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STATE OF WISCONSIN CLAIMS BOARD

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CLAIM OF: GABRIEL LUGO  
CLAIM NO. 2024-010-CONV

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Notice of Appeal Rights

This is a final decision of the Wisconsin Claims Board.

Any person aggrieved by this decision has a right to petition for judicial review in circuit court as provided in Wis. Stat. §§ 227.52 and 227.53. Any petition must be filed in court and served on the Board within 30 days of service of the decision. The time to file and serve a petition runs from the date the final decision is mailed. The petition shall name the Wisconsin Claims Board as the respondent.

Any person aggrieved may also file a petition for rehearing with the Board under Wis. Stat. § 227.49(1); that petition must be received by the Board within 20 days of service of this decision.

This notice of appeal rights is provided pursuant to Wis. Stat. § 227.48.

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DECISION

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Background

Claimant, Gabriel Lugo, filed a claim seeking Innocent Convict Compensation pursuant to Wis. Stat. § 775.05. Lugo claims that he was imprisoned for approximately 14 years for his 2009 conviction of first-degree reckless homicide. Lugo further claims that he is innocent of the crime for which he was imprisoned and seeks statutory compensation in the amount of \$25,000.00, and attorney's fees in the amount of \$77,482.80. Lugo also requests that the Claims Board recommend to the Legislature additional compensation in the amount of \$750,000.00, for a total claim of \$852,482.80.

Claimant's Facts and Argument

In support of his claim for compensation, Lugo submitted a claim form and the following materials:

1. Statement in Support of Petition for Compensation for an Innocent Person Convicted of a Claim, with the following supporting materials:
  - a. Transcript of May 19, 2023, oral decision by Circuit Court Judge Yamahiro;
  - b. Affidavit of Partial Redantation [sic] of Testimony, signed by Luis Angel Correa on December 12, 2013;
  - c. Affidavit of Ramon Trinidad, dated December 22, 2020;
  - d. Handwritten letter from Reymundo Trinidad dated March 20, 2016;
  - e. Handwritten letter from Reymundo Trinidad dated February 1, 2018;
  - f. Affidavit of Martin Pruhs, dated March 16, 2021;
  - g. Milwaukee Police Department Incident Report, 081100035 (Draft);
  - h. Affidavit of Rex Anderegg dated March 8, 2024;
  - i. Affidavit of David Geraghty, dated March 7, 2024;
  - j. Affidavit of Isidoro Lugo, dated March 8, 2024.
2. Claimant's Reply to Agency's Position Regarding Petition for Compensation for an Innocent Person Convicted of a Crime.

Lugo requested a hearing and testimony was presented at the October 15, 2024 meeting of the Claims Board. The Board deferred a decision at that time and requested copies of post-conviction briefs from the parties. Consistent with that request, Lugo submitted the following materials:

1. A one-page summary of post-conviction briefing;
2. Brief in Support of Post-Conviction Motion for a New Trial, dated March 16, 2021;
3. Post-Evidentiary Hearing Brief in Support of Post-Conviction Motion for a New Trial, dated April 14, 2023.

In his petition, Lugo states that he was convicted of first-degree reckless homicide in relation to the April 19, 2008 killing of Jake Gerard. Lugo was 19 and spent more than 14 years in prison before his conviction was vacated on May 19, 2023. Lugo maintained his innocence throughout his arrest, trial, and post-conviction.

Lugo's conviction was vacated and a new trial granted to him based on newly discovered evidence, which included the partial recantation of testimony by Luis Correa, the state's

main witness, and new testimony from Reymundo Trinidad, who was present at the shooting but did not testify at trial.

In support of his claim of actual innocence of the crime for which he was imprisoned, Lugo offers the following explanation of what happened the night Gerard was killed. This explanation is based on the affidavits of Luis Correa, Reymundo Trinidad, and Attorney Martin Pruhs and information that was presented in support of Lugo's motion for a new trial:

On the night in question, Jose Luis Suarez, Luis Correa, and Carlos Montanez arrived at an illegal after-hours bar in Milwaukee, where Reymundo Trinidad was working security. As the men approached, a friend of Trinidad's identified Suarez as someone who had previously stolen drugs from him. Trinidad stopped the men at the door and would not allow them to enter, and an altercation took place between Trinidad and Suarez, during which Trinidad shoved Suarez against the wall and threatened to shoot him.

