

STATE OF WISCONSIN CLAIMS BOARD

CLAIM OF: CORNELIUS R. REED

CLAIM NO. 2014-037-CONV

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DECISION

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The Claims Board held a hearing on this matter on December 15, 2015. Claimant, Cornelius Reed, appeared through counsel. The Milwaukee County District Attorney's Office appeared in opposition to Reed's claim.

Background

This is a claim for Innocent Convict Compensation pursuant to §775.05, Wis. Stats. The claim relates to the Reed's 1993 conviction for First Degree Intentional Homicide. Reed states he is innocent of this crime. He requests the maximum reimbursement of \$25,000 plus additional compensation in an unspecified amount for the four years and 59 days he served in prison.

On December 28, 1992, Danielle Daniels was killed in a "drive by" shooting while walking with her fiancée, Dionysis Thomas, around 5:30 p.m. near the intersection of North Avenue and Sherman Boulevard in Milwaukee, Wisconsin. A car driving near the couple stopped and a man fired a rifle from the car. Daniels was struck by one shot and died.

Claimant's Facts and Argument

Reed, who was 16 years old at the time, was arrested for the crime based on two witnesses identifying him: Daniels' fiancée, Dionysis Thomas, and Anthony Lester, who was driving in the area and saw the vehicle but did not see the shooting.

Reed points to a number of problems with Thomas's identification of the claimant as the shooter. Thomas did not initially identify Reed as the shooter to the police, even though he had known Reed for approximately two years prior to the shooting. In fact, after reviewing photos at the police station, Thomas identified another individual, Gary Stoval, as the gunman. (Stoval was in Arkansas at the time of the shooting.) Thomas later testified that he looked through the pictures for ten or fifteen minutes and "picked the first one; any one." He also testified at trial that he did not believe Stoval was involved but that he "picked out the photograph—any photograph just to get back home, because I was scared." In the course of the investigation, Thomas also told the police that he knew of no reason Reed would have wanted to shoot him. After positively identifying the claimant, Thomas told a detective he was "no longer positive"

that Reed was the gunman. In addition, Thomas later testified that he "didn't care at that time" about making a wrong identification and that he identified Reed and two accomplices based on "three faces that I seen in my dream."

Reed also states there are problems with Lester's identification because Lester did not actually see the shooting and, although he identified Reed as the person in the back seat of the car, he also identified another individual (one of the accomplices) as the person riding in the back seat.

In his opening statement at trial, Reed's defense counsel told the jury "you're going to hear where Mr. Reed was at the time of the shooting, and he wasn't in the automobile." However, at the conclusion of the state's presentation of its case, the defense counsel did not call any witnesses because he considered the state's identification witnesses and other evidence weak. Reed was convicted on December 9, 1993, and sentenced to Life + 25 years.

Reed states that several days after his conviction, he received a letter from Ronnie Watkins. Watkins wrote that he read about Reed's conviction in the newspaper and that he knew Reed was not the gunman because Watkins knew who had actually shot Daniels. Watkins later testified that on the night of the shooting, he heard his nephew tell another person he had shot a woman that night. The nephew, Maurice Taylor, contacted Watkins the next day and asked him to retrieve and hide the shotgun used in the shooting. Following Taylor's instructions, Watkins retrieved the shotgun and hid it in a parked Cadillac.

Based on this new information, Reed filed a post-conviction motion but his request for a new trial was denied by the circuit court. The Court of Appeals later overturned the circuit court, finding that the circuit court had erroneously weighed the new evidence presented by Reed against potential evidence that had never been presented at trial. The Court of Appeals also concluded that the circuit court had erroneously found that Watkins' testimony regarding the true identity of the gunman had not been contrary to his own penal and familial interests. The appeals court overturned Reed's conviction and ordered a new trial.

Reed was re-tried and acquitted.

Reed states that he was very young at the time of his arrest and conviction but was tried and sentenced as an adult. Reed states that because of this, he was assaulted and traumatized during his four years in prison and suffers from Post-Traumatic Stress Disorder. He requests reimbursement for his wrongful imprisonment.

#### DA's Response and Argument

The Milwaukee County District Attorney's Office (DA) believes Reed has not met his burden of providing clear and convincing evidence of his innocence.

The DA addressed claimant's challenges to the credibility of Thomas's identification of Reed as the shooter. The DA points to the fact that Thomas explained at the retrial that his initial identification of another individual was due to the fact that he was upset because his fiancée had just been shot and he just wanted to go home, but that his later identification of the claimant was correct. At retrial, Thomas also testified that when he said Reed was not the shooter, he did so because he was threatened. This testimony was corroborated by a detective to whom Thomas had disclosed the threats.

The DA also addressed Reed's challenges to Lester's identification of the Reed as the shooter. The DA points to the fact that Lester testified at retrial that he saw the barrel come out of the car window and heard three shots. An officer testified that Lester identified Reed in a lineup.

At retrial, Reed relied on the testimony of Watkins, who was not an eyewitness, but who allegedly overheard his own nephew admit to being the shooter. The DA notes that at the time of his disclosure, Watkins had an upcoming sentencing on multiple counts of armed robbery and asked officers if he could get a deal for providing information about Reed's case. The DA points to the fact that, in his statements to police, Watkins admitted that he did not know whose voices he heard from the other room and that he thought his nephew said something, but was not sure what comment came from him. The DA notes that Watkins' testimony at the claimant's retrial was not consistent with the statements Watkins gave to police.

The DA also points to the retrial testimony of Lucner Freeman. Freeman was an accomplice and testified (consistent with his statements to police) that Reed was the shooter, and that Reed shot from a kneeling position in the front passenger seat, aiming the barrel of the gun out the back passenger seat window.

