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

9 In the Matter of the Claim of:

10 **James Barmettler**

11 Claim No. G 549225

**Proposed Decision**  
**(Penal Code §§ 4900 et seq.)**

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13 A hearing on this claim was held December 20, 2005, in Sacramento, California, by Kyle  
14 Hedum, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the Victim  
15 Compensation and Government Claims Board (Board).

16 The claimant, James Barmettler (claimant) represented himself.

17 The California Attorney General (AG) was represented by Deputy Attorney General Michael  
18 Farrell, who recommended that the claim be denied.

19 **Evidence and Arguments Presented**

20 On September 15, 2000, claimant was visiting a friend named Chris Fields (Chris). Chris owned  
21 a 20-acre ranch in Newcastle, California. The ranch was approximately 100-200 yards distant from  
22 Auburn-Folsom Road. Chris was an alcoholic who, after going through an alcohol rehabilitation  
23 program, limited his contact with claimant. Claimant knew that Chris was an alcoholic, and in fact,  
24 claimant had spoken earlier that day to Chris's mother and told her that he would try to take Chris to his  
25 Alcoholics Anonymous meeting that night.  
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1 However, on the evening of September 15, 2000, Chris and claimant went to the ranch at about dusk  
2 and started drinking. While at the ranch, claimant drank at least a six-pack of beer and Chris drank an  
3 unknown amount of Jack Daniels.

4 Chris's sister, Kelly Fields (Kelly) arrived at the ranch sometime after midnight after being invited  
5 by Chris earlier in the evening. Kelly brought a bottle of gin with her and drank an unknown amount  
6 while at the ranch. Claimant testified that he thought he stopped drinking at about midnight. Kelly and  
7 claimant drove Chris to his apartment in Roseville at about 3:00 a.m. Kelly and Chris spoke for a few  
8 minutes outside his apartment, and when Chris expressed a desire to return to the ranch, Kelly talked  
9 him into remaining at his apartment. Kelly and claimant then returned to the ranch. Claimant set up his  
10 telescope outside the residence at the ranch. Shortly after Kelly turned off the outside lights to better  
11 see through the telescope, she saw a man standing near the carport. She became frightened and ran  
12 to claimant, telling him that she saw someone outside. This occurred at about 3:30 a.m. to 3:40 a.m.  
13 Kelly and claimant went into the residence and Kelly locked the door. The residence had a locking  
14 door, operable lights, and a working landline telephone.

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16 Claimant retrieved a .40 caliber pistol from inside his briefcase that was inside the residence.  
17 He then went back outside, took a flashlight from the picnic table outside the door, and yelled, "Who's  
18 out there". When he received no response, he fired a "warning shot" into the dirt in the direction of  
19 the carport. As he stepped back into the residence, Chris came out from behind the open door,  
20 startling claimant and Kelly. Claimant fired his pistol, hitting Chris in the abdomen. Chris  
21 subsequently died from this gunshot wound. Claimant had a .06 blood alcohol level when he was  
22 tested at approximately 6:00 a.m. on September 16, 2000. Given standard burn-off time, the  
23 claimant's blood alcohol level at the time of the shooting was .11.

24  
25 At trial, the prosecutor was allowed to introduce evidence that claimant previously had  
26 accidentally shot and killed another friend; and also that on a separate occasion claimant fired a pistol  
27 into the wall of a friend's garage during a party. Claimant was convicted of Penal Code section 192(a)  
28 [voluntary manslaughter], Penal Code section 192(b) [involuntary manslaughter], and Penal Code  
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1 section 246.3 [discharge of a firearm with gross negligence.] Two firearm enhancements also were  
2 found to be true. Claimant was sentenced to 10 years state prison.

3 On December 18, 2003, the Third District Court of Appeal determined that the evidence of  
4 claimant's other acts involving firearms were not relevant and should not have been admitted by the  
5 trial court. The Court reversed claimant's convictions.

6 The Placer County District Attorney then filed new charges against claimant. On February 1,  
7 2005, claimant plead no contest to Penal Code section 192(b) [involuntary manslaughter] and admitted  
8 a firearm enhancement. On February 4, 2005, claimant was sentenced to 6 years in prison, stayed,  
9 and a term of probation was imposed.

10 At the hearing, the claimant testified that Chris' death was a tragic accident, and that if Chris  
11 had identified himself, either before or after the warning shot, he would still be alive. Claimant testified  
12 that he believed he was acting in self-defense when he shot Chris.

