

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

In the Matter of the Application of:

J.K.

Precedent Decision No. 01 – 06

A hearing on this application was held on August 10, 2001, in Martinez, California, by

Donna D. Ferebee, Hearing Officer, who was assigned to hear this matter by the Executive Officer of the California Victim Compensation and Government Claims Board (Board).

The applicant, J.K., attended the hearing.

Claim History

The application, arising from a battery on June 12, 2000, was received on July 6, 2000; was recommended for denial on the May 8, 2001, consent calendar; and was timely appealed. The application requests assistance for medical expenses.

Summary of Issues

Staff recommended the application be denied because staff determined that J.K. failed to reasonably cooperate with law enforcement in the apprehension and conviction of the perpetrator.

Findings of Fact

According to the police report, the police responded to a report of a loud verbal and physical altercation outside the All Star Gas Station store on June 12, 2000. When the police arrived, they found J.K. sitting on the ground in front of the store with lacerations to his forehead and cheek, a bloody nose, and a swelled right eye. The officers noted that J.K. was conscious but unable to say what happened. Then J.K. told police that he had been jumped by several unknown suspects. The medics arrived to take J.K. to the hospital, and one of the medics reportedly told police that J.K. said he had consumed seven beers before the incident occurred. At the hospital, J.K. told police that he remembers entering the gas station store to pay for gas, and when he left the store, he was jumped. According to the report, J.K. told police that the only person he has a "beef" with is A.C., but he did not know whether A.C. was his attacker, he stated that he could not remember very much because he was drunk.

The officers on the scene interviewed Mr. M. the store clerk who called the police. Mr. M. reported that he heard A.C. and J.K. talking to each other, and then he saw A.C. punch the victim in the face, and could tell that the victim was being kicked while on the ground. He reported that Mr. T. was laughing as A.C. was being

attacked, and when it was over, Mr. T. told Mr. M. that this would be his last night at work.

On June 14, 2000, the police contacted J.K. for a more detailed statement. J.K. told police that he knew A.C. from when they were kids growing up, and that he does not like him as they have different friends. J.K. reported that he was hit from behind without any provocation.

According to the report, officers interviewed a witness named T.L. who reported that he had gone with J.K. to the gas station but waited outside while J.K. went into the store. T.L. reported that while J.K. was in the store, he recognized A.C. and two or three other individuals standing outside the store. T.L. stated that he knew A.C. and J.K. did not get along, so he went into the store to tell J.K. that A.C. was outside. According to T.L., J.K. put a beer down that he was about to purchase, and went outside and confronted A.C., saying "let's squash this," referring to their previous problems. T.L. reported that A.C. then punched J.K. who then fell and hit his head. T.L. reported that the others then stomped on J.K.'s head and A.C. ordered one of them to steal J.K.'s car, which he did.

On June 14, 2000, officers interviewed A.C. who reported that he was walking from the gas station against traffic when a car came up behind him going the wrong way and almost hitting him. A.C. reported that he followed the car to the gas station and then observed that the driver was J.K.. A.C. reported that J.K. came out of the store and started a verbal altercation with him and said "I'll hit anyone I want" and then proceeded to push A.C. A.C. reported that he then took off his watch because J.K. wanted to fight. A.C. admitted that he hit J.K., but told police that he never told anyone to steal his car. He also told police that he tried to help J.K. up off the ground, but people came out of the store so he walked away.

A.C. told police that another witness, R.D., saw the incident, and that she would be calling to report what she saw. R.D. called the police and reported that she observed a "tall guy" come out of the store and start yelling at A.C. in his face. She stated that A.C. hit the tall guy who then tried to hit back but missed. She then left the scene.

On June 14, 2000, an officer called J.K. to ask him further questions, but J.K. said, "I've been thinking about it. I got my car back and I'm not going to press charges." The officer told J.K. that he still needed to ask him more questions, and J.K. said, "I'll think about it." The officer then said that he would need J.K. to sign a medical waiver to go forward with the investigation, or J.K. would have to sign a waiver of prosecution. Both forms were mailed to J.K., and both forms were signed by J.K. and returned to the officer. J.K. also left a voice mail with the officer stating that he still did not want a prosecution.

At the hearing, J.K. reviewed the file in detail, including the police report. He testified that he does not know who hit him, but that he and A.C. had an argument about three years ago and they belong to different groups of friends that do not get along. J.K. testified that his friends associate with the "TMK" (The Mad Kings) gang while A.C. associates with the "BIC" (Boys in Crime) gang. J.K. testified that he himself is not a member of a gang.

He testified that he could not cooperate with the police because he did not know who hit him. He testified that the last thing he remembers is being inside the store preparing to purchase cigarettes and then leaving and being hit from behind. He testified that he did not cooperate with the police because if the public defender had asked him if he remembers seeing the person who hit him, he would have to say "no." He testified that he could not help the police if he wanted to. The Hearing Officer asked J.K. if he was willing to assist the police in any way he could, and he responded that if he could have seen the surveillance tape⁹ and who attacked him, he would have cooperated. The Hearing Officer asked J.K. if he told the police that "he would think about it" when asked for more information, and J.K. responded that that was possible, but he does not remember. He testified that he thinks he had a concussion and was suffering from memory loss. He testified that he was in the hospital for a few hours.

