

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: DAMON D. HANLEY	:	Case No. V2002-51362
DAMON D. HANLEY	:	<u>OPINION OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} On February 20, 2002, the applicant filed a reparations application seeking reimbursement of economic loss incurred as a result of a September 15, 2001 DUI incident. On May 29, 2002, the Attorney General issued a Finding of Fact and Decision denying the applicant’s claim pursuant to R.C. 2743.60(E) contending that the applicant engaged in drug trafficking. The Attorney General stated the applicant was discovered with multiple baggies of marijuana and \$4,000.00 in cash on April 9, 2000. On July 11, 2002, a request to reconsider was filed. On July 24, 2002, the Attorney General issued a Final Decision denying the claim because his request to reconsider was late. On August 8, 2002, a notice of appeal was filed. On December 27, 2002, the panel of commissioners vacated the Attorney General’s Final Decision and remanded the case to the Attorney General for further investigation and decision concerning the felonious conduct issue. On April 17, 2003, the Attorney General filed a Final Decision denying the claim once again pursuant to R.C. 2743.60(E) asserting that the applicant engaged in alleged drug trafficking. The Attorney General cited the April 9, 2000 incident as well as a May

17, 1995 incident whereby the applicant allegedly agreed to sell a \$100.00 worth of crack cocaine to an unbeknownst police informant. The Attorney General asserted that the nolle prosequi of the matter has no bearing on the applicant's actual conduct. On April 29, 2003, a notice of appeal was filed to the Attorney General's latest Final Decision. This matter came to be heard before this panel of three commissioners on July 10, 2003 at 10:35 A.M.

{¶2} The applicant, applicant's counsel and an Assistant Attorney General attended the hearing and presented testimony, exhibits and oral argument for this panel's consideration. Applicant's counsel stated that there are three issues before the panel (1) the 1995 drug trafficking matter, (2) the 2000 drug related incident and (3) the 2001 criminally injurious conduct matter. The Assistant Attorney General agreed with counsel as to the issues before us.

{¶3} Damon Hanley essentially testified that he did not engage in felonious conduct with respect to any of the incidents referenced by the Assistant Attorney General nor did he act as an accomplice to Shawn Arnold on September 15, 2001. Mr. Hanley asserted that in 1995, the police were intentionally misinformed that he had been the person attempting to sell crack cocaine during an alleged drug transaction. Mr. Hanley insisted that this alleged police informant was actually a "crackhead" who held a grudge against him. Mr. Hanley informed the panel that he was not the individual involved in the alleged drug transaction because he was somewhere else at the time. Mr. Hanley asserted that the incident occurred while he was still in high school and that the case against him was eventually thrown out after his attorney filed a Notice of Alibi.

{¶4} As to the 2000 incident, Mr. Hanley explained that the matter arose after the wedding reception of his cousin, Sesric Hanley. Mr. Hanley testified that he was a groomsman

in the wedding and that he had accepted a ride home from the reception from a fellow groomsman when they were stopped and the vehicle was searched by the police. The applicant asserted that he did not know the driver of the vehicle prior to the wedding. Mr. Hanley insisted that he was unaware of any money, drugs, or drug paraphernalia that was contained in the automobile prior to the police search. Mr. Hanley stated that the occupants of the vehicle were charged with various drug related crimes, however all charges against him were nolle.

{¶5} Mr. Hanley explained that on September 15, 2001, he left work around 3:30 P.M. and that sometime later he and his friend, Alonzo Robinson, went to play billiards. While at the pool hall, Mr. Hanley admitted that he and Alonzo had consumed alcoholic beverages. Mr. Hanley stated that Alonzo made several telephone calls for assistance and finally Shawn Arnold arrived to pick them up. Mr. Hanley explained, due to the severity of his injuries, that he was unable to recall entering Shawn's vehicle or whether Shawn was even intoxicated. However, Mr. Hanley stated that Alonzo never appeared intoxicated to him.

{¶6} Janetta Rematt, the victim's fiancé, testified concerning the 2000 drug related incident and the criminally injurious conduct. Ms. Rematt stated that in April of 2000 she and the victim attended Sesric Hanley's wedding reception together. Ms. Rematt explained that after the reception, Damon attempted to car-pool with one of the groomsmen, however they were stopped by the police. Ms. Rematt asserted that Mr. Hanley was not familiar with any of the individuals in the vehicle, even though the driver was also a groomsman in the wedding. Ms. Rematt stated that Damon only accepted the ride home because Sesric made the suggestion.

