

[Cite as *In re Bassett*, 2006-Ohio-1322.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: RUSSELL A. BASSETT : Case No. V2005-80096

RUSSELL A. BASSETT : DECISION

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Applicant : Judge J. Craig Wright

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{¶ 1} This matter came on to be considered upon the Attorney General's appeal from the October 28, 2005, order issued by the panel of commissioners. The panel's determination reversed the final decision of the Attorney General, which denied applicant's claim for an award of reparations based upon the finding that applicant failed to qualify as a victim of criminally injurious conduct. The Attorney General found that applicant, a police officer, was injured while executing a search warrant. However, the Attorney General concluded that applicant's injury was not caused by criminally injurious conduct because the alleged offender did not pose a substantial risk of harm.

{¶ 2} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios* (1983), 8 Ohio Misc.2d 4, 8 OBR 63, 455 N.E.2d 1374. The panel found, upon review of the evidence, that applicant presented sufficient evidence to meet his burden. Specifically, the panel found that the proximate cause of

applicant's injury was "the suspect's conduct of drug trafficking and resisting arrest" based upon applicant's testimony that he injured his right ankle while breaking in an apartment door and wrestling with the suspect.

{¶ 3} The standard for reviewing claims that are appealed to the court is established by R.C. 2743.61(C), which provides in pertinent part: "If upon hearing and consideration of the record and evidence, the judge decides that the decision of the panel of commissioners is unreasonable or unlawful, the judge shall reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the judge of the court of claims is final."

{¶ 4} The issue in this case is whether applicant's injury was the result of criminally injurious conduct.

{¶ 5} R.C. 2743.51(L) defines "victim" as follows:

{¶ 6} "(L) 'Victim' means a person who suffers personal injury or death as a result of any of the following:

{¶ 7} "(1) Criminally injurious conduct;

{¶ 8} "(2) The good faith effort of any person to prevent criminally injurious conduct;

{¶ 9} "(3) The good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct."

{¶ 10} Revised Code 2743.51(C)(1) states in part that:

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

{¶ 12} "(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."

{¶ 13} At the judicial hearing, the Attorney General asserted that applicant's injury occurred when he kicked open a door while leading a group of officers who were executing the warrant that resulted in the suspect's arrest. According to the Attorney General, applicant was injured before he gained entry into the residence. The Attorney General maintained that the suspect did not pose a substantial risk of personal injury because applicant had not had any physical contact with the suspect before applicant entered the apartment.

{¶ 14} In support of his argument, the Attorney General relies on a case involving a police officer who stepped in a hole while securing the back of a residence in an attempt to serve a felony warrant. *In re Kallay* (1997), 91 Ohio Misc.2d 148. In *Kallay*, the court determined that the injuries sustained by the officer were not the result of criminally injurious conduct, but rather were caused by the intervening act of stepping in a hole.

{¶ 15} However, the court finds that the facts in *Kallay* are distinguishable from the facts in this case. In *Kallay*, the court noted that the alleged felon was not at the residence when the officer was injured and that there was no confrontation between the officer and any alleged offender. *Id.* at 150. In this case, there is no dispute that the suspect resisted arrest and that applicant had to use force to place him under arrest.

Although the Attorney General continues to assert that applicant's injury occurred when he kicked open the apartment door rather than during his struggle with the suspect, the panel found that "Officer Bassett sustained and perhaps aggravated his injury in the unbroken execution and apprehension process."

{¶ 16} At the panel hearing, applicant testified regarding the execution of the search warrant and his encounter with the suspect. On cross-examination, applicant was asked whether he injured his ankle "breaking down the door or [during] the entanglement with the suspect?" Applicant replied: "I would have to say it was probably a combination of both because I had to use my foot to break in the door and we also had to wrestle with him to get him under arrest." The court finds that applicant's testimony at the panel hearing supports the finding that the suspect posed a substantial threat of personal injury and that applicant's injury was related to criminally injurious conduct.

{¶ 17} The credibility of applicant's testimony and the issue of whether applicant's injury was caused by the criminally injurious conduct involves a factual determination on a case-by-case basis. See *In re Walling* (1997), 91 Ohio Misc.2d 181. The court finds that the panel's decision contains sufficient findings of fact to support its conclusion. On appeal from a determination of fact, a court is not permitted to substitute its judgment for that of the trier of the fact. *In re Saylor* (1982) 1 Ohio Misc.2d 1.

{¶ 18} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in

finding that applicant had shown by a preponderance of the evidence that he was entitled to an award of reparations.

{¶ 19} Based on the evidence and R.C. 2743.61, it is the court's opinion that the decision of the panel of commissioners was reasonable and lawful. Therefore, this court affirms the decision of the three-commissioner panel, and this case shall be remanded to the Attorney General for economic loss calculations and decision.

J. CRAIG WRIGHT

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Judge

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IN RE: RUSSELL A. BASSETT : Case No. V2005-80096

RUSSELL A. BASSETT : ORDER

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Applicant : Judge J. Craig Wright

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Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed.

IT IS HEREBY ORDERED THAT:

- 1) The order of October 28, 2005, (Jr. Vol. 2258, Pages 169-170) is approved, affirmed and adopted;
- 2) This claim is REMANDED to the Attorney General for economic loss calculations and decision;
- 3) Costs assumed by the reparations fund.

J. CRAIG WRIGHT  
Judge

AMR/cmd

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

Filed 2-10-2006  
Jr. Vol. 2259, Pg. 128  
To S.C. Reporter 3-17-2006