

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: DANIEL T. HUMPHREY, JR.	:	Case No. V2004-60016
DANIEL T. HUMPHREY, JR.	:	<u>OPINION OF A THREE-</u> <u>COMMISSIONER PANEL</u>
Applicant	:	

: : : : :

{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred in relation to a June 2, 2002 assault. On May 29, 2003, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.60(E)(3) contending that the applicant engaged in violent felonious conduct, aggravated assault, on August 29, 1999. On June 20, 2003, the applicant filed a request for reconsideration. On December 17, 2003, the Attorney General denied the claim pursuant to R.C. 2743.60(E)(3) contending that the applicant engaged in violent felonious conduct, robbery, on July 23, 2000. On January 6, 2004, the applicant filed a notice of appeal from the Attorney General’s December 17, 2003 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on March 10, 2004 at 10:50 A.M.

{¶2} The applicant, applicant’s counsel and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel’s consideration. Daniel Humphrey testified that on July 23, 2000 at approximately 10:00 P.M. he was leaving a United

Dairy Farmer (UDF) convenient store when he observed Omar Jolly cut across on the property of Elite Lawn Care with a weedeater. Mr. Humphrey stated that he works for Elite Lawn Care and suspected that Mr. Jolly was stealing the weedeater from his employer. Mr. Humphrey stated that he confronted Mr. Jolly about the weedeater, when Mr. Jolly struck him. The applicant explained that he responded by striking Mr. Jolly in self-defense. Mr. Humphrey stated that soon the police arrived and arrested him for robbery. Mr. Humphrey indicated that the charge was eventually dismissed after he and Mr. Jolly later resolved the matter on their own.

{¶3} Officer Dwayne Dawson of the Cincinnati Police Department testified, via telephone, that he was the first officer to arrive on the scene. Officer Dawson stated that he was working at the UDF when a person entered the store and reported that someone was being attacked outside. Officer Dawson stated that, as he approached the scene, he observed the parties struggling over a weedeater. Officer Dawson testified that he witnessed the applicant strike Mr. Jolly, drop the weedeater, and flee. Officer Dawson explained that he gave chase for approximately 100 yards until the applicant surrendered. Officer Dawson also advised the panel that he spoke to Addie Jolly who informed him that the weedeater belonged to her since she owns Jolly Lawn Care service. Lastly, Officer Dawson noted that Mr. Jolly sustained a minor abrasion to his face.

{¶4} Applicant's counsel stated that the claim should be allowed based upon the evidence presented. Counsel asserted that the Assistant Attorney General failed to prove by a preponderance of the evidence that Mr. Humphrey engaged in violent felonious conduct on July 23, 2000. Counsel contended, based on the applicant's testimony and Addie Jolly's affidavit, that the applicant did not attempt to rob or intentionally assault Mr. Jolly. Counsel argued that

the applicant merely struck Mr. Jolly in self-defense. Moreover, counsel stated that Mr. Jolly did not have permission to use the weed eater himself.

{¶5} The Assistant Attorney General maintained that the applicant's claim must be denied since he engaged in violent felonious conduct on July 23, 2000. The Assistant Attorney General argued, based on Officer Dawson's testimony, that the applicant assaulted Mr. Jolly and attempted to rob him of the weed eater.

{¶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. The Attorney General failed to prove by a preponderance of the evidence that the applicant engaged in violent felonious conduct on July 23, 2000. The Assistant Attorney General argued that the applicant's conduct meets the elements of robbery under R.C. 2911.02.

{¶7} R.C. 2911.02 states:

{¶8} No person, in *attempting or committing a theft offense* or in fleeing immediately after the attempt or offense, shall do any of the following:

{¶9} Have a deadly weapon on or about the offender's person or under the offender's control:

{¶10} Inflict, *attempt to inflict, or threaten to inflict physical harm on another*;

{¶11} Use or threaten the immediate use of force against another.

{¶12} Whoever violates this section is guilty of robbery. A violation of division (A)(1) or (2) of this section is a felony of the second degree. A violation of (A)(3) of this section is a felony of the third degree. Emphasis added.

{¶13} R.C. 2743.60(E)(3) states:

{¶14} (E) The attorney general, a panel of commissioners, or a judge of the court of claims shall not make an award to a claimant if any of the following applies:

{¶15} (3) It is proved by a preponderance of the evidence that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct gave rise to the claim or during the pendency of the claim, in an offense of violence, a violation of section 2925.03 of the Revised Code, or any substantially similar offense that also would constitute a felony under the laws of this state, another state, or the United States.

{¶16} Based upon the information presented, we believe that the applicant did not engage in robbery. We find that the applicant reasonably believed that Mr. Jolly had stolen the weed eater from his employer. We do not believe that Mr. Humphrey attempted or committed a theft offense with respect to the weed eater. We believe Mr. Humphrey's intention was to recover the tool for his employer. Moreover, we note that Mr. Jolly was not the owner of the weed eater nor did Mr. Jolly have permission from Addie Jolly, the true owner, to possess the weed eater. Therefore, the December 17, 2003 decision of the Attorney General shall be reversed and this claim is referred to the Attorney General for economic loss calculations and decision.

{¶17} IT IS THEREFORE ORDERED THAT:

{¶18} 1) The Attorney General's March 5, 2004 motion to allow telephone testimony is hereby GRANTED;

{¶19} 2) The December 17, 2003 decision of the Attorney General is REVERSED and judgment is entered for the applicant;

{¶20} 3) The claim is referred to the Attorney General for economic loss calculations and decision;

{¶21} 4) 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;

{¶22} 5) Costs are assumed by the court of claims victims of crime fund.

CLARK B. WEAVER, SR.
Commissioner

KARL H. SCHNEIDER
Commissioner

THOMAS H. BAINBRIDGE
Commissioner

ID #\1-dld-tad-031904

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

Filed 5-7-2004
Jr. Vol. 2253, Pgs. 134-135
To S.C. Reporter 6-30-2004