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

6 In the Matter of the Claim of:

7 **Antoine Maurice Goff and**

8 **John J. Tennison**

9 Claim Nos. G541855, and G542416

Notice of Decision

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11 On December 17, 2004, the California Victim Compensation and Government Claims Board
12 adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced
13 matter. The Decision became effective on December 17, 2004. Clerical errors were correct as
14 authorized by California Code of Regulations, section 619.6.

15 Date: December 23, 2004

16 
17 JUDITH A. KOPEC
18 Chief Counsel
19 California Victim Compensation and
20 Government Claims Board

BEFORE THE
VICTIM COMPENSATION AND
GOVERNMENT CLAIMS BOARD
STATE OF CALIFORNIA

In the Matter of the Claim for Compensation
by:

ANTOINE MAURICE GOFF

and

JOHN J. TENNISON

Claimants.

Case No. G541855
OAH No. N2004070501

Case No. G542416
OAH NO. N2004070502

CORRECTED PROPOSED DECISION

This matter was heard before William O. Hoover, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, on August 30 and 31, September 1, 2, and 3, 2004, in Sacramento, California.

Keker & Van Nest, L.L.P., by Ethan A. Balogh and Daniel Purcell, Attorneys at Law, represented claimant John J. Tennison.

Randolph E. Daar and Diana Samuelson, Attorneys at Law, represented claimant Antoine Maurice Goff.

Michael P. Farrell, and David Andrew Eldridge, Deputies Attorney General, represented the Attorney General.

The record remained open for submission of briefs relating to the determination of the number of days of incarceration for each claimant that may be considered for purposes of any award. Upon receipt the various briefs were marked for identification only. Claimant Tennison submitted documents received on September 17 and 29, 2004, that were marked as Tennison's Exhibits Y and Z, respectively for identification only. Claimant Goff submitted documents received on September 17 and October 4, 2004, that were marked as Goff's Exhibits YY and ZZ, respectively. With respect to Exhibit YY, the court documents and transcript were admitted into evidence. The Attorney General's submission was received on

September 24, 2004, and marked for identification as A.G.'s Exhibit 19. The attached court document was admitted into evidence. The record was then closed and the matter deemed submitted on October 4, 2004.

FACTUAL FINDINGS

1. This matter arises under the authority of Penal Code sections 4900-4906, and the California Code of Regulations, title 2 (CCR), section 600 et seq. Pursuant to CCR section 615.1, subdivision (a), the formal hearing provisions of the Administrative Procedures Act (Gov. Code §§ 11500-11529) do not apply. The standard of proof is preponderance of the evidence and the burden is on the claimant.¹

2. On October 3, 1990, claimants Antoine Goff and John Tennison were convicted by jury of first degree murder and conspiracy in the shooting death of Roderick Shannon. The jury also found true an allegation that Tennison knew another principal was personally armed with a firearm. Tennison was sentenced to a term of 25 years to life for the murder conviction and 2 years consecutive for the arming enhancement. Goff was sentenced to 25 years to life for the murder conviction and 2 years consecutive for being personally armed or using a firearm. A life sentence for the conspiracy conviction was stayed pursuant to Penal Code section 654. The convictions were the subject of appeals, including a motion for new trial, all of which were denied. Tennison was the more active of the two in pursuing his appeal rights.

3. On August 26, 2003, after consideration of his Amended Habeas Corpus petition, Tennison's conviction was reversed by the United States District Court. The reversal was specifically limited to the District Court's finding of *Brady*² error, in that the prosecution had failed to disclose exculpatory material evidence to the defense resulting in prejudice to claimant Tennison. The District Court specifically addressed withheld evidence relating to polygraph results, a secret witness fund (\$2500), and various police contacts and interviews with Chante Smith, Lewinsky Ricard, Luther Blue. Following the reversal of claimant Tennison's conviction upon the granting of his Habeas Corpus petition by the federal district court, claimant Goff's conviction was similarly reversed by the Superior Court of San Francisco. These court actions resulted in the presentation of evidence at the present hearing that was not heard by the jury during the earlier trial.

