

[Cite as *In re Peppo*, 2005-Ohio-815.]

IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION

IN RE: DANIEL J. PEPPO	:	Case No. V2004-60164
STEPHANIE SMITH	:	<u>ORDER OF A THREE-</u>
LINDA HUTCHINSON	:	<u>COMMISSIONER PANEL</u>
Applicants	:	
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{¶ 1} The applicants filed a reparations application seeking reimbursement of expenses incurred with respect to the February 28, 2003 murder of Daniel Peppo. On December 17, 2003, the Attorney General denied the applicants' claims pursuant to former R.C. 2743.60(F)(2) and In re Dawson (1993), 63 Ohio Misc.2d 79 contending that the decedent engaged in contributory misconduct on February 28, 2003 since the decedent tested positive for cocaine on the coroner's toxicology report. On December 29, 2003, the applicants filed a request for reconsideration. On February 4, 2004, the Attorney General denied the applicants' claim once again. On February 13, 2004, the applicants filed a notice of appeal to the Attorney General's February 4, 2004 Final Decision. Hence, this appeal came to be heard before this panel of three commissioners on December 1, 2004 at 11:30 A.M.

{¶ 2} Linda Hutchinson, applicants' counsel, and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel's consideration. Christen

Beane, a homicide detective with the Dayton Police Department, testified via telephone that she is one of the officers investigating the homicide of Daniel Peppo. Detective Beane stated that the case against Allen Hale, a known drug dealer and suspect in the death of Daniel Peppo, was dismissed after witnesses' retracted their statements. However, Detective Beane noted for the panel that the case may be re-filed against Mr. Hale in the near future. Detective Beane testified that Daniel Peppo was frequently used as a confidential informant by Detective Tim Belinski for drug trafficking cases. Detective Beane stated that the decedent was shot in the parking lot of a well known drug area, but was not working as a police informant that day. Detective Beane noted that Detective Tim Belinski had informed her that he believed that Daniel had started using drugs again.

{¶ 3} Tim Belinski, a detective with the Dayton Police Department, testified via telephone that he recruited Daniel Peppo to work for him as a police informant, since Daniel was well connected in Dayton's illegal drug trade. Detective Belinski stated that when he initially hired Daniel he was not using drugs, however he believed that Daniel had resumed abusing drugs approximately three months before he was shot and that he had helped the decedent enter a drug rehabilitation program. Detective Belinski testified that the decedent was never required to ingest drugs while acting as an informant nor was Daniel working for law enforcement the day he was shot.

{¶ 4} Linda Hutchinson, the decedent's mother, testified that when she became aware that Daniel was working for Detective Belinski as an informant, she contacted Detective Belinski because she was concerned about Daniel, due to his history of drug abuse. Ms. Hutchinson also

testified that she was informed by Detective Belinski that Allen Hale had shot Daniel because he was a “snitch” for the police.

{¶ 5} Applicants’ counsel stated that the claim should be allowed based upon the testimony presented. Counsel argued that Daniel was killed for being a police informant and not as a result of the drugs in his system. Counsel further argued that the presence of cocaine in Daniel’s system could have resulted from the decedent having tasted cocaine to test its authenticity while performing his duties as a police informant, even though such conduct was not required by the police.

{¶ 6} The Assistant Attorney General maintained that the claim should be denied pursuant to former R.C. 2743.60(F)(2) since the applicants failed to overcome the presumption that a positive toxicology report for cocaine is sufficient evidence of felony drug use, which contributed to the criminally injurious conduct. The Assistant Attorney General urged the panel to also consider the following factors when determining the case: 1) the decedent’s history of drug abuse, 2) that the police never required the decedent to ingest any drugs in the performances of his duties as a police informant, and 3) that the decedent was not working as a police informant on the day he was shot.

{¶ 7} Former R.C. 2743.60(F)

(F) In determining whether to make an award of reparations pursuant to this section, the attorney general or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it

is determined to be reasonable because of the contributory misconduct of the claimant or the victim.

{¶ 8} For purposes of this section, if it is proven by a preponderance of the evidence that the victim engaged in conduct at the time of the criminally injurious conduct that was a felony violation of section 2925.11 of the Revised Code, the conduct shall be presumed to have contributed to the criminally injurious conduct and shall result in a complete denial of the claim.

{¶ 9} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, this panel makes the following determination. We find that the Attorney General has proven, by a preponderance of the evidence, that the victim engaged in felonious drug use that contributed to the criminally injurious conduct. In this case, the applicants have failed to present sufficient evidence to rebut the presumption that a positive result for an illegal substance on a toxicology report is evidence of felonious drug use that contributed to the criminally injurious conduct.¹ Therefore, the February 4, 2004 decision of the Attorney General shall be affirmed.

IT IS THEREFORE ORDERED THAT

{¶ 10} 1) The November 19, 2004 and November 29, 2004 motions for telephone testimony are hereby GRANTED;

{¶ 11} 2) The February 4, 2004 decision of the Attorney General is AFFIRMED;

{¶ 12} 3) This claim is DENIED and judgment is rendered in favor of the state of Ohio;

¹ In In re Green, V03-40836jud (5-13-2004), Judge Shoemaker held that toxicology evidence of felony drug use is presumed, pursuant to former R.C. 2743.60(F)(2), to have contributed to the criminally injurious conduct, however that presumption may be rebutted with additional evidence.

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

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

KARL H. SCHNEIDER
Commissioner

ID #\6-dld-tad-120804

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

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To S.C. Reporter 2-25-2005