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

In the Matter of the Claim of:

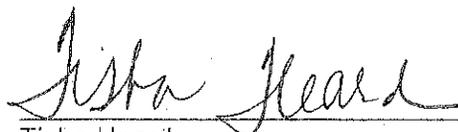
**Cheryl Jones**

Claim No. G564792

**Notice of Decision**

On June 18, 2009, the California Victim Compensation and Government Claims Board adopted the attached Proposed Decision of the Hearing Officer as its Decision in the above-referenced matter.

Date: June 19, 2009



Tisha Heard  
Board Liaison  
Victim Compensation and  
Government Claims Board

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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 **Cheryl Jones**

13 Claim No. G564792

**Proposed Decision**

**(Penal Code § 4900 *et seq.*)**

14  
15 **Introduction**

16 A hearing on this claim was held on July 11, 2008, in Sacramento, California, by Roslyn Mack,  
17 the Hearing Officer assigned to hear this matter by the Executive Officer of the California Victim  
18 Compensation and Government Claims Board.

19 Attorney W. Gordon Kaupp represented the claimant, Cheryl Jones (Jones). Jones appeared  
20 at the hearing and testified under oath. Two witnesses, including a domestic violence expert, also  
21 appeared and testified under oath.

22 The California Department of Justice, Office of the Attorney General (Attorney General) was  
23 represented by Deputy Attorney General Maggy Krell.

24 Penal Code section 4900 provides that any person erroneously convicted of any felony and  
25 sentenced to prison may present a claim to the Board for the pecuniary injury sustained as a result of  
26 the erroneous conviction. Penal Code section 4903 establishes the following requirements which the  
27 claimant must prove by a preponderance of the evidence in order to state a successful claim:  
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- 1           1)     that the crime with which she was charged was either not committed at all, or, if
- 2                     committed, was not committed by her;
- 3           2)     that she did not by any act or omission on her part, either intentionally or negligently,
- 4                     contribute to the bringing about of the arrest or conviction for the crime; and
- 5           3)     that she sustained a pecuniary injury through her erroneous conviction and
- 6                     imprisonment.<sup>1</sup>

7 Preponderance of the evidence means evidence that has more convincing force than that opposed to  
8 it.<sup>2</sup> In order for the Board to approve the claim, all the statutory elements of Penal Code section 4900  
9 et seq. must be met. If the claimant meets her burden of proof, the Board shall recommend to the  
10 Legislature that an appropriation of \$100.00 per day of incarceration served after the conviction be  
11 made for the claimant.<sup>3</sup>

12           In evaluating the claim, the Board may consider the following factors, but the following factors  
13 will not be deemed sufficient evidence to warrant the Board's recommendation that the claimant be  
14 indemnified in the absence of substantial independent corroborating evidence that the claimant is  
15 innocent of the crime charged:

- 16           (1) claimant's mere denial of commission of the crime for which she was convicted;
- 17           (2) reversal of the judgment of conviction on appeal;
- 18           (3) acquittal of claimant on retrial; or
- 19           (4) the failure of the prosecuting authority to retry claimant for the crime.<sup>4</sup>

20           The Board may also consider as substantive evidence the testimony of witnesses that the  
21 claimant had an opportunity to cross-examine, and evidence to which claimant had an opportunity to  
22 object, admitted in prior proceedings relating to the claimant and the crime with which she was charged.  
23 Finally, the Board may also consider any information that it may deem relevant to the issue before it.<sup>5</sup>

24 <sup>1</sup> Gov. Code, § 4900; *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v.*  
25 *Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4<sup>th</sup> 1164, 1173.

26 <sup>2</sup> *People v. Miller* (1916) 171 Cal. 649, 652.

27 <sup>3</sup> Pen. Code, § 4904.

28 <sup>4</sup> Cal. Code Regs., tit. 2, § 641.

29 <sup>5</sup> Cal. Code Regs., tit. 2, § 641.

1 Jones filed this claim for compensation under Penal Code section 4900 based on her  
2 imprisonment for second-degree murder of her abusive husband (Decedent), who she asserts she  
3 shot in self-defense. Because of the multiple conflicting versions of the shooting provided by Jones  
4 throughout the administrative record, in some case under oath, the Hearing Officer determined that  
5 Jones testimony recounting the events of the shooting was not credible. After consideration of all the  
6 evidence, it is determined that Jones failed to prove by a preponderance of the evidence that she did  
7 not commit a crime, or intentionally or negligently contribute to her arrest and conviction for second  
8 degree murder. The Hearing Officer therefore recommends that Jones' claim for compensation under  
9 Penal Code section 4900 be denied.

### 10 Procedural History

#### 11 I. Jones Conviction, Retrial, and Claim for Compensation Under Penal Code § 4900

12 On March 26, 1985, Jones was arrested for shooting and killing the Decedent. At her trial in  
13 1986, evidence of Battered Women's Syndrome<sup>6</sup> was not introduced. The jury was unable to reach a  
14 verdict and a mistrial was declared. On March 20, 1986, facing a retrial with the possibility of life in  
15 prison or the death penalty, Jones pled guilty to second degree murder and was sentenced to 17 years  
16 to life in prison.

