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8 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**
9 **OF THE STATE OF CALIFORNIA**
10

11 In the Matter of the Claim of:

12 **Ronald Ross**

Proposed Decision

(Penal Code § 4900)

14
15 **Introduction**

16 This claim for compensation as an erroneously convicted person was decided based on the
17 written record by considering all the evidence submitted and without a telephonic or in-person hearing.
18 Kevin Kwong was assigned to hear this matter by the Executive Officer of the California Victim
19 Compensation and Government Claims Board. The claimant, Ronald Ross, was represented by Reid
20 Mullen, attorney at law. The California Department of Justice, Office of the Attorney General (AG) was
21 represented by Kenneth Sokoler.

22 As explained below, Ross has met the statutory requirements to receive compensation under
23 Penal Code section 4900 because he has proved by a preponderance of the evidence that he did not
24 commit the crimes with which he was charged. Ross is entitled to \$229,000 in compensation for being
25 incarcerated for 2,299 days after conviction.

26 **Factual and Procedural Summary**

27 On April 15, 2006, Renardo Williams was shot outside of his home after being confronted by
28 two adult males and a teenage boy. The dispute began one day prior, after Williams' three-year-old
29 daughter came home with an injury. Williams believed that 15-year-old Steven Embrey Jr. was

1 responsible for his daughter's injury. This led to a dispute between Williams and Embrey Jr.'s
2 mother, Nikisha Stuart. During the dispute, Stuart accused Williams of hitting Embrey Jr. and stated
3 that somebody would come see Williams to get revenge.

4 Ronald Ross was arrested for shooting Williams and charged with premeditated attempted
5 murder and assault with a firearm. On November 8, 2006, a jury found him guilty on both counts.
6 Ross was sentenced to 25-years-to-life in prison. The Court of Appeals affirmed the judgment, and
7 the California Supreme Court denied review.

8 In February 2012, Ross filed a habeas corpus petition, first based on the claim that the
9 prosecution introduced false evidence, then on the claim that the prosecution failed to disclose
10 exculpatory evidence. The court denied the claim that the prosecution failed to disclose exculpatory
11 evidence but the claim of false evidence proceeded. The Alameda County District Attorney's Office
12 originally opposed the petition, but later changed its position and asked the court to grant the petition
13 based on the introduction of false evidence at Ross' criminal trial. The petition was granted and Ross
14 was released from prison on February 22, 2013. On May 17, 2013, Ross filed his claim for
15 compensation under Penal Code section 4900 with the Board.

16 Summary of Evidence

17 I. Evidence Presented at Trial

18 On April 14, 2006, Renardo Williams was at home playing video games when his three-year-
19 old daughter came home bleeding from a cut near her eye. Williams heard from other children in the
20 neighborhood that 15-year old Steven Embrey, Jr. may have been the person responsible for hitting
21 his daughter. Williams confronted Embrey, Jr., yelled at him, threatened him, and possibly may have
22 struck him. Embrey, Jr. and Williams then went to visit Embrey, Jr.'s mother, Nikisha Stuart.
23 Williams explained what happened to his daughter and Stuart said that Embrey, Jr. would be
24 punished.

25 Williams returned home and about two hours passed when Stuart then came to his home.
26 She accused Williams of hitting Embrey, Jr. An argument ensued between Williams and Stuart. The
27 argument ended with Stuart saying she was "going to have my man" come see Williams.

28 The next day Williams was at home with his friend Rodney Jackson, Jackson's children, and
29 a few neighborhood children were running in and out of the house. Williams drank two or three 32-

1 ounce beers and had taken Ecstasy earlier in the day. At about 8:00 p.m. somebody knocked on
2 Williams' door. Williams could not see who was outside because he did not have his porch light on.
3 He turned on the light and saw Embrey, Jr., an unknown male, and a man who was later identified by
4 Williams to be Ronald Ross. Williams opened his door and stepped out onto his porch. He heard
5 somebody say, "Is that him?" Williams and Ross began to argue for a few minutes about whether
6 Williams had hit Embrey, Jr. After a brief argument, Ross shot Williams in the chest and the
7 suspects fled. Williams suffered a gunshot wound under his ribs and was hospitalized for about a
8 week.

