

[Cite as *In re McConnell*, 2005-Ohio-5672.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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| IN RE: KEVIN E. MC CONNELL | : | Case No. V2004-60741 |
| KEVIN L. MC CONNELL | : | <u>ORDER OF A THREE-</u> |
| LAURA S. PHILLIPS | : | <u>COMMISSIONER PANEL</u> |
| Applicants | : | |
| | : : : : : | |

{¶ 1} The applicants filed a reparations application seeking reimbursement of expenses incurred regarding the February 4, 2003 murder of Kevin E. McConnell (“Mr. McConnell” or “decedent”). On June 17, 2003, the Attorney General denied the claim under former R.C. 2743.60(F) contending that the decedent’s conduct had substantially contributed to his murder. On July 10, 2003, the applicants filed a request for reconsideration. On July 15, 2004, the Attorney General issued a Final Decision denying the claim once again. On July 26, 2004, the applicants filed a notice of appeal to the Attorney General’s Final Decision. Hence, a panel of three commissioners heard this matter on July 27, 2005 at 11:00 A.M.

{¶ 2} The applicants’ attorney and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel’s consideration. Detective Michael Pigman (“Detective Pigman”), of the Trotwood Police Department, testified concerning his involvement regarding the February 4, 2003 murder of Mr. McConnell. Detective Pigman explained that on February 5, 2003 he had the opportunity to interview Antwan Barlow (“Mr. Barlow”), an acquaintance of Mr. McConnell. Detective Pigman testified that Mr. Barlow told

him that he had contacted the decedent on February 4, 2003 offering to sell him a pound of marijuana, but Mr. McConnell only had enough money to purchase a quarter pound of marijuana. Mr. Barlow indicated that the transaction took place outside of his apartment complex (Pinewood Apartments) in an automobile. After the transaction was completed they entered Mr. Barlow's apartment (43 Pinewood Circle) to further inspect the 4 full baggies of marijuana. Detective Pigman stated, as reported by Mr. Barlow, that shortly after the decedent exited 43 Pinewood Circle (to visit a friend at 29 Pinewood Circle) shots were fired that struck and eventually killed Mr. McConnell.

{¶ 3} Detective Pigman explained that Antoine Ingram, Lamont Washington, and Dwight Broom had conspired to rob the residents of 29 Pinewood Circle (a known drug house) when Mr. McConnell was shot and killed. Detective Pigman asserted that he did not believe that Mr. McConnell was the robbers' intended victim. Detective Pigman testified that Mr. McConnell was found with a weapon laying under his body as well as 4 baggies of marijuana in his possession. Detective Pigman stated, due to the large amount of marijuana the decedent had in his possession, he believed that the substance was not intended for recreational use but for distribution purposes.

{¶ 4} Former Revised Code 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.

Revised Code 2925.03 states in pertinent part:

(A) No person shall knowingly do any of the following:

(1) Sell or offer to sell a controlled substance;

(2) Prepare for shipment, ship, transport, deliver, prepare for distribution, or distribute a controlled substance, when the offender knows or had reasonable cause to believe that the controlled substance is intended for sale or resale by the offender or another person.

{¶ 5} Based upon review of the file and the testimony presented, this panel makes the following determination. We find that Mr. McConnell engaged in drug trafficking, within ten years of the criminally injurious conduct, and therefore the claim shall be denied under former R.C. 2743.60(E)(3). Witness statements and Detective Pigman's testimony clearly illustrate Mr. McConnell's illegal drug involvement. Minutes prior to his death, Mr. McConnell had illegally purchased a quarter pound of marijuana, which is a felony violation of R.C. 2925.03. Detective Pigman testified that he believed Mr. McConnell purchased the large quantity of marijuana for distribution purposes and not for recreational usage. Therefore, the July 15, 2004 decision of the Attorney General shall be affirmed, albeit, under R.C. 2743.60(E).

IT IS THEREFORE ORDERED THAT

1) The applicant's July 26, 2005 motion for telephone testimony is hereby GRANTED;

2) The July 15, 2004 decision of the Attorney General is AFFIRMED under former R.C. 2743.60(E).

- 3) This claim is DENIED and judgment is rendered for the state of Ohio;
- 4) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\7-dld-tad-081205

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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