

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE:	DANIEL L. MITCHELL	:	Case No. V2004-60067
	RICHARD C. MITCHELL, III	:	<u>ORDER OF A THREE-</u>
	Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a May 17, 2003 aggravated vehicular homicide incident involving the death of his minor son, Daniel L. Mitchell. On October 1, 2003, the Attorney General denied the applicant's claim contending that the victim knew or should have known that the driver of the vehicle was intoxicated. On October 22, 2003, the applicant filed a request for reconsideration. On December 22, 2003, the Attorney General denied the claim once again. On January 21, 2004, the applicant filed a notice of appeal to the Attorney General's Final Decision. Hence, this matter came to be heard before this panel of three commissioners on April 8, 2004 at 11:20 A.M.

{¶2} Neither the applicant nor anyone on his behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented a brief summary of the case. The Assistant Attorney General stated that the applicant failed to prove that the decedent was unaware of the offending driver's impaired state. The Assistant Attorney General stated that the applicant noted in his statement to the police that he observed both the offender and his son in close proximity to a 12 pack of beer prior to the incident and that the offender appeared intoxicated to him. The Assistant Attorney General also stated that a passenger in the vehicle

indicated that both the offender and the decedent had consumed alcoholic beverages prior to the accident. Accordingly, the Attorney General stated that this claim should be denied pursuant to R.C. 2743.60(B) and In re Jan, V97-57941jud (3-15-99). In Jan, supra, Judge Bettis held that if a victim accepts a ride with a legally intoxicated driver when the preponderance of the evidence indicates that the victim has knowledge of the driver's impaired condition, the victim will be considered an accomplice as defined in R.C. 2743.60(B) and the claim denied.

{¶3} R.C. 2743.60(B) states:

{¶4} (B)(1) The attorney general, a panel of commissioners, or a judge of the court of claims shall not make or order an award of reparations to a claimant if any of the following apply:

{¶5} The claimant is the offender or an accomplice of the offender who committed the criminally injurious conduct, or the award would unjustly benefit the offender or accomplice.(b) Except as provided in division (B)(2) of this section, both of the following apply:

{¶6} The victim was a passenger in a motor vehicle and knew or reasonably should have known that the driver was under the influence of alcohol, a drug of abuse, or both.

{¶7} The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

{¶8} Both of the following apply:

{¶9} The victim was under the influence of alcohol, a drug of abuse, or both and was a passenger in a motor vehicle and, if sober, should have reasonably known that the driver was under the influence of alcohol, a drug of abuse, or both.

{¶10} The claimant is seeking compensation for injuries proximately caused by the driver described in division (B)(1)(b)(i) of this section being under the influence of alcohol, a drug of abuse, or both.

{¶11} (2) Division (B)(1)(b) of this section does not apply if on the date of the occurrence of the criminally injurious conduct, the victim was under sixteen years of age or was at least sixteen years of age but less than eighteen years of age and was riding with a parent, guardian, or care-provider.

{¶12} From review of the file and with full and careful consideration given to all the information presented at the hearing, we find that the December 22, 2003 decision of the Attorney General shall be affirmed.

{¶13} IT IS THEREFORE ORDERED THAT

{¶14} The December 22, 2003 decision of the Attorney General is AFFIRMED;

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

{¶16} Costs are assumed by the court of claims victims of crime fund.

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THOMAS H. BAINBRIDGE  
Commissioner

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CLARK B. WEAVER, SR.  
Commissioner

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STEVEN A. LARSON  
Commissioner

ID #\1-dld-tad-041604

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

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Jr. Vol. 2253, Pgs. 179-181  
To S.C. Reporter 8-10-2004