The DA also notes that Kimberly Ward testified at retrial that she saw Reed and a companion walking from the direction of the crime scene when she saw the ambulance and fire trucks. In addition, two alibi witnesses called by Reed to testify at retrial testified that the claimant was not at home at the time of the shooting as he alleged. The DA also believes the retrial testimony given by Reed's father, sister, and brother that he was home at the time of the shooting was not credible, based on inconsistencies in their statements.

In addition, the DA states there are multiple additional reports that point to Reed's guilt. Among those reports: Individuals in custody at the time of the original trial observed Reed punch and threaten Thomas. A witness provided by the claimant to corroborate his whereabouts at the time of the shooting told Reed's attorney that it was not true and that Reed left home around 5 pm and returned around 6 pm "panting and sweating" because "he was just in a shootout." Melvin Dotson, who denied being in the car at the time of the shooting, told police that his brother, Jamar,

called him and told him Reed had shot at Thomas. And finally, an inmate housed at Waupun Correctional told police Reed confessed to the shooting.

The DA believes that, although Reed was acquitted at retrial, there is not clear and convincing evidence of his innocence and recommends denial of this claim.

#### Discussion and Conclusion

Under the standards of Wis. Stat. § 775.05(3), the Claims Board must determine whether or not the evidence is clear and convincing that the petitioner was innocent of the crime for which he was imprisoned.

The primary evidence provided by Reed in support of his petition was that he was acquitted at retrial. However, based on long-standing precedent, the Claims Board does not equate acquittal with innocence. While the State must prove guilt beyond a reasonable doubt, a claimant like Reed must prove his innocence by clear and convincing evidence. These are two very distinct standards with different burdens of proof and cannot be conflated. Therefore, an acquittal, standing alone, does not mean that a claimant has proven his innocence by clear and convincing evidence. Even though Reed raises other arguments he believes demonstrate his innocence, the DA responded by pointing to conflicting evidence in the record that significantly undercut Reed's position. Since Reed's only uncontroverted evidence of innocence is his acquittal, his claim fails.

When asked at the hearing to identify specific exculpatory facts, aside from the acquittal, Reed pointed to three facts to support a finding of innocence. First, claimant argued that the allegedly conflicting eyewitness testimony of Thomas is a significant fact in favor of his innocence. However, the DA addressed this issue and explained that the conflicting testimony was based on threats to the witness.

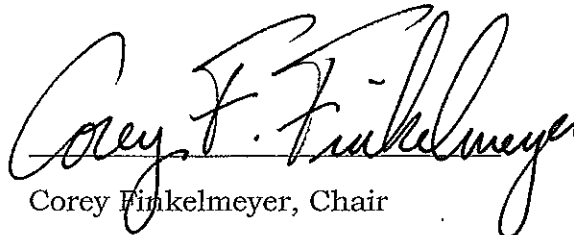
Second, Reed pointed to Watkins' statement that he overheard his nephew admit to the crime and Watkins' subsequent testimony against his own nephew as a significant fact in favor of his innocence. However, this fact is undermined by the fact that Watkins did not actually know it was his nephew who made the statement and the fact that Watkins' testimony had other credibility issues.

Finally, Reed noted that there was some factual testimony at the retrial alleging that the back window of the car would only roll down about 8 inches thereby precluding Reed from physically being able to hang out of the backseat window to shoot the gun. Conversely, the DA provided information indicating that the testimony showed that Reed was in a kneeling position in the front passenger seat, and aimed the barrel of the gun out of the back passenger seat window

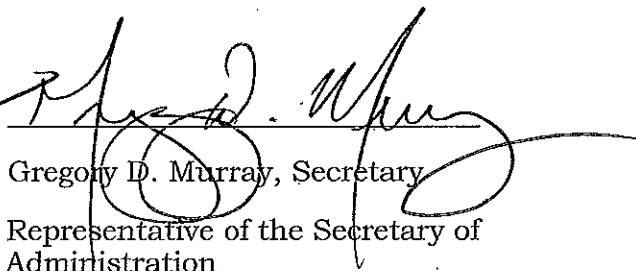
Based on the above, and after hearing the evidence on the petition and reviewing all of the written submissions, the Board concludes and finds that the evidence is not clear and convincing that Reed was innocent of the 1993 conviction for First Degree

Intentional Homicide for which he was imprisoned. Accordingly, the Board further concludes that no compensation shall be awarded. *Vote: 4-1 (Member Czaja dissenting).*

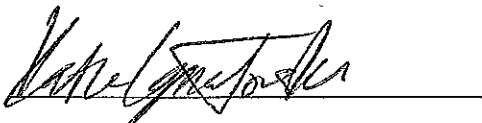
Dated at Madison, Wisconsin this 29<sup>th</sup> day of January 2016



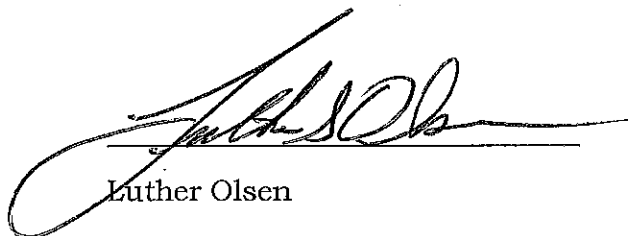
Corey Finkelmeyer, Chair  
Representative of the Attorney General



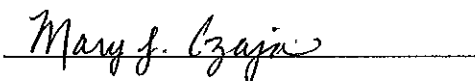
Gregory D. Murray, Secretary  
Representative of the Secretary of Administration



Katie E. Ignatowski  
Representative of the Governor



Luther Olsen  
Senate Finance Committee



Mary Czaja  
Assembly Finance Committee