9 When viewing a photo lineup, Williams pointed to a picture of Ross as being the shooter and
10 stated that he recognized Ross' lips, eyes, and face. Williams described the shooter as bald, but
11 later said that he used this term to mean that the shooter had a big forehead and wore small, tight
12 braids that pulled back his scalp and hair. The shooter was a little bit shorter than Williams who
13 stood at five feet, eight inches tall. Finally, the shooter was described as "light skinned." Williams
14 stated that he had never met Ross before but assumed that he was Embrey, Jr.'s father or uncle
15 because he believed that a family member was responsible.

16 Travis Abner was 15-years-old at the time of the shooting. He was at Williams' house playing
17 video games when the shooting occurred. During a photo lineup, Abner pointed to Ross' picture and
18 said that he "sort of looked like the guy," but that it was also dark on the porch. He only saw Ross
19 and heard Embrey, Jr.'s voice on the porch, but later stated that Williams told him to tell the police
20 that there was a second adult on the porch. Abner described the shooter as five feet, five inches tall
21 and that he had facial hair. He believed that the shooter was Embrey, Jr.'s father.

22 Embrey, Jr. first testified that he was not present at the shooting and that he did not know
23 Ross. After a recess, he changed his testimony and said that he recognized Ross from seeing his
24 picture. He also said that on the night of the shooting he was playing tag in the streets and saw Ross
25 shoot Williams. Ross was wearing a black ski mask and was the only person on the porch arguing
26 with Williams. The two were arguing about drugs and money before Ross shot Williams. When
27 asked how he knew the shooter's identity if the shooter was wearing a ski mask, Embrey, Jr. stated
28 that Ross took the ski mask off when he ran away.

1 Stuart testified that Embrey, Jr. told her that Williams had hit him with a stick. She confronted
2 Williams at his home and he admitted hitting Embrey, Jr. She said she would return with the Housing
3 Police to press charges. She denied sending men to Williams' home the following day and did not
4 know about the shooting until Ross' attorneys contacted her. Finally, she had not spoken to Embrey,
5 Jr.'s father for "quite some time." According to an officer from the Housing Authority, Stuart reported
6 that Embrey, Jr. had been in an altercation with a drunk older man.

7 Oakland Police Sergeant Steven Lovell testified that when he prepared the photo lineup for
8 Williams he did not yet have a description of the shooter. However, he prepared the lineup because
9 showing crime victims a photo lineup made it seem like the police were doing something and it made
10 victims feel good. Lovell then stated it was good for public relations. Lovell did not believe that Ross
11 had anything to do with the shooting but placed him in the lineup because he had a minor connection
12 with Stuart. About ten years prior, Stuart lived in a triplex for about one year. One of the other
13 residents of the triplex was Ross' elderly mother, Thelma Ross. Stuart would occasionally see
14 Ronald Ross when he visited or stayed with his mother, but other than brief, meaningless
15 conversations, the two had no relationship with each other. Thelma Ross and Stuart only had a
16 neighborly relationship as well. Their lack of any type of relationship was testified to by Stuart,
17 Thelma Ross, and Ronald Ross.

18 Prior to showing Williams the photos, Lovell spoke to Williams in an unrecorded interview.
19 Williams described the shooter as five feet, eight inches, to five feet, ten inches and 180 to 190
20 pounds. The shooter was in his late thirties, stocky, muscular, and bald. Lovell did not believe that
21 Ross looked bald in the photo used in the lineup.