4. After reversal of their convictions, claimants obtained relief pursuant to Penal Code section 851.8 (superior court finding of "factual innocence"). Claimants moved to have this finding and order admitted in the instant hearing as evidence of each claimant's innocence. The Administrative Law Judge determined that the superior court findings of "factual innocence," pursuant to Penal Code section 851.8 are not binding and inapplicable

¹ *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580. See also *Eberts v. State Board of Control* (1978) 84 Cal.App.3d 329

² *Brady v. Maryland* 373 U.S. 83 (1963).

to the instant proceeding. Penal Code section 851.8, subdivision (i), precludes use of the finding of "factual innocence," pursuant to that section, in any further or subsequent "action." This tribunal is mindful that the term action has been interpreted to apply exclusively to court actions. However, the nature of this proceeding (a claim for money damages based on the state's wrongdoing) is virtually identical to the type of proceeding the Legislature sought to exclude from its application. Whether or not the term "action" can be construed to apply to administrative proceedings, it is really a distinction without a difference. It is evident that the Legislature intended the relief provided by the statute to be of limited application and the instant hearing is in all respects nearly identical to a civil proceeding for money damages based on alleged wrongful conduct. The use of a finding of "factual innocence," from a proceeding designed to restore the status of a citizen, in a subsequent proceeding for money damages, is not permitted in the civil arena and will not be permitted here. There was also a serious question about the manner in which the finding and order was obtained and whether it was properly accomplished.³ Also, the term "factual innocence" does not comprehend the same standard as applicable in this proceeding.⁴

A second motion relating to the admissibility of polygraph results was also denied. However, the parties were permitted to introduce evidence of questions asked and answers given.

5. Claimants Antoine Goff and John Tennison each filed separate claims, pursuant to Government Code section 640, for compensation based on erroneous convictions and imprisonment. Claimant Goff alleges pecuniary injury in the amount of \$489,800 (4,898 days) and Claimant Tennison alleges pecuniary injury in the amount of \$445,300 (4,453 days). Succinctly stated, the basis for the claims is that each claimant asserts an alibi defense. The presented evidence that they believe supports their contentions that they were convicted on fabricated testimony and offered testimony by claimants and others in support of the alibi of each. They also presented evidence of a confession of the purported actual shooter of Roderick Shannon.

6. Claimants Goff and Tennison each have the burden of establishing by a preponderance of the evidence, that he did not commit the crimes for which he was charged and convicted; and did nothing by way of act or omission, either negligently or intentionally, to contribute to his respective arrest and convictions. Although tried and convicted together, the evidence presented with respect to the claims was examined in its totality and as it related to each claimant.

7. During the late 1980's especially in 1988 and 1989, South San Francisco was marked by regular and deadly episodes of violence among young, black males from various neighborhoods that adjoined one another. Group allegiances and loyalties were defined and determined by neighborhood boundaries. Hunter's Point and Sunnydale were two such

³ See *People v. Matthews* (1992) 7 Cal.App.4th 1056 and *People v. Adair* (2003) 29 Cal.4th 895.

⁴ Various motions were put forward by the parties and the rulings on each are a matter of record. The two motions discussed were considered significant enough to merit specific comment in the body of the proposed decision.

neighborhoods and an intense rivalry existed between the two that was often marked by sometimes-fatal shootings that occurred for one reason or another. In the case of the above two groups, and at the particular time of the shooting incident that is the basis of this hearing, the violence was frequent and retaliatory in nature.

8. Prior to the shooting of Shannon, a group from Sunnydale, in broad daylight and on a city street, shot and killed two individuals from Hunter's Point and wounded several others. One of the deceased was an individual with a street name of "Cheap Charlie." Cheap Charlie was a friend of Claimant Goff, who was present at the scene of that shooting, and of a Luther Blue. While not the root cause of the ongoing cycle of violence, the shooting of Roderick Shannon, who was from Sunnydale, appears to have been an attempt to avenge the killing of Cheap Charlie. At the time of these rivalries law enforcement was well aware of their presence and was actively seeking to quell the violence among what they termed street gangs. (Whether one chooses to call these groups "gangs" is not important for the resolution of the issue presented.)