17 In 1992, the Evidence Code was amended to allow defendants to offer evidence of Battered  
18 Women's Syndrome to support claims of self-defense from that date forward. In 2002, Penal Code  
19 section 1473.5 was adopted, allowing individuals who had been convicted prior to 1992 to file a petition  
20 for habeas requesting a new trial based on evidence of Battered Women's Syndrome.

21 On October 11, 2004, Jones filed a petition for habeas relief under Penal Code section 1473.5  
22 requesting that she be allowed to withdraw her plea and be given a new trial. On April 11, 2005, the  
23 court granted her request to withdraw her plea and granted her a new trial for the first-degree murder of  
24 the Decedent.<sup>7</sup> The Court concluded that if Jones had been allowed to present evidence of Battered

25 \_\_\_\_\_  
26 <sup>6</sup> The Attorney General notes that Battered Women's Syndrome is now commonly referred to as  
27 "Intimate Partner Battering." Because it has been referred to as Battered Women's Syndrome  
throughout the case, this proposed decision uses that term.

28 <sup>7</sup> Although Jones was charged with first degree murder in her second trial, she previously plead guilty  
29 and was imprisoned for second degree murder, which is the crime for the purposes of the claim.

1 Women's Syndrome at her trial in 1986, she stood a reasonable chance of achieving a different result,  
2 such as a conviction for voluntary manslaughter.<sup>8</sup>

3 At her second trial, Jones presented expert evidence of Battered Women's Syndrome to support  
4 her claim of self-defense. On May 31, 2006, she was found not guilty of first degree murder. She was  
5 released after being imprisoned for twenty-one years.

6 Jones subsequently filed this claim with the Board pursuant to Penal Code section 4900,  
7 asserting that she had been erroneously convicted of second degree murder in 1986. Jones asserts  
8 that she was heavily medicated with anti-psychotic drugs at the time that she pled guilty to second  
9 degree murder, and was unable to assist in her defense or intelligently consider her options. She  
10 further argues that the requirement that she not intentionally or negligently contribute to her arrest or  
11 conviction does not apply to her legal strategy or her plea. Jones requests compensation for 7,377  
12 days<sup>9</sup> from the date of conviction until the date of her release from prison.

13 **II. The Attorney General Recommendation**

14 In its written recommendation to the Board, the Attorney General made the following arguments  
15 against compensating Jones. First, Jones failed to demonstrate that she did not commit a crime. To  
16 prevail on her claim, Jones must affirmatively prove that she acted in "perfect self-defense" and did not  
17 commit a crime. To be "perfect self-defense," Jones must prove that a reasonable person would have  
18 perceived the threat and necessity of using deadly force in the same manner that she did. Although  
19 Jones was found not guilty in her second trial, such a finding is not analogous to a finding of innocence.  
20 The reason that the jury found that Jones was not guilty beyond a reasonable doubt is speculation.  
21 Despite the failure to convict Jones, the evidence is not convincing to prove that she is innocent.  
22 Because she did not affirmatively prove that she was innocent of a crime, she is not eligible for  
23 compensation under Section 4900.

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26 <sup>8</sup> Transcript of Hearing on Writ of Habeas Corpus (April 11, 2005).

27 <sup>9</sup> The Attorney General also asserts that Jones was only incarcerated post-conviction for 6,962 days  
28 until April 11, 2005, the date that Jones was granted a new trial.

1 Second, Jones did not prove that she did not negligently or intentionally contribute to her arrest  
2 or conviction for second degree murder. Her actions and decisions before and after the shooting  
3 clearly contributed to her arrest and conviction. In addition, it was her voluntary plea in 1986 to second-  
4 degree murder that resulted in her imprisonment.

5 **Jones Conviction and Subsequent Retrial for the Death of Decedent**

6 The following information relevant to the claim was presented to the hearing officer for  
7 consideration.

8 **I. Jones' Prior Criminal History**

9 Jones' adult arrest record includes armed robbery and kidnap for ransom, burglary, receiving  
10 stolen property, assault and battery and vandalism, fighting in public, possession of narcotics, forgery  
11 and possessing bad checks. She served time in prison for stabbing a woman at a restaurant in 1974,  
12 was on probation in 1977 for welfare fraud and perjury, and was on probation again in 1977 for petty  
13 theft.<sup>10</sup>

14 **II. Events Leading up to the Shooting**

15 In early 1985, Jones and the Decedent were still legally married but not living together. On  
16 February 17, 1985, the Decedent's girlfriend, Nettles, reported to the police that Jones drove up,  
17 blocked her car, grabbed Nettles and scratched her chest, yelled "I'm going to fuck you up," and then  
18 drove away. The following day, Nettles called the police again to report that Jones had disturbed her  
19 family. The officer contacted Jones and advised her to stay away from Nettles.

