

[Cite as *In re Suggs*, 2005-Ohio-3918.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

IN RE: CHARLES M. SUGGS	:	Case No. V2005-80045
CHARLES M. SUGGS	:	<u>ORDER OF A THREE-</u>
CHERYL C. SUGGS	:	<u>COMMISSIONER PANEL</u>
Applicants	:	
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{¶ 1} The applicants filed a reparations application seeking reimbursement of expenses incurred with respect to a May 2, 2004 shooting incident. On October 4, 2004, the Attorney General denied the claim pursuant to R.C. 2743.60(E) and R.C. 2743.60(F). The Attorney General asserted that the victim had been engaging in felonious conduct and substantial contributory misconduct, since he was attempting to purchase marijuana when he was shot. On November 4, 2004, the applicants filed a request for reconsideration. On January 3, 2005, the Attorney General denied the applicants' claim once again. On January 19, 2005, the applicants filed a notice of appeal to the Attorney General's January 3, 2005 Final Decision. Hence, this matter came to be heard before this panel of three commissioners on April 6, 2005 at 12:10 P.M.

{¶ 2} Neither the applicants nor anyone on their behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented brief comments for this panel's

consideration. The Assistant Attorney General reiterated his position that the claim should be denied pursuant to R.C. 2743.60(F) based upon evidence that the victim was engaging in the illegal purchase of marijuana when he was shot. The Assistant Attorney General stated that a total of 13 small bags of marijuana were found on the victim's person as well as \$1,805.00 in cash. The Assistant Attorney General argued that the victim's conduct on May 2, 2005 was illegal, inherently dangerous, and causally related to him being shot.

{¶ 3} 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. According to the police report, the victim and the offender, Allen Herman, were riding in an automobile together, when the victim retrieved a wad of money to purchase marijuana. Mr. Herman saw the money, shot the victim, and fled the scene. Mr. Suggs stated to the police that he "was just buying some weed and Herman saw his bank roll, pulled out a gun and jacked me."

{¶ 4} R.C. 2743.51(M) states:

(M) "Contributory misconduct" means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim.

{¶ 5} According to the definition of "contributory misconduct" there are three elements that must be established before a *prima facie* case of contributory misconduct can be met: (1) conduct by the victim or the claimant; (2) conduct that is unlawful or intentionally tortious; and (3) that conduct must have a causal relationship to the criminally injurious conduct. In this case,

we find that the victim's conduct of illegally purchasing marijuana was substantially and causally related to him being shot. Based upon the above, we find that the victim was engaging in substantial contributory misconduct at the time of the criminally injurious conduct. Therefore, the January 3, 2005 decision of the Attorney General shall be affirmed and the claim denied pursuant to R.C. 2743.60(F).

IT IS THEREFORE ORDERED THAT

- 1) The January 3, 2005 decision of the Attorney General is AFFIRMED pursuant to R.C. 2743.60(F);
- 2) This claim is denied and judgment is rendered in favor of the state of Ohio;
- 3) Costs are assumed by the court of claims victims of crime fund.

JAMES H. HEWITT III
Commissioner

GREGORY P. BARWELL
Commissioner

TIM MC CORMACK
Commissioner

ID #\1-dld-tad-041505

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

Filed 6-3-2005
Jr. Vol. 2257, Pgs. 97-99
To S.C. Reporter 7-28-2005