9. In fact, based on the evidence adduced at trial, and during this hearing, it appears that while the victim may have been mistaken for another person, his death resulted from his perceived neighborhood affiliation. While the start point and other details of the incident may be disputed, the core facts of the shooting are not. The victim was initially mistaken for Patrick Barnett, another Sunnydale resident, whose car Shannon was observed driving sometime after midnight on August 19, 1989. He was chased by a number (approximately 10-12) of young, black males in three vehicles (a pickup truck and two passenger vehicles), crashed the vehicle he was driving, attempted to flee on foot, was chased on foot, cornered and beaten in a store parking lot at Leland Avenue and Rutland Street, and then shot twice (in the shoulder and face) at close range with a 12-gauge shotgun.

10. Within hours word of the shooting had already spread throughout the Hunter's Point neighborhood. From the independent, citizen witnesses, law enforcement officers knew that a pick up truck and two passenger vehicles were involved. It is evident from the documentary and testimonial record that the shooting was common knowledge on the street and that names of individuals known or believed to have been involved were being circulated, but not to law enforcement. It is also apparent that a code of silence existed that hindered and prevented law enforcement from identifying the involved parties. That unwillingness and/or reluctance to provide information to law enforcement still exists.

11. Notwithstanding the reversal of Tennison's conviction by the United States District Court and Goff's conviction by the Superior Court of San Francisco County, the fact remains that each was convicted following a jury trial. Whether either one or both would have been convicted had the jury been presented the withheld material that was the subject of the District Court's *Brady* ruling, is a matter of conjecture and speculation. It is equally speculative to attempt to discern what weight, if any, the jury gave to any particular witness. No trial is perfect and evidence rarely, if ever, proceeds in a smooth, unbroken and consistent manner. The trial record in this matter is no exception and contains inconsistencies even among the only truly independent, unbiased percipient witnesses, Mrs. Dowd and Mr.

Santos. Nonetheless, their testimony, taken with all the rest, helped piece the puzzle together and was considered by the jury. It is not for this tribunal to second-guess the jury's thought processes.

12. This tribunal has reviewed the complete file presented to it in this matter including the trial transcript. It is not this tribunal's intention or role to retry this entire matter, but only to determine whether, in light of the totality of the evidence, claimants did not commit the crimes charged and did not contribute to their arrests or convictions. This tribunal makes the following observations about the evidence presented. The evidence obtained pre-conviction was unsworn, inconsistent, vague and incomplete. Almost all of the detailed exculpatory evidence in this matter occurred post trial, and was provided by individuals who were and are well known, some even related, to one another. Given the nature and circumstances surrounding this case, testimony from such individuals was viewed with skepticism, where it was not corroborated by independent and unbiased sources. Consequently, little if any weight was given to unsupported declarations that simply tended to corroborate one another or statements or testimony adduced during the instant hearing. There was and is a lack of evidence supplied by independent witnesses who have no inherent bias in favor of or against the claimants.

13. The jury in the earlier criminal trial heard testimony from a variety of sources, but the testimony about the actual shooting was provided by two witnesses; a Masina Fauolo (then 11 years old) and a Pauline Maluina (then 14 years old). Although each claimant presents a slightly different set of facts to support his own position, claimants both contend that the eyewitness trial testimony of Pauline and Masina is not trustworthy and should not be believed. Claimants contend both are wholly lacking in credibility. Notwithstanding Pauline's further recantations, the jury was aware of the variances between the testimony of both witnesses and of her earlier recantations. For the purposes of this hearing, whether or not Pauline, was actually present when the shooting occurred, is not necessarily determinative. And whether or not Masina influenced Pauline's testimony is, likewise, not necessarily determinative. Claimant's entire case is predicated on a belief that Masina and/or Pauline were lying and were wrong, because neither claimant was at the scene of the shooting and, therefore, not involved. Claimants further assert a bias or prejudice by Masina since she and the victim were close friends. Yet the same can be said of claimants' supporters and their relationships with one another. The descriptions of the relationships that existed and still exist among claimants and their supporters are marked by inconsistencies.

