



Sacramento County District Attorney's Office

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CASE OF INTEREST

Couple Sentenced for Insurance Fraud, Stemming from Shooting at Swinger's Club

DATE: March 4, 2016

CASE: John Smiley & Cynthia Biasi-Smiley

PROSECUTOR: Deputy District Attorney Kelly Mulcahy, Insurance Fraud Unit

The Honorable James McFetridge sentenced John Smiley and Cynthia Biasi-Smiley to 240 days in county jail, 5 years formal probation, and ordered them to pay \$38,206.70 in restitution to the State Compensation Insurance Fund (SCIF). On February 9, 2016, the Smileys were convicted of multiple insurance fraud felonies.

John Smiley, a former correctional officer with California Department of Corrections and Rehabilitation, and his wife, Cynthia Biasi-Smiley, were convicted of multiple insurance fraud felonies. The charges stem from their fraudulent workers' compensation claim that John Smiley suffered an "on duty" injury when he was shot and paralyzed while in San Francisco. The claim would have qualified them for compensation from State Compensation Insurance Fund and CalPERS. The Smileys had previously been convicted of attempted perjury in an earlier court proceeding.

On April 27, 2008, the Smileys went to a swinger's club in San Francisco. John had sexual intercourse with a female while Cynthia had sexual intercourse with the woman's male companion. An argument ensued when the female accused John of not wearing a condom. Her companion told John he "kills people for a living" and "was going to kill him." The Smileys left the club. As they walked to their car, John was shot in the back by the male who threatened him. John was left a paraplegic.

In recorded statements to the San Francisco Police Department (SFPD) shortly after the shooting, the Smileys stated they did not recognize or know the male or female, and had never seen either of them prior to that night. No one has ever been arrested in connection with the shooting.

Approximately 11 months later, John filed a claim for workers' compensation benefits and Cynthia filed a lien for workers' compensation benefits based on her care of her husband. John also filed for an Industrial Disability Retirement (IDR) with CalPERS. In their claims, the Smileys testified under oath at a deposition that they could not remember the club/restaurant they were leaving when the shooting occurred, and could think of no reason why the man would have wanted to kill John. They testified that neither of them ever touched, spoke to, bumped into or danced with either the unknown female or unknown male. John even testified he never "looked" at the female even though he told SFPD he had sexual intercourse with her.

In an effort to make the injury “work related” so he could collect workers’ compensation and Industrial Disability benefits, John claimed he recognized the shooter as a parolee he had once transported. However, when questioned by SFPD immediately after the shooting, John indicated the shooting had nothing to do with his work as a correctional officer and that neither of the Smileys recognized or knew the shooter or his “wife.”

Had their fraud been successful, John would have received \$3,002 a month for life, untaxed. Upon John’s death, Cynthia would have continued receiving the benefit as his surviving spouse. John’s initial demand to the State Compensation Insurance Fund was for \$4 million. Cynthia demanded \$271,000 for her services as her husband’s caregiver during the previous two years, and indicated this amount was growing every day.