



## Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center  
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[www.cco.state.oh.us](http://www.cco.state.oh.us)

IN RE: ANTONIO BELL

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Applicant  
Case No. 2013-00201 VI

Commissioners:  
Holly True Shaver, Presiding  
Daniel R. Borchert  
Anderson M. Renick

### ORDER OF A THREE-COMMISSIONER PANEL

{¶1} On August 28, 2012, applicant Antonio Bell filed a compensation application as a result of injuries he sustained during an assault on August 18, 2012. On December 11, 2012, the Attorney General issued a finding of fact and decision determining that applicant was not eligible for an award of reparations pursuant to R.C. 2743.60(F), because he had engaged in substantial contributory misconduct.

{¶2} On January 10, 2013, applicant submitted a request for reconsideration wherein he argued that he did not engage in substantial contributory misconduct. On March 13, 2013, the Attorney General rendered a Final Decision that modified the finding of fact and decision. The Attorney General found that applicant qualified as a victim of criminally injurious conduct and that he had incurred \$842.88 in medical expenses. However, the Attorney General maintained that applicant had engaged in contributory misconduct by voluntarily participating in a fight, and reduced applicant's award by 30 percent.

{¶3} On March 27, 2013, applicant filed a notice of appeal from the Final Decision of the Attorney General. Applicant maintains that he did not engage in contributory misconduct and that he acted in self-defense when he was attacked.

{¶4} On September 19, 2013, a hearing was held before this panel of commissioners at 11:00 a.m. Assistant Attorney General Melissa Montgomery appeared at the hearing and represented the state of Ohio. Applicant attended the hearing and was represented by Attorney Gloria Smith.

{¶5} The Attorney General has the burden of showing, by a preponderance of the evidence, that an applicant's claim for reparations should be denied pursuant to the criteria outlined in R.C. 2743.60. *In re Shapiro*, 61 Ohio Misc.2d 725 (Ct. of Cl.1989).

{¶6} R.C. 2743.60(F) states, in part:

{¶7} "In determining whether to make an award of reparations pursuant to this section, the attorney general or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim."

{¶8} R.C. 2743.51(M) states:

{¶9} "'Contributory misconduct' means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim."

{¶10} Contributory misconduct determinations depend heavily on the particular facts

involved with each particular claim. See *In re Williams*, V2001-32691tc (10-11-02). It is the panel's obligation to independently analyze the facts to determine if it is in agreement with the Attorney General's decision. *In re Schultz*, V2008-30260tc (7-18-08), 2008-Ohio-4269 aff'd jud (10-30-08). The exercise of self-defense does not constitute contributory misconduct. *In re Marshall*, 57 Ohio Misc.2d 24(1989). When determining if the unlawful or intentionally tortious conduct of the victim was causally related to the criminally injurious conduct, foreseeability is a necessary element. *In re Ewing*, 33 Ohio Misc.2d 48, (1987).

{¶11} Applicant testified that it is his usual practice to visit his daughter Sekoia and his grandchildren on Saturday mornings after his exercise class. On the day of the incident, applicant drove to his daughter's apartment and arrived there at approximately 10:15 a.m. Although he expected Sekoia to be there, he discovered that she had been called to work unexpectedly that morning. Cortez, his daughter's boyfriend, answered the door and let applicant into the apartment. After a few minutes of conversation, applicant told Cortez that he had been informed that Cortez and his friends had been smoking marijuana in the presence of applicant's grandchildren, Sania and Cortez, Jr. Sania was three years old and Cortez, Jr. was four months old at the time. At the end of the conversation, applicant told Cortez that he would be periodically visiting to check on his grandchildren, and added that he might involve the police if Cortez's behavior did not change. At that point, Cortez became visibly angry and began to shout profanities at applicant, following him into the parking lot. Applicant left the apartment and headed home in his vehicle.

{¶12} Applicant arrived at his home and was there for approximately five minutes when he received a telephone call from his sister who informed him that Sekoia had called

her in a panic and stated that Cortez had told her that he was taking the children. Sekoia requested that applicant meet her at her apartment. Applicant returned to the apartment. Sekoia was there but Cortez had taken the grandchildren to his mother's house. Sequoia asked applicant to follow her in his vehicle to Cortez's mother's house to help her get her children back.

{¶13} To avoid a confrontation, applicant parked his vehicle a short distance away from the house. Applicant's two sisters then arrived in another vehicle and parked near applicant. They soon learned that Cortez's mother had taken the children to another location. Applicant waited in his car for approximately 20 minutes for Cortez's mother to return.