14. Regardless of claimants' efforts to brand Masina a liar, her story is the most detailed accounting of the event and, frankly, the most credible when compared with the evidence provided by claimants. Claimants' assertions that she was provided the information by others, was somehow paid for her cooperation (The missing \$2500 secret witness fund money), and that her story is inherently incredible, were not persuasive. But, it is essential to keep in mind that the question to be answered is not whether there is sufficient evidence to establish culpability, but whether or not the claimants can establish they are not culpable.

15. Claimants relied heavily on the statements and testimony of Chante Smith, an admitted percipient witness, to support their claim of innocence. They suggest that Ms. Smith's version of events is supported by the purported admitted shooter, Lowinsky Ricard, and her then boyfriend, Luther Blue, both of whose unsworn statements are problematic. Ms. Smith's statements and testimony are likewise problematic. Clearly, her version of where the chase began (the 7-11 on Bayshore) and which streets were used, varies significantly from Masina's testimony and statements that the chase began at Mansell and Visatacion (Lover's Leap).

16. There are several major areas of concern about Ms. Smith's testimony starting with the fact that she was driving her convertible on the night of the shooting. She stated that Luther Blue, Mark Anthony and Lowinsky (Levista or Levinsta) Ricard were in the car with her. This is significant when compared to Ricard's November 1990 statement admitting to the shooting. Ricard stated that he used his shotgun to shoot the victim and that he had it with him when they went to the liquor store. According to Ricard after leaving the liquor store the group went to a park to drink and that at some point he got into to the back of the pickup with the shotgun. He claimed not to know the driver or any of the other individuals in the back with him. Since he was driving around with Smith in her vehicle prior to this time it stands to reason that he had the shotgun in her vehicle. Smith also claims she did not go into the liquor store but stayed outside, where she saw Troy Barnes drive by, raises questions about her knowledge of the shotgun's whereabouts when Ricard allegedly got into the pickup bed. Ricard also claims to have thinking about Cheap Charlies death and was "running off at the mouth" about what he was going to do with the shotgun. He also claimed that the group should ride around the Sunnydale area. Based on Smith's statements she would have been present during this period of time.

17. Smith's statement that she saw a friend, Troy Barnes (a Sunnydale person), drive by the liquor store and then purportedly return to the area, strain credulity. If, as she said, she warned him that there could be trouble if he did not leave the area, what logical reason would he have to return? Smith's claim that she thought Barnes had returned and, therefore, followed him and the others chasing him to see if were really him, is not believable. Further, her explanations during her testimony about driving around the block and turning in front of a running victim, at Luther Blue's request, suggest a far greater involvement than she is willing to admit. It is also of note that the citizen witnesses do not describe any automobile chase down Leland Avenue, the direction provided by Smith. Smith's attempts to explain her actions that night appear contrived to provide an innocent reason for her presence at the scene of a crime. While it is clear that Smith was most likely at the scene of the shooting on August 19, 1989, it may not have been as an innocent bystander. During Smith's testimony she disavowed any personal relationship with claimant Goff, yet the record indicates they were dating. Overall, her testimony lacked candor and was not persuasive.

18. Ricard's various statements attempting to take the blame for the shooting are vague, contradictory and self-serving. His version of the chase occurring while riding

around in Sunnydale is decidedly at odds with Smith's version. Perhaps the most glaring discrepancy is his claim that he shot the victim once, when the forensic evidence conclusively established injuries from two distinct shots from a shotgun. He has consistently failed to provide any corroboration for his claims that can be verified other than to identify a convertible at the scene, but would not name the driver. Much of the information he provided was well known by the time of his statements and is viewed with distrust.

