[Cite as *In re Garza*, 2004-Ohio-7266.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: DANIEL L. GARZA	:	Case No. V2004-60610
LUIS GARZA	:	OPINION OF A THREE-COMMISSIONER PANEL
Applicant	:	

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{¶ 1} The applicant filed a reparations application seeking reimbursement of funeral expenses incurred with respect to an August 10, 2003 motor vehicle accident involving his deceased son, Daniel Garza. The offending driver, David Christy (43 years old), had operated his motor vehicle under the influence of alcohol while Daniel Garza was a passenger in that vehicle. Mr. Christy was later convicted of aggravated vehicular homicide. On March 16, 2004, the Attorney General denied the applicant's claim for an award of reparations pursuant to R.C. 2743.60(B) contending that the victim knew or reasonably should have known that David Christy was under the influence of alcohol and therefore Daniel should have declined a ride from Mr. Christy. The Attorney General noted that Mr. Christy had a blood alcohol level of .110 and that witnesses indicated that Mr. Christy demonstrated signs of intoxication. On April 7, 2004, the applicant filed a request for reconsideration. On June 11, 2004, the Attorney General denied the applicant's claim once again. On June 16, 2004, the applicant filed a notice of appeal to the

Attorney General's June 11, 2004 Final Decision. Hence this matter came to be heard before this panel of three commissioners on September 8, 2004 at 10:50 A.M.

{¶ 2} The applicant's counsel and an Assistant Attorney General attended the hearing and presented oral argument for the panel's consideration. Applicant's counsel argued that the Attorney General failed to establish that the victim knew or reasonably should have known that David Christy was intoxicated when he accepted the ride. Counsel asserted that witnesses' statements are in conflict since some witnesses indicated that Mr. Christy seemed sodden, while other witnesses stated that Mr. Christy did not appear inebriated. Counsel argued that: 1) the victim was under Ohio's legal drinking age (Daniel was 18 years old, but the other participants were all older males) and therefore he would have been unable to accurately access whether an individual was intoxicated, 2) the victim had limited experience with and exposure to Mr. Christy in order to have made an accurate determination concerning Mr. Christy's inebriated state, 3) in light of the victim's age and experience or lack thereof with alcohol he assumed no recognizable risk (within his field of knowledge) by riding with Mr. Christy, 4) there is no evidence concerning the length of time Daniel was in Mr. Christy's presence or how closely they interacted in each other's presence, and 5) the victim demonstrated self safety and prudence by refusing to ride on a motorcycle without a helmet just minutes before accepting a ride with Mr. Christy. Counsel argued that since Daniel exercised sound judgment by refusing to ride on the motorcycle without a helmet, then most likely Daniel, if he knew or had reason to believe that Mr. Christy was intoxicated, would have also refused a ride from Mr. Christy.

{¶ 3} Moreover, counsel contended that merely because an individual's blood alcohol level is confirmed to have been over .08 (Ohio's legal limit) while operating a motor vehicle does not allow carte blanche denial of a claim pursuant to R.C. 2743.60(B) when there has no

showing of a victim's (passenger) awareness or possible knowledge of an offending driver's intoxication. Counsel noted that Mr. Christy's blood alcohol level (.110) was only nominally over Ohio's legal limit. Counsel urged the panel to focus on this victim's age and experience with alcohol and with the offender when deciding whether Daniel knew or reasonably should have known that Mr. Christy was intoxicated when he accepted a ride from him. Lastly, counsel advised the panel that some uninsured motorist funds have been paid to the applicant and that the offender was ordered to pay restitution for funeral costs.

{¶ 4} The Assistant Attorney General maintained that the applicant's claim must be denied pursuant to R.C. 2743.60(B). The Assistant Attorney General asserted that the victim was almost 19 years old and that R.C. 2743.60(B)(1) allows no exceptions or mitigating factors to allow a claim when a victim knew or reasonably should have known that a driver was under the influence of alcohol and/or drugs. The Assistant Attorney General stated that witnesses, Jammie Allsup and Jeremy Volkmar, indicated that they saw Mr. Christy consume alcohol and exhibit signs of intoxication. Based on witnesses' observance of Mr. Christy, the Assistant Attorney General asserted that Daniel also knew or should have known that Mr. Christy was under the influence of alcohol, which was ultimately evidenced by Mr. Christy's blood alcohol level of .110. The Assistant Attorney General also contended that the victim and offender were together at least 5-6 hours prior to the accident, which was ample time for Daniel to have observed Mr. Christy consume alcohol and to note Mr. Christy's impaired behavior. The Assistant Attorney General urged the panel to hold the victim to an adult standard under R.C. 2743.60(B)(1) and to find that the victim, based on the record before this panel, to have known

or reasonably should have known that David Christy was under the influence of alcohol when he accepted the ride.

