

[Cite as *In re Cutlip*, 2004-Ohio-7340.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: DANIEL K. CUTLIP	:	Case No. V2004-60725
ALICE MC DARBY	:	<u>ORDER OF A THREE-</u>
		<u>COMMISSIONER PANEL</u>
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DANIEL K. CUTLIP	:	
Applicants	:	
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{¶ 1} The applicants filed a reparations application seeking reimbursement of expenses incurred in relation to an October 25, 2003 assault incident in San Diego, California. On May 24, 2004, the Attorney General denied the applicants' claim pursuant to R.C. 2743.52(A), R.C. 2743.60(A), and R.C. 2743.56(B). The Attorney General contended that Daniel Cutlip was not an Ohio resident at the time of the assault and hence he failed to meet the jurisdictional residency requirements in order to qualify for an award of reparations. The Attorney General also stated that Daniel failed to report the incident within seventy-two hours of its occurrence to law enforcement officials or show good cause for the delay. According to information in the file, a report was not made until April 3, 2004. On June 4, 2004, the applicants filed a request for reconsideration. On July 13, 2004, the Attorney General issued a Final Decision denying the claim once again. On July 20, 2004, Daniel Cutlip filed a notice of appeal to the Attorney General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on October 7, 2004 at 10:00 A.M.

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

testified that prior to moving to San Diego, California in order to work as a seasonal youth counselor for Walking on Water, a Christian surfing camp, he had been enrolled at Owens Community College in Toledo, Ohio. Mr. Cutlip explained that he remained in San Diego after the summer camp ended (August 2003) in order to assist the camp during the winter months, but to help defray the cost of his monthly expenses he obtained employment at Lowe's.

{¶ 3} Mr. Cutlip testified that he was walking home at approximately 1:30 A.M. on October 25, 2004 with two friends when someone from a fraternity house, off San Diego State University's campus, threw a beer bottle, which struck his friend in the head. Mr. Cutlip stated that in an attempt to protect his friend a fight ensued, which soon involved him, his friends, and approximately thirteen individuals from the fraternity house. Mr. Cutlip stated that after the fight ended he went home, took some aspirin, placed an ice pack on his face, and proceeded to bed. After a couple of hours, Mr. Cutlip asserted that he was unable to sleep due to his increasing pain and hence a friend transported him to the hospital. As a result of the assault, Mr. Cutlip stated that he was informed by the emergency room physician that he had sustained an orbital blowout and a broken nose and that he would need immediate facial reconstructive surgery. After departing the hospital, Mr. Cutlip testified that he contacted his father, who immediately purchased an airline ticket for his impending departure (the next day) in order to have the surgery performed at home in Toledo, Ohio. Mr. Cutlip explained that due to the swelling in his face he did not undergo the surgery until a week after his return home to Toledo.

{¶ 4} Mr. Cutlip testified that he did not file an immediate police report because he was unaware that he had to do so, even though he had inquired with hospital staff about making a police report. Mr. Cutlip also indicated that he was unable to remember all the details

surrounding the incident to have properly assisted the police by positively identifying any of the offenders or the location of the assault.

{¶ 5} Mr. Cutlip further testified that he returned to San Diego shortly after his surgery since his personal belongings were still in California. Upon returning to California, Mr. Cutlip stated that he resumed his employment with Lowe's, but eventually returned home to Toledo in February 2004, where he currently attends the University of Toledo. Lastly, Mr. Cutlip testified that he had no intent of becoming a citizen of California or permanently residing in San Diego, since he was enrolled in college in Toledo and still maintained an Ohio driver's license.

{¶ 6} Applicants' counsel stated, based on Daniel Cutlip's testimony, that the claim should be allowed. Counsel argued that Daniel had no intent of becoming a resident of or permanently residing in California since: he 1) initially went to San Diego to work at a seasonal camp, 2) still maintained an Ohio driver's license, and 3) was enrolled in school in Ohio. Counsel argued that it would have been unreasonable for Daniel to have filed a police report within seventy-two hours of the incident, in light of his injuries and because Daniel was unable to remember details of the event that would have assisted the police in the investigation of the matter.

{¶ 7} The Assistant Attorney General continued to maintain that the applicants' claim should be denied since Daniel Cutlip was not an Ohio resident at the time of the criminally injurious conduct and because Daniel failed to timely file a police report or show good cause for the delay. The Assistant Attorney General argued that Daniel listed his address on both the Ohio and California reparations' applications as San Diego, California and that he had stopped working for Walking on Water, but was employed with Lowe's at the time of the criminally

injurious conduct. The Assistant Attorney General also argued that the only exception for delayed reporting under R.C. 2743.60(A) is when a victim has a physical or mental disability preventing him from making a report.

{¶ 8} R.C. 2743.51(A)(2)(a)(ix) states in pertinent part:

(A) "Claimant" means both of the following categories of persons:

(2) Any of the following persons who claim an award of reparations under sections 2743.51 to 2743.72 of the Revised Code:

(a) A victim who had a permanent place of residence within this state at the time of the criminally injurious conduct and who, at the time of the criminally injurious conduct, complied with any one of the following:

(ix) Had not departed the geographical boundaries of this state for a period exceeding thirty days or with the intention of becoming a citizen of another state or establishing a permanent place of residence in another state.

{¶ 9} 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 that Daniel Cutlip meets the jurisdictional residency requirements to qualify for an award of reparations. In In re Berresford (1993), 63 Ohio Misc. 2d 379, Judge Leach allowed an applicant's claim and stated that "For the court not to be able to read the pertinent section of R.C. 2743.51(A)(2)(a)(ix) as "exceeding thirty days [and] with the intention * * *" would unjustly penalize those residents of Ohio who may be outside the state boundaries for over thirty days for a purpose not specified in R.C. 2743.51(A)(2)(a)(i) through (viii)." Id at 382. We note that Daniel Cutlip testified that although he was outside the state of Ohio for more than thirty days,

he had no intent of becoming a citizen of or establishing residency in California based upon his enrollment at the University of Toledo and his Ohio driver's license.

{¶ 10} Moreover, we also find that Daniel Cutlip satisfied the R.C. 2743.60(A) reporting requirement when he informed hospital personnel of the assault. In In re Ross, V2003-40933tc (4-21-04), a panel of commissioners determined that the applicant had good cause for the delay in reporting the incident when the hospital failed to report the assault to the police. We note that R.C. 2743.60(A) does not require hospital personnel to make a report of criminally injurious conduct to law enforcement officials. However, California Penal Code Sections 11160 and 11161 requires hospitals and physicians to report the name of a victim, who suffers from any injuries inflicted in violation of California state penal law, to local law enforcement authorities. We find it reasonable for this victim to have relied upon hospital personnel to inform local law enforcement officials with respect to the October 25, 2003 assault, especially when hospitals and physicians are mandated to do so in California. Therefore, the July 13, 2004 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings.

IT IS THEREFORE ORDERED THAT

- 1) The July 13, 2004 decision of the Attorney General is REVERSED to render judgment in favor of the applicants;
- 2) This claim is remanded to the Attorney General for economic loss calculations and decision consistent with the panel's findings;

- 3) This order is entered without prejudice to the applicants' right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;
- 4) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

KARL H. SCHNEIDER
Commissioner

CLARK B. WEAVER, SR.
Commissioner

ID #\2-dld-tad-102804

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

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