

[Cite as *In re Sanders*, 2004-Ohio-3221.]

**IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION**

IN RE: ALAPHONSO O. SANDERS :
HEATHER R. LANNING : Case No. V2003-40917

BESSIE SANDERS: Case No. V2003-41034

Applicants : ORDER OF A THREE-
COMMISSIONER PANEL

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{¶1} The applicants filed a reparations application seeking reimbursement of expenses incurred with respect to the January 14, 2003 murder of Alaphonso Sanders. On July 25, 2003, the Attorney General denied the claim pursuant to R.C. 2743.60(F) contending that the decedent engaged in substantial contributory misconduct, drug trafficking, shortly before he was shot. On August 15, 2003, the applicants filed a request for reconsideration. On August 26, 2003, the Attorney General determined that no modification of the previous decision was warranted. On September 24, 2003, the applicants filed a notice of appeal to the Attorney General's August 26, 2003 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on February 25, 2004 at 10:30 A.M.

{¶2} The applicants, the applicants’ attorney and an Assistant Attorney General attended the hearing and presented testimony and oral argument for this panel’s consideration. Heather Lanning, the decedent’s live-in girlfriend and mother of his children, testified that on the evening of January 14, 2003 their doorbell rang and an unidentified intruder dragged Alaphonso

outside the house, whereby a struggle ensued. Ms. Lanning explained that shortly thereafter another unknown male approached the house and shot Alaphonso in the leg and back. Ms. Lanning stated that Alaphonso eventually reentered the house while the offenders removed shell casings from the premise. Ms. Lanning indicated that while running to a neighbor's house to telephone 911, she observed the get-away vehicle. Ms. Lanning explained that once the police arrived she was no longer permitted entry into her home. Ms. Lanning advised the panel that Alaphonso worked two jobs, had no criminal record, and that he was not a drug dealer. Ms. Lanning maintained that no drugs were found on Alaphonso's person or at the scene. Ms. Lanning contended that the police report is inaccurate concerning her alleged statements made to the police about the decedent's purported drug involvement. Ms. Lanning stated that she suspects the incident was the result of a mere home invasion.

{¶3} Applicants' counsel stated that the applicants' claim for an award of reparations should be allowed based upon the evidence proffered. Counsel argued that the police report and witness statements are inaccurate and were sufficiently rebutted by Ms. Lanning's own eye-witness testimony concerning the events that transpired on the day in question. Moreover, counsel argued the fact that (1) the decedent held two jobs, (2) the decedent had no criminal record, and (3) no drugs were found on Alaphonso's body or at the scene is probative that the decedent was not engaged in drug trafficking at the time of the incident. Counsel opined that the Attorney General failed to meet the requisite burden of proof in order to deny the claim pursuant to R.C. 2743.60(F) in light of the evidence presented.

{¶4} However, the Assistant Attorney General maintained that the claim must be denied since the evidence is clear that the decedent engaged in substantial contributory misconduct. The Assistant Attorney General asserted that there is overwhelming evidence in the police report and witness statements, including Ms. Lanning's own generous account, that the decedent engaged in drug trafficking.

{¶5} 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 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). However in review of the courts history with respect to this program, we believe that "it is axiomatic that the Court of Claims commissioners are not bound by strict rules of evidence." In re Shapiro (1989), 61 Ohio Misc. 2d 725. Nevertheless, we further believe that the commissioners may consider such information or data presented "as (a) virtually conclusive, (b) prima facie, or (c) completely unreliable, depending on extrinsic and intrinsic factors then subject to scrutiny." In re Shapiro, supra. In the instant case, we have Ms. Lanning's eye-witness testimony, the police report, and witness statements, including Ms. Lanning's own statements to the police, to review and scrutinize.

{¶6} Even though Ms. Lanning's testimony contradicts her police statement, we nevertheless believe Ms. Lanning's initial account to be more accurate and reliable. Ms. Lanning's statement is very detailed with respect to the events of January 14, 2003 and is riddled with information, which we believe was in fact provided by Ms. Lanning, concerning the

decendent's illegal drug activity. Based upon the above reasoning, we find that the Attorney General has proven, by preponderance of the evidence, that the decedent engaged in drug trafficking at the time of the criminally injurious conduct. Therefore, the August 26, 2003 Final Decision of the Attorney General shall be affirmed.

{¶7} IT IS THEREFORE ORDERED THAT:

{¶8} 1) Darren McNeal shall be added as attorney of record for this case;

{¶9} 2) The August 26, 2003 decision of the Attorney General is AFFIRMED;

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

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

KARL H. SCHNEIDER
Commissioner

LEO P. MORLEY
Commissioner

STEVEN A. LARSON
Commissioner

ID #\5-dld-tad-022704

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

Filed 4-21-2004

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ORDER