22 Ross testified on his own behalf. At the time of the shooting he was 45-years old, six feet tall,
23 and weighed 210 pounds. He has multiple prior felony convictions relating to drug possession but no
24 charges relating to weapons or violent crimes. None of Ross' witnesses testified to ever seeing Ross
25 own a gun. Ross denied shooting Williams and stated that he did not know Williams other than
26 seeing him around the neighborhood. Ross also did not know any of the other people present at the
27 scene of the shooting, and he only knew Stuart based on Stuart living next to his mother many years
28 prior. On the day of the shooting, Ross was at his mother's house. Ross left the house to pick-up
29 Nicole Scott, his nephew's mother, from the store. According to Scott's testimony, she and Ross

1 watched television and Ross did not receive any phone calls nor did he seem upset. Scott left at
2 5:00 p.m. that evening which was three hours before Williams was shot on his porch. Ross stated
3 that he drank about eight beers that night, got drunk, and fell asleep on the couch while watching a
4 basketball game on television.

5 Thelma Ross testified that her son Ronald Ross would stay at her house for up to two weeks
6 a month because he did not have a home of his own. On the day of the shooting, Ross was at his
7 mother's home and left in the middle of the day to pick up Scott from the store. Ross and Scott
8 played dominos and drank beers at his mother's house for the rest of the day. Ross was sleeping on
9 the couch when his mother went to bed at around 10:00 p.m.

10 Based on the evidence presented, the jury determined that Ross shot Williams and Ross was
11 sentenced to 25-years-to-life in prison. This decision was upheld by the Court of Appeals.

12 II. Evidence from the Writ of Habeas Corpus

13 In February 2012, more than five years after his conviction, Ross filed a habeas corpus
14 petition. The Alameda County District Attorney's Office originally opposed the position, but after
15 further investigation changed its opinion and asked the court to grant the petition.

16 Steven Embrey, Jr.

17 Embrey, Jr. signed a declaration on May 16, 2011, stating that Stuart called his father, Steven
18 Embrey, Sr., after Stuart's argument with Williams. The next day, Embrey, Jr. and his father went to
19 Williams' house to confront Williams. Embrey, Sr. and Williams argued before Embrey, Sr. shot
20 Williams in the ribs. Embrey, Jr. stated that his trial testimony was false.

21 The District Attorney's Office interviewed Embrey, Jr. on March 29, 2012. He stated that
22 Stuart called Embrey, Sr. and told him that a man had been beating on Embrey, Jr. Embrey, Sr.
23 came to the house around 9:00 p.m. along with another unknown male. Those two, along with
24 Embrey, Jr., then went to Williams' home. After an argument, Embrey, Sr. shot Williams in the ribs.

25 Embrey, Jr. described his father as an "evil person" who beat him whenever he did something
26 wrong. Embrey, Sr. did not spend time with Stuart because he had 20 children with 20 different
27 mothers.

28 At the habeas hearing, Embrey, Jr. testified that Stuart called Embrey, Sr. after Stuart was
29 involved in the argument with Williams. Embrey, Sr. arrived at Stuart's home after being dropped off

1 by a friend. Embrey, Sr. ordered his son to show him the apartment where Williams lived. After
2 Williams opened the door, Embrey, Sr. shot Williams in the ribs. No conversation between the two of
3 them took place. Embrey, Sr. called Stuart to pick them up and both Embrey, Sr. and Stuart
4 threatened Embrey, Jr. to not tell anybody about what happened. Embrey, Sr. was then picked-up by
5 a friend while Embrey, Jr. went home with Stuart. The gun was thrown in the bushes near Williams'
6 house. At home, Embrey, Jr. told his aunt and his grandmother about the shooting, and his
7 grandmother told Embrey, Jr. to keep his mouth shut and that his father was a bad influence.
8 Embrey, Jr. said that he felt compelled to tell the truth now because his grandmother, on the day that
9 she died, told him to tell the truth.