13 Claimant denied that his consumption of alcohol that evening had any effect on his decision to  
14 arm himself and leave the security of the residence. Claimant stated that he was not willing to sit in the  
15 residence waiting 45 minutes for the sheriff to arrive. He testified that he brought a pistol to the ranch  
16 for this very reason, in case "something happened."

17 Claimant admitted under cross-examination that he joked on the way back to the ranch from  
18 Chris's apartment that he "hoped Chris would stay home and sleep it off." He testified that that on an  
19 earlier occasion, Chris had taken a cab from his apartment back to the ranch after being dropped off in  
20 Roseville. Claimant also admitted under cross-examination that he knew that Chris was very protective  
21 of Kelly and that Chris didn't like the fact that Kelly and the claimant were alone at the ranch, especially  
22 after both had consumed alcohol. When asked if he had consumed any other alcohol besides the six-  
23 pack of beer, claimant testified that he might have had a shot of gin sometime after Kelly arrived.

### 24 Findings

25 A preponderance of the evidence supports the following findings:

- 26
- 27 1. Claimant shot and killed Chris on September 16, 2001.
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1 2. Claimant was convicted of this killing and served 890 days subsequent to his conviction.

2 3. After claimant's conviction was overturned, the claimant entered a plea of no contest to  
3 involuntary manslaughter and he also admitted a firearm enhancement. The claimant was sentenced  
4 to 6 years in prison, stayed, and probation.

5 4. Claimant was employed prior to his conviction on July 25, 2001.

#### 6 **Determination of Issues**

7 Penal Code section 4903 establishes the requirements for a successful claim for an  
8 erroneously convicted felon. The claimant must prove: 1) that the crime with which he was charged  
9 was either not committed at all, or, if committed, was not committed by him; 2) that he did not by any  
10 act or omission on his part, either intentionally or negligently, contribute to the bringing about of the  
11 arrest or conviction for the crime; and 3) that he sustained a pecuniary injury through his erroneous  
12 conviction and imprisonment. (Pen. Code, § 4903.) If the claimant meets his burden of proof, the  
13 Board shall recommend to the legislature that an appropriation of \$100.00 per day of incarceration be  
14 made for the claimant. (Pen. Code, § 4904.)  
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16 The claimant has the burden of proving his innocence by a preponderance of the evidence.  
17 (*Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7.) California Code of Regulations,  
18 Title 2, Article 5, section 641 states:  
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20 In reaching its determination of the merits of the claim, the Board may consider the  
21 following, but the following will not be deemed sufficient evidence to warrant the Board's  
22 recommendation that the claimant be indemnified in the absence of substantial  
23 independent corroborating evidence that the claimant is innocent of the crime charged:  
(1) claimant's mere denial of commission of the crime for which he was convicted; (2)  
reversal of the judgment of conviction on appeal; (3) acquittal of claimant on retrial; or  
(4) the failure of the prosecuting authority to retry claimant for the crime.

24 Testimony of witnesses claimant had an opportunity to cross-examine, and evidence to  
25 which claimant had an opportunity to object, admitted in prior proceedings relating to the  
26 claimant and the crime with which he was charged, may be considered by the Board as  
27 substantive evidence. The Board may also consider any information that it may deem  
relevant to the issue before it.

28 Claimant argues that he is entitled to compensation because the Court of Appeal determined  
29 that evidence of claimant's other acts involving firearms were not relevant and were erroneously

1 admitted by the trial court. This argument is without merit. The mere overturning of a conviction is not  
2 sufficient proof that the crime with which claimant was charged was not committed, or if committed,  
3 was committed by him. In fact, the evidence in this case is just the opposite. The claimant clearly  
4 contributed to his conviction when he entered a plea of no contest to involuntary manslaughter  
5 together with an admission to the firearm enhancement.

6 After careful evaluation of all of the evidence, claimant has not proven by a preponderance of  
7 the evidence that he did not violate California Penal Code sections 192(a), 192(b), 246.3, and  
8 12022.5(a). Furthermore, claimant did not prove by a preponderance of the evidence that he did not,  
9 either intentionally or negligently, contribute to his arrest or conviction for those offenses.  
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11 **Order**

12 Mr. Barmettler's claim under Penal Code sections 4900 *et seq.* is denied.

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14 Date: January 18, 2006

15 \_\_\_\_\_  
16 Kyle Hedum  
17 Hearing Officer  
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