

[Cite as *In re Bassett*, 2005-Ohio-6053.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: RUSSELL A. BASSETT	:	Case No. V2005-80096
RUSSELL A. BASSETT	:	<u>OPINION OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} The applicant, an Akron police officer, Russell Bassett (“Officer Bassett” or “applicant”), filed a reparations application seeking reimbursement of expenses incurred regarding a July 20, 2004 incident. Officer Bassett alleges he was injured while executing a narcotics warrant for suspect, Nathaniel Johnson (“Mr. Johnson” or “suspect”). On December 6, 2004, the Attorney General denied the claim under R.C. 2743.52(A) contending that the applicant failed to qualify as a victim of criminally injurious conduct. On December 26, 2004, the applicant filed a request for reconsideration. On February 22, 2005, the Attorney General denied the applicant’s claim once again. On March 7, 2005, the applicant filed a notice of appeal to the Attorney General’s February 22, 2005 Final Decision. Hence, this panel heard the matter on June 22, 2005 at 10:30 A.M.

{¶ 2} The applicant, applicant’s counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument. Officer Bassett testified that on July 20, 2004 he was assigned to the day shift and was dispatched to assist on a narcotics warrant.

Officer Bassett stated that approximately 8-10 police officers were on the scene, however he and his supervisor were the only uniformed officers present. Officer Bassett indicated that he, as the “lead man,” was the first person to gain entry into the suspect’s apartment complex by kicking in the entry door. Officer Bassett explained that upon entering the complex, he saw the suspect open his apartment door and attempt to retreat. Officer Bassett then pursued Mr. Johnson into his apartment. Officer Bassett stated that a struggle ensued before the suspect was finally subdued and handcuffed. Officer Bassett explained that he injured his right ankle while breaking in the door and wrestling with the subject. Officer Bassett noted that he sought medical attention at the hospital for his injury and was advised to remain off work for three days. He further stated that as a result of this injury, he incurred private duty work loss for which he seeks reimbursement.

{¶ 3} Applicant’s counsel stated, based upon the testimony presented, that the applicant’s claim for work loss should be allowed. Counsel argued that Officer Bassett clearly sustained injury while attempting to effectuate a search warrant involving Mr. Johnson. Counsel asserted that the applicant was a victim of criminally injurious conduct, since Mr. Johnson’s conduct of both drug trafficking and resisting arrest posed a substantial threat of personal injury or death to Officer Bassett.

{¶ 4} The Assistant Attorney General maintained that the applicant failed to prove that he qualifies as a victim of criminally injurious conduct. The Assistant Attorney General asserted that Mr. Johnson never engaged in any conduct that posed a substantial threat of personal injury or death to Officer Bassett. The Assistant Attorney General argued that the proximate cause of the applicant’s injury was kicking in the apartment complex door and not scuffling with Mr.

Johnson, as the applicant contends. This distinction, the Assistant Attorney General contends, makes all the difference since the applicant's ankle injury occurred prior to any contact with the suspect. Ergo, the suspect never engaged in any conduct that posed a substantial threat of personal injury or death to Officer Bassett, thereby precluding the applicant's recovery.

{¶ 5} Revised Code 2743.51(C)(1) states in part that:

(C) 'Criminally injurious conduct' means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, 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.

{¶ 6} Revised Code 2743.51(L) states:

(L) 'Victim' means a person who suffers personal injury or death as a result of any of the following:

- (1) Criminally injurious conduct;
- (2) The good faith effort of any person to prevent criminally injurious conduct;
- (3) The good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

{¶ 7} The issue of criminally injurious conduct requires a factual determination on a case-by-case basis. See *In re Walling* (1997), 91 Ohio Misc. 2d 181. And the facts of this case, in light of the relevant case law, compels us to grant Officer Bassett's request for statutorily allowed expenses.

{¶ 8} Precedent guides this panel to apply the traditional principles of proximate cause. See *In re May*, V94-43540tc (2-29-96) affirmed jud (5-10-96) (criminally injurious conduct must be the proximate cause of applicant's injury in order for officer/applicant to recover allowable expense); *In re Kallay* (1997), 91 Ohio Misc.2d 148 (three-commissioner panel decision reversed for not applying principles of traditional proximate cause standards); *In re Walling* (1997), 91 Ohio Misc. 2d 181 (criminally injurious conduct of fleeing from police was the proximate cause of the applicant's injury where no intervening act broke the chain of causation). Our query, therefore, is whether the suspect's conduct of drug trafficking and resisting arrest is the proximate cause of Officer Bassett's injury or whether the applicant's injury is the result of some intervening act, not causally related to Mr. Johnson's actions. We answer the query as follows: Mr. Johnson's conduct was indeed the proximate cause of Officer Bassett's injury and not the result of some intervening, unrelated act.