{¶14} When Cortez's mother arrived, she got out of her vehicle and started cursing at Sekoia. Cortez's mother was belligerent toward both Sekoia and applicant, and she threw the grandchildren's possessions into the street. Cortez's mother confronted applicant, but applicant remained calm and informed her that they just wanted the grandchildren. Once Sekoia and applicant gathered up the belongings and the children, applicant escorted Sekoia and the children back to her apartment to make sure they made it home safely. Applicant's sisters also drove their vehicle to Sekoia's apartment.

{¶15} After Sekoia and the grandchildren were safely inside the apartment, applicant walked from his vehicle in the parking lot to his sisters' vehicle. He sat in the back seat of his sisters' vehicle for approximately ten minutes to discuss the situation with them. Applicant then walked back to his vehicle with the intention of going home to take a shower. However, before he made it back to his vehicle, Cortez pulled up in his car, exited his vehicle and ran at him. Applicant noticed that Cortez had a gun in his

waistband. Cortez swung at applicant and a struggle ensued. Cortez and applicant engaged in a fist-fight, and then Cortez's sister struck applicant in the face with the gun. Applicant was knocked unconscious. Cortez's friends and family also started assaulting applicant. Ultimately, applicant's sisters intervened and then law enforcement officers arrived.

{¶16} Applicant explained that he was attacked before he knew what was happening. Applicant stated that he could not have walked or run away because he was suddenly attacked. Applicant explained that it was not his intention to fight Cortez, but rather, he was only trying to make sure that his grandchildren returned home safely.

{¶17} Applicant presented photographs of his injuries that were taken shortly after the assault. Applicant testified that he spent one night in the hospital, missed one day of work, and underwent dental treatment as a result of the assault.

{¶18} The Attorney General maintains that a reduction is appropriate in this case based upon applicant's contributory misconduct. The Attorney General argued that applicant had a "duty to retreat" and that he should not have escorted Sekoia back to her apartment after Cortez had threatened him. The Attorney General asserts that it was foreseeable that applicant would be assaulted if he returned to the parking lot of the apartment complex. The Attorney General relies on *In re Svoboda*, 91 Ohio Misc.2d 166 (1997), and *In re Fiorini*, V82-33081jud (7-26-84), to support the contention that a reasonably prudent person would have anticipated that an injury was likely to result when applicant returned to the parking lot of his daughter's apartment. The Attorney General asserts that when applicant initially spoke to Cortez, he created a conflict and it was foreseeable that Cortez might attack him. The Attorney General suggests that applicant should have gone to the nearby police station to ask for help instead of

escorting his daughter back to her apartment.

{¶19} Applicant argues that his actions of leaving the apartment after he first spoke to Cortez, parking a distance from Cortez's mother's house, not reacting to Cortez's mother when she was belligerent to him, and attempting to leave after ensuring his daughter and grandchildren were home safely shows that he did not willingly participate in a fight with Cortez. The panel agrees.

{¶20} The panel finds applicant's version of the events credible. The panel finds that applicant's action of talking to his daughter's boyfriend about illegal drug use in the presence of his grandchildren was reasonable. When the conversation got contentious, applicant left the premises. Furthermore, the panel finds that applicant acted reasonably when he escorted his daughter both to and from Cortez's mother's home to make sure that his grandchildren were safe. In short, the panel finds that the Attorney General has not identified any conduct of applicant that was unlawful or intentionally tortious. Lastly, the panel finds that the Attorney General's reliance on *In re Svoboda* and *In re Fiorini* is misplaced. *In re Svoboda* involved a documented history of animosity between applicant and the offender; *In re Fiorini* involved voluntary participation in a fight.

{¶21} Upon review of the case file and testimony and argument from the hearing, we find the Attorney General has failed to prove, by a preponderance of the evidence, that applicant engaged in contributory misconduct pursuant to R.C. 2743.51(M). Accordingly, a reduction of applicant's claim pursuant to R.C. 2743.60(F) is not warranted. Therefore, the March 13, 2013 Final Decision of the Attorney General is reversed, and this claim is remanded to the Attorney General for economic loss calculations and payment.

IT IS THEREFORE ORDERED THAT

- 1) Applicant's Exhibits 1-4 are admitted;
- 2) The March 13, 2013 Final Decision of the Attorney General is REVERSED;
- 3) This claim is REMANDED to the Attorney General for economic loss calculations and payment;
- 4) Costs are assumed by the court of claims victims of crime fund.

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HOLLY TRUE SHAVER  
Presiding Commissioner

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DANIEL R. BORCHERT  
Commissioner

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ANDERSON M. RENICK  
Commissioner

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

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