

## Court of Claims of Ohio Victims of Crime Division

The Ohio Judicial Center

65 South Front Street, Fourth Floor  
Columbus, OH 43215  
614.387.9860 or 1.800.824.8263  
www.cco.state.oh.us

IN RE: HAROLD KINAMON

TINA KINAMON

and

DEANA KINAMON

Applicants

Case No. V2008-30464

Commissioners:  
Karl C. Kerschner, Presiding  
Gregory P. Barwell  
Tim McCormack

### OPINION OF A THREE COMMISSIONER PANEL

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{¶ 1} On March 2, 2006, the applicant, Deana Kinamon, filed a compensation application as the result of the death of Harold Kinamon which occurred on October 22, 2005. On July 13, 2006, the Attorney General issued a finding of fact and decision denying the applicant's claim pursuant to R.C. 2743.60(E)(3). The Attorney General alleges the decedent was engaged in conduct that constitutes aggravated assault on

January 23, 1999, which was within ten years of Mr. Kinamon's death. On October 4, 2006, the applicant, Deana Kinamon submitted a request for reconsideration. The applicant asserted she was a victim in her own right as the result of the death of her brother, Harold Kinamon. The applicant asserted she was with her brother at the time of his death, that his death constituted manslaughter and she suffered emotional distress as the result of being present at the scene and discovering that her brother was dead. The applicant asserts she has never been convicted of a felony or engaged in felonious conduct.

{¶ 2} On December 4, 2006, the Attorney General issued a Final Decision asserting that Harold Kinamon was not a victim of criminally injurious conduct and, accordingly, the applicant's assertion that she was a secondary victim could not be supported. Furthermore, the Attorney General reiterated that Harold Kinamon had engaged in felonious conduct within ten years of his death.

{¶ 3} On October 23, 2007, Tina Kinamon, the decedent's spouse, filed a supplemental compensation application. On February 20, 2008, the Attorney General issued a finding of fact and decision again holding that Tina Kinamon's claim should be denied since Harold Kinamon engaged in felonious conduct within ten years of his death. On February 27, 2008, the applicant filed a request for reconsideration. On April 29, 2008, the Attorney General issued a Final Decision finding no reason to modify its initial decision and also ruling that Harold Kinamon's death was not the result of criminally injurious conduct. On May 30, 2008, the applicants filed a notice of appeal from the Attorney General's Final Decision of April 29, 2008. The hearing before this panel of commissioners was held on August 27, 2008 at 10:25 A.M.

{¶ 4} Assistant Attorney General Georgia Verlaney appeared on behalf of the Attorney General's office while the applicant, Deana Kinamon, attended via telephone and her attorney Mark Poole appeared in person.

{¶ 5} The parties indicated that there were three issues on appeal: first, whether the decedent's death was the result of criminally injurious conduct; second, whether the decedent engaged in felonious conduct within ten years prior to his death; and, third, whether Deana Kinamon can qualify as an indirect victim. Applicant's counsel noted that Deana Kinamon has filed a separate application as a victim in her own right and consequently that issue should not be addressed.

{¶ 6} Accordingly, this panel notes that Deana Kinamon's claim as a victim in her own right is not ripe for appeal and that issue will not be addressed in this opinion.

{¶ 7} Dr. Bryan Douglass Casto, the Attorney General's witness, was first called to testify based upon agreement between the parties. Attorney Poole stipulated to Dr. Casto's qualifications as an expert witness in pathological medicine and Attorney Verlaney introduced Dr. Casto's curriculum vitae into evidence without objection as Exhibit "A." Dr. Casto is the deputy coroner of Montgomery County. Dr. Casto testified that the cause of Mr. Kinamon's death was acute fentanyl intoxication with hypertensive and arteriosclerotic cardiovascular disease as a contributing factor. Dr. Casto indicated that fentanyl intoxication was not the sole cause of Mr. Kinamon's death.

{¶ 8} Attorney Verlaney introduced the postmortem toxicology laboratory report as Exhibit "B." Dr. Casto testified that the decedent's urine tested positive for caffeine, Diphenhydramine (Benadryl), Fentanyl, Metoclopramide and Oxycodone. Attorney Verlaney then introduced Exhibit "C," the Coroner's Verdict. Dr. Casto related that the Coroner's Verdict found the cause of death was acute fentanyl intoxication with contributing factors relating to hypertensive and arteriosclerotic cardiovascular disease,

and alcoholic hepatitis. Dr. Casto testified based on a reasonable degree of medical certainty that the death of Harold Kinamon was accidental. Ms. Verlaney then submitted Exhibit "D," the Office of Armed Forces Medical Review Report. Dr. Casto testified that the results of this report are consistent with the findings of the Montgomery County Coroner and steadfastly maintained the cause of Mr. Kinamon's death was accidental.