When the Hearing Officer asked J.K. about R.D.'s statement to the police that she saw a "tall guy" come out of the store and start yelling at A.C. in his face, J.K. testified that that is not what happened. J.K. also testified that T.L.'s story has changed many times, and he no longer considers T.L. a friend.

Determination of Issues

The Board shall approve an application for assistance if a preponderance of the evidence shows that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss. (Gov. Code, § 13964(a).)

A victim who failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of the perpetrator of the qualifying crime may not receive program assistance. (Gov. Code, § 13964(c)(2).) Conduct that adversely affected the ability to investigate a qualifying crime may constitute a failure to cooperate with law enforcement. (Cal. Code Regs., tit. 2, § 657.1(f).)¹⁰ A victim may be found to have failed to cooperate with law enforcement even if his failure to completely and truthfully respond to requests for information in a timely manner did not adversely affect law enforcement's ability to investigate the crime. (Reg., § 657.1(h).) A victim's physical condition may be considered when assessing whether a victim reasonably cooperated with law enforcement. (Reg., § 657.1(j)(2).) Completely and truthfully responding to requests for information in a timely manner is one element of cooperating with law enforcement. (Reg., § 657.1(e)(2).) The assessment of a victim's cooperation with law enforcement shall be based on all available evidence. (Reg., § 657.1(k).)

An application may be denied, in whole or in part, if the Board finds that denial is appropriate because of the nature of the victim's involvement in the events leading to the crime. (Gov. Code, § 13964(b).) Evidence of a victim's involvement in the events leading to the qualifying crime obtained by an investigating law enforcement agency

⁹ The police report noted that the store's surveillance system was not operating properly, and the incident was not recorded on tape.

¹⁰ All citations to regulations are to California Code of Regulations, title 2.

may be given significant weight. (Reg., § 656.1(e).) The Board may consider the following factors when determining whether a victim was involved in the events leading to the qualifying crime as a result of mutual combat: (1) an implicit or explicit agreement to fight; (2) a deliberate threat by the victim; (3) the victim's conduct indicated the intent to carry out a deliberate threat; (4) the victim's deliberate conduct reasonably provoked the other party to initiate a physical altercation; and (5) the victim initiated a physical altercation that led to the qualifying crime. (Reg. § 656.4.)

The issue raised in the staff recommendation is failure to reasonably cooperate with law enforcement in the apprehension and conviction of the perpetrator. The police report indicates that J.K. refused to provide further information to the investigating officers upon their request, and that J.K. signed a waiver of prosecution and left a message with the officer that he does not want a prosecution. At the hearing, J.K. confirmed that this is true. J.K. failed to provide any believable reason why he would not cooperate; fear that he would not know the answers to a criminal defense attorney's questions is not a valid reason. J.K. could have cooperated with the police by answering all of their questions to the best of his ability, whether or not he saw who hit him. Instead J.K. declined to assist the police, and stated that he does not want a prosecution. Answering law enforcement's questions fully and completely is what J.K. was obliged to do, whether or not he had information that could have helped the police. It is law enforcement's job to determine what information is and is not helpful. Because J.K. was unwilling to answer all of law enforcement's questions, and subsequently tendered his waiver of prosecution, the police closed the case. It is found that J.K. failed to reasonably cooperate with law enforcement in the apprehension and prosecution of the perpetrator.

It is found that this case is distinguishable from Precedent Decision No. 01-04 (In the Matter of the Application of R.C.). In that case, it was found that there was insufficient evidence that R.C. failed to cooperate with law enforcement when the police repeatedly questioned R.C. while he was in pain and in need of medical attention. It was also found that R.C. responded to the officer's questions. In this case, J.K. declined to answer questions asked of him two days after the incident, at a time when he was not in the hospital or in need of immediate medical treatment. By declining to answer all of law enforcement's questions, J.K. failed to reasonably cooperate with law enforcement.

A second issue is whether or not J.K. was involved in the events leading to the qualifying crime as a result of mutual combat. This issue warrants discussion although the staff recommendation did not raise it.¹¹ Although, J.K. vehemently denies even seeing A.C., witness statements contained in the police report clearly indicate that J.K. had exchanged words with A.C. prior to the incident. There is in fact

¹¹ The Hearing Officer informed J.K. that the facts may give rise to a finding that he was involved in the events leading to the qualifying crime due to mutual combat, and that such a finding would mean that he may not be eligible for program assistance. J.K. indicated that he understood that the Hearing Officer would be considering that potential issue.

evidence that J.K. instigated the fight. It is most likely that if J.K. remembers standing in the store getting ready to purchase cigarettes, he would remember why he did not make the purchase and instead walked out the door. It is likely that he knew A.C. was outside and went to confront or at least speak to him. This is mentioned because it weighs on the overall lack of integrity of J.K.'s testimony. No specific finding is made as to J.K.'s involvement though, as the finding that J.K. failed to reasonably cooperate with law enforcement is a complete bar to his eligibility for program benefits.

Order

The application is denied. J.K. is not eligible for program assistance.

Date: August 31, 2001

DONNA D. FEREBEE
Hearing Officer
California Victim Compensation and
Government Claims Board

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OF THE STATE OF CALIFORNIA**

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On October 19, 2001, the California Victim Compensation and Government Claims Board adopted the attached Decision as a Precedent Decision in the above-referenced matter. The Decision became effective on October 19, 2001.

Date: October 30, 2001

JANICE HILL
Acting Chief Counsel
California Victim Compensation and
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