20 In another incident report dated February 20, 1985, the Decedent reported that Jones attempted  
21 to run him over with her car and made threats to kill him and have him sent back to prison. He only  
22 requested a report and no further action was taken. At retrial, two other witnesses testified under oath  
23 of having witnessed this event.

24 **III. The Shooting**

25 Two days prior to the shooting, Jones wrote a letter to the Decedent to make arrangements to  
26 retrieve his belongings. Jones addressed the letter to "Franko Baby" and stated, "I love so much."  
27

28 <sup>10</sup> Jones later asserted that, during the 1974 stabbing, she blacked-out once the woman grabbed her,  
29 and that she only remembers being outside the restaurant after the stabbing.

1 Jones wrote that she had cleaned his fish tank and her neighbor would help them move it. She told him  
2 to come by that night and to call to confirm that she was home.

3 Jones gave the following statement to the police regarding the incident when initially  
4 questioned. She and the Decedent had been separated for some time. On March 26, 1985, the  
5 Decedent came to her apartment, and she let him inside. Jones said that her children wanted to keep  
6 the fish tank and they argued. The verbal argument escalated to a physical fight, and they started  
7 hitting each other. Jones broke away, retrieved a .22 pistol that the Decedent had given her, and shot  
8 him. She could not remember how many times she shot him. The Decedent told Jones to take him to  
9 the hospital. Instead of driving to a hospital, Jones drove him to her cousin's house. While driving him,  
10 he told her to throw the gun out of the car window, which she did.

11 When she arrived at her cousin's house, Jones exited the car, leaving the Decedent inside with  
12 the doors locked. Family members were unable to reach the Decedent until someone obtained the  
13 keys from her. After being called by family members, the police were dispatched to the scene at 7:51  
14 p.m. When the police arrived, they found Jones walking down the street. She started saying "he beat  
15 me, he beat my kids." Jones said that she did not have a gun, and the officers were not able to locate  
16 any firearms.

17 After Jones gave her first statement, the police learned that there was possibly a knife used in  
18 the incident. There was a bullet hole in the Decedent's knife sheath, indicating that the knife was out  
19 when the Deceased was shot. Jones told the officer that the Decedent had a knife, but only used it to  
20 clean his fingernails. Jones said that she had not been threatened with the knife.

21 While investigating Jones' home, the police found divorce papers on the table. Nettles testified  
22 that, the night of the shooting, the Decedent was bringing the divorce papers to Jones.<sup>11</sup>

23 A neighbor testified that they heard arguing and a snapping sound, possibly a BB gun, followed  
24 by a loud thud at around 5:30 or 6:00 p.m. on the night of the shooting.<sup>12</sup> After about 30 minutes of  
25 silence, they saw a woman trying to put a man into a car. The woman declined assistance.

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28 <sup>11</sup> Testimony is from the 2006 retrial.

29 <sup>12</sup> *Id.*

1 Hendricks, a male friend of Jones with whom she was having a sexual relationship, provided the  
2 following information to the police and in his testimony at the retrial. Around March 22, 1985, Hendricks  
3 had stolen a rifle. He left the rifle at Jones' home, with plans to sell it. The rifle did not have a clip or  
4 ammunition. Jones purchased a clip and ammunition. On March 24 or 25, 1985, Jones asked  
5 Hendricks how to load the rifle, and he showed her how to load and cock the rifle.

6 The original owner of the rifle testified that the stolen rifle was a 10-shot, .22 caliber semi-  
7 automatic rifle. A person must pull the trigger each time to shoot one bullet. The owner of a gun shop  
8 testified that someone matching Jones description purchased ammunition and a clip for the rifle.

9 According to the Coroner's report, the Decedent was shot seven times at close range, with at  
10 least one of the shots striking the Decedent after he had fallen to his hands and knees. Laboratory  
11 tests taken the night of the shooting showed that there were no drugs in Jones' system.

#### 12 **IV. Plea to Second Degree Murder**

13 There is no transcript of Jones' first murder trial in 1985. In a declaration, Jones' defense  
14 attorney for that trial, Michael Barkett, stated the following information. Evidence of Battered Women's  
15 Syndrome was not presented at Jones' first trial, which undermined his ability to argue that Jones killed  
16 the Decedent in self-defense. Barkett believes that evidence of Battered Women's Syndrome would  
17 have led the jury to find Jones not guilty of first degree murder or of a lesser offense. The jury was  
18 unable to reach a verdict, and Jones chose to enter a plea of guilty to second-degree murder. He does  
19 not believe that Jones would have agreed to plead guilty to second degree murder if evidence about  
20 Battered Women's Syndrome had been admissible at the trial.