{¶ 9} On cross examination, Dr. Casto acknowledged that the cause of death of Mr. Kinamon's death was acute fentanyl intoxication. Dr. Casto related that Oxycodone was present in Mr. Kinamon's body after his death. Dr. Casto also related that subsequent to the autopsy, he learned that Mr. Kinamon was allergic to Oxycodone. Upon questioning by the panel, Dr. Casto testified that all drugs from the decedent's body were within therapeutic levels. Dr. Casto stated he was unaware whether a peer review of the medications prescribed would be necessitated by the case at bar. On redirect examination, Dr. Casto testified that the applicant, Deana Kinamon approached both the Montgomery and Greene County Coroner offices with respect to changing the cause of death from accidental to homicide, but that both coroners' offices refused to do so. Whereupon, the testimony of Dr. Casto was concluded.

{¶ 10} The applicant Deana Kinamon was called to testify. Ms. Kinamon provided an anecdotal summary of Mr. Kinamon's prior surgery and subsequent death. She related only one fentanyl patch was used and that patch was applied at the hospital. On cross-examination by Attorney Verlaney, Ms. Kinamon acknowledged that she discussed her crime victims claim with William Fulcher.

{¶ 11} Assistant Attorney General Verlaney called Assistant Section Chief William Fulcher. Mr. Fulcher related he spoke with Ms. Kinamon for approximately two hours on February 27, 2008, at the Attorney General's office. He indicated that Ms.

Kinamon conveyed to him her desire to inform the public about the dangers involved with the use of fentanyl. He could not recall that Ms. Kinamon had left her employment to pursue this information campaign. Whereupon the testimony was concluded.

{¶ 12} R.C. 2743.51(C)(1) in pertinent part states:

“(C) ‘Criminally injurious conduct’ means any of the following:

“(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state.”

{¶ 13} R.C. 2743.52(B) states:

“A court of claims panel of commissioners or a judge of the court of claims has appellate jurisdiction to order awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met.”

{¶ 14} The burden of proof rests with the applicant to present a prima facie case concerning the occurrence of criminally injurious conduct. *In re Williams*, V77-0739jud (3-26-79). Blacks Law Dictionary, Sixth Edition (1990) burden of proof is defined: “[t]he necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a cause. The obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.” Further, Black’s Law Dictionary, Sixth Edition (1990) preponderance of the evidence constitutes: “[E]vidence which is of greater weight or more convincing than the

evidence which is offered in opposition to it. That is, evidence which as a whole shows that the fact sought to be proved is more probable than not.”

{¶ 15} From a review of the file and with full and careful consideration given to all information and testimony presented at the hearing, we make the following determinations. First, as applicant’s counsel conceded, the issue of the applicant’s status as an indirect victim is not properly before this panel. This issue should be determined by the Attorney General in connection with the compensation application filed by the applicant on her own behalf. Second, no evidence was presented concerning the issue of the felony exclusion as it related to the past conduct of the decedent. Accordingly, the panel will take no position on this issue since this claim will be determined solely upon the issue of criminally injurious conduct. Third, we find the applicant has failed to prove by a preponderance of the evidence that Harold Kinamon was a victim of criminally injurious conduct. The applicant maintains the burden of proof to provide this panel with reliable and authoritative evidence which establishes it is more likely than not the decedent’s death was caused by criminally injurious conduct. The applicant offered no expert medical testimony to rebut or refute the sworn testimony of Dr. Casto that based on a reasonable degree of medical certainty Mr. Kinamon’s death was accidental. This panel will not base its opinion on conjecture or speculation with respect to such an important issue. Therefore, the April 29, 2008 decision of the Attorney General is affirmed.

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KARL C. KERSCHNER  
Presiding Commissioner

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GREGORY BARWELL  
Commissioner

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TIM MC CORMACK  
Commissioner

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ORDER OF A THREE  
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IT IS THEREFORE ORDERED THAT

- 1) Exhibits "A" - "D" are admitted into evidence;
- 2) The April 29, 2008 decision of the Attorney General is AFFIRMED;
- 3) This claim is DENIED and judgment is rendered for the state of Ohio;
  
- 4) Costs are assumed by the court of claims victims of crime fund.

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KARL C. KERSCHNER  
Presiding Commissioner

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GREGORY BARWELL  
Commissioner

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TIM MC CORMACK  
Commissioner

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

Filed 11-21-2008  
Jr. Vol. 2270, Pgs. 113-114  
To S.C. Reporter 11-24-2008