19. Statements by Luther Blue were likewise viewed with suspicion. Like Goff, Blue knew Cheap Charlie well (cousin) and had a motive not only to protect Goff, but to avenge Cheap Charlie's death. Like Ricard, he provided little useful information except to state that claimants were not involved.

20. In support of their alibis both claimants testified and produced witnesses to attest to their whereabouts on the night of the shooting. Neither the witnesses nor the claimants provided a believable scenario that would clearly place them at a location other than the shooting at the time it occurred. The testimony from both claimants was vague and inconsistent with prior statements, and it cannot be concluded that they lacked the opportunity to participate in the offense.

21. From the evidence presented it cannot be said that it is more likely than not that either claimant did not commit the crimes for which each was convicted and imprisoned. They have failed to meet the burden of proof in that regard. However, even if it could be concluded that they demonstrated that they did not commit the offenses, there remains another hurdle. Each claimant must demonstrate that he did nothing by way of act or omission, either negligently or intentionally, to contribute to his arrest or conviction.

22. In this instance the news of Roderick Shannon's murder was known almost immediately on the street throughout the neighborhood. And the news was not limited to the immediate area. The difficulty is that no one wanted to be identified as someone who cooperated with a police investigation. Claimants assert that they did not know anything about Chante Smith or her involvement, or Ricard's confession, or Blue's statement, until after they were convicted. That assertion is simply not credible. It defies logic and reason that two individuals would spend the better part of a year in jail awaiting trial and never have received any indication from friends or relatives of what the "word on the street" was about the shooting.

23. From Smith's July 24, 1992, statement it is evident that claimants knew of her involvement. At one point she stated, "that after they were arrested, Sodapop [Goff] and Tennison, through their friends, were sending her messages to talk to their attorneys." Yet, according to the record and testimony of Jeffrey Adachi, Tennison's attorney, he knew nothing of Smith until his client was convicted. The same is true of Goff's attorney, although Goff claims to have told him about Smith. This claim is viewed with extreme skepticism in light of Goff's attorneys focus on alibi witnesses to the apparent exclusion of someone who could potentially exonerate his client. What is apparent is that claimants, for their own unstated reasons, elected not to disclose Smith's identity to their respective

attorneys. Perhaps the only logical explanation is that while they encouraged Smith to come forward on her own, they were not prepared to disclose her identity, especially since they were being told that the state's case was very weak. Whether Smith would have cooperated, and to what degree, with claimants' attorneys is uncertain, but it would have given some direction to the defense case and may have produced the withheld evidence prior to rather than after the trial. In any event, the answer to that question will never be known, because, by their silence, claimants deprived their attorneys of significant information.

24. After 14 years, the shooting of Roderick Shannon remains somewhat of a mystery, largely due to an impenetrable wall of silence, disinformation and misinformation about the matter. Notwithstanding the Herculean efforts of claimants' counsel to establish their clients' innocence, the evidence does not lead in the direction they desire. Claimants have not established by a preponderance of the evidence that they did not commit the crimes for which they were convicted. Similarly, by their own silence, claimants impeded the investigation of the case by their defense attorneys.

25. The computation of the actual days of incarceration since conviction for purposes of establishing pecuniary injury, has been rendered moot by the failure of the respective claims.⁵

APPLICABLE LAW

26. Pertinent Penal Code provisions are:

Penal Code section 4900 provides the statutory authority and basis for the filing of a claim against the State of California for pecuniary injury sustained as a result of an erroneous conviction and imprisonment.

⁵ However, because the matter was briefed by the parties and may have future application, it is addressed in abbreviated form. While the "date of conviction" has been interpreted differently depending on the purpose to be served, it is this tribunal's judgment that, for purposes of fulfilling the ameliorative effect of the claims statute, the date of conviction is the date on which the jury verdict was returned, October 3, 1990. As such, pecuniary injury would be measured for each day of incarceration subsequent to that date.

