



## Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center  
65 South Front Street, Fourth Floor  
Columbus, OH 43215  
614.387.9860 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

IN RE: DEBRA SANTIAGO

DEBRA SANTIAGO

Applicant

Case No. V2007-90668

### DECISION

Judge J. Craig Wright

{¶1} This matter came on to be considered upon the Attorney General's appeal from the January 31, 2008 order issued by the panel of commissioners. Applicant is seeking reimbursement of expenses incurred as a result of the murder of her daughter, Nicole Santiago. The panel's determination reversed the final decision of the Attorney General, which granted applicant's claim for unreimbursed funeral expense in the amount of \$7,500. However, the Attorney General denied applicant's claim for work loss based upon the finding that she failed to qualify as a victim of criminally injurious conduct in her own right.

{¶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 her burden.

{¶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 panel of commissioners concluded that applicant qualified as a victim in her own right based upon her testimony that she arrived at the hospital approximately 35 minutes after receiving a call advising her that her daughter had been injured. When she arrived at the hospital applicant was informed that her daughter had been shot in the head, was on life support, and was brain dead. Applicant remained with her daughter for three days until her daughter’s organs were harvested for donation. The panel noted that applicant was asked to retrieve belongings from the vehicle that her daughter was riding in at the time of the criminally injurious conduct. The panel found that applicant viewed “the gruesome conditions of and contents of the vehicle” and she observed that there was blood “everywhere.”

{¶5} This court has previously held that “a case-by-case analysis [should] be utilized to ascertain the impact a criminal incident may have upon a person other than the individual directly involved in the crime.” *In re Anderson* (1991), 62 Ohio Misc.2d 268, 270, quoting *In re Clapacs* (1989), 58 Ohio Misc.2d 1. In *Anderson*, the court also recognized that the rationale in *Clapacs* would not be viewed to open a floodgate for fraudulent or imagined injury claims. *Id.*

{¶6} Generally, in order for an individual to qualify as a victim in her own right, she must have had a contemporaneous sensory perception of the criminally injurious conduct or have arrived on the scene immediately after the occurrence of the incident. *In re Anderson*, *supra*.

{¶7} The panel considered applicant’s testimony concerning her perceptions of the gruesome conditions that existed at the crime scene. The panel concluded that applicant had a contemporaneous sensory perception of the aftermath of the criminally injurious conduct when she observed both her daughter’s condition at the hospital and the condition of the vehicle. Furthermore, the panel found that applicant’s observations caused her psychological injury.

{¶8} Considering the unique facts of this case and the information in the claim file, the court finds that there is sufficient evidence to support the panel’s determination. This court will not weigh the evidence or substitute its judgment for that of the trier of fact.

{¶9} Upon review of the file in this matter, the court finds that the panel of commissioners was not arbitrary in finding that applicant has shown by a preponderance of the evidence that she was entitled to an award of reparations.

{¶10} 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.

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J. CRAIG WRIGHT  
Judge



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### ORDER

Judge J. Craig Wright

{¶11} Upon review of the evidence, the court finds the order of the panel of commissioners must be affirmed and the Attorney General's appeal must be denied.

{¶12} IT IS HEREBY ORDERED THAT:

{¶13} The order of January 31, 2008, (Jr. Vol. 2267, Pages 161-167) is approved, affirmed and adopted;

{¶14} This claim is REMANDED to the Attorney General for economic loss calculations and decision;

{¶15} Costs assumed by the reparations fund.

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J. CRAIG WRIGHT  
Judge

AMR/cmd

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

Jr. Vol. 2268, Pg. 165  
Filed 5-23-08  
Sent to S.C. reporter 7/19/13