[Cite as *In re Grisson*, 2004-Ohio-1887.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: MATLA GRISSON	:	Case No. V2002-51869
MATLA GRISSON	:	ORDER OF A THREE-COMMISSIONER PANEL
Applicant	:	

: : : : :

{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred in relation to a February 9, 2002 automobile related incident. On May 22, 2002, the Attorney General denied the applicant's claim contending that she failed to qualify as a victim of criminally injurious conduct under the motor vehicle exception. On June 20, 2002, the applicant filed a request for reconsideration. On October 18, 2002, the Attorney General denied the claim pursuant to R.C. 2743.60(F) asserting that the applicant had also engaged in substantial contributory misconduct since information in the file indicates the applicant was inebriated at the time of the accident and because the applicant failed to prove she was a victim of criminally injurious conduct under the motor vehicle exception. On November 19, 2002, the applicant filed an appeal of the Attorney General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on January 14, 2004 at 11:00 A.M.

{¶2} The applicant, applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel of commissioners. Matla Grisson testified that on February 9, 2002 at approximately 1:00 A.M. she was driving back to

her hotel with Brandon Parks, a long-time friend, when he grabbed the steering wheel and crashed the vehicle into a tree. Ms. Grisson stated that prior to the crash she and Mr. Parks were at a bar where they consumed alcoholic beverages. The applicant stated that she ordered two mixed drinks and two beers, however Mr. Parks consumed most of her beverages as well as a fifth of gin before arriving at the bar. Ms. Grisson explained that while at the bar, Mr. Parks became belligerent and accused her of flirting with another man, even though she and Mr. Parks were not romantically involved. Ms. Grisson indicated that she and Mr. Parks left the bar and while in the car an argument ensued over the flirting accusation. Ms. Grisson stated that Mr. Parks then grabbed the steering wheel and crashed the vehicle into a tree, whereby she sustained physical injury. The applicant asserted, despite the fact that she had been drinking, that she was not intoxicated and that she did not cause the accident.

{¶3} Detective James Rease of the Columbus Police Department's Accident Investigation Unit testified that he investigated the matter. Detective Rease stated that when he arrived on the scene, sometime later on February 9, 2002, the site was cleared. However, he still checked the surrounding area for evidence. Detective Rease indicated that he returned to the scene on February 14, 2002 and February 17, 2002 to conduct further investigation. Detective Rease stated that no evidence was found that supports the applicant's contention that a sudden change of direction occurred with the vehicle that would be consistent with someone grabbing the steering wheel. Detective Rease advised the panel that he took pictures of the scene and observed the area and the pavement and noted that there was no evidence of a "critical speed scuff", which typically indicates erratic steering or someone having grabbed the steering wheel of a vehicle. Detective Rease noted that the "critical speed scuff" generally remains on the

pavement anywhere from two weeks to two months after occurrence. Detective Rease elaborated that he observed a relatively straight path from the road to the tree, which more clearly indicates that the automobile merely drifted off the roadway. Lastly, Detective Rease explained that no charges were filed against the applicant because no toxicology report was ever performed, which would prove that Ms. Grisson was legally intoxicated. Detective Rease also explained that no charges against Mr. Parks were filed because there was no evidence to prove that the applicant sustained serious physical injury as a result of the incident.

{¶4} Applicant's counsel contended that, based on the testimony presented, the claim should be allowed. Counsel stated that if Mr. Parks had not grabbed the steering wheel the applicant would not have been injured on February 9, 2002. Counsel also asserted that the Attorney General failed to meet his burden of proof with respect to R.C. 2743.60(F) since no toxicology screen was performed on the applicant to prove that she was legally intoxicated at the time of the incident.

{¶5} The Assistant Attorney General maintained that the applicant failed to prove she qualifies as a victim of criminally injurious conduct, based on the testimony presented. The Assistant Attorney General argued that the incident fails to meet all of the elements of aggravated vehicular assault, under R.C. 2903.08, because the applicant did not sustain serious physical injuries, as noted in the police report and hospital records, and there was no evidence that Mr. Parks grabbed the steering wheel causing the vehicle to veer off the road. The Assistant Attorney General stated that since the incident fails to qualify under any of the listed exceptions contained in R.C. 2743.51(C)(1) this claim must be denied.

{¶6} R.C. 2743.51(C)(1) states:

{¶7} (C) "Criminally injurious conduct" means one of the following:

{¶8} (1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

{¶9} (a) The person engaging in the conduct intended to cause personal injury or death;

{¶10} (b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of this state;

{¶11} (c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OMVI violation;

{¶12} (d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code.

{¶13} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. We find that the applicant fails to qualify as a victim of criminally injurious conduct under the motor vehicle exception. The police report and Detective Rease's testimony clearly establishes that no sudden changes occurred in the direction of the vehicle while the applicant was driving on February 9, 2002. We find that the applicant, whom we believe was intoxicated based on hospital personnel's observation of Ms. Grisson, allowed the vehicle to drift off the roadway and crash into a tree. Moreover, the record also establishes that the applicant failed to sustain serious

physical injury as required by R.C. 2903.08. Therefore, the October 18, 2002 Final Decision of the Attorney General shall be affirmed pursuant to R.C. 2743.52(A).

{¶14} IT IS THEREFORE ORDERED THAT

{¶15} 1) The October 18, 2002 decision of the Attorney General is AFFIRMED pursuant to R.C. 2743.52(A);

{¶16} 2) This claim is DENIED and judgment is entered for the state of Ohio;

{¶17} 3) Costs are assumed by the court of claims victims of crime fund.

CLARK B. WEAVER, SR.
Commissioner

JAMES H. HEWITT III
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

ID #\12-dld-tad-012304

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Franklin County Prosecuting Attorney and to:

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