guilty, of murder,
19 shooting at an occupied vehicle, and being a felon in possession of a firearm. The burden rests upon
20 Martin to affirmatively demonstrate that he did not commit these offenses, or they never occurred. To
21 that end, it is Martin's burden to show that, when he twice shot Melissa in the head as she sat unarmed
22 in her car, he did so while under the reasonable belief that he was in imminent danger of great bodily
23 injury that required immediate use of deadly force to defend against, and he used no more force than
24 necessary.¹¹¹ It is also Martin's burden to show that, when he possessed a firearm as a convicted
25

26
27 ¹¹⁰ AGRL Ex. 4 at pp. 712-713.

28 ¹¹¹ CALCRIM 505, 3470.


1 felon, his possession was momentary and solely for the purpose of disposing it.¹¹² Martin entirely fails
2 to meet his burden on this record, for all of the reasons detailed above.

3 In sum, the evidence fails to show that Martin likely acted in self-defense when he committed
4 the challenged offenses for which he was charged and imprisoned. Indeed, Martin's guilt appears
5 much more likely, given all of the inculpatory evidence detailed above, even if insufficient to convince a
6 jury beyond a reasonable doubt. Accordingly, his application as an erroneously convicted person under
7 Penal Code section 4900 must be denied.

8 **V. CONCLUSION**

9 In accordance with subdivision (a) of Penal Code section 4900, the undersigned Hearing
10 Officer recommends that CalVCB deny Martin's claim. He failed to demonstrate by a preponderance
11 of evidence that he did not commit the offenses for which he was convicted and imprisoned. Martin
12 is, therefore, ineligible for compensation as an erroneously convicted person.

13
14 Date: October 9, 2023

15 
16 _____
17 Laura Simpton
18 Senior Attorney
19 California Victim Compensation Board
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23
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26

27 _____
28 ¹¹² Pen. Code, § 29800; CALCRIM 2510.

RESPONSE RECEIVED

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BEFORE THE VICTIM COMPENSATION BOARD
OF THE STATE OF CALIFORNIA

In the Matter of Proposal Decision
Shawn Martin (Penal Code 4900, subd. (a))
Claim No. 21-ECO-21

1. Introduction

16. I will be addressing these question in no particular order. Here it goes. There may be
17. additional information and if so I will try to point it out. Most of which was already
18. Discussed. Here are your questions.
19. 1.) Are the facts stated in the Proposed Decision supported by the evidence in the
20. hearing record? NO!
21. 2.) Does the Proposed Decision contain an accurate statement of the application law? NO .
22. 3.) Does the Proposed Decision correctly apply the applicable law? NO
23. 4.) Is there additional evidence that the Board should consider? YES!
24. 5.) If the Board should consider additional evidence, why was it not presented at the
25. Hearing? MY LIFE (WOAS) AND LOSSES DUE TO LOOSING 7 YEARS OF LIFE! *video*
26. 6.) If the Board rejects the Proposed Decision , what further action should the Board
27. take to resolve thè matter? PLEASE PAY ME WHAT IS DUE TO ME? \$358,820.00
28. AND \$11,631.43 + 5 YEARS INTEREST AND SETTLE MY CLAIM w/(AIMS-COUNTY
29. CLAIM NO.:15-257, \$20,000 WAS REMOVED FROM MY 2015 S.R.JAIL ACCOUNT)
30. INTERVIEW WITH VIRGINIA MARTINEZ P9 L7-10
31. P9 L7-10, Did you already know that she was evicting , uh, Mr. Martin at that point?
32. Mm-hm [affirmative]. You did know? Yeah. L17-25, And so she had already informed
33. You at some point that she was going to evict him? Oh yeah. Yeah. But... Why was
34. She? Because, um, he-you know, he had his car chained to the fence, you know, and
35. He had all these things, uh, little, um, pieces of paper where, you know, bitch this and
36. (unintelligible) look at the mileag and he-he went 4 miles or something like that. I didn't
37. read all of them. I just - that one bitch though real big. And he... So he had pieces of
38. paper on his ownvehicle?
39. P11 L20-22, What were you talking about in that moment? What was we talking about?
40. Um, what was we talking about? I don't emember. Were you talking about the signs
41. That said bitch and all sorts of stuff on them?
42. P12 L1-2, Because the tow truck didn't want to take the car. We was laughing but
43. anyways, um, I, uh, forgot. L26, (Gloria)- because we were saying we was gonna
44. go to court with her, um-we'd

1. P13 L1-2, go to court for her because you know the way that this man talks to her
2. she's trying to have him evicted. L8, And, you know, I'm like, "Damn (Debra), how
3. do you let him talk," L18-19, Sure, It's not really your issue. Right. L23-24, And
4. the three of you are standing out front, (Gloria), (Debra) and yourself. Uh, and
5. she had been taking the trashcan.
6. P14 L13, **Oh, I don't know. He just -um, I don't know. I never- I mean I don't pay**
7. **attention to him.**
8. P15 L2-9, ...I just didn't pay any attention to him and he said something else and
9. **I said, "Who-is he talking to ?" And he said, "You bitch." And I went to leap at**
10. **him and (Debra) jumped in front of me, you know, (unintelligible) you don't**
11. **Know who the fuck I am, you know? Shit.** So you -you were offended by that?
12. Oh hell yeah. Because, you know, he just jumped in the conversation and then,
13. You know, I hear how he talks to her but then he talking to me? Oh no. I ain't
14. (Debra). I'm sorry. L20-21, I couldn't tell you because at that point I'm- you know,
15. honestly I'm yelling, talking, and cussing and whatever. L23-25, I couldn't even
16. tell you half the things I said, but I know I kept telling him he wasn't no man and
17. and I know I had said in that piece of shit hole that was (unintelligible)
18. P16 L1-2 Because that piece of shit car. Nobody wouldn't steal it for parts. I told him
19. that. That was at night though.
20. Interview with William Petosky P6-L1-3
21. **...the owner next door asked her if she would, uh,go-go next door with her and**
22. **See if this guy's there because she was about to evict him. So she went and I**
23. **went around to the back you know... L10-13 Every time we come home there's**
24. something going around there. So, it's like we don't pay no attention to him. Yeah. Until
25. She dragged my wife into it. L16 ... I don't look at him or nothing...
26. P7-L19-21 ..So did Melissa have problems with this neighbor guy? Well, um, the thing
27. about that is that he had a beef with us- me and my wife..
28. P8-L7-11 ... I with Melissa uh she just went up to him and told him and told him don't -
29. why you call my mom a bitch you know and that's all I heard but you know I didn't get
30. a chance to talk to her uh, to tell her don't get into it cause I don't want to get hurt you
31. know or nobody to 'cause they will easily mistake you as boy or man you know.
32. P9-L7-12 but if I keep going in this somebody's gonna get HURT... Eventually so, uh,
33. I guess with, uh, with him you know he's pretty tall and I TOLD HIM I SAID, uh, um,
34. We can easily get this over with me and you but you really don't know me you know
35. and I don't know you but I BET I CAN TAKE YOU OUT... cause you really don't me
36. uh I TOLD HIM I MEAN...L14... I JUST KNOW I COULD KNOCK HIM YOU KNOW
37. TO HIS KNEES YOU KNOW. L20-22 Didhe ever besides that one morning with the
38. Bottle he said I'm gonna kick your ass did he ever threaten you or hurt you in any
39. Way? NO, HE NEVER SAID NOTHING LIKE THAT BUT TO ME.,
40. P10-L8-16 So he- Melissa used to park like basically where her Acura was was
41. That night? Right. When we came out there right? But he started putting. HE
42. STARTED TAKING UP THAT SPACE. PUTTING HIS ACURA RIGHT THERE AND
43. THEN MELISSA WOULD PARK, LIKE NOT IN THE DRIVEWAY BUT BEHIND..
44. Yeah. She- IT DIDN'T BOTHER HER OR WHATEVER BUT. ???

1. Joanna Casillas interview P12-L6-24 Have you ever heard him make comments about
2. Women in the past? NO..Every time I-when I-the times that I would see him HE WAS
3. WORKING ON THAT BLACK CAR.... But then you were aware just from people in the
4. Neighbor talking that someone... Yeah. that they were tryin' to kick him out.....She's
5. been trying to get him out or whatever....Have you ever seen him talk bad to anybody
6. Else in the neighbor? NO. NO. I've only seen him WORKING ON HIS CAR AND THAT'S
7. IT..P10-L3-7 ...like I said I really don't pay attention. Yeah. Has he-has this person ever
8. Confronted you about anything? NO. Have you ever spoken to this person before? NO.
9. L10-11 ...I guess he I guess talked crazy to her mom. AND SHE, YOU KNOW, JUST TOLD
10. HER... L25-26 Um, he had called her mom a bitch. We weren't home at the time but HER
11. MOM CALLED HER AND TOLD HER THAT. AND SO WHEN WE GOT HOME IT JUST SO
12. HAPPENS HE CAME P11-L1-7 -WAS COMING OUTSIDE, WENT TO THE WHITE CAR
13. THAT HE OWNS. ... And we were going up to the gate because HE WAS PARKED IN
14. FRONT OF THE GATE. AND MELISSA STARTED SAYING,"DON'T CALL MY MOM A
15. BITCH AGAIN. THE NEXT TIME, YOU KNOW, IT'S GONNA BE BAD," or whatever.
16. NEXT TIME, whatever . AND HE CAME FRONT O- - he's like, "What bitch?" And he came
17. He- he- cause he was already on the - the inside of the door, I GUESS HE WAS IN HIS
18. CAR. L23-24 When he pointed it at her he's, like, "Oh you a female" And then HE PUT IT
19. DOWN AND RAN AND WENT TO HIS HOUSE. (KATHY A. LYONS CSR NO. 7230)
20. JOANNA CASILLAS' 1st TRIAL TRANSCRIPT P565-L18-28 Now, the time that you spent
21. with Melissa, would you describe it as full of conflict? Yes. Can you describe for us what you
22. understand conflict to mean? Fighting, arguing. Now, you said fighting. Did it get physical at
23. times? Very physical. You said fighting. Was there actually punching? Punching, kicking,
24. SHE STABBED ME. Where did she stab you? P566-L1-3 IN MY HAND. WITH WHAT? A
25. POCKET KNIFE. L6-14 Now, you said it was fighting, I want to make sure it was clear :
26. Was it both ways or only one way? Well, I could - - you know , there were a couple of times I
27. did start it , so I guess it would be both ways, BUT IT WAS MAINLY HER. So let me ask
28. you: Did she usually win the fight? YES. A couple of times did you have to go to the
29. hospital? YES. L22-23 Did- - during your time with Melissa, DID SHE USUALLY PARK
30. AROUND THE SAME GENERAL AREA? P602-L8-10 SO BOTH COUNSEL GAVE ME
31. PERMISSION TO TELL BAILIFF TO GO UPSTAIRS AND TELL THE JURY THAT A POINT
32. OF LAW HAS COME UP, WE NEED TO TAKE A LITTLE BIT LONGER. L20-28 Now, what
33. we talked about in chambers was, Mr. Foxall, that his position was this That Mr. Ford, the
34. District Attorney, on direct examination has brought out evidence of ACTS OF VIOLENCE
35. BY THE WITNESS - - STRIKE THAT. THE VICTIM, RATHER, Melissa - - who's been
36. identified as Melissa here - - has past instances where the witness and the victim had
37. altercations, some of these altercations were WILD. One resulted in a stabbing of the
38. VICTIM in her hand - - STRIKE THAT. STABBING OF THE DEFENDANT ("WITNESS-J.C.)
39. IN HER HAND, and another- P603-L1-18 instance where the DEFENDANT
40. (WITNESS-J.C.) INJURED HER (M.M.) WRIST. Mr. Foxall's position is that , under Section
41. 1103(a) of the penal code - - oh, strike that - - the evidence code, which would allow such
42. evidence to be admitted if offered by the defendant to prove conduct to the victim in
43. Conformity with the character or trait of character, but that this was done, that is, this
44. Evidence was offered by the defendant, it would trigger the application of section 1103(b)-