#### 21 **V. Jones Statement to the Board of Prison Terms in 1996**

22 Jones made the following statements under oath to the Board of Prison Terms (now the Parole  
23 Board) in 1996.

24 Although Jones told Hendricks that she would sell the rifle for him, she intended to keep it. She  
25 bought ammunition for her protection. Jones described the shooting as follows. She used drugs earlier  
26 on the day of the shooting. She denied that she invited the Decedent to the residence. After the  
27 Decedent was unable to make prior arrangements to retrieve his fish tank, he came over and they  
28 started talking. The Decedent wanted to have sex with Jones, but she refused. They discussed the  
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1 divorce, which escalated into a heated argument. The Decedent put his hands on Jones and they  
2 started fighting. Jones retrieved the rifle and shot him.

3 The presiding officer noted that Jones initially shot the Decedent five times and then, twice more  
4 when he fell to his knees. Jones responded that she just kept shooting when the Decedent fell. The  
5 Decedent asked Jones to take him to the hospital, but Jones drove him around for an unknown period  
6 of time. Jones admitted that she wanted the Decedent to die. However, she asserted that the shooting  
7 was in self-defense because the Decedent put his hands on her.

8 **VI. 2002 Mental Health Evaluation for the Board of Prison Terms**

9 A 2002 Mental Health Evaluation for the Board of Prison Terms includes the following  
10 information. On March 22, 1985, Jones obtained a stolen rifle from Hendricks to sell it for him. Instead,  
11 she purchased a clip and ammunition for it the following day. Jones said that she needed the rifle for  
12 protection because she lived in a dangerous neighborhood.

13 Jones previously said that she used heroine and marijuana several hours prior to the shooting.  
14 Jones denied inviting the Decedent over to her residence. The Decedent had been calling and  
15 threatening her. Jones promised herself that she would never allow the Decedent to put his hands on  
16 her again. When he arrived, they argued over his belongings. He became physically violent, refused to  
17 leave, knocked her down, and kicked her. Jones ran into the bedroom to get the rifle and shot the  
18 Decedent as he came towards her. Jones was tearful and said that she was sorry for killing the  
19 Decedent.

20 **VII. 2006 Expert Testimony at Trial**

21 **A. Linda Barnard, PhD.**

22 At the 2006 trial, Linda Barnard, PhD., testified as an expert witness on Jones' behalf and  
23 provided the following analysis.

24 Dr. Barnard defined a battered woman as one who has experienced physical, sexual,  
25 psychological, or verbal abuse in the context of an intimate relationship. Dr. Barnard explained the  
26 cycle of violence in domestic violence relationships. Abusers exercise power and control through  
27 intimidation, threats, emotional abuse, name calling, isolation, use of children, economic abuse,  
28 sexual abuse, and physical abuse. She noted that there was a high level of violence in Jones'  
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1 relationship with the Decedent and that the Decedent reputedly used these methods to exercise  
2 power and control over Jones. Jones told Dr. Barnard that the police came to her home a couple of  
3 times regarding domestic violence, but never took a report.

4 Dr. Barnard stated that the Decedent abused Jones in public and that the public abuse  
5 demonstrated that the Decedent believed that he could do anything to her with no consequences. In  
6 one incident, the Decedent put Jones in the trunk of his car and drove her to a location where he  
7 forced her to perform oral sex on him in front of his friends.

8 In Dr. Barnard's opinion, Jones was still a victim of domestic violence even if she threatened  
9 the Decedent or others and despite her criminal record. Dr. Barnard believed that at the time of the  
10 shooting, the Decedent still maintained some control over Jones, even though Jones had a sexual  
11 relationship with Hendricks.

12 Dr. Barnard explained that victims accommodate the level of abuse as it escalates. A victim's  
13 definition of what is "normal" changes to accept some abuse as normal, and then accepts each  
14 increasing level of abuse as normal. She described "traumatic bonding" and learned helplessness to  
15 explain that Jones' experience led her to believe that attempting to leave would make the abuse  
16 worse.

17 At the 2006 trial, Jones testified that she was afraid that the Decedent would stab her. In  
18 contrast, although Jones mentioned the Decedent's knife to Dr. Barnard, Jones did not tell Dr.  
19 Barnard that the Decedent threatened her with a knife. Jones also told Dr. Barnard that the Decedent  
20 did not talk to her about divorce and that she did not know that he had divorce papers.

21 Dr. Barnard explained that drug use, alcohol, and time can affect memory. Further, traumatic  
22 information is different from normal information. Memory becomes random, as does a person's ability  
23 to recall the events. Trauma affects a person's ability to concentrate. Inconsistency is a symptom of  
24 the traumatic experience. Parts of memory associated with the trauma do not change and can be  
25 remembered exactly. However, people can forget salient or important information related to a  
26 trauma. Dr. Barnard believed that it was possible that Jones had traumatic amnesia about the  
27 Decedent threatening her with a knife and remembered it later.

1 Dr. Barnard noted that Jones was diagnosed by another mental health professional with Post-  
2 Traumatic Stress Disorder (PTSD). She stated that she was not able 19 years later to diagnose  
3 Jones' condition at the time of the shooting, but explained that several years after the trauma Jones  
4 showed symptoms of PTSD. Dr. Barnard constantly assesses her clients for malingering or faking  
5 symptoms to gain any type of benefit.

