

[Cite as V2004-60679, 2006-Ohio-7326.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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ALEXANDER P. SWINT, : Case No. V2004-60679
Applicant. : OPINION OF A THREE-
COMMISSIONER PANEL

{¶ 1} Alexander Swint (“Swint” or “applicant”) filed a reparations application seeking reimbursement of expenses incurred with respect to a November 10, 2002 physical altercation between himself and Bradley Shafer (“Bradley”). On March 30, 2004, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.52(A) contending that the applicant failed to prove that he was the victim of criminally injurious conduct. The Attorney General noted that the police and the prosecutor’s office were unable to determine who the initial aggressor was in the matter and hence no charges were filed against either party. On April 19, 2004, the applicant filed a request for reconsideration. On June 17, 2004, the Attorney General issued a Final Decision and stated that the previous decision warranted no modification. On July 12, 2004, the applicant filed a notice of appeal to the Attorney General’s Final Decision. After several continuances, this matter came to be heard before this panel of three commissioners on May 3, 2006 at 11:00 A.M.

{¶ 2} For the reasons set forth below, the panel affirms the decision denying reparations to the applicant. This case, as most others, presents varied versions of

facts that are all plausible; however, neither the applicant nor the witnesses for the State have presented an entirely plausible version of the origin, the reason for or the likely cause of the physical altercation.

{¶ 3} The applicant, the applicant's attorney, and an Assistant Attorney General attended the hearing and presented testimony, an exhibit, and oral argument for the panel's consideration. According to the testimony of Swint, he met Bradley's mother, Patricia Hamilton ("Hamilton"), while the two worked at Nationwide Insurance Company. Swint and Hamilton lived together from 2001-2003 with Hamilton's two sons, Bradley (now age 23) and Todd (now age 20). Swint further testified that he and Bradley had a poor relationship and did not get along particularly because Swint had previously advised Hamilton not to co-sign for a vehicle loan for Bradley; however, Swint and Bradley had no history of physical altercations. Swint asserted that he attempted to be a father figure to Bradley, to no avail.

{¶ 4} Swint further testified that he borrowed Hamilton's vehicle with her permission on November 9, 2002 to go to a bar, where he consumed a few shots of liquor and a few beers. Hours later, he drove home, had a brief discussion with Hamilton, then walked to a neighbor's home, where he consumed more beer. Swint acknowledged that he was very intoxicated when he returned home and added that he had earlier fallen out of a chair at the neighbor's home. Swint stated that he returned home around 4:00 A.M. and was in the living room with Hamilton having a discussion. Shortly thereafter, Swint stated that Bradley came down the stairs and following a brief verbal exchange, a physical altercation ensued.

{¶ 5} Swint testified that he never provoked Bradley to strike him and stated that he himself never struck anyone. According to Swint, Bradley came down the stairs and asked him where he had been with Hamilton's car. After Swint responded that it was a matter between himself and Hamilton, Bradley struck him in the face. Todd also came down the stairs and joined the altercation, during which time he bit Swint on the back. Swint testified that other individuals who were present at the home, (Bradley's girlfriend, Todd's girlfriend, and a male friend of Bradley's), also participated in the altercation. Swint stated that the assault ended when Hamilton instructed Bradley not to hit him over the head with a pan. Swint then contacted the police, who arrived shortly thereafter and transported him to the hospital for treatment to his jaw, shoulder, and back.

{¶ 6} Bradley's version of events varied markedly from Swint's in certain respects. According to Bradley, on November 10, 2002 he was at home asleep in his upstairs bedroom because he had to work the next morning when the applicant came home drunk and belligerent. Bradley grew weary of the applicant's behavior and hence he proceeded downstairs. When he arrived downstairs, Bradley stated that Swint stood up from the sofa and lunged at him. Bradley stated that he struck Swint and the physical altercation commenced. Bradley explained that Todd also came downstairs and that they attempted to remove Swint from the house until the police arrived. At some point during the altercation, Todd bit Swint on the back. The incident was the first physical altercation that Bradley or Todd ever had with Swint. Bradley also noted that he was unaware of any previous physical confrontations between Swint and Hamilton. Contrary to Swint's testimony, Bradley asserted that Swint disliked him and

that he was always making negative comments about him and giving him dirty looks. Bradley stated that he believed Swint's comments that evening were threatening and that he struck Swint because he wanted Swint to "shut up." Bradley further stated that he feared for his safety as well as that of his mother. In addition, Bradley testified that only his girlfriend, Todd, Hamilton, and Swint were in the house at the time of the altercation.