1. for the District Attorney to be able to prove evidence of conduct of the defendant of traits of
2. violence. Mr. Foxall's position is that this is not evidence under Section 1103(a) (1), this is
3. not evidence offered by the defendant. It was evidence offered by the prosecution. So
4. therefore if he, Mr. Foxall, cross-examines on this subject, the fact that the District Attorney
5. Brought this subject up and thus, offered the evidence of the WITNESS, Miss Casillas, it
6. does not invoke the - - or trigger the introduction of character evidence of the defendant for
7. acts of violence.....L24-27.... which reflected the portion of testimony that Mr. Foxall
8. to: Did, in fact Mr. Ford raise the subject on direct examination and to what detail did he raise
9. it?..P604-L1-9 ..and my review of the Evidence code section, I agree with Mr. Foxall, that this
10. is not evidence that was offered by the defendant. On the contrary, it was evidence offered
11. by the PROSECUTION. Therefore, I find, and I hope, that the fact these acts of violence on
12. the part of the victim have been raised by the PROSECUTION, DOES NOT TRIGGER THE
13. APPLCATION OF SECTION 1103(b) WHICH WOULD ALLOW EVIDENCE OF THE
14. DEFENDANT'S CHARACTER FOR VIOLENCE.("This is what triggered D.A. Ford to pull out
15. all the stops and DOUBLE DOWN ON THE LIES AND MISDIRECTION to the jury!")
16. L20-28 ..but Mr. Foxall laid out at least four or five specific acts of violence by the victim that
17. He intends to go through.....L27-28 Is the Court's position that Mr. Foxall has FULL
18. ABILITY TO GO INTO THOSE ACTS BASED UPON ESSENTIALLY THE WITNESS-
19. P605-L1-5 SAYING, "YEAH, WE WOULD GET INTO FIST FIGHTS. It would be physical
20. AND AT SOME POINT SHE STABBED ME IN THE HAND"? The court made reference to
21. somebody injuring a wrist. What the witness said is that - - during one of these fights, she
22. injured the victim's wrist. L18-22 So I just want to make sure that the Court's ruling is that,
23. because the witness testified to what she did, that Mr. Foxall has free reign to get into any
24. acts of violence that he's aware of with no1103(b) trigger. I just want to make sure I
25. UNDERSTAND THAT.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE OF THE STATE OF
CALIFORNIA

Plaintiff and Respondent,

Court of Appeal
No. A151562

V.

SHAWN KIMANI MARTIN

Alameda County
Superior Court
No. 175083

Defendant and Martin

APPELLANT'S REPLY BRIEF

INTRODUCTION

Shawn Martin shot and killed his 21-year-old neighbor, Melissa Martinez, and contended at trial that he did so in self-defense. The court provided jurors a series of instructions explaining but also limiting the theories of self-defense and imperfect self-defense. Martin raises five challenges in this appeal. He first contends that the trial court failed to properly respond to a jury query, frustrating consideration of his self-defense claims by failing to dispel the jury's erroneous belief that the victim had a right of self-defense while Martin had forfeited his own. He further contends the trial court prejudicially erred by instructing jurors with two factually-inapplicable instructions: CALJIC No.5.54 (self-defense by aggressor) and No.5.55 (contrived self-defense.) Appellant contends that the cumulative effect of these instructional errors violated his right to due process and fair trial, and denied him a meaningful opportunity to present a defense as guaranteed by the Sixth and Fourteenth Amendments. Finally, Martin contends, and respondent concedes, that he is entitled to a limited remand for resentencing so that the court may exercise its discretion to strike the 25-year weapon enhancement pursuant to Senate Bill 620. For the reasons set forth below and in his opening brief, he respectfully requests that this court grant the requested relief.

ARGUMENT

1. THE TRIAL COURTS RESPOND TO THE JURORS' QUERY FRUSTRATING CONSIDERATION OF SELF-DEFENSE AND IMPERFECT SELF-DEFENSE BY FAILING TO DISPEL THE JURY'S ERRONEOUS BELIEF THAT THE VICTIM HAD A RIGHT OF SELF-DEFENSE, WHILE MARTIN HAD FORFEITED HIS OWN.

A. Background

Martin admitted at trial that he shot Martinez but contends he did so in self-defense. As defense counsel argued, **Martin reasonably believed she was armed and about to shoot him based on Martinez's earlier threat that "next time it will be all bad" and her actions on the night of her death, including calling out to him in an aggressive, threatening manner and "digging" for a weapon.** (7RT 1093-1094, 9RT 1504-1510.) Once Martin saw Martinez

reaching into her jacket and pulling out a weapon, it was reasonable for him to act and “not wait and see if she’s successful in pulling out a weapon and firing at him first[.]” (9RT 1510.)

The court instructed the jury with a series of self-defense instructions, including CALJIC No. 5.50.1, “**Prior Threats/Assaults By Victim.**” (3CT641.)... The trial court also delivered CALJIC No.5.17 on the imperfect self-defense....

The instruction told jurors that “this principal is not available, and malice aforethought is not negated, if the defendant by his unlawful or wrongful conduct created the circumstances which legally justified his adversary’s use of force, attack or pursuit.” (3CT639.)

During closing arguments, the prosecutor urged the jury to reject Martin’s self-defense theory, **arguing that it was Martinez, and not Martin**, who had the right to use deadly violence in self defense. (9RT 1434.) The prosecutor emphasized CALJIC No.5.50.1, ***the antecedent threat instruction, and told jurors they should substitute Martinez’s name for the threaten person, and to consider Martin as the source of the prior threat.** (9RT 1450-1451.) **The prosecutor then read his modified version of the instruction to the**

Jury: “In addition, Melissa Martinez, whose life or safety was previously threatened and assaulted by the defendant, is justified in acting more quickly and taking harsher measures for self-protection from an assault by the defendant.” (9RT 1451, emphasis added.) Directing jurors to focus on the April incident, he argued that once Martin approached her on the night of her killing “**the law says that at that point in time Melissa Martinez had and absolute right to self defense**, has a right to defend herself from being attacked by someone who has already assaulted.” (9RT 1470-1471.) He urged jurors to focus on Martinez’s state of mind,.... He argued, “.... **The law says Melissa gets to shoot him.** The law says she has a right to self-defense at that point.” (9RT 1468.) He argued that under CALJIC 5.17, Martin had forfeited his own right to self-defense. “The defendant is the aggressor. The defendant is the one who has assaulted somebody before. That person doesn’t get to shoot somebody else and say it’s self-defense.” (9RT 1453, 1467.) **He repeated this theme even more bluntly during rebuttal**, telling jurors: “you’re going to tell the defendant Melissa Martinez didn’t have to take it. She didn’t have to take it.” (9RT 1533.) On the third day of deliberations, the just presented the following written question to the court:

If we agree the early April encounter would justify Melissa taking harsher measures in the encounter with Shawn Martin according to 5.50.1, if she pulls a gun in response to his approach, does he have a right at that point to defend himself or has he forfeited it per 5.17?

(10RT 1606.) the prosecution contended the question raised a legal issue, arguing that Martinez was legally justified to use deadly force because of the prior incident and that Martin “Is not entitled to claim of self-defense.” (10RT 1609.) **The prosecution argued that because “jurors have indicated they believe the earlier encounter constitutes an assault by the defendant on the victim,”** jurors were properly instructed “that somebody who previously attacks you is not entitled to any claim of self-defense,” (10RT 1608-1609.) Defense counsel also characterized the note as presenting a legal question. He argued that regardless of whether Martinez may have been entitled to take harsher measures, **Martin’s conduct several weeks earlier did not forfeit right of self-defense in the later, entirely separate encounter with Martinez.** (10RT 1613.) Defense counsel asked the court to re-read CALJIC No.5.17 and No. 5.50.1, and further instruct that mutual self-defense is possible under these circumstances.

(10RT 1615.) The court denied defense counsel's request to reread the instructions or to further instruct on mutual self-defense. (10RT 1616.) While both attorneys recognized the jurors' query as a legal question requiring clarification from the court, the court viewed the question as merely factual.

"When the jury asks, does he have a right at that point to defend himself, or has he forfeited it, they are asking for a question [sic] answer to a question of fact. And that's something that I cannot give them, It would be inappropriate for me to do that." (10RT 1617.) The court then provided jurors with the following written response:

Your question, "does he have a right at that point to defend himself or has he forfeited it per 5.17", is a question of fact which only you can resolve. It would be inappropriate for me to suggest an answer to this question, as it would invade the province of the jury to determine all questions of fact.

(2CT 571, 10 RT 1617-1618.)

DEFENSE COUNSEL FILED A WRITTEN MOTION ASKING THE COURT TO

RECONSIDER ITS RESPONSE TO THE JURY. (2CT 566.) this is the reason for over turn ***

Counsel's argument was two pronged. First, counsel argued that the jury was confused by the prosecutor's argument about whether Martinez had a right to self-defense and request that the court clear up the confusion by instructing that CALJIC No.5.50.1 applies ONLY to the defendant's state of mind. (2CT 568.) Defense counsel also argued that the jury was misinterpreting CALJIC No.5.17, **Counsel argued that the jury should be instructed to consider only the conduct that immediately preceded the killing, not that which occurred weeks before. (2CT 567.)**

The court declined to further instruct the jury as requested by defense COUNSEL. (10RT 1628.)

B. The trial Court Erred By Failing To Provide Adequate Clarifying Instructions In The Face of Clear Juror Confusion About The Law.

In a trial by jury, "the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of the law." (Quercia v. United States (1933) 289 U.S. 466, 469.) Thus, when a jury makes explicit its difficulties with an issue of law, " **a trial judge should clear them away with concrete accuracy.**" (Bollenbach v. United States (1946) 326 U.S. 607, 612-613; accord Powell v. United States (9th Cir. 1965) 347 F.2d 156, 157-158; United States v. Harris (7th Cir. 1967) 388 F.2d 373, 377.) " A jury's request for... clarification should alert the trial judge that the jury has focused on what it believes are the critical issues in the case. **The judge must give these inquiries serious consideration.**" (People v. Thompkins (1987) 195 Cal.App.3d 244, 250.) "**Discharge of the jury's responsibility for drawing appropriate conclusion from the testimony depended on discharge of the judge's responsibility to give the jury the required guidance by a lucid statement of relevant legal criteria.**"

(Bollenbach , supra, 326 U.S. at p. 612.)⁵

By statute, trial courts are required, on request of a deliberating jury, to instruct " on any point of law arising in the case." (Pen. Code, s 1138; see People v. Ross (2007) 155 Cal.App.4th 1033, 1047.) The court need not always elaborate on the instructions already given if they were "full and complete," (Id. at p. 1213; see People v. Smithey (1999) 20 Cal.4th 936, 1009.) However, when a jury indicates confusion about an important legal issue, it is not sufficient for the court , to rely on more general statements in its prior charge. "**A conviction**

ought not to rest on an equivocal direction to the jury on a basic issue.” (United States v. Rodriquez (6th Cir.1989) 889 F.2d 1564, 1568.) **A supplemental instruction, in response to a jury’s question about the law, should do more than simple recite instructions previously given.** (United States v. Giacalone (6th Cir. 1978) 588 F.2d1158, cert. Denied 441 U.S. 944.) **Reluctance to “strike out on its own” does not permit the court to “ figuratively throw up its hands and tell the jury it cannot help.”** (People v. Beardslee (1991)53 Cal.3d 68,97; see People v. Moore (1996) 44 Cal.App.4th 1323,1331.) Here, it is clear jurors were fixated on two related but distinct legal issues: whether Martinez, the victim in the case, had a right to self-defense based on the early April encounter; and whether Martin could forfeit his right to self-defense based on his assaultive conduct against Martinez weeks earlier. They were clearly having difficulty with both legal concepts and sought guidance from the court. The court could have cleared up the juror confusion about these legal concepts by instructing that the answer to both queries was “no,” or by providing the clarifying instructions proposed by the defense: that CALJIC No.5.50.1 **applies only to the defendant’s state of mind** (2CT568); **and that the wrongful conduct exception to imperfect self-defense is limited to the defendant’s conduct immediately preceding the killing, not that which occurred weeks before.** (2CT 567; 3CT 639; see CALJIC 5.17.) Instead, by its non-response, the court erroneously communicated to jurors that it was proper to focus on Martinez’s state of mind instead of Martin’s, and that they could properly conclude Martin forfeited his right to self-defense based on his early-April “assault” of Martinez. **By characterizing the issue as a question of fact, the trial court effectively “threw up its hands” and communicated to jurors that their erroneous legal presumptions were correct, i.e. that they had properly zeroed in on Martinez’s right to self-defense:** and that Martin’s assaultive conduct from weeks earlier could extinguish his right to claim imperfect self-defense. In defending the court’s non-response, respondent first contends that answering the jurors’ question “would have invaded the province of the jury by answering a question of fact[.]” (Respondent’s Brief at p.28, hereafter” RB.”Respondent argues that the jury’s question “shows that the jury was leaning toward finding that appellant, by drawing his firearm on Martinez in early April, committed unlawful or wrongful conduct that created the circumstances which legally justified Martinez drawing her own firearm when he approachd her vehicle on April 23. In other words, the jury was in the process of determining whether appellant’s antecedent threat against Martinez negated his claim of imperfect self-defense.” (RB at p. 28.)