6 **B. Phillip Trompetter, PhD.**

7 At the 2006 trial, prosecution expert witness Dr. Phillip Trompetter testified to the following  
8 information. He reviewed the police reports, Department of Correction (DOC) documents, Parole  
9 Board hearing documents, probation officer reports, letters from friends or family, and Dr. Barnard's  
10 report.

11 Dr. Trompetter testified that Battered Women's Syndrome is sometimes diagnosed as PTSD.  
12 Dr. Trompetter questioned how Dr. Barnard assessed Jones for malingering. One doctor from DOC  
13 diagnosed Jones as having PTSD as a result of the shooting, not from the abuse by the Decedent.  
14 Other DOC doctors did not diagnose PTSD, but rather other diagnosis, including substance abuse.  
15 He believed that Jones' prior arrest record and her sexual relationship with Hendricks are inconsistent  
16 with Battered Women's Syndrome.

17 When questioned regarding whether a person could forget being threatened with a knife, Dr.  
18 Trompetter testified that trauma affects memory, but people remember the salient aspects of trauma  
19 and focus on what is critical to survival. He also testified that it was unlikely for an adult to forget an  
20 attempted rape. He further explained that although a woman is abused, she may still kill for other  
21 reasons. Dr. Trompetter further stated that, if the abuser wants to leave, the woman would not be in  
22 danger.

23 **Penal Code Section 4900 et seq. Hearing**

24 **I. Testimony of Jones**

25 During the hearing on her claim, Jones provided the following testimony.

26 **A. Jones' Background**

27 Jones was the oldest of three girls and had a lot of responsibility in her mother's home. Her  
28 mother was an alcoholic, and her family lived in a middle-class, black community. Jones' step-father  
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1 was violent towards her mother and shot her mother in the back. Jones and her siblings were abused  
2 by their mother. Based on her upbringing, Jones believed that abuse and violence were normal within  
3 the black community.

4 Jones was fourteen when she started dating her first husband, and they married because she  
5 was pregnant. Her first marriage was abusive. Although she went to the hospital for injuries as the  
6 result of abuse, the hospital staff never reported the abuse to the police.

7 The abuse by the Decedent started small and became more severe. The Decedent forced  
8 Jones to have sex with him, beat her if she did not do things for him, forced her to engage in criminal  
9 activity, beat her when she was caught, and forced her to take the blame for things that he did or  
10 threatened Jones if she reported him. The Decedent made his dog guard Jones, and she was afraid  
11 that the dog would attack her. The Decedent frequently beat her in public and in front of her friends.  
12 He was a well-known gang member, and people in the community were afraid of him. He beat people,  
13 brandished his gun and knife, and used his dog against people.

14 The police responded to an incident when the Decedent beat Jones but did not do anything. On  
15 another occasion Jones was hospitalized when the Decedent hit her, requiring her to have surgery on  
16 her ear drum. The hospital staff did not report the abuse to the police.

17 **B. Events Leading up to the Death of Decedent**

18 Jones described the incident with Nettles on February 17, 1985, as a verbal altercation and  
19 denied that any physical fight took place. Jones also denied that she was involved in the disturbance  
20 as reported by Nettles on February 18, 1985, or that she was told by an officer to stay away from  
21 Nettles.

22 Jones testified that on February 20, 1985, she needed money, and the Decedent called her to  
23 meet him at a restaurant. When Jones arrived, they argued through the car window. The Decedent  
24 swung at her through the window, pulled her out of the car, and they struggled. Her cousin helped her  
25 back into her car. Jones then tried to run over the Decedent, not to kill him, but just to chase him away  
26 from her and leave.

27 Jones did not know that the gun that she used to shoot the Decedent was stolen until her  
28 second trial. She never touched the gun until the night of the shooting. Jones does not remember if  
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1 she was home when Hendricks brought the gun to her apartment or when she saw it for the first time.  
2 Jones watched Hendricks "mess around" with the gun. Jones insists that she had never loaded a gun  
3 in her life and does not recall buying a clip and ammunition for the gun.

4 Jones was having a sexual relationship with Hendricks. The Decedent previously had seen  
5 Hendricks at Jones' house on one occasion and told Jones that she could not have other men in his  
6 house. The Decedent and Jones fought that night, and Hendricks ran out of the house. The Decedent  
7 then beat Jones badly.

8 On the night of the shooting, Jones was sleeping on the couch. She does not remember if she  
9 answered the door or if the Decedent came in the door on his own. He was upset and wanted to have  
10 sex with her, but she refused. He pulled at her clothes, and she asked him to leave her alone. He hit  
11 her and she fell to the ground. He threatened to kill her and came at her with his knife. This was the  
12 first time he had ever beaten her while armed with a knife. She broke away and ran to her bedroom to  
13 get the gun. She pointed the gun at him and told him to leave. The Decedent said, "Bitch, you don't  
14 have the heart to shoot me." The last thing Jones saw was the Decedent coming towards her with a  
15 knife. She closed her eyes and started firing. She only pulled the trigger of the gun once, and it  
16 continued to shoot bullets.