{¶7} As to the criminally injurious conduct, Ms. Rematt testified that prior to the accident she was aware that Damon and Alonzo had been playing billiards. Ms. Rematt testified

that she was at work on the West side of Cleveland when she received a telephone call from Damon at approximately 10:45 P.M. indicating that he would be unable to pick her up from work since Alonzo's car had broken down. Ms. Rematt explained that through out the night she attempted to contact Damon, via his cell phone, to no avail. Eventually, Ms. Rematt explained that around 9:30 P.M. the next day, she was informed by Alonzo's fiancé that Damon had been in an automobile accident. Shortly thereafter, Ms. Rematt stated that she went to the hospital and identified Damon for hospital personnel.

{¶8} Counsel argued that, according to the testimony presented, the applicant's claim should be permitted. Counsel asserted that the applicant did not engage in felonious conduct in 1995 nor in 2000 since all charges were nolle. Counsel further asserted that the applicant did not know and had no reason to know that Shawn Arnold was intoxicated on September 15, 2001, regardless of his knowledge or lack thereof concerning Alonzo Robinson's inebriated state. Moreover, counsel contended that it would be patently unfair to deny the applicant an award of reparations based upon his *alleged* knowledge of Alonzo's intoxication, when the accident occurred as a result of Shawn Arnold's incompetent driving ability. Lastly, counsel moved to introduce Exhibits 1 through 4.

{¶9} The Assistant Attorney General continued to maintain that the applicant's claim should be denied. The Assistant Attorney General asserted that the police reports, concerning both the 1995 and 2000 incident, clearly indicate that the applicant had previously engaged in felonious drug activity, despite the nolle charges or the testimony presented. The Assistant Attorney General argued that the reason the 1995 charge was nolle was because the police did not want to expose their informant by having him testify, not because of the Notice of Alibi. The

Assistant Attorney General argued, concerning the 2000 incident, that the reason the charges were dropped was because nobody in the vehicle claimed ownership of the money or drugs. However, the Assistant Attorney General stated that the applicant admitted through his former attorney, in the request to reconsider, that the \$4,000.00 was his money. With respect to the criminally injurious conduct, the Assistant Attorney General stated that it is clear based on the toxicology report that the applicant and Alonzo were intoxicated. The Assistant Attorney General contended that if Damon would ride with Alonzo while he was inebriated, then Damon would also ride with Shawn Arnold who was also intoxicated. The Assistant Attorney General argued that the applicant used poor judgment by accepting a ride from Mr. Arnold. Accordingly, the Assistant Attorney General stated that the claim should be denied.

{¶10} R.C. 2743.60(E)(3) states:

“(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:

“* * *

“(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.

{¶11} 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. With respect to the May 1995 incident, we find insufficient evidence that the applicant engaged in felonious conduct. According to information in the file, the police obtained an audio/video tape of the

alleged 1995 drug transaction that could have been presented as evidence. Moreover, we believe the applicant's testimony to be true that he had a credible alibi, as evidenced by his lack of prosecution.

{¶12} In relation to the 2000 incident, we find that the Attorney General failed to prove by a preponderance of the evidence that the applicant engaged in felonious conduct. We find, the fact that the applicant had just left his cousin's wedding reception, that he had accepted the ride at his cousin's suggestion, that he was not familiar with the driver of the vehicle, and the fact that he was not convicted of any drug related offenses, even though the other occupants of the vehicle were convicted, to be reliable evidence that the applicant may not have been involved in any drug related activity.

{¶13} As far as the September 15, 2001 DUI matter is concerned, we find that the applicant was not an accomplice of the offender who committed the criminally injurious conduct. Mr. Hanley testified that he was unaware of both Mr. Robinson's and Mr. Arnold's intoxication. Mr. Hanley, inebriated himself, had no reason to know of Shawn Arnold's sodden state since he did not have the opportunity to witness him imbibe. Moreover, the Attorney General's argument of transfer intent is not well-taken by this panel. Even if Mr. Hanley knew Mr. Robinson was intoxicated, we cannot apply Mr. Hanley's state of knowledge concerning Mr. Robinson to Mr. Arnold's inebriated condition. Certainly, one cannot reasonably assume that just because a person is able to tell that a particular individual is drunk that he can also tell when another individual is sodden. Mr. Hanley testified that he was not very familiar with Mr. Arnold nor did he remember entering Mr. Arnold's vehicle. Based on the facts of this case and the reasons set

forth above, we find the applicant's claim for an award of reparations shall be remanded to the Attorney General for economic loss calculations and decision.

{¶14} IT IS THEREFORE ORDERED THAT

{¶15} 1) The April 17, 2003 decision of the Attorney General is REVERSED to render judgment in favor of the applicant;

{¶16} 2) This claim is remanded to the Attorney General pursuant to R.C. 2743.191 for economic loss calculations and decision based on the above findings;

{¶17} 3) This order is entered without prejudice to the applicant's right to file a supplemental compensation application pursuant to R.C. 2743.68;

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

DALE A. THOMPSON
Commissioner

CLARK B. WEAVER, SR.
Commissioner

ASHER W. SWEENEY
Commissioner