

[Cite as *In re McGarity*, 2004-Ohio-5488.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: JAMES MC GARITY	:	Case No. V2003-41247
JO ANN CADE	:	<u>ORDER OF A THREE-</u>
JAMES MC GARITY	:	<u>COMMISSIONER PANEL</u>
Applicants	:	
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{¶ 1} The applicants filed a reparations application seeking reimbursement of expenses incurred with respect to a February 1, 2003 aggravated vehicular assault incident involving James McGarity. On October 6, 2003, the Attorney General denied the applicants' claim pursuant to R.C. 2743.60(B)(1) contending that the victim knew or should have known that the offending driver, Scott Sanzo, was under the influence of alcohol and therefore the victim should have declined a ride from Mr. Sanzo. On October 23, 2003, the applicants filed a request for reconsideration. On December 22, 2003, the Attorney General determined that the previous decision warranted no modification. On December 29, 2003, the applicants filed a notice of appeal to the Attorney General's December 22, 2003 Final Decision. The victim asserted that he was unaware that the offender was intoxicated since he did not have ample opportunity to observe Mr. Sanzo's behavior. Hence, this matter came to be heard before this panel of three commissioners on July 21, 2004 at 11:25 A.M.

{¶ 2} The victim, applicants' counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. James

McGarity and Kevin Payne, a fellow passenger in the vehicle, essentially testified that even though they were both impaired upon leaving a friend's party on February 1, 2003, they both felt confident that Scott Sanzo was capable of driving them safely home (based upon Scott's previous behavior), despite their knowledge of Mr. Sanzo's consumption of alcohol that evening. The victim and Mr. Payne both suggested that no one was reasonably aware that Scott Sanzo was intoxicated, since Kelli Allen, another passenger in the vehicle, who was not impaired had also accepted a ride home from Mr. Sanzo.

{¶ 3} Mark Seevers of the Columbus Police Department briefly testified that he was dispatched to the scene and had the opportunity to observe Scott Sanzo's intoxicated behavior. Officer Seevers stated that Mr. Sanzo smelled of alcohol, had slurred speech, staggered, had blood shot eyes, and was not wearing any shoes. Officer Seevers stated that Mr. Sanzo failed all the administered field sobriety tests and that it was eventually determined that Mr. Sanzo's blood alcohol content was .179.

{¶ 4} Applicants' counsel stated that the claim should be allowed based on the testimony presented. Counsel stated, based on the victim's and Kevin Payne's knowledge of Scott Sanzo, that there was no reason for them to have declined a ride home that night. Counsel argued that James and Kevin testified that normally Scott was the designated driver since he did not usually consume much alcohol. Counsel further argued, based on Scott's character and his previous behavior, that all the passengers, even Kelli Allen who was not impaired, thought it was safe to ride with Scott and did not believe that he was intoxicated.

{¶ 5} The Assistant Attorney General stated that the claim must be denied pursuant to R.C. 2743.60(B) since Mr. McGarity was aware or reasonably should have been known of Scott

Sanzo's intoxicated state, had he not been impaired himself. The Assistant Attorney General stated that the victim should have known that Mr. Sanzo was impaired since he had the opportunity to observe Scott consume alcohol while at the party. The Assistant Attorney General argued, based on Mr. Sanzo's blood alcohol content, that he must have demonstrated obvious signs of intoxication, which were noted by Officer Seevers.

{¶ 6} R.C. 2743.60(B)(1) states:

{¶ 7} (B)(1) The attorney general, a panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to a claimant if any of the following apply:

(a) The claimant is the offender or an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice.

(b) Except as provided in division (B)(2) of this section, both of the following apply:

{¶ 8} The victim was a passenger in a motor vehicle and knew or reasonably should have known that the driver was under the influence of alcohol, a drug of abuse, or both.

{¶ 9} The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

(a) Both of the following apply:

{¶ 10} The victim was under the influence of alcohol, a drug of abuse, or both and was a passenger in a motor vehicle and, if sober, should have reasonably known that the driver was under the influence of alcohol, a drug of abuse, or both.

{¶ 11} The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

{¶ 12} (2) Division (B)(1)(b) of this section does not apply if on the date of the occurrence of the criminally injurious conduct, the victim was under sixteen years of age or was

at least sixteen years of age but less than eighteen years of age and was riding with a parent, guardian, or care-provider.

{¶ 13} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. We find that the Attorney General has proven, by a preponderance of the evidence, that James McGarity reasonably should have known that Scott Sanzo was under the influence of alcohol and therefore he should not have accepted the ride from the impaired driver. We find that Mr. McGarity, had he been sober himself, would have known that Scott Sanzo was too impaired to have driven safely that night. R.C. 2743.60(B)(1)(c)(i) was created to prevent victims from using their own intoxication as an excuse for not exercising sound judgment in situations such as these. Therefore, the December 22, 2003 Final Decision of the Attorney General shall be affirmed.

IT IS THEREFORE ORDERED THAT

- 1) The December 22, 2003 decision of the Attorney General is AFFIRMED;
- 2) This claim is DENIED and judgment is rendered in favor of the state of Ohio;
- 3) Costs are assumed by the court of claims victims of crime fund.

CLARK B. WEAVER, SR.
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

KARL H. SCHNEIDER
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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