10 Steven Embrey, Sr.

11 Ross' defense attorneys interviewed Embrey, Sr. at Atascadero State Hospital on December
12 21, 2012. Embrey, Sr. stated that on the day of the shooting he and his friend Dennis saw Embrey,
13 Jr. on the street and took him home. At home, Stuart told Embrey, Sr. that somebody had hit his
14 son. Embrey, Sr. asked his son to show him where this man lived. Embrey, Sr., his son, and Dennis
15 then went to Williams' home. Embrey, Sr. knocked on Williams' door and asked Embrey, Jr. if the
16 man who opened the door was the man who had hit him. Embrey, Sr. began to take off his shirt to
17 fight but then Dennis said "I got this" and shot Williams. After the shooting, the three men drove to
18 another location, threw the gun in the bushes, and Stuart picked up Embrey, Sr. and Embrey, Jr. and
19 drove Embrey, Sr. home. Embrey, Sr. stated that he does not know Ross and Ross was not involved
20 in the shooting. At the habeas hearing, Embrey, Sr. invoked his Fifth Amendment right and refused
21 to testify.

22 Of note, in 2013 Embrey, Sr. pled no contest to the unrelated charges of attempted murder,
23 two counts of attempted robbery, shooting at an occupied vehicle, shooting at an inhabited dwelling,
24 and assault with a semiautomatic firearm. These crimes all occurred in a single day in 2011 and
25 involved Embrey, Sr. shooting four different people during four unrelated incidents. Two incidents
26 were random robberies, one was against a witness who saw the robbery, and the fourth involved
27 Embrey, Sr. shooting at a moving vehicle. Embrey, Sr. also fired weapons into another moving
28 vehicle and an apartment complex, but these incidents did not cause injuries.

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1 Renardo Williams

2 On October 13, 2011, Williams signed a declaration stating that he was confident that Ross
3 was not the shooter. He had originally identified Ross as the shooter because Sergeant Lovell asked
4 him to do so and he owed Lovell a favor. When he was presented with the photo lineup, Lovell
5 silently indicated that he should pick photo number four, which happened to be Ross' picture.
6 Williams was also afraid of retaliation if he identified the correct shooter.

7 In an interview with the District Attorney's Office on April 13, 2012, Williams said that the
8 person he identified at trial was the person who shot him and that Lovell did not suggest that he
9 choose a specific photo in the lineup.

10 At the habeas hearing on December 13, 2012, Williams once again stated that he had doubt
11 that Ross was the shooter because he had recently been shown photos of Embrey, Sr. He had
12 never seen pictures of Embrey, Sr. while the case was being investigated and Embrey, Sr.'s picture
13 was never in the photo lineup.

14 Nikisha Stuart

15 The District Attorney's Office interviewed Stuart numerous times after Ross' conviction. She
16 always said that she had no relationship with Embrey, Sr. and that she never sees him. On February
17 6, 2013, Stuart stated that everything she knew about the shooting came from Embrey, Jr. Stuart
18 said that Ross was not involved in the shooting and that Embrey, Sr. was the person responsible for
19 shooting Williams. Stuart still stated that she had not been in contact with Embrey, Sr. for a long
20 time and did not even have his phone number. She reiterated that she had no relationship with
21 Ross, that she did not believe that Embrey, Sr. had any relationship with Ross, and that she thought
22 Ross was arrested for the shooting because Ross had found the gun in the bushes and kept it.

23 Crystal Holloway

24 Crystal Holloway was incarcerated for murder but spoke to the District Attorney's Office on
25 February 5, 2013. Holloway called Stuart her best friend and said she had two phone conversations
26 with her around the time of the shooting. In the first, Stuart told her that somebody had jumped
27 Embrey, Jr. for no reason and that she was going to call his father. In the second, Stuart told her
28 that Embrey, Sr. had shot the man who jumped her son. Stuart said that she did not send Embrey,
29 Sr. to shoot the man and that Stuart was afraid that she would get into trouble or go to jail for calling

1 Embrey, Sr. Holloway also stated that Stuart barely talked to Embrey, Sr. and did not know how she
2 contacted him. Finally, Holloway said that there was no relationship between Stuart and Ross. In its
3 habeas brief to the court, the District Attorney's Office stated that it found Holloway's statements to
4 be credible and because of this it found Stuart's trial testimony to be false.