Claimant Goff is in a slightly different posture in that a violation of probation was heard concurrently with the jury trial. The violation alleged the offenses charged and unrelated matters ("dirty test" and failure to complete drug program). At the conclusion of the trial the trial judge separately heard the remaining evidence on the unrelated matters and made an independent determination of culpability. He found Goff in violation based on the trial evidence as well as the subsequently received evidence, of each allegation. Thus, irrespective of the jury conviction, a separate, independent determination was made by the judge, and any term of incarceration would necessarily have been based on the judge's findings not those of the jury. Even if the jury had acquitted Goff, the findings of the trial judge would stand due to different standard of proof required for each proceeding. Any term imposed could operate as a setoff towards calculating Goff's actual days of incarceration. However, while Goff was found in violation for each allegation and his probation revoked, no sentence was imposed by the court due to his subsequent conviction of murder by the jury. Therefore, no factual basis exists to make a determination of a probable sentence without engaging in gross speculation. Under these circumstances, Goff's violation of probation does not affect the calculation of his period of incarceration.

Penal Code section 4901 provides general guidance regarding the filing of any claim and the timelines governing such filing.

Penal Code section 4902 provides for a hearing on a claim.

Penal Code section 4903 provides the framework for a hearing and states:

On such hearing the claimant shall introduce evidence in support of the claim, and the Attorney General may introduce evidence in opposition thereto. The Claimant must prove the facts set forth in the statement constituting the claim, including the fact that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, the fact that he did not, by any act or omission on his part, either intentionally or negligently, contribute to the bringing about of his arrest or conviction for the crime with which he was charged, and the pecuniary injury sustained by him through his erroneous conviction and imprisonment. [Emphasis added]

Penal Code section 4904 provides that the amount of damages shall be \$100 per day as determined by the number of days of "incarceration served subsequent to the claimant's conviction." It is evident that conviction as used in this statute is intended to refer to the actual date that a verdict of finding of guilt is rendered and not the date of sentencing. To conclude otherwise would be contrary to the intent of the statute.

27. Pertinent regulations are:

CCR, section 640 relates to the presentation of claims and establishes the format to be followed. It provides in pertinent part that:

The undersigned Claimant makes claim against the State of California in the sum ofdollars, and in support of said claim represents as follows:

1. (Name of the felony for which he was convicted, title of the court in which the conviction was had, the date of conviction and length of sentence imposed.)
2. (State prisons in which the sentence was served, length of time incarcerated and the dates thereof.)
3. (Facts showing (a) that the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, (b) that he neither intentionally nor negligently contributed to his arrest and conviction.)
4. (Facts showing the pecuniary injury sustained by him through his erroneous conviction and imprisonment.)

5. (The date of whichever is the latest of the following acts (a) the judgment of acquittal, (b) the discharge, (c) the grant of the pardon, or (d) the release from imprisonment.)

CCR, section 641 relates to the burden of proof and provides that:

In reaching its determination of the merits of the claim, claimant's mere denial of commission of the crime for which he was convicted; reversal of the judgment of conviction on appeal; acquittal of claimant on retrial; or, the failure of the prosecuting authority to retry claimant for the crime, may be considered by the Board but will not be deemed sufficient evidence to warrant the Board's recommendation that claimant be indemnified in the absence of substantial independent corroborating evidence that claimant is innocent of the crime charged. Testimony of witnesses claimant had an opportunity to cross-examine, and evidence to which claimant had an opportunity to object, admitted in prior proceedings relating to the claimant and the crime with which he was charged, may be considered by the Board as substantive evidence. The Board may also consider any other information that it may deem relevant to the issue before it. [Emphasis added]

LEGAL CONCLUSIONS

1. Claimant Goff has failed to establish by a preponderance of the evidence that he is entitled to compensation pursuant to Penal Code section 4903 and his claim is denied.
2. Claimant Tennison has failed to establish by a preponderance of the evidence that he is entitled to compensation pursuant to Penal Code section 4903 and his claim is denied.

ORDER

1. The claim of Antoine Goff for compensation is denied.
2. The claim of John Tennison for compensation is denied.

Dated: _____

WILLIAM O. HOOVER
Administrative Law Judge
Office of Administrative Hearings