{¶ 5} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. According to information in the file, Daniel Garza, the 18 year old victim, was in the company of David Christy and Joseph Adkins sometime before departing for Manuel Amesquita's home on August 10, 2003. After visiting with Mr. Amesquita at his home, David Christy, Daniel Garza, and Joseph Adkins departed simultaneously. Mr. Adkins drove a motorcycle, while Mr. Christy drove the 1932 roadster with Daniel Garza as a passenger.

{¶ 6} The file also contains witness statements from David Christy, Joseph Adkins, Manuel Amesquita, Jammie Allsup, and Jeremy Volkmar. In David Christy's statement to the police, he stated that he had 2-4 beers at home (prior to leaving for Mr. Amesquita's home) and 2-3 beers while at Mr. Amesquita's home. Mr. Christy also indicated that he did not really know Daniel Garza since he was unaware of his first name and referred to him as "the Boy Garza." In Joseph Adkin's statement, he stated that *he* had been with Mr. Christy at least 5 - 5 ½ hours before the incident and had seen Mr. Christy consume three beers at his home and two beers while at Mr. Amesquita's home. In Manuel Amesquita's statement to the police, he stated that he saw Mr. Christy drink two beers in his presence, but indicated that Mr. Christy did not act drunk to him. Witness Jammie Allsup told police that he saw Mr. Christy consume at least three beers and stated that Mr. Christy was happy and acted foolishly. However, he did not see Daniel Garza drink any alcohol. Mr. Allsup also informed the police that Daniel Garza did not have a helmet with him and hence he declined a ride on the motorcycle with Mr. Adkins. Witness

Jeremy Volkmar stated that he had known Mr. Christy for five years and spoke with Mr. Christy at Mr. Amesquita's home for approximately 45 minutes to one hour. Mr. Volkmar indicated that Mr. Christy seemed intoxicated to him since he slurred his speech, his eyes were red and glazed over, he tripped, was loud and rambunctious.

{¶ 7} R.C. 2743.60(B)(1)(a) states:

{¶ 8} (B)(1) The attorney general, a panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to a claimant if any of the following apply:

(a) The claimant is the offender or an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice.(b) Except as provided in division (B)(2) of this section, both of the following apply:

{¶ 9} The victim was a passenger in a motor vehicle and knew or reasonably should have known that the driver was under the influence of alcohol, a drug of abuse, or both.

{¶ 10} The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

{¶ 11} We believe the legislative intent of R.C. 2743.60(B) is to prevent individuals from recovering from the fund who truly knew or had good reason to know of a driver's intoxication yet intentionally disregard such a risk. R.C. 2743.60(B) cases are fact specific and require a heightened level of scrutiny and analysis of those facts on a case-by-case basis under the law. The premise of

{¶ 12} R.C. 2743.60(B) is based upon a reasonable person standard, which ultimately poses the question of what would a prudent person (one of ordinary care and skill) of the same

age, intelligence, and experience have done in the same or similar circumstances. Based upon the facts of this case, we believe that Daniel acted prudently.

{¶ 13} We note that two individuals indicated that Mr. Christy exhibited signs of intoxication, while another person believed that he did not appear inebriated. These differing perceptions of Mr. Christy's state compel us to believe that quite possibly, the victim may not have known that the offender was sodden. Moreover, we note that there are other factors that have also shaped our opinion as to why Daniel Garza may not have known that Mr. Christy was inebriated: Those factors are: 1) the victim was under Ohio's legal drinking age (the record is silent concerning whether the victim was familiar with the substance), 2) the victim was significantly younger than the offender and witnesses; 3) the length of Daniel's and Mr. Christy's interaction before and during the visit to Mr. Amesquita's home is unknown; 4) it appears that Mr. Christy and Daniel were not well acquainted with each other, based on Mr. Christy's statement; 5) Mr. Christy's blood alcohol level was only slightly higher than the legal limit, which may have prevented him from demonstrating obvious signs of intoxication to Daniel or others; and 6) the victim exercised reasonable judgment, just prior to the accident, by declining to ride on the motorcycle with Mr. Adkins without a helmet.

{¶ 14} Based upon the above facts and analysis, we find that the Attorney General has failed to prove by a preponderance of the evidence that Daniel Garza knew or reasonably should have known that David Christy was under the influence when he accepted the ride on August 10, 2003. We note that this decision is not an exception to R.C. 2743.60(B), but merely our conclusion in light of the facts before this panel. Therefore, the June 11, 2004

decision of the Attorney General shall be reversed and this claim shall be remanded to the Attorney General for economic loss calculations and decision.

CLARK B. WEAVER, SR.
Commissioner

JAMES H. HEWITT III
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: DANIEL L. GARZA	:	Case No. V2004-60610
LUIS GARZA	:	ORDER OF A THREE-COMMISSIONER PANEL
Applicant	:	

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IT IS THEREFORE ORDERED THAT

1) The June 11, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

2) This claim is remanded to the Attorney General for economic loss calculations and decision;

3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

4) 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 #\1-dld-tad-092804

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

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To S.C. Reporter 12-30-2004