

[Cite as *In re Daniels*, 2007-Ohio-5689.]

Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

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IN RE: MARCIEL J. DANIELS

MELZIA SUGICK
STEPHANIE SUGICK

BRENDA DANIELS

MELYSSA WINKLEMAN

Applicants

Case No. V2006-21034

Case No. V2006-21042

Case No. V2006-21051

Commissioners:

Karl C. Kerschner, Presiding

Thomas H. Bainbridge

Tim McCormack

ORDER OF A THREE-
COMMISSIONER PANEL

{¶1} During 2003 and 2005, the applicants filed reparations applications seeking reimbursement of expenses incurred with respect to the December 18, 2003 homicide of Marciel Daniels (“victim”). On January 12, 2006, the Attorney General denied the claims pursuant to R.C. 2743.60(F) contending that the victim had engaged in substantial contributory misconduct. On July 25, 2006, a request for reconsideration was filed. On October 10, 2006, the Attorney General denied the claim once again. On November 9, 2006, a notice of appeal to the Attorney General’s October 10, 2006 Final

Decision was filed. On July 12, 2007 at 9:40 A.M., this matter was heard by this panel of three commissioners.

{¶2} Applicants' attorneys and an Assistant Attorney General attended the hearing and presented testimony and oral argument for the panel's consideration. Lt. Marhulik of the Warren Police Department briefly testified that he arrested Calvin Clark ("offender") on December 19, 2003 after he turned himself into the police. Lt. Marhulik explained that his involvement with the case was very limited because his only participation in the matter was the arrest of the offender. The remainder of Lt. Marhulik's testimony essentially reflected the information that was previously provided in the police reports.

{¶3} Melzia Daniels ("Mr. Daniels"), the victim's brother (now age 25), testified concerning the events that transpired the morning of December 18, 2003. Mr. Daniels explained that he, the victim, and Jarvis Russell ("Mr. Russell") went to the home of Tiffany Knepper ("Ms. Knepper"), who was Mr. Russell's girlfriend. Mr. Daniels stated that he, Mr. Russell, and his brother were going to look for jobs that day and that Mr. Russell had gone to Ms. Knepper's home to change his clothes. However, when they arrived the offender was present. Mr. Daniels opined that Ms. Knepper was also having a sexual relationship with the offender, which caused conflict between Mr. Russell and the offender. Mr. Daniels stated that the offender asked for a cigarette and that he tossed him a cigarette. However, the offender crumpled the cigarette up and threw it back at him. The offender then walked outside. Mr. Daniels stated that he watched the offender from the window and noticed him standing there and looking "crazy."

{¶4} Mr. Daniels related that approximately five minutes later he, his brother, and Mr. Russell exited the house (in that order). Mr. Daniels contended that the offender asked him whether he had a gun, and Mr. Daniels replied “no.” The offender then swiped a knife at him cutting his shirt. Mr. Daniels stated that he escaped injury, but that his brother had come to assist him and slipped and fell on the ice outside. The offender then began to stab his brother. Mr. Daniels stated that he started throwing rocks at the offender in an attempt to get him to stop. Mr. Daniels stated that during the ordeal, Mr. Russell remained standing on the front porch looking on in “shock.” Mr. Daniels stated that when the offender stopped he and Mr. Russell placed his brother into their vehicle and drove him to the hospital, where he died from his injuries. Lastly, Mr. Daniels stated that he knew the offender from high school and that he is currently in jail for felonious assault and robbery with respect to a different incident. The Attorney General failed to present any persuasive direct evidence or testimony to contradict Mr. Daniels. We found Mr. Daniels’ testimony credible.

{¶5} From review of the file and with full and careful consideration given to all the evidence presented at the hearing, we find that the Attorney General has failed to prove that the victim engaged in contributory misconduct. With respect to the exclusionary criteria of R.C. 2743.60, the Attorney General bears the burden of proof by a preponderance of the evidence. *In re Williams*, V77-0739jud (3-26-79); and *In re Brown*, V78-3638jud (12-13-79). According to R.C. 2743.51(M) and relevant case law, there are three elements that must be established before a *prima facie* case of contributory misconduct can be met: (1) specific, unlawful or intentionally tortious

conduct by the victim or applicant¹; (2) that specific conduct must have a causal relationship to the criminally injurious conduct; and (3) the victim or applicant must have or should have reasonably foreseen the likelihood of the criminally injurious conduct occurring if he engaged in such conduct². Moreover, in order for an award of reparations to be denied pursuant to R.C. 2743.60(F), the Attorney General must prove by a preponderance of the evidence that the victim's contributory misconduct was substantial in nature. See *In re Spaulding* (1991), 63 Ohio Misc. 2d 39. Every allegation of contributory misconduct shall be examined on a case-by-case basis. See *In re McKendry*, V91-26415jud (1-26-94) and *In re Simpson*, V93-36752jud (2-14-96).

{¶6} Based upon the facts and circumstances of this particular case, we do not find that the Attorney General established a prima facie case of contributory misconduct; i.e., the Attorney General failed to establish beyond a preponderance of the evidence that the victim engaged in any specific, unlawful or intentionally tortious conduct. Mr. Daniels testified that the offender assaulted him and that his brother had come to his rescue when he was assaulted with deadly force. The Attorney General presented insufficient evidence that the victim attacked the offender or that the victim did anything to warrant the assault or use of deadly force against him. Therefore, the October 10, 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

¹ See *In re McGary II*, V91-83761jud (11-16-94).

² See *In re Ewing* (1987), 33 Ohio Misc.2d 48.

{¶8} 1) The July 9, 2007 motion for telephone testimony is hereby GRANTED;

{¶9} 2) The October 10, 2006 decision of the Attorney General is REVERSED and judgment is rendered for the applicants;

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

{¶11} 4) This order is entered without prejudice to the applicants' right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

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

KARL C. KERSCHNER
Presiding Commissioner

THOMAS H. BAINBRIDGE
Commissioner

TIM MC CORMACK
Commissioner

ID #:\Victim Decisions to SC Reporter\Panel September 2007\V2006-21034.wpd\16-dld-tad-072307

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

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