

[Cite as *In re Wills*, 2004-Ohio-4180.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: TAMMY A. WILLS	:	Case No. V2003-41140
TAMMY A. WILLS	:	<u>ORDER OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to an August 8, 2003 assault incident. The applicant stated that she sustained physical injury when she was either pushed or she jumped from a moving vehicle driven by her then live-in boyfriend, Jerry Borden. On October 6, 2003, the Attorney General denied the claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove, by a preponderance of the evidence, that she was a victim of criminally injurious conduct. The Attorney General stated that the case was closed due to the lack of evidence to pursue criminal charges against the alleged offender. On October 14, 2003, the applicant filed a request for reconsideration. On October 28, 2003, the Attorney General denied the claim once again. On November 5, 2003, the applicant filed a notice of appeal contending that she was a victim of criminally injurious conduct because she was either pushed or she jumped from the vehicle in order to escape from further abuse by Jerry Borden. The applicant further indicated that she was unable to recall the entire events of the day due to the head injury she sustained. Hence, this

matter came to be heard before this panel of three commissioners on April 21, 2004 at 10:30 A.M.

{¶2} The applicant, applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony, exhibits, and oral argument for the panel's consideration. Tammy Wills testified that she and her former live-in boyfriend worked for Reynolds Transportation Company and frequently traveled together. Ms. Wills informed the panel that on August 8, 2003, she and Jerry Borden were traveling together on business to Chicago. Ms. Wills stated that an altercation ensued between her and Mr. Borden while on the road. The applicant asserted that she contacted her mother on her cellular telephone to inform her that she could no longer handle her relationship with Mr. Borden and that she was selling her house when she returned home. The applicant stated that Mr. Borden yelled, cursed, and told her (while she was on the telephone with her mother) that he was going to put her out of the semi-truck. Ms. Wills explained that Mr. Borden then snatched the telephone away and struck her. Ms. Wills stated she is unable to recall what transpired after she was struck since she was rendered unconscious. The applicant testified that she suffered two abrasions to her elbow, a nasal abrasion, a groin injury, a scrape on her ankle, a head contusion and a fractured finger. The applicant contended that her attending nurse told her, that she could not have jumped from the truck, based on the type injuries she sustained. The applicant denied that she told Mr. Borden that she was going to voluntarily jump out of the vehicle. Ms. Wills stated that she provided the police with a statement and attempted to have Mr. Borden prosecuted, however to no avail. The applicant stated that the police simply believed Mr. Borden's version of what transpired that evening.

{¶3} Madeline Miller, the victim's mother, testified that on August 8, 2003 her daughter contacted her via cellular telephone to inform her that she could no longer tolerate her relationship with Jerry Borden. Ms. Miller explained that she could hear Mr. Borden in the background screaming and cursing at her daughter. Ms. Miller stated that she overheard Mr. Borden say, using expletives, that he would kick Ms. Wills out of the vehicle. Ms. Miller contended that suddenly the telephone went dead and that she was unable to contact her daughter again, despite her many attempts. Ms. Miller explained that two hours later, she was informed that her daughter had been admitted to Good Samaritan Hospital. Ms. Miller acknowledged that she only overheard arguing between her daughter and Mr. Borden and never any physical altercation. However Ms. Miller stated, based on what she overheard, that she feared for her daughter's safety.

{¶4} Applicant's counsel asserted that the claim should be allowed based upon the testimony presented. Counsel argued that, more likely than not, the applicant was the victim of an assault on August 8, 2003. Counsel stated that the victim testified that Jerry Borden had struck her prior to her losing consciousness. Counsel also noted that the applicant sustained a head injury, consistent with being punched. Counsel argued that the victim's act of jumping from the vehicle should be viewed as a reasonable method of escape from Mr. Borden. Counsel further argued that even if the applicant was not pushed out of the vehicle, the applicant still presented evidence, via testimony, that she was assaulted by Jerry Borden. Counsel urged the panel to consider the entire events of August 8, 2003 as a whole and not simply whether the applicant was pushed or if she jumped from the vehicle. Lastly, counsel requested reimbursement for all incurred economic loss stemming from the events of August 8, 2003.

{¶5} The Assistant Attorney General continued to maintain that Ms. Wills failed to prove, by a preponderance of the evidence, that she was a victim of criminally injurious conduct. The Assistant Attorney General stated that the applicant was unable to recall the entire events of August 8, 2003 and hence there is no evidence to prove that Mr. Borden actually caused the applicant's injuries.

{¶6} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find, based upon the greater weight of the evidence, that the applicant was a victim of criminally injurious conduct on August 8, 2003. We find it reasonable and more likely than not that Ms. Wills was a victim of assault either by being pushed from or by jumping from the moving vehicle to escape further abuse by Jerry Borden. We believe both the victim's and Ms. Miller's testimony to be credible concerning the events that transpired on August 8, 2003. Despite the lack of evidence to criminally charge Mr. Borden, we also note that the police report listed the matter as a domestic violence incident. Hence, we find that the applicant shall be reimbursed for all economic loss incurred with respect to the entire August 8, 2003 incident. Therefore, the October 28, 2003 decision of the Attorney General shall be reversed and this claim shall be remanded to the Attorney General for economic loss calculations and decision.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} The October 28, 2003 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

{¶9} This claim is remanded to the Attorney General for economic loss calculations (arising from the entire events of August 8, 2003) and decision;

This order is entered without prejudice to the applicant's right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

{¶10} Costs are assumed by the court of claims victims of crime fund.

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

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To S.C. Reporter 8-10-2004

ROBERT B. BELZ
Commissioner

ID #\3-dld-tad-051104

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