

[Cite as *In re Martin*, 2007-Ohio-4510.]

**IN THE COURT OF CLAIMS OF OHIO**

**VICTIMS OF CRIME DIVISION**

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IN RE: SANDORA S. MARTIN	:	Case No. V2007-90145
SANDORA S. MARTIN	:	Commissioners:
Applicant	:	Lloyd Pierre-Louis, Presiding
	:	Thomas H. Bainbridge
	:	Clarence E. Mingo II
_____	:	
_____	:	<u>ORDER OF A THREE-</u>
	:	<u>COMMISSIONER PANEL</u>
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{¶1} Sandora Martin (“applicant” or “Mrs. Martin”) filed a reparations application seeking reimbursement of expenses incurred when she sustained injury to her ankle on November 15, 2004, while delivering newspapers. The applicant’s injuries occurred when she stepped into an open manhole. On November 22, 2006, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove that she qualifies as a victim of criminally injurious conduct. On December 19, 2006, the applicant filed a request for reconsideration. On January 25, 2007, the Attorney General denied the claim once again. On February 20, 2007, the applicant filed a notice of appeal to the Attorney General’s January 25, 2007 Final Decision. At 10:10 A.M. on May 9, 2007, this matter was heard by this panel of three commissioners.

{¶2} The applicant, applicant’s counsel, and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the

panel's consideration. Mrs. Martin testified that on November 15, 2004 at approximately 5:30 A.M. while delivering newspapers, she slipped and fell into a storm drain that was four to five feet deep and injured her ankle. Mrs. Martin explained that it was dark outside and that she did not notice that the manhole cover had been removed. The applicant stated she was a little disoriented after the fall, but managed to contact her son (who lived nearby) via cellular phone for assistance. The applicant testified that her son soon arrived and he telephoned 911 for help. An ambulance arrived and she was transported to Mt. Carmel East Hospital for treatment. Via various exhibits, the applicant explained that she incurred economic loss as a result of the incident. The applicant related that most of her medical bills have been paid, however she indicated that she will need surgery in the future to repair nerve damage. Lastly, Mrs. Martin noted a civil suit is pending.

{¶3} According to the Gahanna Police Department's Incident Report, Patrol Officer Cochran ("Officer Cochran") was dispatched to Medwin Place at Hamilton Road on November 15, 2004 at 5:22 A.M. in response to an injury and a theft. Officer Cochran reported that he arrived at the scene at 5:32 A.M. and that an unknown person(s) had removed the manhole covers from both sides of the street. Mrs. Martin had been delivering newspapers when she fell into a storm drain and injured her ankle. Officer Cochran noted that the manhole covers were replaced by a service crew at 6:25 A.M. and then all units were cleared from the scene. The police report listed the offenses as criminal mischief (R.C. 2909.07), theft (R.C. 2913.02), and tampering with manhole covers (R.C. 4511.17).

{¶4} From review of the file and with full and careful consideration of all the evidence presented, we find that Mrs. Martin qualifies as a victim of criminally injurious conduct. As a case of first impression, the panel is asked to determine whether an unauthorized removal of a manhole cover qualifies as criminally injurious conduct. In this particular case, we find the answer to be yes.

{¶5} Revised Code 2743.51(L) states:

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

- (1) Criminally injurious conduct;
- (2) The good faith effort of any person to prevent criminally injurious conduct;
- (3) The good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

{¶6} Revised Code 2743.51(C)(1) states in pertinent part:

(C) "Criminally injurious conduct" means one of the following:

- (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.

{¶7} Revised Code 4511.17 states in pertinent part:

- (A) No person, without lawful authority, shall do any of the following:

\* \* \*

(3) Knowingly move, damage, destroy, or otherwise improperly tamper with a manhole cover.

(B)(1) Except as otherwise provided in this division, whoever violates division (A)(1) or (3) of this section is guilty of a misdemeanor of the third degree. If a violation of division (A)(1) or (3) of this section creates a risk of physical harm to any person, the offender is guilty of a misdemeanor of the first degree.

**{¶8}** Revised Code 2909.07(A)(4) states:

(A) No person shall:

(4) Without privilege to do so, knowingly move, deface, damage, destroy, or otherwise improperly tamper with any safety device, the property of another, or the property of the offender when required or placed for the safety of others, so as to destroy or diminish its effectiveness or availability for its intended purpose.

**{¶9}** The Attorney General's argument, that the removal of the manhole cover "poses no substantial threat of personal injury," is not well-taken by this panel. We believe, that because both manhole covers were missing from the street that more likely than not, the manhole covers were stolen and that the applicant sustained direct injury as a result of such. R.C. 4511.17 was specifically enacted to protect the public from such a foreseeable and substantial risk of personal injury that a missing manhole cover is likely to inflict upon a person. We find that Mrs. Martin suffered injury as a result of the offender's criminal and tortious conduct that R.C. 4511.17 was specifically created to address. Based upon the above, Mrs. Martin has proven by a preponderance of the evidence that she qualifies as a victim of criminally injurious conduct. Therefore, the

January 25, 2007 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for total economic loss calculations and decision.

**{¶10}** IT IS THEREFORE ORDERED THAT

**{¶11}** “1) The January 25, 2007 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

**{¶12}** “2) This claim is remanded to the Attorney General for total economic loss calculations and decision;

**{¶13}** “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;

**{¶14}** “4) Costs are assumed by the court of claims victims of crime fund.

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LLOYD PIERRE-LOUIS  
Presiding Commissioner

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THOMAS H. BAINBRIDGE  
Commissioner

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CLARENCE E. MINGO II  
Commissioner

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

Filed 7-5-2007

Jr. Vol. 2265, Pgs. 138-143

To S.C. Reporter 8-31-2007

Case No. V2007-90145

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ORDER