{¶ 7} Hamilton's testimony is equally credible in some respects, and questionable in others. According to Hamilton, although she never gave Swint permission to use her vehicle on November 9, 2002, Swint returned home in the vehicle at approximately 10:00 P.M. Shortly thereafter, Swint left with a neighbor and did not return until approximately 3:00 A.M. on November 10, 2002. When Swint returned home, he was inebriated and Hamilton was asleep on the sofa. Swint then began ranting and raving about Bradley and accused Hamilton of having sexual relations with him. Hamilton noted that Swint and Bradley held a mutual dislike for one another. Hamilton further explained that Bradley was upstairs sleeping at the time, but came downstairs after hearing all the commotion. Hamilton stated that Swint was sitting on the sofa when Bradley descended the stairs and confronted Swint for talking about him. Hamilton stated that she feared for Bradley's safety, not necessarily her own. Unlike Swint and Bradley, Hamilton stated that Bradley picked up a small, delicate vase containing glass pebbles and hit Swint over the head. Swint then threw a plate across the room, stood and lunged at Bradley, but Todd tackled Swint to the floor. Hamilton stated that the incident ended when she stopped Bradley from striking the applicant with

a pan. Hamilton explained that she then contacted the police, who arrived a short time later and escorted Swint from the premises.

{¶ 8} The applicant's attorney argued that the applicant's claim should be allowed based on the testimony proffered. Counsel stated that historically, loudness and inebriation do not amount to contributory misconduct under this program in order to disqualify a victim/applicant from an award. Counsel asserted that based on the evidence, the applicant clearly qualifies as a victim of criminally injurious conduct, since he was assaulted. Counsel noted that everyone testified that the applicant never struck anyone. Counsel also noted that the applicant sustained injuries as indicated in Exhibit 1 (photographs of Swint's injuries after the assault). Counsel argued that the applicant was assaulted merely because he was drunk, loud, and engaging in abusive talk. Counsel asserted that there is no evidence to find that the applicant engaged in any force or threat of imminent force with any of the parties involved in the incident to have warranted the assault.

{¶ 9} However, the Assistant Attorney General maintained that the applicant's claim should be denied. The Assistant Attorney General argued that the applicant's intoxicated state and threatening behavior warranted Bradley's response. The Assistant Attorney General stated that but for the applicant's behavior there would have been no physical altercation.

{¶ 10} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. A prima facie claim is typically made when an applicant files an application in accordance

with R.C. 2743.56 and submits such additional material, information, and evidence as required by R.C. 2743.59. However, this panel is of the view that there is insufficient evidence to demonstrate, by a preponderance of the evidence, that Swint was the victim of criminally injurious conduct, specifically an assault in this case.

{¶ 11} Revised Code 2743.51(C)(1) in part states:

“(C)‘Criminally injurious conduct’ means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.”

{¶ 12} Based on the varied testimony regarding the physical altercation, along with the inherent unreliability of the recollection of a then-heavily intoxicated applicant, we find that Swint has not demonstrated, by a preponderance of the evidence, that Bradley’s actions constituted an assault.

{¶ 13} Three versions of the events that transpired that evening were presented, but the only consistent facts were as follows: 1) Swint had been drinking alcohol heavily for a number of hours; 2) Swint woke Hamilton up when he returned home at 4:00 A.M. and started ranting about Bradley; 3) Swint’s and Hamilton’s argument was loud enough to wake Bradley; 4) Swint made lewd accusations against Hamilton and Bradley; 5) Swint arose from his seated position on the couch when Bradley descended the steps; 6) Bradley feared for the safety of his mother; 7) Hamilton feared for the safety of her sons; 8) Swint lunged toward Bradley in a manner that was

perceived to be a threat; 9) the police department and prosecutor's office failed to charge or prosecute either Swint or Bradley; 10) Swint and Bradley had a history of verbal altercations with one another; 11) there was some form of physical altercation; and 12) Swint is physically larger than Bradley and, but for his intoxicated state, could have seriously injured Bradley during a physical confrontation.

{¶ 14} Based on the above, we believe it would have been questionable logic and sensibility for Bradley to attack Swint and invite him into a physical altercation, especially when Bradley would have likely been overtaken. By the same token, it is reasonable to believe that Bradley's initial blow was to prevent a potential or probable attack to his person or to his mother. The evidence presented does not outweigh this uncertainty. Moreover, the panel does not believe that Bradley's conduct was punishable by fine, imprisonment or death in accordance with the definition of criminally injurious conduct. Therefore, the June 17, 2004 decision of the Attorney General shall be affirmed and the claim denied.

Decision affirmed.

LLOYD PIERRE-LOUIS,
Commissioner

THOMAS H. BAINBRIDGE,
Commissioner

TIM MC CORMACK,
Commissioner

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IN RE: ALEXANDER P. SWINT : Case No. V2004-60679
ALEXANDER P. SWINT : ORDER OF A THREE-
Applicant : COMMISSIONER PANEL

IT IS THEREFORE ORDERED:

- 1) The June 17, 2004 decision of the Attorney General is AFFIRMED pursuant to R.C. 2743.52(A);
- 2) This claim is DENIED and judgment is rendered for the state of Ohio; and,
- 3) Costs are assumed by the court of claims victims of crime fund.

LLOYD PIERRE-LOUIS,
Commissioner

THOMAS H. BAINBRIDGE,
Commissioner

TIM MC CORMACK,
Commissioner