Respondent’s contention lacks merit for several reasons. First, as argued by both the prosecutor and defense counsel, **the jury’s inquiry involved a legal issue, NOT a factual one. Specifically, the jurors’ question showed they had made legally erroneous presumptions about two key issues in the case:** (1.) that the antecedent threats principle of CALJIC No.5.50.1 applies to prior threats **by the defendant** and their effect on the reasonableness of a victim’s belief in imminent harm; and (2) that the wrongful conduct limitation to imperfect self defense set forth in CALJIC No. 5.17 encompassed conduct by the defendant committed weeks earlier. **The jurors’ question should have put the court on notice that the jury misunderstood these underlying legal principals, triggering its mandatory duty to correct the jury’s erroneous understanding of the law.** (People v. Gonzalez (1990) 51 Cal.3d 1179,1212.) **It is settled that where a question posed by jurors during deliberations suggests misapplication of the law, the court has a duty to correct that**

misunderstanding with clarifying instructions. (Thompkins, supra, 195 Cal.App.3d at pp. 250-251 [The court has a primary duty to help the jury understand the legal principals it is asked to apply]; People v. Chung (1997) 57 Cal.App.4th 755, 758 ([the court has “ a duty to reinstruct if it becomes apparent that the jury may be confused on the law.”]) Even where a jury “ should have understood” the applicable legal principals from given instructions, the trial court must provide clarifying instructions in the face of Continued jury confusion. (People v. Loza (2012) 207 Cal.App.4th 332, 354-355.) Thus, where “ it was clear from the jury’s questions that the instructions already provided had left the jurors confused, it is not enough for the court to inform the jurors, in response to their specific inquiry, that they must rely on the very instructions that had confused them.” (Ibid.) Here, it is clear from the jurors’ question that they were confused about legal principals in the case. Thus, the court had a duty to provide clarifying instructions, and could not rely on the very instructions that had left the jury confused, Respondent’s reasoning is also faulty for a more basic reason: it erroneously presumes that a defendant’s “ antecedent threat” can negate a claim of imperfect self-defense. (RB at p. 28.) By so arguing, respondent is conflating the legally distinct principals of prior threats and their effect on a defendant’s state of mind (CALJIC No.5.50.1) with the Christian S. wrongful conduct exception of imperfect self-defense. (CALJIC No.5.17.) As will be discussed more fully in sections C and D below, **these legal principals are not interchangeable and must be separately considered by the factfinder.** Respondent next contends the court’s non-response was proper because the instructions given were “full and complete” and had “previously been upheld as correct statements of law.” (RB at p.29.) **But respondent fails to acknowledge the well-settled principal that instructions that are not “crucially erroneous” standing alone may become so in particular circumstances.** (People v. Brown (1988) 45 Cal.3d 1247, 1256.) “ When the issue is not whether erroneous instructions have been cured by argument, but whether the interplay of argument with individually proper instructions produced a distorted meaning, it seems appropriate to evaluate the remarks of both counsel to determine whether the jury received adequate information.” (Ibid; see People v. Valenzuela (1977) 76 Cal.App.3d 218, 221([“ the judge must always be alert to the possibility that counsel in the course of argument may have befuddled the jury as to the law.”]) Here, respondent does not address or even acknowledge the prosecutor’s argument calling on the jury to apply the jury instructions in a manner contrary to law. As to CALJIC No. 5.50.1, the antecedent threat instruction, the prosecutor told jurors they should substitute Martinez’s name for the threatened person, and to consider Martin as the source of the prior threat. (9RT 1450-1451.) The prosecutor went so far as to read the modified version of the instruction to the jury: “ In addition, Melissa Martinez, whose life or safety was previously threatened and assaulted by the defendant, is justified in acting more quickly and taking harsher measures for self-protection from an assault by the defendant.” (9RT 1451, emphasis added.) Directing jurors to focus on the early April incident, he argued that once Martin approached her on the night of her killing “ the law says that at that point in time Melissa Martinez had an absolute right to self-defense, has a right to defend herself from being attacked by somebody who has already assaulted her.” (9RT 1470-1471.) **The prosecutor also erroneously urged jurors to focus on Martinez’s state of mind,** arguing that she would be reasonably in fear of appellant based

on the earlier incident and would have a lawful right to shoot him when he approached her on the night of the killing. (9RT 1467, 1448-1449.) **He argued, “ the law says Melissa gets to shoot him. The law says she has a right to self-defense at that point.” (9RT 1468.) Here, the remarks of the prosecutor created “distorted meaning” of the jury instructions that required clarifying instructions from the court. Although CALJIC No.5.50.1 correctly instructed jurors about the effect of a prior threat or assault by a “victim” on the defendants’s state of mind, the prosecutor distorted the instruction when he urged jurors to instead consider the state of mind of the victim. The tactic worked. By asking “if we agree that the early April encounter would justify Martinez taking harsher measures in the encounter with Shawn Martin according to 5.50.1, it is clear jurors were applying the instruction in the erroneous manner urged by the prosecutor, and had shifted their focus from Martin’s state of mind to Martinez’s.**

.... As discussed more fully below, courts have applied the ‘wrongful conduct’ exception only where the provocative actions of a defendant immediately preceded the use of deadly violence.Here, however, the prosecutor urged jurors to apply the exception more broadly and in a manner never sanctioned by the courts, arguing that appellants’s conduct from weeks earlier extinguished his right to claim self-defense. Again, the tactic paid off for the prosecution..... it is clear they were applying the Christian S. wrongful conduct exception in the erroneous manner urged by the prosecution. In short, contrary to respondent’s contention, the instruction here were not full and complete, particularly when reviewed in light of the prosecutor’s argument. Considering the “interplay” of the instructions with his argument, it is clear the prosecutor “ befuddled the jury” about critical legal issues. Accordingly, the court had a duty to clarify jurors’ erroneous Understanding of the law in response to their query. (Thompkins, supra, 195 Cal.App.3d at pp. 250-251, Chung, supra, 57 Cal.App.4th at p. 758, Loza, supra, 207 Cal.App.4th at pp. 354-355.) BY FAILING TO DO SO, THE TRAIL COURT (E R R E D.)

October 31 2023

To Office of the California Attorney General
Kathryn Althizer
Jessica Leal
Dina Petrushenko
CALVCB
Andrea Burrell
1300 I Street, Suite 125
Sacramento, CA. 94244-2550
Email: kathryn.althizer@doj.ca.gov
jessica.leal@doj.ca.gov
dina.petrushenko@doj.ca.gov
Tina Flores on behalf of Shawn Martin
PO Box 10782
Oakland, CA 94610
tina.flores235@gmail.com
Shawn Martin
28s.martin@gmail.com

I, Shawn K. Martin grant Tina Flores Power of Attorney for the purposes of communicating and dealing with CALVCB to its conclusion. To stand in my place as my representative.

Shawn K. Martin,



SEE ATTACHMENT

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ALAMEDA

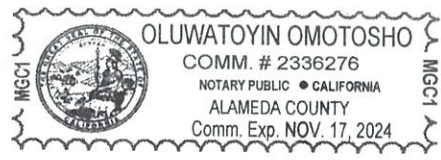
On 11/01/2023 before me, OLUWATOYIN OMOTOSHO
NOTARY PUBLIC

personally appeared Shawn Martin and Tina Flores
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (Seal)





October 19, 2015

Shawn K. Martin
PFN# AWK-314
5325 Broder Blvd
Dublin, CA 94568-3309

RE: Shawn K Martin v. County of Alameda
County Claim No.: 15-257

Dear Mr. Martin:

Our office is the authorized claims administrator for the County of Alameda. This letter acknowledges we are in receipt of the above-captioned claim filed with the Clerk, Board of Supervisors on October 6, 2015.

We are currently investigating the allegations presented in this matter. We will advise you of the County's decision as soon as it is available. In the meantime, please do not hesitate to call should you have any questions.

Sincerely,

Kenneth R. Maiolini, ARM-P
/dt

P.O. Box 724
Sebastopol, CA 95473
(707) 792-4980
(707) 792-4988 Fax
www.aims4claims.com
CA LIC. 2G17034

Trinity Services Group, Inc.
Sacramento Warehouse
for Santa Rita Friday

No exchanges or refusals for this said order

Name : MARTIN, SHAWN

Account # : AWX314

Bal Before Order: \$20,478.94

Bal After Order: \$456.93

Order Slip # : 243 - HW1R0149

Date: 07/10/2015

Zn	Item	Qty	Description	Cost	Short
Total Qty: 36			Sub Total:	\$54.79	
			Tax:	\$0.37	
			Total:	\$55.16	

I have checked and received this order with any and all credits/shortages as indicated herein.

Signed _____

Delivered By: _____

8065315 1601 2028 2199 2900 2907 4212 5008 5114 5220
5302 5388 5438 5482 5494 5628 5672 5732 5743
5932

- 2903 - Cannot be purchased
- 4105 - Cannot be purchased
- 4217 - Cannot be purchased
- 5255 - Out Of stock

1.81
7.60
2.87

12.28
3.04

15.32
55.16

70.48

AIMS
Claim
No. 15-257

SPRINKLER FITTERS AND APPRENTICES

LOCAL 483

OF THE UNITED ASSOCIATION OF PLUMBERS,
PIPEFITTERS AND SPRINKLER FITTERS OF THE
UNITED STATES AND CANADA AFL-CIO

Jeffrey M. Dixon
Business Manager

Dylan M. Boldt
John Medina
Dan Torres
Business Agents

EFFECTIVE SATURDAY, JANUARY 1, 2022

Rik Drury
Market Development
Representative

TO: ALL FIRE PROTECTION CONTRACTORS SIGNATORY TO LOCAL 483'S COLLECTIVE BARGAINING AGREEMENT

ATTENTION – PAYROLL DEPARTMENT

The following are the Wage Rates and Fringe Benefits effective Saturday, January 1, 2022, as agreed to by Local 483 and the National Fire Sprinkler Association (NFSA).

As Per Contract Guidelines

GENERAL FOREMAN	\$ 79.55
FOREMAN	\$ 77.55
JOURNEYMAN	\$ 70.55
SUPPLEMENTAL PENSION	\$ 14.00
NASI PENSION	\$ 7.10
NASI HEALTH & WELFARE	\$ 10.94
LOCAL 483 TRAINING FUND	\$ 1.75
HRA CONTRIBUTION	\$ 1.50
INTL TRAINING FUND	\$.10
NO. CA FIRE PROT INDUSTRY FUND	\$.15
INDUSTRY PROMOTION (All Contractors)	\$.15
NON NFSA MEMBERS	INDUSTRY PROMOTION (Bay Area) \$.11

WORK ASSESSMENT #1 shall be calculated at six percent (6%) of the appropriate gross hourly wage rate for ALL General Foremen, Foremen, Journeymen, and Apprentices. Example: 40 hours X \$70.55 = \$2822.00 X 6% = \$169.32 or 50 hours X \$70.55 = \$3527.50 X 6% = \$211.65.

WORK ASSESSMENT #2 shall be calculated at \$1.05 per hour for each hour worked for ALL General Foremen, Foremen, Journeymen, and Apprentices.