Suarez, Correa, and Montanez walked back to Suarez's vehicle about a half block away. After a few minutes, Trinidad approached Suarez's car to tell the men they could enter the bar after all, but they declined. A short time later Suarez became angry, grabbed a gun, and fired 6 or 7 shots towards Trinidad. Suarez missed Trinidad but struck and killed Jake Gerard as he exited the bar.

Suarez, Correa and Montanez fled to Montanez's house, where they learned that Gerard had been shot. While at the house, the men smoked marijuana and concocted a false story to blame the shooting on Lugo, who was known to them. Correa was initially reluctant to go along with the story, but agreed after Suarez promised him \$5,000 and an ounce of cocaine. The men agreed to say that after the initial confrontation with Trinidad, Correa called Lugo, who came to the bar with a gun and shot Gerard. When the three men were later arrested as suspects, Suarez and Correa were housed together in custody and solidified their false story, which they stuck to at trial.

In addition to providing the affidavits that support the explanation above, Lugo notes that investigators found no forensic evidence connecting him to the crime and established no motive for him to shoot either Trinidad or Gerard; whereas, Suarez, Correa, and Montanez were confirmed to have been at the crime scene and had motive to retaliate against Trinidad because of the altercation at the door.

Lugo also points to various conflicts in the testimony provided at trial by Suarez, Correa, and Montanez, including surrounding whether the men claimed they went to pick up Lugo after the altercation with Trinidad and then returned to the bar, or remained at the vehicle where Lugo joined them. In addition, Lugo notes that detectives had discovered that while Suarez was in custody he admitted to another inmate that his own gun had been used in the shooting, and described the shooter as "my little guy" who

was “like family,” which conflicted with Suarez’ trial testimony that Lugo used his own gun, and other statements Suarez made to detectives that he did not know Lugo and had only seen him a few times. Finally, Lugo points out that the false story provided by the three men and proffered by the state at trial was unreliable from the beginning given that all three had significant felony records and obtained favorable treatment in other cases based on their willingness to testify against Lugo.

In Judge Yamahiro’s decision to vacate the conviction, which evaluated the evidence described above, with a focus on the credibility of Correa and Trinidad, the Judge stated that he believed the statements of Correa and Trinidad, and that he believed the statements “tell the real story [] about who killed Mr. Gerard.” Judge Yamahiro also opined that “[i]f there is another trial...there is a strong likelihood of a different result. Frankly, in this case, I believe there is substantial likelihood of actual innocence here.”

Lugo also asserts in his claim that the state erred in several additional ways, including by holding Suarez and Correa in custody together, noting that Correa in his affidavit admits that he and Suarez used that time to solidify their false testimony. Lugo also faults law enforcement for not acting sooner on unprompted statements made by Trinidad identifying Suarez as Gerard’s killer, which were made as early as two years after Lugo’s conviction, even though law enforcement considered Trinidad to be a reliable source of information. Trinidad’s statements about Lugo’s innocence may never have been known if Trinidad had not again taken it upon himself to write to two different attorneys who he believed were representing Lugo in order to share what he knew. Not long after Trinidad’s outreach, Correa signed an affidavit recanting his testimony implicating Lugo in the murder.

In support of the amount claimed, Lugo argues that he was incarcerated during prime earning years and alleges to have lost the opportunity to join his father and brother when they started their own construction company. His conviction also deprived him of family relationships, including a relationship with his son, who was just one month old when Lugo was arrested. Lugo also continues to struggle with the psychological and emotional trauma of his wrongful conviction. He therefore requests that the Board award him the maximum statutory compensation of \$25,000.00, plus \$77,482.80 in attorney’s fees, for a total of \$102,482.80. However, Lugo notes that the statutory maximum would compensate him at a rate of only \$1,666 per year for the 15 years he spent in prison. He therefore also requests that the Board recommend to the Legislature an additional award of \$750,000.00.

#### DA’s Response and Argument

In its June 20, 2024 response, the Milwaukee County District Attorney deferred to the Claims Board to determine if any compensation for Lugo is appropriate. Per the Board’s request for copies of post-conviction materials, the DA’s Office submitted the following:

1. State's Response to Defendant's Post Conviction Motion, dated August 18, 2021;
2. State's Memorandum Regarding Luis Correa's Invocation of the Fifth Amendment During Post-Conviction Proceedings, dated July 27, 2022;
3. Post-Evidentiary Argument from the State in Opposition of the Defendant's Post-Conviction Motion for a New Trial, dated April 21, 2023.

