

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: DAVID GIPSON

Case No. V2007-90056

DAVID GIPSON

Applicant

Commissioners:
Clarence E. Mingo II, Presiding
Gregory P. Barwell
Randi Ostry LeHoty

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} On September 14, 2006, David Gipson (“applicant” or “Mr. Gipson”) filed a reparations application seeking reimbursement of expenses incurred with respect to a September 16, 2004 assault incident. On September 27, 2006, the Attorney General denied the claim pursuant to R.C. 2743.56(B), R.C. 2743.60(A), and R.C. 2743.60(E). On October 20, 2006, the applicant filed a request for reconsideration. On December 11, 2006, the Attorney General denied the claim pursuant to R.C. 2743.52(A), R.C. 2743.60(E), and R.C. 2743.60(F). The Attorney General contends that the applicant failed to qualify as a victim of criminally injurious conduct; that the applicant engaged in violent felonious conduct; and that the applicant engaged in substantial contributory misconduct. On January 12, 2007, the applicant filed a notice of appeal to the Attorney General’s December 11, 2006 Final Decision. On August 23, 2007 at 10:50 A.M., this matter was heard by this panel of three commissioners.

{¶2} The applicant, the applicant’s attorney, and an Assistant Attorney General attended the hearing. According to the Incident Report, on September 16, 2004, an

assault occurred. However, in the report, the applicant is listed as having been arrested in connection with the alleged rape and kidnaping of Ashley Higdon ("Ms. Higdon"). The report lists Ms. Higdon as the reportee, but lists no witnesses. On September 28, 2004, the following text was added to the report: "Suspect held vickt at knife point in office of above location. Suspect ordered victim to undress and stated he wanted to have sex with her. Victim refused but suspect would not let her leave." Also according to the Field Report, Detective Day of the Cincinnati Police Department stated that the applicant was sexually assaulting Ms. Higdon when two individuals came to Ms. Higdon's rescue and assaulted him.

{¶13} Mr. Gipson testified that he suffered severe injuries on September 16, 2004, while working at one of his properties, 3560 Wilson Avenue. Mr. Gipson explained that he had previously arranged to meet one of his renters to collect her late rent payment. According to Mr. Gipson, shortly after the renter left, a stranger, Ashley Higdon knocked on his office door which is located in the basement of the apartment complex. The applicant opened the door and asked Ms. Higdon how she gained entry into the secured building. She responded that the people in unit #4 let her in the building. He instructed her to leave the premises and he returned to work. A short while later, Ms. Higdon returned with the renter from unit #2. The applicant stated the renter from unit #2 asked him to help Ms. Higdon secure an apartment. After a brief discussion, the applicant stated that he informed Ms. Higdon that she needed subsidized housing and that he could provide her with the name of a Section 8 housing inspector. Mr. Gipson explained that while he was retrieving the information, the renter from unit #2 left. However, shortly thereafter he heard a man's voice coming from the hallway asking the whereabouts of his girlfriend. Two males knocked on his office door,

when he opened the door he was struck with a baseball bat and a fight ensued. Sometime during the melee, the assailants and Ms. Higdon departed his office.

{¶4} The applicant testified that after the incident, he went outside to his truck, retrieved his cellular telephone and contacted the police. The police arrived approximately 10 minutes later and offered to transport him to the hospital, but he declined because he did not wish to leave his business unattended while large sums of money were present. Mr. Gipson explained that he went to the police station for additional questioning, and that later he and the police returned to his office to retrieve the baseball bat. However, when they returned to the premises, he was arrested for kidnaping and rape and was taken to jail. Mr. Gipson opined that he had been “set up” to be robbed because one of the assailants stated that he was going to “get paid.”

{¶5} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, we find that Mr. Gipson qualifies as a victim of criminally injurious conduct. According to the file, the applicant was treated at University Hospital on September 21, 2004. Mr. Gipson suffered injury to his head, face, neck, and leg after reporting to hospital personnel that he had been assaulted with a baseball bat.

{¶6} Moreover, we fail to find that Mr. Gipson engaged in violent felonious conduct or substantial contributory misconduct on September 16, 2004. Even though the applicant was arrested for kidnaping and rape, we do not find sufficient evidence of such conduct to warrant denying this claim. The only evidence presented of any misconduct by Mr. Gipson on September 16, 2004 is the police incident report, which fails to list any witnesses or details of the alleged incident. Therefore, the December 11,

2006 decision of the Attorney General shall be reversed and the claim shall be remanded to the Attorney General for total economic loss calculations and decision.

{¶7} IT IS THEREFORE ORDERED THAT

{¶8} 1) The December 11, 2006 decision of the Attorney General is REVERSED and judgment is rendered for the applicant;

{¶9} 2) This claim is remanded to the Attorney General for total economic loss calculations and decision;

{¶10} 3) 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;

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

CLARENCE E. MINGO II
Presiding Commissioner

GREGORY P. BARWELL
Commissioner

RANDI OSTRY LE HOTY

[Cite as *In re Gipson*, 2007-Ohio-6284.]

Commissioner

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

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