The VACATION WITHHOLDING RATE for all General Foremen, Foremen, and Journeymen is (minimum) Two Dollars (\$2.00) per hour for each hour worked or as directed by the member.

The VACATION WITHHOLDING RATE for Apprentices 3rd Period and higher is (minimum) One Dollar Fifty Cents (\$1.50) per hour for each hour worked or as directed by the member.

Parking Reimbursement is up to \$20.00 per day with receipt.

Sincerely,

SPRINKLER FITTERS & APPRENTICES

JEFFREY M. DIXON
Business Manager/Financial Secretary

JMD/sw
OPEIU-3-AFL-CIO (127)

2525 Barrington Court • Hayward, California 94545
Telephone (510) 785-8483 • Fax (510) 785-8508
www.sprinklerfitters483.org

DUANE M. LEONARD
ATTORNEY AT LAW
THE PROMENADE BUILDING
1936 UNIVERSITY AVE., SUITE 380
BERKELEY, CALIFORNIA 94704-1024
TELEPHONE (510) 843-2321
FACSIMILE (510) 843-2954

January 30, 2019

California Victim Compensation Board
Legal Division
P.O. Box 1348
Sacramento, CA 95812-1348

**RE: ESTATE OF LUCILLE WHITLEY;
ALAMEDA COUNTY PROBATE CASE NO. RP16836867**

Dear California Victim Compensation Board:

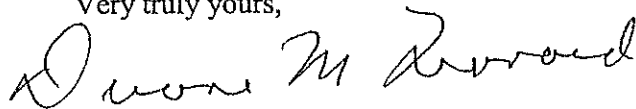
Enclosed please find:

- Copy of the filed court order for final distribution in this estate
- Check in the amount of \$11,631.43 payable to California Victim Compensation Board by claim against Shawn Martin

Please date and sign in *blue* ink the enclosed receipt and return it in the envelope provided.

If you have any questions about this, please let us know. Thank you.

Very truly yours,



Duane M. Leonard

DML/ecr
Enclosures
Copy: Shawn Martin

ITEM 8

1
2
3
4
5
6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**

8
9 In the Matter of:

10 **Dupree Antoine Glass**

11 Claim No. 20-ECO-24

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On December 1, 2020, Dupree Antoine Glass (Glass) submitted a claim for compensation to
14 the California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to
15 Penal Code section 4900, which was initially stayed and then supplemented on April 24, 2023. The
16 supplemented claim is based upon Glass' imprisonment for 11 counts of attempted murder, which
17 were vacated by writ of habeas corpus and dismissed upon remand in 2020, and one count of shooting
18 at an inhabited dwelling, which was vacated pursuant to Penal Code section 1473.7, subdivision (a)(2),
19 and dismissed upon remand in 2023. The supplemented claim requests \$867,020 as compensation
20 for the entire duration of Glass' imprisonment, which he calculated as 6,193 days. Glass is
21 represented by attorney Annee Della Donna in this administrative proceeding.

22 The Attorney General is represented by Deputy Attorney General Seth McCutcheon. By letter
23 dated September 8, 2023, the Attorney General declined to object to Glass' supplemented claim. The
24 matter was assigned to CalVCB Senior Attorney Laura Simpton, who requested a response from both
25 parties regarding compensation, as it appeared that Glass had actually been confined for 6,136 days.
26 After both parties agreed, the administrative record closed on October 4, 2023.

27 As required by subdivision (b) of Penal Code section 4900, CalVCB is mandated to approve
28 payment to Glass in the amount of \$859,040 if sufficient funds are available, upon appropriation by the

1 Legislature, as indemnification for the demonstrated injury sustained by his 6,136 days imprisonment
2 solely as a result of his vacated convictions. It is recommended that compensation be denied for the
3 remaining 57 days requested by Glass, as the record fails to show he was imprisoned for this portion of
4 time.

5 **II. Procedural Background**

6 On January 13, 2004, Glass was arrested and subsequently charged with 11 counts of
7 attempted murder and one count of shooting at an inhabited dwelling in Los Angeles County Superior
8 Court case number MA028053.¹ Enhancements for promoting a criminal street gang and personal use
9 of a firearm were also alleged. All of these offenses stemmed from a single incident that occurred on
10 January 3, 2004. Glass' codefendant Juan Marshall Rayford (Rayford) was charged with the same 12
11 counts and enhancements.²

12 Following a joint trial, the jury convicted both Glass and Rayford as charged on September 16,
13 2004. Glass was sentenced on October 25, 2004, to 11 consecutive life sentences for attempted
14 murder, plus 220 years for the enhancements, with a stayed sentence on the remaining count for
15 shooting at an inhabited dwelling.³ Rayford received an identical sentence. In a combined appeal
16 decided July 18, 2006, the Court of Appeal reversed the enhancements but otherwise affirmed all 12
17 convictions for both Glass and Rayford.⁴ Glass separately pursued federal habeas relief, which was
18 denied on March 12, 2010.⁵

19
20 ¹ Pen. Code, §§ 187/664 (attempted murder), 246 (shooting a dwelling), 186.22 (gang enhancement),
21 12022.53 (firearm enhancement); Glass Supplemental Application (Supp. App.) at p. 3. The
22 pagination refers to the continuous page numbers for the entire, 61-page PDF file received April 24,
2023.

23 ² Glass Application (App.) at pp. 6-8. The pagination refers to the continuous page numbers for the
entire, 56-page PDF file received December 1, 2020.

24 ³ Glass App. at p. 14; see also Los Angeles County Superior Court Docket in *People v. Dupree Antoine*
25 *Glass*, case number MA028053, available online at [https://www.lacourt.org/division/
criminal/criminal.aspx](https://www.lacourt.org/division/criminal/criminal.aspx). (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

26 ⁴ Glass App. at pp. 4-47 (*People v. Rayford et al.*, Court of Appeal, Second District, case number
B179017, opinion filed July 18, 2006.)

27 ⁵ *Glass v. Hedgpeth*, U.S. District Court (C.D. Cal.), case number CV 07-7018 VAP, order filed Mar. 12,
28 2010, adopting Report and Recommendation to deny petition without certificate of appealability,
available on Westlaw at 2010 WL 935759. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

1 **A. Habeas Relief as to Counts 1 through 11**

2 On September 25, 2015, with the assistance of counsel Annee Della Donna, Glass filed a
3 petition for writ of habeas corpus in the California Supreme Court. The petition challenged a jury
4 instruction defining the “kill zone” theory of attempted murder and further asserted Glass’ factual
5 innocence. Glass’ codefendant Rayford also filed a petition raising the same issues. In both cases,
6 the California Supreme Court deferred action pending its decision in *People v. Canizales* (2019) 7
7 Cal.5th 591, which ultimately narrowed the circumstances under which the “kill zone” theory applies.
8 Thereafter, on September 18, 2019, the court directed the appellate court to reconsider both habeas
9 petitions by Glass and Rayford.⁶

10 In a consolidated decision published on June 16, 2020, the appellate court granted limited
11 habeas relief for both Glass and Rayford. Relying upon *Canizales*, the appellate court found that the
12 “kill zone” theory did not apply to the circumstances of their case and prejudicial error resulted. The
13 appellate court therefore vacated all 11 convictions for attempted murder, as to both Glass and
14 Rayford, leaving intact their sole remaining conviction for shooting at an inhabited dwelling (i.e., count
15 12). The appellate court declined to decide the separate claim of factual innocence as to Glass or
16 Rayford.⁷

17 Upon remand to the superior court, Glass and Rayford were released from prison on October
18 30, 2020, pending retrial. By then, a total of 6,146 days had passed since the underlying offenses
19 occurred on January 3, 2004. Moreover, a total of 6,136 days had passed since Glass and Rayford
20 were arrested for those offenses on January 13, 2004.⁸

21 Two weeks later on November 13, 2020, the prosecution officially declined to retry Glass or
22 Rayford for attempted murder. Consequently, the superior court dismissed all 11 charges of attempted
23

24
25 ⁶ Glass App. at pp. 5-6; see also Docket for *In re Glass*, Court of Appeal, Second District, Division 7,
26 case number B303007, and California Supreme Court case number S263538, available online at
<https://appellatecases.courtinfo.ca.gov/search/case/>. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

27 ⁷ Glass App. at pp. 4-47; *In re Rayford, et al.* (2020) 50 Cal.App.5th 754.

28 ⁸ Glass Supp. App. at p. 3; see also TimeandDate Calculator, available online at <https://www.timeanddate.com/date/dateadded.html/>.

1 murder, as to both Glass and Rayford, in the interests of justice pursuant to Penal Code section 1385.⁹
2 Immediately thereafter, the superior court resentenced Glass and Rayford on their sole remaining
3 conviction for shooting at an inhabited dwelling (i.e., count 12) to the upper term of seven years
4 imprisonment. With the parties' agreement, the court awarded custody credits totaling 6,193 days for
5 Glass and Rayford each. This calculation included a lump sum of 5,863 days for "custody time in state
6 prison," in addition to "presentence credits" in the amount of 287 actual days plus 43 days "good time /
7 work time."¹⁰ The calculation for state prison time necessarily included conduct credits too because,
8 otherwise, the actual credits would have preceded the commission of the crime.¹¹ In any event,
9 because this period exceeded the length of the maximum sentence combined with any potential term
10 of parole supervision, the court ordered Glass and Rayford immediately discharged from parole.¹²

11 **B. CalVCB Original Claim**

12 On December 1, 2020, counsel Annee Della Donna submitted a claim to CalVCB on behalf of
13 Glass seeking compensation as an erroneously convicted person under Penal Code section 4900.
14 The claim requested compensation in the amount of \$360,220 for the additional 2,573 days that Glass
15 was incarcerated as a result of the vacated convictions for attempted murder (i.e., counts 1 through 11)
16 beyond the maximum sentence imposed for his still valid conviction for shooting at an inhabited
17 dwelling (i.e., count 12). Glass alleged that he was found factually innocent but only attached the
18 appellate court's decision to grant habeas relief due to instructional error.¹³

19 By letter dated December 8, 2020, CalVCB requested supporting documentation to confirm
20 Glass' alleged finding of factual innocence. CalVCB's letter to Glass' counsel included a

21 _____
22 ⁹ Glass App. at pp. 1-2, 51-53 (transcript for joint hearing with Glass and Rayford); Glass Supp. App. at
23 pp. 9-10 (minute order for codefendant Rayford); Los Angeles County Superior Court Docket, *supra*,
for *People v. Glass*, case number MA028053.

24 ¹⁰ Glass App. at pp. 51-53; Glass Supp. App. at pp. 9-10; Los Angeles County Superior Court Docket,
25 *supra*, for *People v. Glass*, case number MA028053.

26 ¹¹ Subtracting 6,150 days (i.e., 6,193 less 43 for presentence conduct credits only) from Glass' release
27 on October 30, 2020, amounts to December 29, 2003. (TimeandDate Calculator, available online at
<https://www.timeanddate.com/date/dateadded.html/>.)

28 ¹² Glass App. at pp. 51-53; Glass Supp. App. at pp. 9-10.

¹³ Glass App. at pp. 1-2.

1 representative for the Attorney General. By email sent January 7, 2021, both parties requested Glass’
2 claim be stayed while he pursued a motion for a finding of factual innocence. Based upon this joint
3 request, CalVCB stayed the proceeding on Glass’s claim pending a decision on the anticipated motion.