The DA opposed Lugo's motion to vacate his conviction, however, when the conviction was vacated, the State considered whether it could meet its burden of proof at retrial. The State determined that Correa's multiple conflicting statements, including his sworn recantation of his original testimony at trial, compromised his credibility to the extent that he could not be called as a witness. The State was not able to locate Joel Ortiz (Suares), who would therefore not be available to testify. And, although the State did have contact with Montanez, he expressed difficulty recalling the details of the homicide as well as his prior testimony from 2009. Based on those circumstances, the State decided it could not meet its burden of proof at a retrial and dismissed the case. The State has taken no position on Lugo's innocence.

#### Discussion and Conclusion

Pursuant to Wis. Stat. § 775.05(3), the Claims Board must review the evidence presented on the petition and determine whether the evidence is clear and convincing that Lugo was innocent of the crime for which he was imprisoned.

In its decision, the Board relies heavily on the transcript of Judge Yamahiro's May 19, 2023 oral decision to vacate Lugo's conviction. The Board finds the Judge's decision and his comments regarding the credibility of the witness testimony upon which Lugo relies for his claim of innocence thorough and compelling. The Board in particular relies upon the Judge's determination that "there is substantial likelihood of actual innocence here." While the standard the Judge was applying in the context of Lugo's motion for a new trial did not require him to find (as the Board is required to find here) that there was "clear and convincing evidence" of innocence on the part of Lugo, upon evaluation of all the evidence the Judge essentially did just that, proactively providing a conclusion that is comparable to such a finding.

Consistent with the Judge's overall evaluation, the Board finds Lugo's explanation of what occurred the night in question persuasive. The sworn affidavit from Correa (the State's main witness) partially recanting his trial testimony states that Lugo played no role in the incident and was not present at the time of the shooting. While there is some question of Correa's credibility given his various statements over the years, the Judge found Correa's recantation credible given it was further corroborated by statements of others, including Trinidad and Adelaide Alvarez, who was present during the incident and assisted in transporting Gerard to the hospital. The Board agrees.


Trinidad, who did not testify at trial, provided a sworn affidavit and testified post-conviction that Luis Correa and Joel Ortiz (Suarez) were the shooters, and that Lugo was wrongfully convicted. Trinidad alleges, and the record supports, that Trinidad made multiple attempts over the years that Lugo was incarcerated to make this information known to law enforcement and attorneys he believed to represent Lugo. These proactive attempts to reveal the truth about Lugo's wrongful conviction, with no prospect of any personal benefit to Trinidad, influenced positively the Judge's evaluation of the credibility of this testimony. The Board agrees.

Finally, there is separate evidence indicating that Lugo was not at the scene of the crime, nor could he have been brought to the scene of the crime in the timeframe alleged by the state's witnesses. The testimony of Adelaide Alvarez indicated that Lugo was not present. Trinidad's recitation of the events also indicates that there was insufficient time between when he observed the three men in the car and when the shooting took place that they could not have left to get Lugo and come back.

For these reasons, and based on the written submissions and testimony at the meeting, the Board concludes and finds that the evidence is clear and convincing that Lugo was innocent of the crime for which he was imprisoned. Accordingly, the Board concludes that compensation in the amount of \$102,482.80 (\$25,000.00 statutory compensation plus \$77,482.80 in attorney fees) shall be awarded from the Claims Board appropriation § 20.505(4)(d), Wis. Stat. The Board does not find that amount to represent equitable compensation, and further concludes and recommends to the Legislature an additional payment of \$750,000.00. *[Vote: 3-2. Senator Eric Wimberger and Representative Alex Dallman dissenting.]*


**Dated at Madison, Wisconsin this 30th day of January, 2025.**

Signed by:  
  
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Lara Sutherland, Chair  
Rep. of the Attorney General

Signed by:  
  
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Anne L. Hanson, Secretary  
Rep. of the Secretary of Administration

Signed by:  
  
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Eric Wimberger  
Senate Finance Committee

Signed by:  
  
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Alex Dallman  
Assembly Finance Committee

Signed by:  
  
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Mel Barnes  
Rep. of the Governor