{¶ 9} In this case, the facts reveal that Officer Bassett was in imminent danger at the time of his injury and this injury was sustained in a context that clearly falls within the definition of "victim" under R.C. 2743.51(L)(2) & (3). Officer Bassett's ankle injury was connected with the execution of the search warrant suspecting probable criminal conduct. An injury of this type is directly related and is a natural consequence of the execution of a search warrant possibly involving dangerous criminal activity. Officer Bassett was in the process of execution, apprehension, and prevention when his injury occurred. Thus, the law as applied to the facts of this case compels us to hold that his injury was proximately caused by Mr. Johnson's actions.

{¶ 10} The Attorney General relies upon *May* and *Kallay* to support the denial of Officer Bassett's claim. However, both cases are factually distinguishable. In *May*, the

applicant/officer slipped and fell on ice as he exited his vehicle to assist in executing a search warrant. The *May* court, in denying the claim, held that the criminally injurious conduct—illegal possession of drugs and firearms— was not the proximate cause of the applicant’s injuries, his accidental fall was. *Id.* at 5. Specifically, “[t]he applicant was injured in the line of duty while preparing to execute a search warrant, but his injury occurred before he ever entered the subject residence that was to be searched or encountered the suspected offenders inside the residence.” *Id.* Further, “the applicant was never shot at or assaulted while searching the residence or taking the suspected offenders into custody.” *Id.*

{¶ 11} However in this case, Officer Bassett was injured as he kicked in the apartment complex door, which began the chain of causation. The chain continued unbroken as Officer Bassett entered Mr. Johnson’s residence and wrestled with him in attempting to take him into custody. Officer Bassett sustained and perhaps aggravated his injury in the unbroken execution and apprehension process. The applicant’s injury did not result from an intervening act, such as slipping and falling on ice, but rather it resulted from Mr. Johnson’s conduct of drug trafficking and resisting arrest.

{¶ 12} In *Kallay*, the applicant/officer stepped in a hole and injured his foot while attempting to serve a felony warrant. The court found it factually significant that “[t]he alleged felon was not at the residence, and there was no confrontation with any alleged offenders.” *Id.* at 150. Dissimilarly in this case, the subject of the warrant was at his residence and there was a confrontation. Hence, the chain of causation remained unbroken since there was no intervening act, like an accidental slip and fall, that caused Officer Bassett’s injury.

{¶ 13} Again, in *Walling*, the panel found that contact between the officer and suspect was a factor. In *Walling*, an officer/applicant was injured in a fall while chasing a suspect after a routine traffic stop. The panel stated that “once the alleged offender exited his vehicle and fled the police, a substantial risk of personal injury or death arose.” The panel reasoned that an offender’s flight increases an officer’s chance of being a victim of criminally injurious conduct, because the chance of physical contact between the officer and suspect also increases. The court affirmed that fleeing, in and of itself, is criminally injurious conduct, in light of the inherently dangerous nature of the suspect’s actions. Likewise, we find here that drug trafficking and resisting arrest, in and of themselves, are criminally injurious conduct and both create a significant risk of personal injury or death.

{¶ 14} Based upon the above, we find that Mr. Johnson’s conduct posed a substantial risk of personal injury or death to Officer Bassett and that the applicant has proven, by a preponderance of the evidence, that he qualifies as a victim of criminally injurious conduct. Therefore, the February 22, 2005 decision of the Attorney General shall be reversed and this claim shall be remanded to the Attorney General for economic loss calculations and decision.

JAMES H. HEWITT III
Commissioner

RANDI OSTRY LE HOTY
Commissioner

Gregory P. Barwell, Commissioner, Dissenting Opinion:

{¶ 15} I respectfully dissent from the majority’s decision to qualify the applicant as a victim of criminally injurious conduct. The applicant, an Akron police officer, filed a reparations application seeking reimbursement of expenses incurred when he was injured while executing a narcotics warrant for suspect, Nathaniel Johnson. On December 6, 2004, the Attorney General denied the claim pursuant to R.C. §2743.52(A) contending that the applicant failed to qualify as a victim of criminally injurious conduct because he actually sustained injury while kicking in the door to the suspect’s apartment complex.

