[Cite as *In re Simpson*, 2026-Ohio-4167.]

IN THE COURT OF CLAIMS OF OHIO

IN RE: DEVONTE KENARD SIMPSON	Case No. 2025-00964VI
DEVONTE KENARD SIMPSON	Judge Lisa L. Sadler
Applicant	ORDER

{¶1} On June 30, 2026, a magistrate issued a decision on Devonte Kenard Simpson's ("applicant") appeal of the Attorney General's ("AG") final decision denying his victims of crime compensation application. The magistrate found that the AG's final decision was reasonable and lawful and recommended that the court affirm the same. On July 13, 2026, applicant filed objections to the magistrate's decision. On July 21, 2026, the AG filed a memorandum in opposition to applicant's objections. Upon independent review, and for the reasons stated below, the court overrules applicant's objections.

Background

{¶2} The incident on which this claim is based occurred on May 24, 2025, when applicant was shot in Cleveland, Ohio. The AG denied applicant's application because it found that applicant failed to demonstrate by a preponderance of the evidence that he was a victim of criminally injurious conduct. The AG based this finding on applicant's statement to law enforcement about the incident. The AG found that applicant told law enforcement that he was shot but was not sure where it happened and he was unable to give law enforcement any other information regarding the circumstances. In his request for reconsideration applicant argued that he qualifies as a victim of criminally injurious conduct because there was no indication that he shot himself.

{¶3} At the hearing, applicant did not testify. The AG presented the testimony of Detective Brittany Vajusi of the Cleveland Police Department who investigated applicant's incident. The magistrate found Vajusi's testimony credible and consistent with the police

report. Vajusi testified that based on applicant's statements to law enforcement and the statements of his friends, she was unable to come to a conclusion as to the location in Cleveland where applicant was shot. Vajusi testified that applicant provided law enforcement with conflicting information about where the shooting occurred. Vajusi testified that initially applicant stated that he did not know where he was shot, later, applicant amended his report and stated that he was shot at Tailgate Bar and Grille ("Tailgate"). Vajusi testified that she contacted Tailgate, but Tailgate's management was uncooperative with her investigation. Vajusi testified that she found no evidence that applicant was shot at Tailgate. Vajusi checked Tailgate's opening hours and determined that Tailgate was not open for business when applicant was shot. Vajusi explained that because of the lack of information regarding where applicant was shot, the investigation ended.

{¶4} Applicant argued that the medical records demonstrate that he was shot from behind and therefore, he could not have shot himself. Applicant argued that it is more likely than not that the injuries were caused by criminally injurious conduct. Therefore, applicant requested that the AG's final decision be reversed. The AG argued that applicant failed to provide enough evidence that the gunshot injury occurred as a result of criminally injurious conduct.

{¶5} Based upon a review of all of the evidence presented, the magistrate recommended that the AG's final decision be affirmed. The magistrate found that applicant failed to prove, by a preponderance of the evidence, that he was a victim of criminally injurious conduct. The magistrate determined that the medical records prove only that applicant suffered an injury from a gunshot, not that the gunshot occurred as a result of criminally injurious conduct. Further, the magistrate found that applicant's account of the events was uncorroborated. The magistrate determined that applicant failed to present adequate evidence that criminally injurious conduct occurred.

Objections

{¶6} Applicant presents three objections to the magistrate's decision. First, applicant asserts that "the decision erroneously conflates uncertainty about precise location with absence of criminally injurious conduct." *Objections,* p. 4. Second, applicant objects to the magistrate's finding that his account of the incident was uncorroborated

and supported by only a guess and asserts that the magistrate misapplied the law. Finally, applicant asserts that the magistrate's decision allowed "speculative noncriminal possibilities to outweigh the record's actual evidence." *Objections*, p. 6. Throughout applicant's objections, he argues that the magistrate improperly applied the burden of proof.

Law & Analysis

{¶7} R.C. 2743.52(B) places the burden of proof on an applicant to satisfy the court of claims that the requirements for an award have been met by a preponderance of the evidence. In order to meet the requirements for an award, applicant must be a victim of criminally injurious conduct. R.C. 2743.51(L)(1)(a).

{¶8} R.C. 2743.51(C)(1) defines criminally injurious conduct as, "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." The applicant must prove criminally injurious conduct by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc.2d 4, 6 (Ct. of Cl. 1983). The applicant must produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *In re Staten*, 2011-Ohio-4321, ¶ 8, citing *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82 (1954). However, "[w]ith respect to the exclusionary criteria of R.C. 2743.60, the Attorney General bears the burden of proof by a preponderance of the evidence." *In re Sammons*, 2006-Ohio-6321, ¶ 7 (Ct. of Cl.). Such exclusionary criteria includes contributory misconduct. R.C. 2743.60.