17 Jones does not know how the Decedent went outside. She thought that he could still hurt her  
18 and she was afraid to leave the hallway. Eventually, she went outside and saw him lying at the bottom  
19 of the stairs. Jones did not call anyone for assistance. When the Decedent begged for her help and  
20 asked Jones to help him into the car, she did so. She does not remember how long it took to place him  
21 into the car. He then asked her to take him to the hospital, but Jones was scared, so he told her to take  
22 him to her cousin's home. Jones does not remember driving around aimlessly or stopping anywhere on  
23 the way to her cousin's house. The Decedent was still alive when she arrived at her cousin's house.  
24 She cannot remember how she arrived at her cousin's house or how she disposed of the rifle.

25 Jones insisted that she did not want to kill the Decedent. She denied that she did anything to  
26 prevent him from getting help.  
27  
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1 Jones does not recall much about her statement to the police. She told the police that the  
2 Decedent had abused her and about the knife. Jones stopped talking about the knife because the  
3 police were accusing her of stabbing the Decedent.

4 Jones addressed her statements to the Parole Board. She denied her previous admission that  
5 she knew that the rifle was stolen and that she had purchased ammunition. She does not remember  
6 buying the clip and ammunition or threatening the Decedent, although she acknowledged that anything  
7 may have been said during their fights. Jones does not remember discussing divorce with the  
8 Decedent, even though she told the Parole Board that she did. She does not remember telling the  
9 Parole Board that she kept shooting the Decedent when he fell to the ground or that she thought about  
10 killing the Decedent and wanted him to die. She insisted that she would not lie.

11 Jones explained that at the first trial, the judge did not allow her to introduce her history of  
12 domestic violence. Because the jury breakdown was 11 guilty and one not guilty, her attorney advised  
13 her to accept a plea bargain, based on the possible imposition of the death penalty. Jones only pled  
14 guilty to avoid a life sentence or the death penalty. She would have never pled if she could plead  
15 again. Although the Court asked if Jones was pleading voluntarily and she answered that she was, she  
16 did not plead voluntarily.

## 17 **II. Testimony of Erica Torrance**

18 Erica Torrance, Jones' daughter, provided the following testimony at the Penal Code section  
19 4900 hearing. She lived with Jones and witnessed the abuse Jones suffered. The violence by the  
20 Decedent against Jones was at first small and then became worse. If she did not see the abuse, she  
21 could hear the distinct sounds of violence. Torrance testified to seeing Jones beat up, seeing the  
22 Decedent's vicious dog guarding Jones, and hearing the Decedent's threats of violence against Jones.

## 23 **III. Testimony of Domestic Violence Expert**

24 Domestic violence expert Linda S. Barnard, Ph.D., testified at the Penal Code section 4900  
25 hearing. Much of her testimony was repetitive of the testimony she offered at the trial in 2006. She  
26 testified that Jones told her that she had the rifle for protection. She views Jones' letter to the  
27 Decedent a few days prior to shooting as an effort to placate him. On the night that Jones killed the  
28 Decedent, Dr. Barnard asserts that Jones tried several strategies to placate the Decedent including  
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1 being nice to him and being passive at times. She made efforts to have the Decedent leave the  
2 residence.

3 Dr. Barnard believed Jones' statement that prior to the shooting the Decedent demanded sex  
4 and that it would be reasonable for Jones to believe that she would be hurt if she refused his  
5 demands. Dr. Barnard explained that because Jones was accustomed to knives being around, the  
6 presence or absence of a knife did not register. This time the abuse was different in that the  
7 Deceased pulled a knife and beat her simultaneously. At the time that Jones made her initial  
8 statement to the police, she was in shock, she still loved the decedent, and felt bad about killing him.  
9 Jones did not remember that the knife was a part of the threat until several years later. Further,  
10 Jones' lack of memory regarding what occurred while she drove around is consistent with a traumatic  
11 memory.

12 Dr. Barnard opined that Jones' act of shooting the Decedent several times may be explained  
13 in the context of domestic violence. A battered woman may view her abuser as having exceptional  
14 powers and may not believe that she is actually inflicting injury on him. She may believe that he will  
15 still attack her even after he is mortally wounded. This could result in continuous firing of a weapon  
16 long after the threat is removed. In her opinion, Jones responded to a perceived threat.

