

[Cite as *In re Vanhooose*, 2007-Ohio-2282.]

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

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|---------------------------|---|-------------------------------|
| IN RE: DUSTIN S. VANHOOSE | : | Case No. V2006-20984 |
| LEE E. FENNER | : | Commissioners: |
| Applicant | : | Gregory P. Barwell, Presiding |
| | : | Thomas H. Bainbridge |
| | : | Lloyd Pierre-Louis |
| | : | |
| | : | <u>ORDER OF A THREE-</u> |
| | : | <u>COMMISSIONER PANEL</u> |

: : : : :

{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to an October 30, 2005 aggravated vehicular homicide, whereby Dustin Vanhooose (“victim”) and three other minors were killed. On August 8, 2006, the Attorney General denied the applicant’s claim pursuant to R.C. 2743.60(F) contending that the victim had been engaging in substantial contributory misconduct, receiving stolen property, when he was killed. On September 11, 2006, the applicant filed a request for reconsideration. On October 12, 2006, the Attorney General determined that the previous decision warranted no modification. On October 24, 2006, the applicant filed a notice of appeal to the Attorney General’s October 12, 2006 Final Decision. The applicant asserts that the victim did not have knowledge that the vehicle was stolen. On December 19, 2006, the Attorney General filed a brief recommending the Final Decision be affirmed since evidence within the claim file shows that the victim

aided in the theft of the vehicle and then went for a joyride. On January 24, 2007 at 10:45 A.M., this matter was heard before this panel of three commissioners.

{¶2} Neither the applicant nor anyone on his behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. According to the police report, the victim (age 15), Joshua Fleming (age 14), Joseph Bruce (age 15), Ian Bailey (age 14), and Jeremy Sallee (age 15) conspired to steal a motor vehicle and went joyriding on the evening of October 29, 2005. Jeremy Sallee ("Mr. Sallee") was driving the stolen vehicle while traveling at a high rate of speed and under the influence of alcohol and marijuana. Mr. Sallee was adjudicated delinquent and was subsequently committed to the Ohio Department of Youth Services for his participation in the crime. The police report contains statements from witnesses Amanda Faulkner and Zach Myers about their knowledge regarding the minors' attempt to break into a motor vehicle. Ms. Faulkner advised the police that the subjects had been in her garage the evening of October 29, 2005 and were discussing what was the easiest way to steal a vehicle. Mr. Myers informed the police that Joshua and the victim specifically asked him for a screwdriver to use in order to break into an automobile. Mr. Myers indicated that he refused the minors' request and that they then left his home.

{¶3} Troopers James Boysel and Robert Hoelscher testified via telephone concerning their knowledge of the incident. The troopers' testimony essentially mirrored the information that is contained within the police report.

{¶4} After hearing the troopers' testimony, the Assistant Attorney General reiterated her position for denying the claim pursuant to R.C. 2743.60(F). After a brief discussion of the claim, the panel chair concluded the hearing.

{¶5} Revised Code 2743.60(F) states in part:

(F) In determining whether to make an award of reparations pursuant to this section, the attorney general or panel of commissioners shall consider whether there was contributory misconduct by the victim or the claimant. The attorney general, a panel of commissioners, or a judge of the court of claims shall reduce an award of reparations or deny a claim for an award of reparations to the extent it is determined to be reasonable because of the contributory misconduct of the claimant or the victim.

{¶6} From review of the file and with full and careful consideration given to all the information presented at the hearing, we make the following determination. Based on the particular facts and circumstances of this case, we find that the victim had been engaging in substantial contributory misconduct when he was killed. See *In re Spaulding* (1991), 63 Ohio Misc. 2d 39 and *In re Williams*, V01-32691tc (10-11-02). Therefore, the October 12, 2006 decision of the Attorney General shall be affirmed.

{¶7} IT IS THEREFORE ORDERED THAT:

{¶8} 1) The October 12, 2006 decision of the Attorney General is AFFIRMED;

{¶9} 2) This claim is DENIED and judgment is rendered for the state;

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

GREGORY P. BARWELL
Presiding Commissioner

THOMAS H. BAINBRIDGE
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

ID #X-dld-laa-1/1/26/07

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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