{¶9} Here, the magistrate found that applicant failed to prove, by a preponderance of the evidence, that criminally injurious conduct occurred. Both the AG's final decision and the magistrate's recommendation determined that applicant did not qualify as a victim because he did not prove criminally injurious conduct occurred and therefore, he was not entitled to compensation. The magistrate did not apply the exclusionary criteria of R.C. 2743.60 in her decision. Therefore, the magistrate recommended that the court affirm the AG's final decision.

First Objection: Absence of Criminally Injurious Conduct

{¶10} Applicant first asserts that the magistrate erred in finding that no criminally injurious conduct occurred. Applicant argues that he met his burden of proof as to whether criminally injurious conduct occurred even though law enforcement was unable to identify the precise location of the incident. Applicant cites *In re Smith*, Ct. of Cl. No. V86-43161 (10-16-87sc) in support of his argument. Applicant states that in *Smith*, the court found that the nature of the gunshot, to the back of the head, and no evidence of accident or self-infliction, proved that criminally injurious conduct occurred. Applicant asserts that the incident in this case was similar because applicant sustained his gunshot wound from behind. Applicant contends that the magistrate's decision required certainty about the location of the incident and therefore placed a burden of proof greater than by a preponderance of the evidence. In its memorandum in opposition to applicant's objections the AG argued that applicant erred in relying on *Smith* because a single commissioner decided *Smith* and it is an outlier in the case law.

{¶11} At issue here is whether the conduct that resulted in applicant's gunshot injury was punishable by fine, imprisonment, or death. Applicant did not testify at the hearing as to the events that caused his gunshot injury. Therefore, the magistrate relied on the evidence in the record and the testimony of Vajusi to determine whether criminally injurious conduct occurred. The magistrate determined that the evidence did not provide a reasonable basis for finding that criminally injurious conduct occurred. Upon an independent review, the court agrees.

{¶12} Applicant relied on the medical records to prove that he was shot and that the wound was a result of criminally injurious conduct. Applicant relies on *Smith*, a case decided by a single commissioner in 1987 to support his argument. The court finds this reliance misplaced. More recently in *In re Straughter*, the court adopted a magistrate's decision wherein the magistrate determined that the medical records in that case supported a finding that the applicant suffered a personal injury but not that criminally injurious conduct occurred. *In re Straughter*, 2025-Ohio-3222, ¶ 15. Similarly, here, the medical records prove only that applicant was shot, they do not explain the circumstances.

{¶13} Applicant failed to produce evidence, beyond his own statements to law enforcement, that he was the victim of criminally injurious conduct. "[T]he uncorroborated statement of the applicant does not constitute sufficient proof, by a preponderance of the evidence, to establish the criminally injurious conduct occurred." *In re Henderson*, 2012-Ohio-6364, ¶ 11 (Ct. of Cl.) citing *In re Warren*, V2008-30014tc (9-5-08) and *In re Minadeo*, V79-3435jud (10-31-80). Further, the court cannot speculate as to how an event occurred with no substantive evidence pointing to a reasonable conclusion. Proof of events "must be established by factual evidence and probabilities, not by possibilities and speculation." *In re Calhoun*, 66 Ohio Misc.2d 159, 162 (Ct. of Cl. 1994).

{¶14} While applicant asserts that the magistrate erred in relying on uncertainty about the location of the shooting to find that applicant failed to prove criminally injurious conduct, the court finds that this assertion is not based in fact. The magistrate's decision found that applicant failed to prove criminally injurious conduct because his statement of the events was not supported by the evidence. Upon review, the court agrees with the magistrate's finding. Therefore, the court OVERRULES applicant's first objection.

Second Objection: Applicant's Account of Events was Uncorroborated

{¶15} In his second objection applicant asserts that the magistrate erred in finding that his account of the incident was uncorroborated by the evidence. Applicant argues that the magistrate misapplied *Henderson* and *Straughter* and did not consider the record as a whole. Upon a review of the record, the court finds these arguments unfounded.