17 Dr. Barnard addressed Jones' various statements at the Parole Hearings. In 1996, she  
18 asserted that the Parole Board did not identify domestic violence as a mitigating factor. If a woman  
19 stated that she was abused, the Parole Board would view such a statement as making an excuse and  
20 denying responsibility for the crime. Dr. Barnard noted that Parole Board Hearings are contentious,  
21 important, and frightening. People are nervous and say things differently depending on how a  
22 question is asked. Dr. Barnard thought that it is possible that Jones blacked-out at times, was  
23 affected by drugs, or did not remember some events. Dr. Barnard acknowledged that Jones lied to  
24 the police about where she obtained the gun in order to protect Hendricks.

### 25 Findings

26 A preponderance of the evidence supports the following findings:

- 27 1. Jones was the victim of domestic violence prior to her marriage to the Decedent, both  
28 from her mother and from a previous marriage.

- 1 2. Prior to marrying the Decedent, Jones served prison time for stabbing a woman at a  
2 restaurant in 1974, probation in 1977 for welfare fraud and perjury, and probation again  
3 in 1977 for petty theft.
- 4 3. During their seven-year marriage, the Decedent abused Jones by threatening her with a  
5 vicious dog, numerous beatings, rape, forcing her into a trunk of a car, forcing her to  
6 perform oral sex in front of others, and physical abuse of Jones' children.
- 7 4. On February 17, 1985, Jones attacked Nettles, the Decedent's girlfriend.
- 8 5. On February 20, 1985, Jones and the Decedent had an argument in a restaurant  
9 parking lot, after which Jones tried to run the Decedent over with her car.
- 10 6. On March 23, 1985, three days prior to the shooting, Jones purchased ammunition and  
11 a clip for a stolen rifle, which she possessed.
- 12 7. Two days prior to the shooting, Jones wrote the Decedent a letter stating that he could  
13 come and retrieve his belongings.
- 14 8. On March 26, 1985, the night of the shooting, the Decedent came to Jones residence  
15 with divorce papers.
- 16 9. Jones was not under the influence of alcohol or drugs the night of the shooting.
- 17 10. Jones shot the Decedent seven times with a .22 caliber semi-automatic rifle.
- 18 11. On the night of the shooting, an empty knife sheath with a bullet hole through it was  
19 found in Jones' residence.
- 20 12. After Jones shot the Decedent, he asked her to take him to the hospital, but she instead  
21 drove him to her cousin's home.
- 22 13. Jones had the Decedent in the car for one to one an a half hours before delivery the  
23 Decedent to her cousin's house.
- 24 14. Decedent died as a result of Jones' actions.
- 25 15. Jones disposed of the rifle in an unknown location.
- 26 16. Jones lied to the police when she said that she shot the Decedent with a pistol that he  
27 had given her.
- 28 17. Jones lied on several occasions about buying ammunition and a clip for the rifle.
- 29

- 1 18. Jones pled guilty to second degree murder in 1986.
- 2 19. No evidence showed that Jones was incapable of knowingly agreeing to plead guilty in
- 3 1986.
- 4 20. On April 11, 2005, the court granted Jones' request to withdraw her plea and granted
- 5 her a new trial for first degree murder of the Decedent.
- 6 21. On May 31, 2006, Jones was found not guilty of first degree murder.
- 7 22. Jones was incarcerated for 6,962 days.

#### 8 Determination of Issues

9 To succeed on her claim under Penal Code section 4900, Jones must show the following  
10 elements by a preponderance of the evidence:

- 11 1) that the crime with which she was charged was either not committed at all, or, if
- 12 committed, was not committed by her;
- 13 2) that she did not by any act or omission on her part, either intentionally or negligently,
- 14 contribute to the bringing about of the arrest or conviction for the crime; and
- 15 3) that she sustained a pecuniary injury through her erroneous conviction and
- 16 imprisonment.<sup>13</sup>

17 As explained below, Jones failed to establish that she is eligible for compensation under Penal Code  
18 section 4900.

#### 19 I. Jones failed to prove that she did not commit the crime of murder

20 The Court of Appeals has found that a person erroneously imprisoned for a justifiable  
21 homicide may be eligible for compensation pursuant to Penal Code section 4900 et seq.<sup>14</sup> For  
22 example, when a person kills in lawful self-defense, it is considered that the person did not commit  
23 the crime of murder.<sup>15</sup> Notably, the fact that the 2006 jury did not find Jones guilty of first degree  
24 murder does not mean she is innocent of the crime of second degree murder for which she pled guilty  
25

26 <sup>13</sup> Gov. Code, § 4900; *Diola v. Board of Control* (1982) 135 Cal.App.3d 580, 588, fn 7; *Tennison v.*  
27 *Victim Compensation and Government Claims Board* (2000) 152 Cal. App. 4<sup>th</sup> 1164.

28 <sup>14</sup> *Diola v. Board of Control, supra*, 135 Cal.App.3d at p. 588.

29 <sup>15</sup> *Id.*

1 in 1986. In order for there to be a conviction in a criminal trial, the prosecution must prove a  
2 defendant's guilt beyond a reasonable doubt.<sup>16</sup> In contrast, for this claim, Jones must prove that she  
3 is innocent by a preponderance of the evidence.<sup>17</sup> Here, Jones failed to prove by a preponderance of  
4 the evidence that she did not commit the crime of second degree murder for which she pled guilty,  
5 was convicted and imprisoned.

