



Court of Claims of Ohio

Victims of Crime Division

The Ohio Judicial Center
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IN RE: EVONNE M. BRADLEY

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Applicant
Case No. 2012-70416 VI

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

ORDER OF A THREE COMMISSONER PANEL

- {¶1} On January 24, 2012, applicant Evonne Bradley filed a compensation application as a victim in her own right for psychological injuries she sustained as a result of the murder of her son, Duane Hamilton, on June 15, 2010. On July 17, 2012, the Attorney General issued a finding of fact and decision determining that applicant was not eligible for an award of reparations in her own right pursuant to the criteria set forth in *In re Clapacs*, 58 Ohio Misc.2d 1, 567 N.E.2d 1351 (Ct. of Cl. 1989), in that she witnessed neither the crime against her son nor the immediate aftermath of the crime.
- {¶2} On August 15, 2012, applicant submitted a request for reconsideration. On August 31, 2012, the Attorney General rendered a Final Decision finding no reason to modify the initial decision. On October 5, 2012, applicant filed a notice of appeal from the Final Decision of the Attorney General. On April 23, 2014, a hearing was held before this panel of commissioners at 10:00 a.m. Assistant Attorney General Lauren Angell, applicant, and applicant's attorney, Michael

Falleur, attended the hearing.

- {¶3} Applicant testified that she lives in Cleveland, Ohio, and that her son Duane Hamilton, had traveled to Cincinnati, Ohio to sell t-shirts at a Cincinnati Reds game. Applicant received a telephone call late in the evening from Hamilton's girlfriend's mother that Hamilton had been shot. Applicant and her husband drove to Cincinnati from Cleveland and arrived early in the morning at University Hospital. When they arrived, a nurse took them to a waiting room. Applicant spoke to detectives and to Hamilton's friends who were with him when he was shot. Later on, a doctor informed applicant that Hamilton had died. The doctor allowed applicant to view Hamilton's body. Applicant testified that she was utterly distraught, and that she collapsed over his body in grief. Applicant stated that although her son's body was covered with a sheet up to his neck, he looked different in that his face and neck were swollen, and an endotracheal tube remained in his mouth. Applicant stated that she tried to examine Hamilton's injuries but that she was prevented from doing so by medical personnel. Applicant left the hospital and then returned to Cleveland.
- {¶4} Applicant testified about the extensive mental anguish that she has suffered as a result of her son's death. According to applicant, she has been unable to return to employment due to the mental stress that she has suffered, and she has sought professional counseling for grief and anxiety. Applicant has been diagnosed with post-traumatic stress disorder and depression as a result of the death of her son. Applicant testified that she had a very close relationship with her son and that he was living with her at the time of his death.
- {¶5} Applicant asserts that she has met her burden of having a contemporaneous sensory perception of the crime because she touched her son's body after he

had been shot and killed. The Attorney General asserts that applicant does not qualify as a victim in her own right inasmuch as she did not witness the crime scene or view the immediate aftermath. The Attorney General points to the fact that applicant observed her son's body in a hospital room that had been cleaned and prepared by medical personnel prior to her arrival, and that her son's body was covered by clean bedding to prevent applicant from viewing his wounds.

{¶6} Based upon the Supreme Court holding in *Paugh v. Hanks*, 6 Ohio St. 3d 72, 451 N.E.2d 759 (1983), the Court of Claims has set forth certain factors to be considered when determining who may qualify as a victim in their own right.

{¶7} "The factors to be considered * * * shall consist of the person's proximity to the location of the crime, the relationship between [the applicant] and the victim * * * and the shock directly attributable to the sensory and contemporaneous observance of the incident." *In re Clapacs*, at pg. 3. A panel of commissioners in *In re Anderson*, 62 Ohio Misc. 2d 268, 598 N.E.2d 223 (Ct. of Cl. 1991), modified the contemporaneous sensory perception requirement to allow for instances where an individual arrives at the scene shortly after the incident. Applicant has the burden to prove she is a victim by a preponderance of the evidence. See *Clapacs*; *In re Fife*, 59 Ohio Misc.2d 1, 589 N.E.2d 1078 (Ct. of Cl. 1989). If applicant is unable to view the crime scene or arrive immediately after the occurrence and is unable to view the aftermath, applicant cannot satisfy a necessary element of the *Clapacs/Fife* requirements having a contemporaneous sensory perception of the criminally injurious conduct. See *In re Steele*, V2001-32542tc (3-1-02) aff'd jud (7-1-02); *In re Racey*, 62 Ohio Misc.2d 317, 598 N.E.2d 896 (Ct. of Cl. 1991); *In re Anderson*; and *In re Hill*, V2003-41158tc (3-24-04), 2004-Ohio-1892 aff'd jud (6-9-04), 2004-Ohio-4169.

R.C. 2743.52 (A) places the burden of proof on the 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*, 8 Ohio Misc.2d 4, 455 N.E.2d 1374 (Ct. of Cl. 1983).

{¶8} Upon review of the evidence presented at the hearing and the documents in the case file, we find applicant has failed to prove, by a preponderance of the evidence, that she qualifies as a victim in her own right pursuant to the holdings in *Clapacs* and *Fife*. Although the evidence presented shows that applicant had a close relationship with her son, and that she has suffered severe psychological injury which has impeded her from performing daily activities, the panel finds that she has not proven by a preponderance of the evidence that she had a contemporaneous sensory perception of the criminally injurious conduct. The facts in this case differ from those in *In re Freeman*, V2000-02330tc (1-14-02), aff'd jud (4-23-02). In *Freeman*, a mother who arrived at the hospital shortly after her son had been stabbed was found to be a victim in her own right inasmuch as she observed his severely wounded and bloody body prior to his death. In this case, applicant was permitted to view her son's body after medical personnel had prepared the room and her son's body for her viewing. Many hours had passed between the time of the criminally injurious conduct and the time that applicant was allowed to see her son. Applicant's argument that she had a sensory perception of touching her son's body after he had been fatally wounded does not support the claim that she either had a direct awareness of the criminally injurious conduct or arrived at the scene in its immediate aftermath. The panel finds that applicant observed her son in a setting similar to that of a person who identifies a loved one in a morgue. Although the panel sympathizes

with applicant for her loss, we cannot find by a preponderance of the evidence that she has satisfied her burden of proof to qualify as a victim of crime in her own right. Accordingly, the August 31, 2012 decision of the Attorney General is affirmed.

IT IS THEREFORE ORDERED THAT

- 1) The August 31, 2012 decision of the Attorney General is AFFIRMED;
- 2) This claim is DENIED and judgment is entered for the state of Ohio;
- 3) Costs are assumed by the court of claims victims of crime fund.

ANDERSON M. RENICK
Presiding Commissioner

DANIEL R. BORCHERT
Commissioner

HOLLY TRUE SHAVER
Commissioner

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

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