

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: MICHAEL J. ARNETT

Case No. V2006-21000

MICHAEL J. ARNETT

Applicant

Commissioners:
Lloyd Pierre-Louis, Presiding
Gregory Barwell
Randi Ostry LeHoty

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} Michael Arnett (“applicant”) filed a reparations application seeking reimbursement of expenses incurred with respect to a May 28, 2006 assault incident. On September 26, 2006, the Attorney General denied the claim pursuant to R.C. 2743.60(E)(1)(c) contending that the applicant engaged in violent felonious conduct, assault against a police officer, in violation of R.C. 2903.13(A)(c)(3) on May 24, 2003. On October 18, 2006, the applicant filed a request for reconsideration. On November 1, 2006, the Attorney General denied the claim once again. On November 3, 2006, the applicant filed a notice of appeal to the Attorney General’s November 1, 2006 Final Decision. At 10:50 A.M. on June 20, 2007, this matter was heard by this panel of three commissioners.

{¶2} The applicant, applicant’s counsel, an Assistant Attorney General, Jennifer Wyatt (“Ms. Wyatt”), Officer Shawn Baab (“Officer Baab”), and Adam Arnett (“Mr.

Arnett”) appeared at the hearing. The parties presented testimony and oral argument for the panel’s consideration.

{¶3} Ms. Wyatt, the applicant’s girlfriend, testified concerning the events of May 28, 2006, and her testimony essentially corroborated the applicant’s testimony about the events surrounding the criminally injurious conduct. Ms. Wyatt stated that she and the applicant were at home and were celebrating Memorial Day weekend by having a barbeque with various friends. During the festivities, Todd Woodruff (“offender”) and his girlfriend sporadically bickered throughout the evening. Later that night, the offender began arguing with his uncle outside in the front yard. Upon noticing the disturbance, the applicant exited the house to investigate the commotion. After witnessing the uproar, the applicant told the offender to leave the premises, however a fight ensued and the applicant was stabbed.

{¶4} The applicant testified that on May 28, 2006 he was stabbed nine times by the offender. The applicant explained that the offender is the nephew of one of his neighbors and that he had previously considered the offender a mere acquaintance. The applicant stated that he had observed the offender harassing a minor earlier on the day of the incident. However sometime later, he stated that he heard a commotion outside and went to investigate. The applicant stated the offender was causing a ruckus. Hence, he told him to leave the premises. However, a fight ensued and the applicant sustained severe injuries. The applicant stated that since the incident, he has undergone multiple surgeries and is still recovering.

{15} Mr. Arnett, the applicant's brother, testified via telephone concerning the events on May 24, 2003. Mr. Arnett stated that he, the applicant, and two friends (Trevor and Brooke) were at his house. Around 2:00 A.M. and after a few too many drinks, he and his brother got into a rather heated debate. Mr. Arnett stated that his brother grew increasingly agitated and, as a calming tactic, he dialed 911 and then hung up the telephone (not meaning to have actually called the police). However, the 911 dispatcher returned the call and dispatched the police to Mr. Arnett's home as a safety precaution. Mr. Arnett stated that when two police officers arrived they threatened to shoot his dog, entered his home without permission, and arrested his brother and Brooke without proper cause. Mr. Arnett stated that he believed the officers were upset because they had to go on yet another "run" for drunks that night. Mr. Arnett explained that while the officers were checking identifications, the applicant, who was very inebriated, lost his balance twice while attempting to grab his identification and inadvertently staggered into one of the officers. Mr. Arnett stated that, even though his brother was arrested for assault, he never witnessed his brother "headbutt" or engage in any type of intentional assault upon the officers.

{16} Officer Baab of the Montgomery County Sheriff's Office testified, via telephone, that he was "headbutted" by the applicant on May 24, 2003. Officer Baab stated that he and a fellow officer were dispatched to Mr. Arnett's home after a report of disorderly conduct. Officer Baab was the first officer on the scene and he indicated that when he arrived he heard people arguing at the back of Mr. Arnett's residence. When other officers arrived, they approached the house and began collecting identification

from the parties. Officer Baab stated that the applicant exited the backyard and walked into the house. Officer Baab related that he followed the applicant into the house in order to ask him to remain outside until the matter was concluded. The applicant finally exited the house after some reluctance, but shortly thereafter the applicant attempted to grab his identification. Officer Baab testified that the applicant “headbutted” him, a struggle ensued, and the applicant was arrested for felony assault against a police officer, but was charged with only misdemeanor assault. Officer Baab indicated that he did not want to ruin the applicant’s opportunity to serve in Iraq; therefore, the applicant was charged with only misdemeanor assault because he was supposed to return to military duty soon.

{¶7} Applicant’s counsel stated that the claim should be allowed based upon Ms. Wyatt’s, Mr. Arnett’s, and the applicant’s testimony. Counsel argued that the Attorney General failed to prove that the applicant engaged in contributory misconduct on May 28, 2006 or that the applicant engaged in a felony offense of violence on May 24, 2003. The Assistant Attorney General conceded that the applicant did not engage in contributory misconduct on May 28, 2006. However, the Assistant Attorney General maintained that the claim should be denied because the applicant engaged in a felony offense of violence when he assaulted Officer Baab on May 24, 2003.

{¶8} Revised Code 2743.60(E)(1)(c) states:

(E) (1) Except as otherwise provided in division (E)(2) of this section, the attorney general, a panel of commissioners, or a judge of the court of claims shall not make an award to a claimant if any of the following applies:

(c) It is proved by a preponderance of the evidence that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim, in an offense of violence, a violation of section 2925.03 of the Revised Code, or any substantially similar offense that also would constitute a felony under the laws of this state, another state, or the United States.

{¶9} From review of the file and with full and careful consideration given to all the evidence at the hearing, we find that the Attorney General failed to sufficiently prove that the applicant engaged in contributory misconduct on May 28, 2006. We further find that the Attorney General failed to prove, by a preponderance of the evidence, that the applicant engaged in felony violence on May 24, 2003. We find the following facts to be compelling evidence that the applicant did not engage in violent felonious conduct: (1) the applicant was extremely intoxicated; (2) credible testimony was presented that the applicant lost his balance; (3) the applicant was charged with only misdemeanor assault upon an officer with the officer's consent; and (4) the Attorney General failed to establish applicant's mens rea for violent felonious conduct. Based upon the above, we find the November 1, 2006 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 June 19, 2006 motions for telephone testimony are hereby GRANTED;

{¶12} 2) The November 1, 2006 decision of the Attorney General is REVERSED and judgment is rendered for the applicant;

{¶13} 3) This claim is remanded to the Attorney General for total economic loss calculations and decision;

{¶14} 4) 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;

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

LLOYD PIERRE-LOUIS
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

RANDI OSTRY LE HOTY
Commissioner

[Cite as *In re Arnett*, 2007-Ohio-4696.]

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

Filed 8-31-2007
Jr. Vol. 2266, Pgs. 79-85
To S.C. Reporter 9-13-2007