4 **C. Penal Code Section 1473.7 Proceedings for Count 12**

5 At a hearing on April 20, 2023, the superior court vacated Glass’ sole remaining conviction for
6 shooting at an occupied dwelling (i.e., count 12) on the basis of actual innocence pursuant to Penal
7 Code section 1473.7, subdivision (a)(2). The court emphasized that its ruling was solely based upon
8 section 1473.7, even though Glass had initially filed a motion for factual innocence pursuant to Penal
9 Code section 1485.55, which the court had re-characterized.¹⁴ At the prosecution’s request and over
10 Glass’ objection, the court set a hearing date for possible retrial on May 18, 2023.¹⁵ Thereafter, on
11 June 5, 2023, the prosecution announced that it was unable to proceed, and the court granted Glass’
12 motion to dismiss count 12 in the interests of justice pursuant to Penal Code section 1385.¹⁶

13 **D. CalVCB Supplemented Claim**

14 Meanwhile, on April 24, 2023, Glass’ counsel supplemented his stayed claim to seek
15 compensation for all 12 of his now vacated convictions in case number MA028053. As supplemented,
16 Glass’ claim requested \$867,020 for the entire length of his imprisonment, which he calculated as
17 6,183 days, even though he was allegedly in custody for 6,136 days from the date of his arrest on
18 January 13, 2004, and release on October 30, 2020. Glass attached a “Statement of Injury” that
19 detailed his hardships in prison but failed to specify the dates of his confinement or address whether he
20

21 _____
22 ¹⁴ This distinction is significant. A conviction may be vacated under Penal Code section 1473.7 based
23 upon newly discovered evidence of actual innocence that requires vacation as a matter of law or in the
24 interests of justice, whereas a finding of factual innocence under Penal Code section 1485.55 requires
25 a preponderance of evidence that the claimant did not commit the crime. (See *Larsen v. California*
26 *Victim Comp. Bd.* (2021) 64 Cal.App.5th 112, 129 [“finding of factual innocence must be made by at
27 least a preponderance of the evidence and must reflect a determination that the person charged and
28 convicted of an offense did not commit the crime”].) A finding under section 1485.55 is only available
after the underlying conviction for the crime has been vacated under specified circumstances.

¹⁵ Glass Supp. App. at pp. 13-22, 24-26.

¹⁶ Email from counsel Annee Della Donna, sent June 15, 2023, at 3:20 p.m., attaching superior court
minute order dated June 5, 2023.

1 served any overlapping sentences for unrelated offenses.¹⁷ Glass finally asserted that the court's
2 ruling to vacate his conviction pursuant to Penal Code section 1473.7, subdivision (a)(2), constituted a
3 finding of factual innocence.¹⁸

4 The matter was assigned to CalVCB Senior Attorney Laura Simpton as the hearing officer. In
5 an email reply to the parties sent April 25, 2023, the hearing officer extended the stay for the
6 supplemented claim, explaining that it was premature under Penal Code section 4901 because less
7 than 60 days had passed since the superior court vacated Glass' conviction for shooting at an
8 inhabited dwelling (i.e., count 12). The hearing officer noted that, once the 60 days had passed, the
9 stay would be lifted, and the administrative proceeding resumed. The hearing officer added that the
10 supplemented claim did not appear to fall within subdivision (b) of Penal Code section 4900, which
11 shifts the burden of proof onto the Attorney General in specified circumstances, unless and until count
12 12 was dismissed on remand. While acknowledging the superior court vacated count 12 pursuant to
13 Penal Code section 1473.7, subdivision (a)(2), the hearing officer cited subdivision (b) of Penal Code
14 section 1485.55, which requires a separate motion for a finding of factual innocence following relief
15 under section 1473.7. Finally, the hearing officer requested clarification on the issue of injury, noting
16 that the requested compensation for 6,193 days did not match the reported dates of confinement,
17 which amounted to 6,136 days.¹⁹

18 In response, Glass' counsel again requested compensation for 6,193 days and cited the
19 superior court's credit calculation as the sole support. Otherwise, counsel confirmed Glass was not
20 released on bail at any time before October 30, 2020, nor did Glass sustain any other convictions with
21 overlapping sentences during his imprisonment for case number MA028053. Counsel acknowledged
22 the continued stay of CalVCB proceedings until June 19, 2023, when 60 days will have passed since
23 count 12 was vacated on April 20, 2023. Counsel further acknowledged that a finding of factual
24 innocence was lacking under Penal Code section 1485.55 and advised that she may pursue such a
25

26 ¹⁷ Glass Supp. App. at p. 61.

27 ¹⁸ Glass Supp. App. at p. 3.

28 ¹⁹ CalVCB email to the parties, sent April 25, 2023, at 12:38 p.m.

1 determination during the stay. Finally, counsel agreed to notify CalVCB of the outcome of the still
2 pending charge for count 12.²⁰

3 On June 15, 2023, counsel for Glass informed CalVCB that count 12 was dismissed by the
4 superior court on June 5, 2023, without a finding of factual innocence, and requested to resume the
5 administrative proceedings pursuant to subdivision (b) of Penal Code section 4900.²¹ On June 19,
6 2023, 60 days after Glass' conviction for count 12 had been vacated, CalVCB lifted the stay, filed
7 Glass' supplemented claim, and requested a response from the Attorney General within 45 days as
8 required by subdivision (d) of Penal Code section 4902. Following a single request for an extension of
9 time, the Attorney General timely submitted a declination letter on September 8, 2023. In it, the
10 Attorney General declined to object to Glass' supplemented claim for compensation in the amount of
11 \$867,020 for 6,193 days imprisonment.²² The Attorney General did not challenge or dispute the dates
12 of Glass' confinement.

13 On October 3, 2023, the hearing officer requested a response from both parties regarding
14 compensation, noting again that it appeared Glass had actually been confined for 6,136 days based
15 upon the date of his arrest and release, which was 57 days less than alleged by Glass.²³ After both
16 parties agreed with this calculation, the administrative record closed on October 4, 2023.²⁴

17 **III. Factual Background**

18 On the night of Friday, January 2, 2004, Glass and Rayford attended a party in Los Angeles
19 County. At that time, Glass was 17 years old, and Rayford was 18 years old. They encountered a 15-

20
21
22 ²⁰ Email from counsel Annee Della Donna, sent April 25, 2023, at 1:45 p.m.; CalVCB email to the
23 parties, sent April 25, 2023, at 3:10 p.m. (summarizing telephone conversation with counsel).

24 ²¹ Email from counsel Annee Della Donna, sent June 15, 2023, at 3:20 p.m., attaching court minute
25 order dated June 5, 2023.

26 ²² Declination Letter, dated Sept. 8, 2023, signed by Deputy Attorney General (DAG) Seth
27 McCutcheon; see also email from DAG McCutcheon, sent September 12, 2023, at 4:12 p.m.,
28 confirming declination.

²³ Email from CalVCB to parties, sent October 3, 2023, at 1:37 p.m.

²⁴ Email from counsel Annee Della Donna, sent October 3, 2023, at 1:43 p.m.; email from DAG Seth
McCutcheon, sent October 3, 2023, at 1:50 p.m.

1 year-old girl named Donisha,²⁵ who was present with her 17-year-old male cousin Perry. Glass and
2 Rayford both knew Donisha, and they had frequented Donisha’s home on multiple occasions. Glass
3 was also friends with Perry, but during the party, they started to argue. As the argument escalated and
4 Rayford joined in, Perry left the party with Donisha in a car driven by her older sister Shadonna.²⁶

5 Shadonna dropped off Perry at their grandmother’s house, and then Shadonna and Donisha
6 returned to their home around 1:00 a.m. on January 3, 2004. Shortly thereafter, Glass called Donisha
7 and repeatedly asked for Perry. Donisha insisted that Perry was not there and invited Glass over to
8 see for himself. Around 1:30 a.m., multiple cars pulled up in front of Donisha’s home, from which
9 Glass, Rayford, and approximately 10 or more young men exited. The group included Douglas Bland
10 (Bland), who was known as “Fat Man.”²⁷ Glass approached Donisha and Shadonna, who were
11 standing in front of their home, and told them to tell Perry to come outside.²⁸

12 Donisha and Shadonna returned inside and informed their mother Sheila what was happening.
13 There were roughly 11 persons inside their home, which included Donisha, Shadonna, and Sheila, as
14 well as other family members and friends, two of whom were male neighbors Darrell and Terry. Sheila
15 walked outside, accompanied by Donisha and several others. As Sheila stood on her front lawn, she
16 recognized Glass and Rayford, as well as Bland, among the group of young men. All three men were
17 also standing on Sheila’s lawn, with Glass directly in front of her, Rayford to her right, and Bland to her
18 left. Glass demanded Sheila send Perry outside. Sheila replied that Perry was not there, and there
19 would be no fight. During this exchange, a young man from the group struck neighbor Terry.
20 Concerned, Sheila attempted to corral her family and friends back inside her home. As she did so,
21 multiple shots rang out, with the first ones emanating from the area where Bland was standing.²⁹

22
23 ²⁵ The victims are referred to by first name only in an effort to preserve their privacy.

24 ²⁶ Glass App. at pp. 6-8; Glass Supp. App. at p. 50.

25 ²⁷ Glass App. at p. 9; Motion for Factual Innocence (Motion) at p. 4, and Reply to Opposition to Motion
26 for Factual Innocence (Reply) at p. 3, submitted as attachments to email from counsel Annee Della
27 Donna, sent May 9, 2023, at 9:39 a.m. Although the Motion and Reply were submitted as Word files,
28 without signatures or court file stamp, the Attorney General does not dispute their authenticity.

²⁸ Glass App. at pp. 8-9; Glass Supp. App. at pp. 50-51.

²⁹ Glass App. at pp. 8-11; Glass Supp. App. at pp. 50-51.

1 A total of eight bullets struck Sheila's home. The bullets penetrated the living room, dining
2 room, and multiple bedrooms. One bullet struck neighbor Darrel, another bullet grazed the back of
3 Donisha's sister Kimberly. The direction of the bullets was consistent with two separate shooters,
4 although the exact number of shooters could not be determined. Sheila and Donisha specifically
5 identified Glass and Rayford as the shooters. Kimberly told police that Glass had implicated himself as
6 one of the shooters during a telephone conversation they had shortly after the shooting.³⁰

7 No physical evidence tied Rayford or Glass to the shooting. At trial, Glass and Rayford both
8 denied firing a gun or even possessing a gun on the night of the shooting. Rayford denied seeing
9 anyone fire a gun. Glass added that someone else, whom he did not recognize, fired at least some of
10 the shots. Glass acknowledged that he went to Donisha's home with Rayford and the other young
11 men looking to fight Perry. Glass denied making any incriminating statements to Kimberly about the
12 shooting and claimed, instead, that she had threatened to kill him if he did not identify the shooter.³¹

13 Between October 2022 and February 2023, exculpatory evidence was presented during an
14 evidentiary hearing on consolidated petitions by Glass and Rayford to vacate their sole remaining
15 conviction for shooting at an inhabited dwelling (i.e., count 12) pursuant to Penal Code section 1473.7,
16 subdivision (a)(2).³² The evidence included various inconsistent statements by Donisha, Sheila, and
17 Kimberly as to their knowledge of the shooters' identity.³³ It further included evidence that Bland was
18 one of the shooters, although he had died in 2011.³⁴ It also included testimony by Chad McZeal
19 (McZeal), who was imprisoned for 90-years-to-life for a different crime and had decided to come
20 forward in 2020 to clear his conscience.³⁵

21 During his testimony, McZeal admitted that he was one of the shooters at Donisha's home on
22 the morning of January 3, 2004. He specifically admitted firing at least two rounds, though only after
23

24 ³⁰ Glass App. at pp. 10-11; Glass Supp. App. at p. 51.

25 ³¹ Glass App. at pp. 11-13; Glass Supp. App. at p. 51.

26 ³² Glass Supp. App. at p. 16; see also Motion at pp. 1-22; Reply at pp. 1-15.

27 ³³ Glass Supp. App. at pp. 17, 19; Motion at pp. 5-9.

28 ³⁴ Glass Supp. App. at p. 19; Motion at p. 4; Reply at pp. 3, 6.

³⁵ Glass Supp. App. at pp. 18-20; Reply at p. 3.