5 Tanya Thomas

6 The District Attorney's Office interviewed Tanya Thomas, Stuart's sister, on February 6, 2013.
7 Thomas stated that Stuart told her about the shooting and that Stuart called Embrey, Sr. about a man
8 who messed with Embrey, Jr. Thomas said that Stuart told her that she had gone to the house with
9 Embrey, Sr. and Embrey, Jr. and that they handled business and "fucked up" the man.

10 Rodney Jackson

11 Jackson was inside Williams' home at the time of the shooting. On March 23, 2012, he told
12 the District Attorney's Office that while Williams was arguing with the suspect on his porch, he and
13 the boys inside his home, which included Abner who testified against Ross at the trial, remained in
14 the kitchen and could not have seen the shooting. After the shots were fired they ran out the back
15 door.

16 Based on the above evidence, the District Attorney's Office believed that false evidence was
17 used against Ross and it supported his habeas petition. The District Attorney's Office believed that
18 Stuart testified falsely at trial and it was also persuaded by Embrey, Sr. implicating somebody other
19 than Ross. The court granted Ross' habeas petition on February 20, 2013.

20 **III. Penal Code Section 4900 Hearing**

21 Ross, through his attorneys, declined an oral hearing after the AG's Office recommended that
22 the claim be granted. In addition to a legal brief, Ross submitted a declaration in support of his claim.
23 He states that on the evening of the shooting he was at his mother's home and fell asleep on the
24 sofa while watching television. He did not leave the house that evening. He had no relationship with
25 Embrey, Jr., Embrey, Sr., or Stuart. He knew of Stuart based on Stuart living next to his mother's
26 home in the 1990's, but he called this relationship a passing familiarity with a neighbor.

27 Ross further states that he held multiple paying jobs throughout his life including: being a
28 junior high school football coach, working at a Coca Cola plant, working at a clothing warehouse,
29 working at an office supply store, working as a cashier at a restaurant, working at an auto detailing

1 shop, and working as a concession worker at the Oakland Coliseum. Had he not been erroneously
2 convicted he would have continued to work for compensation.

3 The AG's office argued that Ross has met his burden of proof and offers three major
4 arguments. First, substantial evidence points to Embrey, Sr., not Ross, as the shooter. Second,
5 Ross' alibi is plausible and has been consistent. Finally, the eyewitness identifications that were
6 used to convict Ross were not overwhelming. Due to these factors and the evidence detailed above,
7 the AG's Office recommended that Ross' claim be granted.

8 **Determination of Issues**

9 A person erroneously convicted and imprisoned for a felony may submit a claim to the Board for
10 pecuniary injury sustained as a result of his erroneous conviction and imprisonment.¹ Penal Code
11 section 4903 provides that in order to state a successful claim for compensation, the claimant must
12 prove the following by a preponderance of the evidence:²

- 13 1. That the crime with which he was charged was either not committed at all, or, if committed,
14 was not committed by him; and
- 15 2. That he sustained a pecuniary injury through his erroneous conviction and imprisonment.

16 If the claimant meets his burden of proof, the Board shall recommend to the legislature that an
17 appropriation of \$100.00 per day of incarceration served subsequent to conviction be made for the
18 claimant.³ A claimant's mere denial of the commission of the crime, or reversal of the judgment of
19 conviction on appeal may be considered by the Board, but it will not be sufficient evidence to carry the
20 claimant's burden in the absence of substantial independent corroborating evidence that the claimant is
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24 ¹ Pen. Code, § 4900.

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26 ² *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v. Victim Compensation and*
27 *Government Claims Board* (2000) 152 Cal. App. 4th 1164. Preponderance of the evidence means
28 "evidence that has more convincing force than that opposed to it." (*People v. Miller* (1916) 171 Cal.
29 649, 652.)

³ Pen. Code, § 4904.

1 innocent of the crime charged.⁴ Here, Ross' claim should be approved because there is a
2 preponderance of the evidence that he did not commit the crime with which he was charged.