6 Although the domestic violence that Jones suffered is undeniable, Jones failed to establish  
7 that she killed the Decedent in self-defense and did not commit the crime of murder. Battered  
8 Women's Syndrome is not an absolute or perfect defense to a charge of murder. Rather, the courts  
9 consider the effects of Battered Women's Syndrome in determining whether a defendant actually and  
10 reasonably believed in the need to defend herself from imminent harm, which is a necessary  
11 component of self-defense.<sup>18</sup> Expert witness testimony regarding Battered Women's Syndrome is  
12 relevant to correct common misconceptions regarding the behavior of abused women, to better  
13 assess a battered woman's credibility, and to determine if the defendant's belief she was in danger is  
14 reasonable.<sup>19</sup> One court explained the analysis as follows:

15 In assessing reasonableness, the issue is whether a reasonable person in the  
16 [d]efendant's circumstances would have seen a threat of imminent injury or  
17 death, and not whether killing the alleged abuser was reasonable in the sense of  
18 being an understandable response to ongoing abuse.<sup>20</sup>

19 Further, the defendant's belief must be honest.<sup>21</sup> Here, however, it is found that Jones actions were  
20 unreasonable, and she did not show that she honestly believed in the need to defend herself.

21  
22 <sup>16</sup> Pen. Code, § 1096.

23 <sup>17</sup> *Diola v. Board of Control*, *supra*, 135 Cal.App.3d at p. 588, fn 7; *Tennison v. Victim Compensation*  
*and Government Claims Board* (2000) 152 Cal. App. 4<sup>th</sup> 1164, 1173.

24 <sup>18</sup> *People v. Jaspar* (2002) 98 Cal. App. 4<sup>th</sup> 99, 109; *People v. Humphrey* (1996) 13 Cal. 4<sup>th</sup> 1073, 1082.

25 <sup>19</sup> *People v. Erickson* (1997) 57 Cal. App. 4<sup>th</sup> 1391, 1399-1400.

26 <sup>20</sup> *People v. Jaspar* (2002) 98 Cal. App. 4<sup>th</sup> 99, 109.

27 <sup>21</sup> *Id.* If the defendant honestly believed in the need to defend herself but the belief was unreasonable,  
28 the defendant would have established an imperfect self-defense and could still be guilty of voluntary  
29 manslaughter. Because the hearing officer determined that she did not honestly believe in the need to  
defend herself, this proposed decision will not address this issue.

1 Jones actions the night of the shooting were unreasonable. The evidence shows that  
2 Jones likely pulled the trigger seven times and not once as she testified during the Penal Code  
3 section 4900 hearing. The evidence also shows that the Decedent was on his knees when she shot  
4 him once and maybe twice. In addition, there was no longer any threat of imminent injury or death  
5 requiring self-defense when Jones drove the Decedent around without taking him to the hospital. By  
6 doing so, she prevented him from receiving help that may have saved his life.

7 Jones also failed to prove by a preponderance of the evidence that she actually and honestly  
8 believed that she needed to defend herself. After considering both the prosecution expert at the 2006  
9 trial and the expert testimony in support of Jones's claim, it is determined that Jones's contention that  
10 the Decedent threatened her with a knife and that this was the first time that he pulled the knife and  
11 beat her at the same time is not credible. At the time of the shooting, Jones denied that the  
12 Deceased threatened her with a knife. Based upon the transcript of the testimony of the prosecution  
13 expert, it is determined that Jones would remember that the Decedent had threatened her with a  
14 knife, a fact that would have been critical to her survival.

15 Notably, it appears that Jones' version of the shooting changes to meet the circumstances.  
16 While under oath before the Parole Board, Jones testified that she and the Decedent had a heated  
17 argument regarding divorce and that she wanted the Decedent to die. That is a very different version  
18 than her testimony at the 4900 hearing. This is compounded by her different stories about  
19 purchasing the ammunition and a clip for the rifle and the use of the knife by the Decedent.

20 It is determined that Jones failed to prove that she did not commit the crime of second degree  
21 murder for which she was imprisoned.

## 22 **II. Jones Contributed to Her Arrest and Conviction**

23 Jones' claim under Penal Code section 4900 should also be denied because the evidence  
24 establishes that she contributed to her arrest or conviction.

25 Jones argues that she took all reasonable means available to her to avoid the incident that  
26 resulted in her shooting the Decedent and that she did not intentionally or negligently contribute to  
27 her arrest and conviction. Jones asserts that she moved and tried to separate herself from the  
28 Decedent and that law enforcement did not help her.



1 The issue of whether Jones suffered pecuniary injury is therefore rendered moot.

2  
3 Date: April 28, 2009



4 Roslyn Mack  
5 Hearing Officer  
6 Victim Compensation and  
7 Government Claims Board