1 someone else started shooting first. He insisted that Glass and Rayford were not the shooters. As
2 McZeal concluded his testimony, Rayford blurted out, “Why? Why did you shoot?”³⁶ As the superior
3 court observed, Rayford “was upset to say the least,” and Glass “was at counsel table crying, tears
4 streaming down his face.”³⁷

5 When granting the consolidated petitions for both Rayford and Glass pursuant to Penal Code
6 section 1473.7, subdivision (a)(2), the court found that McZeal’s testimony was credible. The court
7 further found that “Mr. Rayford and Mr. Glass were not [the] shooters nor did they aid and abet the
8 actual shooters,” whom the court believed were McZeal and Bland.³⁸ The court characterized the
9 events that occurred that night in January 2004 as “a product of immaturity and impetuosity” that ended
10 in “pure chaos” and “could have resulted in someone being killed ... [or] a mass casualty.”³⁹

11 **IV. Determination of Issues**

12 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
13 for a felony offense that they did not commit, to submit a claim for compensation to CalVCB.⁴⁰
14 Typically, claimants bear the burden to prove by a preponderance that (1) the crime with which they
15 were convicted either did not occur or was not committed by them and (2) they suffered injury as a
16 result of their erroneous conviction.⁴¹ If the claimant satisfies their burden for both elements, then
17 CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient
18 funds are available, upon appropriation by the Legislature.⁴² Payment is calculated at the rate of \$140
19 per day of imprisonment that resulted solely from the erroneous conviction.⁴³

22 ³⁶ Glass Supp. App. at p. 19.

23 ³⁷ Glass Supp. App. at p. 19.

24 ³⁸ Glass Supp. App. at p. 19.

25 ³⁹ Glass Supp. App. at p. 18.

26 ⁴⁰ Pen. Code, § 4900, subd. (a).

27 ⁴¹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

28 ⁴² Pen. Code, § 4904.

⁴³ Pen. Code, § 4904.

1 Under subdivision (b) of Penal Code section 4900, CalVCB's approval is mandated for certain
2 claimants, even without a preponderance of evidence that the claimant did not commit the crime for
3 which they were convicted.⁴⁴ Specifically, subdivision (b) compels approval of the claim for
4 compensation, without a hearing and within 60 days, when the following three elements are met. First,
5 the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to
6 Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated
7 conviction must have been dismissed on remand, or the claimant must have been acquitted upon
8 retrial. Third, the Attorney General must decline to object to the application in this administrative
9 proceeding.⁴⁵ If all three of these elements are satisfied, and CalVCB finds that the claimant sustained
10 injury through their erroneous conviction, then CalVCB shall approve payment for the purpose of
11 indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the
12 Legislature.⁴⁶ CalVCB's approval of the claim is statutorily required, regardless of whether or not the
13 record proves the claimant is more likely innocent than guilty.

14 If the Attorney General objects, he must do so in writing, within 45 days after the claim is filed,
15 and with clear and convincing evidence that the claimant is not entitled to compensation. Only a single
16 extension of time for 45 days is allowed for good cause. The Attorney General bears the burden to
17 prove, by clear and convincing evidence, that the claimant committed the acts constituting the
18 offense.⁴⁷ To meet that burden, the Attorney General may not rely solely on the trial record for the
19 vacated conviction to establish that the claimant is not entitled to compensation.⁴⁸ If the Attorney
20 General fails to meet this burden following a hearing on the claim, then CalVCB shall approve payment
21 to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient funds are available
22 upon appropriation by the Legislature.⁴⁹

23
24 ⁴⁴ Pen. Code, § 4900, subd. (b).

25 ⁴⁵ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

26 ⁴⁶ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

27 ⁴⁷ Pen. Code, § 4902, subd. (d).

28 ⁴⁸ Pen. Code, § 4903, subd. (d); Cal. Code Regs., tit. 2, § 645, subd. (g).

⁴⁹ Pen. Code, §§ 4903, subd. (d), 4904.

1 **A. Innocence**

2 Here, Glass’ supplemented claim falls within the mandatory approval provision of subdivision
3 (b) of Penal Code section 4900, as all three of the required elements are met. First, Glass’ 11
4 convictions for attempted murder in case number 170279 were vacated pursuant to a writ of habeas
5 corpus, and his sole remaining conviction for shooting at an inhabited dwelling was subsequently
6 vacated pursuant to Penal Code section 1473.7, subdivision (a)(2). Second, all charges were
7 dismissed upon remand in 2020 and 2023, respectively. Third, the Attorney General declined to object
8 in this administrative proceeding. Consequently, CalVCB is required by subdivision (b) to approve
9 compensation for the injury sustained by Glass if sufficient funds are available, upon appropriation by
10 the Legislature.⁵⁰ No finding is made as to the weight of evidence offered in support of Glass’ claim
11 regarding innocence, though CalVCB accepts the superior court’s binding determination that Glass did
12 not shoot or abet the shooters.⁵¹

13 **B. Injury**

14 By statute, the amount of compensation “shall be a sum equivalent to one hundred forty dollars
15 (\$140) per day of incarceration served, and shall include any time spent in custody, including a county
16 jail, that is considered to be part of the term of incarceration.”⁵² This compensation is “for the purpose
17 of indemnifying the claimant for the injury” sustained “through their erroneous conviction and
18 imprisonment...”⁵³ The requisite injury “may be established by showing that, but for the erroneous
19 conviction, the claimant would not have been in custody.”⁵⁴

20 Here, as both parties concede, Glass’ injury amounts to \$859,040, representing \$140 per day
21 of his 6,136 days imprisonment. This custodial calculation includes the date of Glass’ arrest on
22
23

24 ⁵⁰ Pen. Code, §§ 4900, subd. (b), 4904.

25 ⁵¹ See Pen. Code, § 4903, subd. (c) (rendering binding any factual finding and credibility determination
26 rendered during a proceeding under Pen. Code, § 1473.7, subd. (a)).

27 ⁵² Pen. Code, § 4904.

28 ⁵³ Pen. Code, § 4904.


⁵⁴ Cal. Code of Regs., tit. 2, § 640, subd. (f).

1 January 13, 2004, to and including the date of his release on October 30, 2020.⁵⁵ But-for his
2 erroneous convictions in case number MA028053, Glass would have been free for all 6,136 days of his
3 imprisonment. The record fails to support a finding of injury for the additional 57 days requested by
4 Glass. Although the superior court's resentencing order awarded 6,193 days as custodial credits,
5 those credits necessarily included additional days for good conduct because, otherwise, the custodial
6 duration would have preceded the crime.⁵⁶ Consequently, as both parties agree, Glass did not sustain
7 any injury for the 57 days during which he was not actually imprisoned.

8 **V. Conclusion**

9 As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer
10 recommends that CalVCB grant Glass' claim and approve payment in the amount of \$859,040 if
11 sufficient funds are available, upon appropriation by the Legislature, as indemnification for the injury
12 sustained by his 6,136 days of imprisonment solely as a result of his vacated convictions for attempted
13 murder and shooting at an inhabited dwelling. No compensation is recommended for the remaining 57
14 days of Glass' claim due to the absence of any demonstrated injury.

15
16 Date: October 12, 2023

17 
18 _____
19 Laura Simpton
20 Hearing Officer
21 California Victim Compensation Board

22
23
24
25 _____
26 ⁵⁵ See Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3 Cal.App.4th
27 882, 886 (construing "days" for custody credit to include partial days).

28 ⁵⁶ Glass App. at pp. 51-53; Glass Supp. App. at pp. 9-10. Subtracting 6,193 days from Glass' release
on October 30, 2020, amounts to November 16, 2003. (TimeandDate Calculator, available online at
[https://www.timeanddate.com/date/dateadded.html/.](https://www.timeanddate.com/date/dateadded.html/))

ITEM 9

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5
6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**

8
9 In the Matter of:

10 **Juan Marshall Rayford**

11 Claim No. 20-ECO-23

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On December 1, 2020, Juan Marshall Rayford (Rayford) submitted a claim for compensation to
14 the California Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to
15 Penal Code section 4900, which was initially stayed and then supplemented on April 24, 2023. The
16 supplemented claim is based upon Rayford's imprisonment for 11 counts of attempted murder, which
17 were vacated by writ of habeas corpus and dismissed upon remand in 2020, and one count of shooting
18 at an inhabited dwelling, which was vacated pursuant to Penal Code section 1473.7, subdivision (a)(2),
19 and dismissed upon remand in 2023. The supplemented claim requests \$867,020 as compensation
20 for the entire duration of Rayford's imprisonment, which he calculated as 6,193 days. Rayford is
21 represented by attorney Annee Della Donna in this administrative proceeding.

22 The Attorney General is represented by Deputy Attorney General Seth McCutcheon. By letter
23 dated September 8, 2023, the Attorney General declined to object to Rayford's supplemented claim.
24 The matter was assigned to CalVCB Senior Attorney Laura Simpton, who requested a response from
25 both parties regarding compensation, as it appeared that Rayford had actually been confined for 6,136
26 days. After both parties agreed, the administrative record closed on October 4, 2023.

27 As required by subdivision (b) of Penal Code section 4900, CalVCB is mandated to approve
28 payment to Rayford in the amount of \$859,040 if sufficient funds are available, upon appropriation by

1 the Legislature, as indemnification for the demonstrated injury sustained by his 6,136 days
2 imprisonment solely as a result of his vacated convictions. It is recommended that compensation be
3 denied for the remaining 57 days requested by Rayford, as the record fails to show he was imprisoned
4 for this portion of time.

5 **II. Procedural Background**

6 On January 13, 2004, Rayford was arrested and subsequently charged with 11 counts of
7 attempted murder and one count of shooting at an inhabited dwelling in Los Angeles County Superior
8 Court case number MA028053.¹ Enhancements for promoting a criminal street gang and personal use
9 of a firearm were also alleged. All of these offenses stemmed from a single incident that occurred on
10 January 3, 2004. Rayford's codefendant Dupree Antoine Glass (Glass) was charged with the same 12
11 counts and enhancements.²

12 Following a joint trial, the jury convicted both Rayford and Glass as charged on September 16,
13 2004. Rayford was sentenced on October 25, 2004, to 11 consecutive life sentences for attempted
14 murder, plus 220 years for the enhancements, with a stayed sentence on the remaining count for
15 shooting at an inhabited dwelling.³ Glass received an identical sentence. In a combined appeal
16 decided July 18, 2006, the Court of Appeal reversed the enhancements but otherwise affirmed all 12
17 convictions for both Rayford and Glass.⁴ Rayford separately pursued federal habeas relief, which was
18 denied on January 27, 2011.⁵

19
20 ¹ Pen. Code, §§ 187/664 (attempted murder), 246 (shooting a dwelling), 186.22 (gang enhancement),
21 12022.53 (firearm enhancement); Rayford Supplemental Application (Supp. App.) at p. 3. The
22 pagination refers to the continuous page numbers for the entire, 61-page PDF file received April 24,
2023.

23 ² Rayford Application (App.) at pp. 6-8. The pagination refers to the continuous page numbers for the
entire, 56-page PDF file received December 1, 2020.

24 ³ Rayford App. at p. 14; see also Los Angeles County Superior Court Docket in *People v. Juan*
25 *Marshall Rayford*, case number MA028053, available online at [https://www.lacourt.org/division/
criminal/criminal.aspx](https://www.lacourt.org/division/criminal/criminal.aspx). (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

26 ⁴ Rayford App. at pp. 4-47 (*People v. Rayford et al.*, Court of Appeal, Second District, case number
B179017, opinion filed July 18, 2006)

27 ⁵ *Rayford v. Hedgpeth*, U.S. District Court (C.D. Cal.), case number CV 09-688 VAP, order filed Jan.
28 27, 2011, adopting Report and Recommendation to deny petition without certificate of appealability,
available on Westlaw at 2011 WL 488860. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

1 **A. Habeas Relief as to Counts 1 through 11**

2 On September 25, 2015, with the assistance of counsel Annee Della Donna, Rayford filed a
3 petition for writ of habeas corpus in the California Supreme Court. The petition challenged a jury
4 instruction defining the “kill zone” theory of attempted murder and further asserted Rayford’s factual
5 innocence. Rayford’s codefendant Glass also filed a petition raising the same issues. In both cases,
6 the California Supreme Court deferred action pending its decision in *People v. Canizales* (2019) 7
7 Cal.5th 591, which ultimately narrowed the circumstances under which the “kill zone” theory applies.
8 Thereafter, on September 18, 2019, the court directed the appellate court to reconsider both habeas
9 petitions by Rayford and Glass.⁶

10 In a consolidated decision published on June 16, 2020, the appellate court granted limited
11 habeas relief for both Rayford and Glass. Relying upon *Canizales*, the appellate court found that the
12 “kill zone” theory did not apply to the circumstances of their case and prejudicial error resulted. The
13 appellate court therefore vacated all 11 convictions for attempted murder, as to both Rayford and
14 Glass, leaving intact their sole remaining conviction for shooting at an inhabited dwelling (i.e., count
15 12). The appellate court declined to decide the separate claim of factual innocence as to Rayford or
16 Glass.⁷

17 Upon remand to the superior court, Rayford and Glass were released from prison on October
18 30, 2020, pending retrial. By then, a total of 6,146 days had passed since the underlying offenses
19 occurred on January 3, 2004. Moreover, a total of 6,136 days had passed since Rayford and Glass
20 were arrested for those offenses on January 13, 2004.⁸

21 Two weeks later on November 13, 2020, the prosecution officially declined to retry Rayford or
22 Glass for attempted murder. Consequently, the superior court dismissed all 11 charges of attempted
23

24 ⁶ Rayford App. at pp. 5-6; see also Docket for *In re Juan Marshall Rayford*, Court of Appeal, Second
25 District, Division 7, case number B264402, and California Supreme Court case number S229536,
26 available online at <https://appellatecases.courtinfo.ca.gov/search/case/>. (Cal. Code Regs., tit. 2, §
617.8 (official notice).)