{¶ 16} Based on the facts, officers were informed that the suspect was involved in some form of drug-related activity. Officer Bassett testified that he and his supervisor, Sergeant Aylward, were the only uniformed officers present. The applicant approached the apartment building as the door had secured itself when it closed after a suspected delivery of narcotics. Sergeant Aylward, the only witness, indicated in his statement that the applicant “kicked the door several times to gain access” to the apartment building. In fact, Officer Bassett also testified that he injured his right ankle while breaking in the door. After gaining entry to the apartment building, Officer Bassett did not come into contact with the alleged offender until the alleged offender opened his own door.

{¶ 17} Pursuant to R. C. 2743.51(L)(2) and (3), a victim is one who suffers personal injury due to “The good faith effort...to prevent criminally injurious conduct” or “to apprehend a person suspected of engaging in criminally injurious conduct.” These respective provisions are inapplicable to Officer Bassett since the “narcotics delivery” is not criminally injurious conduct because the suspect’s possession of drugs in and of itself did not constitute criminally injurious

conduct. Undeniably, the applicant cannot prove that the delivery or possession of drugs posed a substantial risk of personal injury to any person since there was no contact with the offender prior to the arrest. The applicant was not even attempting to apprehend a person suspected of criminally injurious conduct, but merely gaining entry through the apartment complex door which could have been accomplished with a ramming device or simply breaking the window. The injuries sustained by the applicant were simply the result of an intervening act of kicking in the entry door to the apartment complex. Accordingly, the applicant was not a victim of criminally injurious conduct because the suspect never engaged in any conduct that posed a substantial threat of personal injury or death to Officer Bassett.

{¶ 18} Precedent guides this panel to apply the traditional principles of proximate cause. Officer Bassett testified that he injured his right ankle *while breaking in the door*, and denying the applicant's claim follows precedent set forth in *May* and *Kallay*. The *May* court denied the applicant's claim because his injuries resulted from an intervening act of slipping and falling on ice. *In re May*, V94-43540tc, (2-29-96) affirmed jud (5-10-96). Specifically, Officer May's "injury occurred before he ever entered the subject residence that was to be searched or encountered the suspected offender inside the residence." *Id.*, at 5. Identically, Officer Bassett suffered his injury prior to entering the suspect's residence or encountering the suspect offender inside the residence. The applicant's injury resulted from the superseding, intervening act, similar to slipping and falling on ice, of kicking in the apartment complex door.

{¶ 19} In *Kallay*, the court denied the applicant's claim because his injuries resulted from an intervening act of stepping in a hole and injuring his foot. Similarly in this case, "there was no confrontation with any alleged offender." *Kallay*, at 150. Mr. Johnson's conduct was not

the proximate cause of the applicant's injury because there was absolutely no contact with the alleged offender or the door to his apartment. Undoubtedly, the chain of causation was broken by the intervening act of kicking in the apartment complex door which caused Officer Bassett's injury.

{¶ 20} From review of the file, with full consideration given to the testimony and oral argument presented at the hearing, the facts do not indicate, by a preponderance of the evidence, that the applicant was injured on a result of criminally injurious conduct. The majority's finding that qualifies the Applicant as a victim in the instant claim, "render[s] the reparations fund as a form of occupation hazard insurance." *May*, Hewitt dissent at 5. The applicant was injured in the line of duty while preparing to execute a search warrant, but Officer Basset injured his ankle as a result of the superseding, intervening act of kicking in the apartment complex door. Thus, any criminally injurious conduct that occurred after the outside door was broken down was not the proximate cause of the applicant's injuries. If criminally injurious conduct was the cause of Officer Bassett's kicking in the apartment complex door, then "every police officer would be eligible for reparations every time he responds to a call or executes a warrant, without regard to the application of traditional proximate cause standards." *Id.*, Hewitt dissent at 5-6.

GREGORY P. BARWELL
Commissioner

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RUSSELL A. BASSETT : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL

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IT IS THEREFORE ORDERED THAT

- 1) The February 22, 2005 decision of the Attorney General is REVERSED;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision;
- 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, under R.C. 2743.68;

- 4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #-tad-07/25/05

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

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