{¶16} Applicant argues that *Henderson* is distinguishable from this case because in *Henderson* there was no police report and the medical examination did not support a finding that criminally injurious conduct occurred. Applicant argues that *Straughter* is distinguishable because in *Straughter*, police determined that the applicant had not been shot, the injuries were of uncertain origin, and the evidence did not establish that another person had assaulted the applicant. The court finds that the magistrate correctly applied *Henderson* and *Straughter.*

{¶17} Applicant relies on the medical records to show that because applicant was shot from behind, criminally injurious conduct must have occurred. The court is not convinced. The medical records present a conflicting account of what happened. In a medical record from a couple of months after the incident the subjective finding states

that the "[b]ullet exited his back." Transmitted file p. 78. A medical record from the night of the shooting states that applicant suffered multiple gunshot wounds to the abdomen and that applicant did not realize he had been shot. Transmitted file p. 83. A medical record from a CT scan states that the bullet likely entered from the right posterior glute. Transmitted file p. 180. Further, the police report applicant amended after he was released from the hospital states that applicant told law enforcement that he was shot in the stomach. Transmitted file p. 47.

{¶18} Even assuming, as applicant argues, that the medical records demonstrate that it was more likely than not that applicant's gunshot was not self-inflicted, the court finds that applicant failed to prove by a preponderance of the evidence that criminally injurious conduct occurred. The AG argues that applicant could have been shot in self-defense, during a mutual gun battle, by a fellow perpetrator in the midst of a crime, or by accident. The record does not provide an explanation of who shot applicant or the circumstances surrounding the incident from which the court can determine that criminally injurious conduct occurred. Further, applicant did not testify at the hearing to refute any of the other possible non-criminal possibilities or expand upon his statements to law enforcement. Applicant arrived at the hospital with several individuals who were arrested on outstanding warrants, none of whom gave law enforcement details as to the shooting. Therefore, the court finds that the magistrate correctly applied *Henderson* and concluded that applicant's assertion that criminally injurious conduct occurred was not corroborated by the evidence. Additionally, the court finds that the magistrate correctly determined that in this case, like in *Straughter*, the medical records establish that applicant's injuries were of uncertain origin and do not establish, by a preponderance of the evidence, that he was shot by another person. Due to the lack of evidence presented by applicant as to the circumstances surrounding the shooting, the court finds that the magistrate correctly determined that applicant's account of the events was uncorroborated. Accordingly, applicant's second objection is OVERRULED.

Third Objection: Weight of the Evidence

{¶19} In his final objection applicant asserts that the magistrate erred by allowing speculative possibilities to outweigh the evidence in the record. Applicant argues that this error imposed a burden greater than a preponderance of the evidence on applicant.

{¶20} As stated above, applicant must prove criminally injurious conduct by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc.2d 4, 6 (Ct. of Cl. 1983). The applicant must produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case, he fails to sustain the burden as to such issue. *In re Staten*, 2011-Ohio-4321, ¶ 8, citing *Landon v. Lee Motors, Inc.*, 161 Ohio St. 82 (1954).

{¶21} The magistrate found credible Vajusi's testimony regarding the uncertain circumstances around applicant's injuries. The magistrate is free to rely on the facts she deems most relevant and material to the issues at hand and free to disregard some evidence and rely on other evidence, in part, in whole, or any deviation in between. See *Siegel v. State*, 2015-Ohio-441, ¶ 12 (10th Dist.) (Any "suggestion that a magistrate . . . is incapable of deciding the facts and weighing the credibility of witnesses, lacks merit.").

{¶22} The medical records and police report provide only enough information to establish that applicant was shot, not that the shooting constitutes criminally injurious conduct. Furthermore, applicant did not testify at the hearing or otherwise provide a credible explanation as to the location in Cleveland where he was shot, who shot him, or the circumstances that led to the shooting. Applicant only asserted that he could not have shot himself therefore, criminally injurious conduct must have occurred. However, based on the evidence provided, specifically the conflicting information found in the medical records, the court can only guess as to the circumstances surrounding the shooting. The court finds that there are possible circumstances that may not constitute criminally injurious conduct. Therefore, the court finds that the magistrate correctly determined that criminally injurious conduct was not proven by a preponderance of the evidence. The court OVERRULES applicant's third objection.

{¶23} Throughout his objections, applicant asserted that the magistrate incorrectly applied the burden of proof. For the above stated reasons, the court finds that the magistrate correctly applied the burden of proof in her analysis of this case.

Conclusion

{¶24} Upon independent review of the claim file, the magistrate's decision, the arguments and testimony presented at the hearing, and the objections and response, it is the court's determination that the magistrate was correct in her analysis of the issues

and application of the law. Accordingly, the court adopts the magistrate's decision and recommendation as its own.

IT IS HEREBY ORDERED THAT

{¶25} The June 30, 2026 decision of the magistrate is ADOPTED;

{¶26} The AG's November 18, 2025 final decision is AFFIRMED;

{¶27} This claim is DENIED and judgment is entered for the State of Ohio;

{¶28} Costs are assumed by the reparations fund.

LISA L. SADLER
Judge

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

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