27 ⁷ Rayford App. at pp. 4-47; *In re Rayford* (2020) 50 Cal.App.5th 754.

28 ⁸ Rayford Supp. App. at p. 3; see also TimeandDate Calculator, available online at <https://www.timeanddate.com/date/dateadded.html/>.

1 murder, as to both Rayford and Glass, in the interests of justice pursuant to Penal Code section 1385.⁹
2 Immediately thereafter, the superior court resentenced Rayford and Glass on their sole remaining
3 conviction for shooting at an inhabited dwelling (i.e., count 12) to the upper term of seven years
4 imprisonment. With the parties' agreement, the court awarded custody credits totaling 6,193 days for
5 Rayford and Glass each. This calculation included a lump sum of 5,863 days for "custody time in state
6 prison," in addition to "presentence credits" in the amount of 287 actual days plus 43 days "good time /
7 work time."¹⁰ The calculation for state prison time necessarily included conduct credits too because,
8 otherwise, the actual credits would have preceded the commission of the crime.¹¹ In any event,
9 because this period exceeded the length of the maximum sentence combined with any potential term
10 of parole supervision, the court ordered Rayford and Glass immediately discharged from parole.¹²

11 **B. CalVCB Original Claim**

12 On December 1, 2020, counsel Annee Della Donna submitted a claim to CalVCB on behalf of
13 Rayford seeking compensation as an erroneously convicted person under Penal Code section 4900.
14 The claim requested compensation in the amount of \$360,220 for the additional 2,573 days that
15 Rayford was incarcerated as a result of the vacated convictions for attempted murder (i.e., counts 1
16 through 11) beyond the maximum sentence imposed for his still valid conviction for shooting at an
17 inhabited dwelling (i.e., count 12). Rayford alleged that he was found factually innocent but only
18 attached the appellate court's decision to grant habeas relief due to instructional error.¹³

19 By letter dated December 8, 2020, CalVCB requested supporting documentation to confirm
20 Rayford's alleged finding of factual innocence. CalVCB's letter to Rayford's counsel included a
21 representative for the Attorney General. By email sent January 7, 2021, both parties requested
22 Rayford's claim be stayed while he pursued a motion for a finding of factual innocence. Based upon

23 ⁹ Rayford App. at pp. 1-2, 51-53; Rayford Supp. App. at pp. 9-10.

24 ¹⁰ Rayford App. at pp. 51-53; Rayford Supp. App. at pp. 9-10.

25 ¹¹ Subtracting 6,150 days (i.e., 6,193 less 43 for presentence conduct credits only) from Rayford's
26 release on October 30, 2020, amounts to December 29, 2003. (TimeandDate Calculator, available
27 online at <https://www.timeanddate.com/date/dateadded.html/>.)

28 ¹² Rayford App. at pp. 51-53; Rayford Supp. App. at pp. 9-10.

¹³ Rayford App. at pp. 1-2.

1 this joint request, CalVCB stayed the proceeding on Rayford’s claim pending a decision on the
2 anticipated motion.

3 **C. Penal Code Section 1473.7 Proceedings for Count 12**

4 At a hearing on April 20, 2023, the superior court vacated Rayford’s sole remaining conviction
5 for shooting at an occupied dwelling (i.e., count 12) on the basis of actual innocence pursuant to Penal
6 Code section 1473.7, subdivision (a)(2). The court emphasized that its ruling was solely based upon
7 section 1473.7, even though Rayford had initially filed a motion for factual innocence pursuant to Penal
8 Code section 1485.55, which the court had re-characterized.¹⁴ At the prosecution’s request and over
9 Rayford’s objection, the court set a hearing date for possible retrial on May 18, 2023.¹⁵ Thereafter, on
10 June 5, 2023, the prosecution announced that it was unable to proceed, and the court granted
11 Rayford’s motion to dismiss count 12 in the interests of justice pursuant to Penal Code section 1385.¹⁶

12 **D. CalVCB Supplemented Claim**

13 Meanwhile, on April 24, 2023, Rayford’s counsel supplemented his stayed claim to seek
14 compensation for all 12 of his now vacated convictions in case number MA028053. As supplemented,
15 Rayford’s claim requested \$867,020 for the entire length of his imprisonment, which he calculated as
16 6,183 days, even though he was allegedly in custody for 6,136 days from the date of his arrest on
17 January 13, 2004, and release on October 30, 2020. Rayford attached a “Statement of Injury” that
18 detailed his hardships in prison but failed to specify the dates of his confinement or address whether he
19 served any overlapping sentences for unrelated offenses.¹⁷ Rayford finally asserted that the court’s
20

21 ¹⁴ This distinction is significant. A conviction may be vacated under Penal Code section 1473.7 based
22 upon newly discovered evidence of actual innocence that requires vacation as a matter of law or in the
23 interests of justice, whereas a finding of factual innocence under Penal Code section 1485.55 requires
24 a preponderance of evidence that the claimant did not commit the crime. (See *Larsen v. California*
25 *Victim Comp. Bd.* (2021) 64 Cal.App.5th 112, 129 [“finding of factual innocence must be made by at
26 least a preponderance of the evidence and must reflect a determination that the person charged and
27 convicted of an offense did not commit the crime”].) A finding under section 1485.55 is only available
28 after the underlying conviction for the crime has been vacated under specified circumstances.

¹⁵ Rayford Supp. App. at pp. 13-22, 24-26.

¹⁶ Email from counsel Annee Della Donna, sent June 15, 2023, at 1:44 p.m., attaching superior court
minute order dated June 5, 2023.

¹⁷ Rayford Supp. App. at p. 61.

1 ruling to vacate his conviction pursuant to Penal Code section 1473.7, subdivision (a)(2), constituted a
2 finding of factual innocence.¹⁸

3 The matter was assigned to CalVCB Senior Attorney Laura Simpton as the hearing officer. In
4 an email reply to the parties sent April 25, 2023, the hearing officer extended the stay for the
5 supplemented claim, explaining that it was premature under Penal Code section 4901 because less
6 than 60 days had passed since the superior court vacated Rayford's conviction for shooting at an
7 inhabited dwelling (i.e., count 12). The hearing officer noted that, once the 60 days had passed, the
8 stay would be lifted, and the administrative proceeding resumed. The hearing officer added that the
9 supplemented claim did not appear to fall within subdivision (b) of Penal Code section 4900, which
10 shifts the burden of proof onto the Attorney General in specified circumstances, unless and until count
11 12 was dismissed on remand. While acknowledging the superior court vacated count 12 pursuant to
12 Penal Code section 1473.7, subdivision (a)(2), the hearing officer cited subdivision (b) of Penal Code
13 section 1485.55, which requires a separate motion for a finding of factual innocence following relief
14 under section 1473.7. Finally, the hearing officer requested clarification on the issue of injury, noting
15 that the requested compensation for 6,193 days did not match the reported dates of confinement,
16 which amounted to 6,136 days.¹⁹

17 In response, Rayford's counsel again requested compensation for 6,193 days and cited the
18 superior court's credit calculation as the sole support. Otherwise, counsel confirmed Rayford was not
19 released on bail at any time before October 30, 2020, nor did Rayford sustain any other convictions
20 with overlapping sentences during his imprisonment for case number MA028053. Counsel
21 acknowledged the continued stay of CalVCB proceedings until June 19, 2023, when 60 days will have
22 passed since count 12 was vacated on April 20, 2023. Counsel further acknowledged that a finding of
23 factual innocence was lacking under Penal Code section 1485.55 and advised that she may pursue
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27 ¹⁸ Rayford Supp. App. at p. 3.

28 ¹⁹ CalVCB email to the parties, sent April 25, 2023, at 12:37 p.m.

1 such a determination during the stay. Finally, counsel agreed to notify CalVCB of the outcome of the
2 still pending charge for count 12.²⁰

3 On June 15, 2023, counsel for Rayford informed CalVCB that count 12 was dismissed by the
4 superior court on June 5, 2023, without a finding of factual innocence, and requested to resume the
5 administrative proceedings pursuant to subdivision (b) of Penal Code section 4900.²¹ On June 19,
6 2023, 60 days after Rayford's conviction for count 12 had been vacated, CalVCB lifted the stay, filed
7 Rayford's supplemented claim, and requested a response from the Attorney General within 45 days as
8 required by subdivision (d) of Penal Code section 4902. Following a single request for an extension of
9 time, the Attorney General timely submitted a declination letter on September 8, 2023. In it, the
10 Attorney General declined to object to Rayford's supplemented claim for compensation in the amount
11 of \$867,020 for 6,193 days imprisonment.²² The Attorney General did not challenge or dispute the
12 dates of Rayford's confinement.

13 On October 3, 2023, the hearing officer requested a response from both parties regarding
14 compensation, noting again that it appeared Rayford had actually been confined for 6,136 days based
15 upon the date of his arrest and release, which was 57 days less than alleged by Rayford.²³ After both
16 parties agreed with this calculation, the administrative record closed on October 4, 2023.²⁴

17 III. Factual Background

18 On the night of Friday, January 2, 2004, Rayford and Glass attended a party in Los Angeles
19 County. At that time, Rayford was 18 years old, and Glass was 17 years old. They encountered a 15-

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22 ²⁰ Email from counsel Annee Della Donna, sent April 25, 2023, at 1:45 p.m.; CalVCB email to the
23 parties, sent April 25, 2023, at 3:10 p.m. (summarizing telephone conversation with counsel).

24 ²¹ Email from counsel Annee Della Donna, sent June 15, 2023, at 1:44 p.m., attaching court minute
25 order dated June 5, 2023.

26 ²² Declination Letter, dated Sept. 8, 2023, signed by Deputy Attorney General (DAG) Seth
27 McCutcheon; see also email from DAG McCutcheon, sent September 12, 2023, at 4:12 p.m.,
28 confirming declination.

²³ Email from CalVCB to parties, sent October 3, 2023, at 1:37 p.m.

²⁴ Email from counsel Annee Della Donna, sent October 3, 2023, at 1:43 p.m.; email from DAG Seth
McCutcheon, sent October 3, 2023, at 1:50 p.m.