3 The eye witness testimony used to convict Ross is no longer reliable evidence. Ross was
4 convicted based on the eye witness identification of three witnesses: Williams, Embrey, Jr., and
5 Abner. Since the trial, Embrey, Jr. has stated that his testimony was a lie and that Ross was not the
6 shooter. Williams subsequently testified at the habeas hearing that he now has doubts that Ross was
7 the shooter after seeing pictures of Embrey, Sr. During the investigation leading up to the trial Williams
8 was never shown pictures of Embrey, Sr. Although Abner has not wavered in his identification of Ross,
9 he only stated that Ross "kinda looked like the guy" and that it was dark. Further, it is unclear how
10 much Abner was able to see from where he was standing. Abner testified that he was only able to see
11 one person on the porch even though there were two or three people on the porch, and Abner never
12 went outside during the argument and ran away as soon as gunshots were fired. Finally, Abner
13 described the shooter as five feet and five inches tall even though Ross was six feet tall.

14 Ross was never a suspect and was only put in the photo lineup because of a loose connection
15 he had with Stuart ten years prior. Sergeant Lovell stated that at the time the lineup was made he did
16 not have a description of the shooter and he did not think that Ross had anything to do with the
17 shooting. If Ross really was the shooter, it was an extremely lucky coincidence that Sergeant Lovell's
18 decision to place a random person in the lineup that he did not consider a suspect turned out to be the
19 actual perpetrator.

20 There is strong evidence that the real perpetrator was Embrey, Sr. First, Embrey, Sr. had a
21 motive to shoot Williams while there was no motive for Ross. Embrey, Sr. was mad at Williams for
22 allegedly hitting his son and there is evidence that he was "the man" that Stuart called to get revenge.
23 Other than a casual connection as neighborly acquaintances ten years prior, Ross had no connection
24 to Stuart and did not even know Embrey, Jr. He had no reason to seek revenge for a person whom he
25 had no relationship with.

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⁴ Cal. Code of Regs., title 2, § 641. All regulations citations are to California Code of Regulations, title
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1 Although he never testified at a hearing, Embrey, Sr. admitted to being at the scene of the
2 shooting and stated that he did not know Ross and that Ross was not present. The details he gave
3 were a fairly accurate description of what happened and were very similar to the statements that
4 Embrey, Jr. made that implicated his father as the shooter. Thus, there is some reliability in Embrey,
5 Sr.'s statements. Further, Embrey, Sr. has a long history of committing violent crimes that include the
6 use of weapons. Shooting Williams to extract revenge fits his prior criminal profile. Ross only has
7 drug convictions on his record and does not have any arrests or convictions for violent crimes or the
8 use of weapons.

9 The subsequent statements from Embrey, Jr., Stuart, Holloway, and Thomas differ and it is
10 difficult to determine the true facts. However, all their statements are similar in the fact that none
11 mention Ross as the shooter and all show that Embrey, Sr. was somehow involved in the shooting.
12 While it would not be unreasonable to question the reliability of these witnesses taken individually, the
13 common theme of all of them incriminating Embrey, Sr. and not implicating Ross increases their
14 credibility in stating that Ross is innocent.

15 There is other evidence to show that Ross has met his burden of proof. First, Ross' alibis,
16 Scott and Thelma Ross, have never wavered and have consistently testified that Ross was at his
17 mother's home watching a basketball game at the time of the shooting. This is consistent with Ross'
18 testimony. Second, the Alameda County District Attorney's Office supported Ross and joined his
19 habeas petition. Finally, pictures of Embrey, Sr., who was never placed in a photo lineup, show him as
20 bald and he looks more like Williams' description of the shooter compared to Ross.

21 Based on the totality of the evidence, Ross has met his burden of proving that he did not
22 commit the crimes with which he was charged and is entitled to \$229,000 in compensation.

23
24 Dated: July 14, 2014

25 _____
26 Kevin D. Kwong
27 Hearing Officer
28 California Victim Compensation and
29 Government Claims Board