1 year-old girl named Donisha,²⁵ who was present with her 17-year-old male cousin Perry. Rayford and
2 Glass both knew Donisha, and they had frequented Donisha's home on multiple occasions. Glass was
3 also friends with Perry, but during the party, they started to argue. As the argument escalated and
4 Rayford joined in, Perry left the party with Donisha in a car driven by her older sister Shadonna.²⁶

5 Shadonna dropped off Perry at their grandmother's house, and then Shadonna and Donisha
6 returned to their home around 1:00 a.m. on January 3, 2004. Shortly thereafter, Glass called Donisha
7 and repeatedly asked for Perry. Donisha insisted that Perry was not there and invited Glass over to
8 see for himself. Around 1:30 a.m., multiple cars pulled up in front of Donisha's home, from which
9 Glass, Rayford, and approximately 10 or more young men exited. The group included Douglas Bland
10 (Bland), who was known as "Fat Man."²⁷ Glass approached Donisha and Shadonna, who were
11 standing in front of their home, and told them to tell Perry to come outside.²⁸

12 Donisha and Shadonna returned inside and informed their mother Sheila what was happening.
13 There were roughly 11 persons inside their home, which included Donisha, Shadonna, and Sheila, as
14 well as other family members and friends, two of whom were male neighbors Darrell and Terry. Sheila
15 walked outside, accompanied by Donisha and several others. As Sheila stood on her front lawn, she
16 recognized Glass and Rayford, as well as Bland, among the group of young men. All three men were
17 also standing on Sheila's lawn, with Glass directly in front of her, Rayford to her right, and Bland to her
18 left. Glass demanded Sheila send Perry outside. Sheila replied that Perry was not there, and there
19 would be no fight. During this exchange, a young man from the group struck neighbor Terry.
20 Concerned, Sheila attempted to corral her family and friends back inside her home. As she did so,
21 multiple shots rang out, with the first ones emanating from the area where Bland was standing.²⁹

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23 ²⁵ The victims are referred to by first name only in an effort to preserve their privacy.

24 ²⁶ Rayford App. at pp. 6-8; Rayford Supp. App. at p. 50.

25 ²⁷ Rayford App. at p. 9; Motion for Factual Innocence (Motion) at p. 4, and Reply to Opposition to
26 Motion for Factual Innocence (Reply) at p. 3, submitted as attachments to email from counsel Annee
27 Della Donna, sent May 9, 2023, at 9:39 a.m. Although the Motion and Reply were submitted as Word
28 files, without signatures or court file stamp, the Attorney General does not dispute their validity.

²⁸ Rayford App. at pp. 8-9; Rayford Supp. App. at pp. 50-51.

²⁹ Rayford App. at pp. 8-11; Rayford Supp. App. at pp. 50-51.

1 A total of eight bullets struck Sheila's home. The bullets penetrated the living room, dining
2 room, and multiple bedrooms. One bullet struck neighbor Darrel, another bullet grazed the back of
3 Donisha's sister Kimberly. The direction of the bullets was consistent with two separate shooters,
4 although the exact number of shooters could not be determined. Sheila and Donisha specifically
5 identified Glass and Rayford as the shooters. Kimberly told police that Glass had implicated himself as
6 one of the shooters during a telephone conversation they had shortly after the shooting.³⁰

7 No physical evidence tied Rayford or Glass to the shooting. At trial, Rayford and Glass both
8 denied firing a gun or even possessing a gun on the night of the shooting. Rayford denied seeing
9 anyone fire a gun. Glass added that someone else, whom he did not recognize, fired at least some of
10 the shots. Glass acknowledged that he went to Donisha's home with Rayford and the other young
11 men looking to fight Perry. Glass denied making any incriminating statements to Kimberly about the
12 shooting and claimed, instead, that she had threatened to kill him if he did not identify the shooter.³¹

13 Between October 2022 and February 2023, exculpatory evidence was presented during an
14 evidentiary hearing on consolidated petitions by Rayford and Glass to vacate their sole remaining
15 conviction for shooting at an inhabited dwelling (i.e., count 12) pursuant to Penal Code section 1473.7,
16 subdivision (a)(2).³² The evidence included various inconsistent statements by Donisha, Sheila, and
17 Kimberly as to their knowledge of the shooters' identity.³³ It further included evidence that Bland was
18 one of the shooters, although he had died in 2011.³⁴ It also included testimony by Chad McZeal
19 (McZeal), who was imprisoned for 90-years-to-life for a different crime and had decided to come
20 forward in 2020 to clear his conscience.³⁵

21 During his testimony, McZeal admitted that he was one of the shooters at Donisha's home on
22 the morning of January 3, 2004. He specifically admitted firing at least two rounds, though only after
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24 ³⁰ Rayford App. at pp. 10-11; Rayford Supp. App. at p. 51.

25 ³¹ Rayford App. at pp. 11-13; Rayford Supp. App. at p. 51.

26 ³² Rayford Supp. App. at p. 16; see also Motion at pp. 1-22; Reply at pp. 1-15.

27 ³³ Rayford Supp. App. at pp. 17, 19; Motion at pp. 5-9.

28 ³⁴ Rayford Supp. App. at p. 19; Motion at p. 4; Reply at pp. 3, 6.

³⁵ Rayford Supp. App. at pp. 18-20; Reply at p. 3.

1 someone else started shooting first. He insisted that Rayford and Glass were not the shooters. As
2 McZeal concluded his testimony, Rayford blurted out, "Why? Why did you shoot?"³⁶ As the superior
3 court observed, Rayford "was upset to say the least," and Glass "was at counsel table crying, tears
4 streaming down his face."³⁷

5 When granting the consolidated petitions for both Rayford and Glass pursuant to Penal Code
6 section 1473.7, subdivision (a)(2), the court found that McZeal's testimony was credible. The court
7 further found that "Mr. Rayford and Mr. Glass were not [the] shooters nor did they aid and abet the
8 actual shooters," whom the court believed were McZeal and Bland.³⁸ The court characterized the
9 events that occurred that night in January 2004 as "a product of immaturity and impetuosity" that ended
10 in "pure chaos" and "could have resulted in someone being killed ... [or] a mass casualty."³⁹

11 **IV. Determination of Issues**

12 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
13 for a felony offense that they did not commit, to submit a claim for compensation to CalVCB.⁴⁰
14 Typically, claimants bear the burden to prove by a preponderance that (1) the crime with which they
15 were convicted either did not occur or was not committed by them and (2) they suffered injury as a
16 result of their erroneous conviction.⁴¹ If the claimant satisfies their burden for both elements, then
17 CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient
18 funds are available, upon appropriation by the Legislature.⁴² Payment is calculated at the rate of \$140
19 per day of imprisonment that resulted solely from the erroneous conviction.⁴³

22 ³⁶ Rayford Supp. App. at p. 19.

23 ³⁷ Rayford Supp. App. at p. 19.

24 ³⁸ Rayford Supp. App. at p. 19.

25 ³⁹ Rayford Supp. App. at p. 18.

26 ⁴⁰ Pen. Code, § 4900, subd. (a).

27 ⁴¹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

28 ⁴² Pen. Code, § 4904.

⁴³ Pen. Code, § 4904.

1 Under subdivision (b) of Penal Code section 4900, CalVCB's approval is mandated for certain
2 claimants, even without a preponderance of evidence that the claimant did not commit the crime for
3 which they were convicted.⁴⁴ Specifically, subdivision (b) compels approval of the claim for
4 compensation, without a hearing and within 60 days, when the following three elements are met. First,
5 the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to
6 Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated
7 conviction must have been dismissed on remand, or the claimant must have been acquitted upon
8 retrial. Third, the Attorney General must decline to object to the application in this administrative
9 proceeding.⁴⁵ If all three of these elements are satisfied, and CalVCB finds that the claimant sustained
10 injury through their erroneous conviction, then CalVCB shall approve payment for the purpose of
11 indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the
12 Legislature.⁴⁶ CalVCB's approval of the claim is statutorily required, regardless of whether or not the
13 record proves the claimant is more likely innocent than guilty.

14 If the Attorney General objects, he must do so in writing, within 45 days after the claim is filed,
15 and with clear and convincing evidence that the claimant is not entitled to compensation. Only a single
16 extension of time for 45 days is allowed for good cause. The Attorney General bears the burden to
17 prove, by clear and convincing evidence, that the claimant committed the acts constituting the
18 offense.⁴⁷ To meet that burden, the Attorney General may not rely solely on the trial record for the
19 vacated conviction to establish that the claimant is not entitled to compensation.⁴⁸ If the Attorney
20 General fails to meet this burden following a hearing on the claim, then CalVCB shall approve payment
21 to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient funds are available
22 upon appropriation by the Legislature.⁴⁹

23
24 ⁴⁴ Pen. Code, § 4900, subd. (b).

25 ⁴⁵ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

26 ⁴⁶ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

27 ⁴⁷ Pen. Code, § 4902, subd. (d).

28 ⁴⁸ Pen. Code, § 4903, subd. (d); Cal. Code Regs., tit. 2, § 645, subd. (g).

⁴⁹ Pen. Code, §§ 4903, subd. (d), 4904.

1 **A. Innocence**

2 Here, Rayford’s supplemented claim falls within the mandatory approval provision of
3 subdivision (b) of Penal Code section 4900, as all three of the required elements are met. First,
4 Rayford’s 11 convictions for attempted murder in case number 170279 were vacated pursuant to a writ
5 of habeas corpus, and his sole remaining conviction for shooting at an inhabited dwelling was
6 subsequently vacated pursuant to Penal Code section 1473.7, subdivision (a)(2). Second, all charges
7 were dismissed upon remand in 2020 and 2023, respectively. Third, the Attorney General declined to
8 object in this administrative proceeding. Consequently, CalVCB is required by subdivision (b) to
9 approve compensation for the injury sustained by Rayford if sufficient funds are available, upon
10 appropriation by the Legislature.⁵⁰ No finding is made as to the weight of evidence offered in support
11 of Rayford’s claim regarding innocence, though CalVCB accepts the superior court’s binding
12 determination that Rayford did not shoot or abet the shooters.⁵¹

13 **B. Injury**

14 By statute, the amount of compensation “shall be a sum equivalent to one hundred forty dollars
15 (\$140) per day of incarceration served, and shall include any time spent in custody, including a county
16 jail, that is considered to be part of the term of incarceration.”⁵² This compensation is “for the purpose
17 of indemnifying the claimant for the injury” sustained “through their erroneous conviction and
18 imprisonment...”⁵³ The requisite injury “may be established by showing that, but for the erroneous
19 conviction, the claimant would not have been in custody.”⁵⁴

20 Here, as both parties concede, Rayford’s injury amounts to \$859,040, representing \$140 per
21 day of his 6,136 days imprisonment. This custodial calculation includes the date of Rayford’s arrest on
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24 ⁵⁰ Pen. Code, §§ 4900, subd. (b), 4904.

25 ⁵¹ See Pen. Code, § 4903, subd. (c) (rendering binding any factual finding and credibility determination
26 rendered during a proceeding under Pen. Code, § 1473.7, subd. (a)).

27 ⁵² Pen. Code, § 4904.

28 ⁵³ Pen. Code, § 4904.

⁵⁴ Cal. Code of Regs., tit. 2, § 640, subd. (f).

1 January 13, 2004, to and including the date of his release on October 30, 2020.⁵⁵ But-for his
2 erroneous convictions in case number MA028053, Rayford would have been free for all 6,136 days of
3 his imprisonment. The record fails to support a finding of injury for the additional 57 days requested by
4 Rayford. Although the superior court's resentencing order awarded 6,193 days as custodial credits,
5 those credits necessarily included additional days for good conduct because, otherwise, the custodial
6 duration would have preceded the crime.⁵⁶ Consequently, as both parties agree, Rayford did not
7 sustain any injury for the 57 days during which he was not actually imprisoned.

8 **V. Conclusion**

9 As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer
10 recommends that CalVCB grant Rayford's claim and approve payment in the amount of \$859,040 if
11 sufficient funds are available, upon appropriation by the Legislature, as indemnification for the injury
12 sustained by his 6,136 days of imprisonment solely as a result of his vacated convictions for attempted
13 murder and shooting at an inhabited dwelling. No compensation is recommended for the remaining 57
14 days of Rayford's claim due to the absence of any demonstrated injury.

15
16 Date: October 12, 2023



17 _____
18 Laura Simpton
19 Hearing Officer
20 California Victim Compensation Board

21
22
23
24
25 _____
26 ⁵⁵ See Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3 Cal.App.4th
882, 886 (construing "days" for custody credit to include partial days).

27 ⁵⁶ Rayford App. at pp. 51-53; Rayford Supp. App. at pp. 9-10. Subtracting 6,193 days from Rayford's
28 release on October 30, 2020, amounts to November 16, 2003. (TimeandDate Calculator, available
online at <https://www.timeanddate.com/date/dateadded.html/>.)