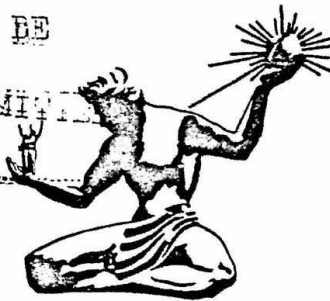


TE TO COUNCIL THIS MATTER WILL BE

BROUGHT INTO COMMITTEE

ON JUL 26 1979



Law Department  
City-County Building  
Detroit, Michigan 48226  
(313) 224-4550

Coleman A. Young, Mayor  
City of Detroit

July 23, 1979

THE HONORABLE CITY COUNCIL

RE: JESSIE A. McKINNEY, Deceased  
by his Administratrix, ANTRICE vs. JAMES ANDERSON, JOHN DOE  
McKINNEY, and ANTRICE McKINNEY, THE CITY OF DETROIT and  
individually, the DETROIT POLICE  
DEPARTMENT, jointly and  
severally

CIVIL ACTION NO. 76 611 985 NO

We have reviewed the above captioned lawsuit, the facts and particulars of which are set forth in the attached memorandum. From this review, it is our considered opinion that a settlement in the amount of \$90,000.00 is in the best interest of the City of Detroit.

We, therefore, request your Honorable Body to direct the Finance Director to issue his draft in the amount recommended, payable to the Estate of Jesse McKinney and Arvin J. Pearlman, the attorney, to be delivered upon receipt of properly executed releases and Satisfaction of Judgment of Lawsuit No. 76 611 985 NO, satisfactory to the Law Department.

Respectfully submitted,

*Thomas A. Smith*

Thomas A. Smith  
Assistant Corporation Counsel

TAS/dc

1979 JUL 23 PM 4 22

Attachments

cc: Budget Department

RESOLUTION  
\*\*\*\*\*

BY COUNCIL MEMBER \_\_\_\_\_

RESOLVED, that the Finance Director be and he is hereby authorized and directed to draw his warrant upon the proper fund in favor of the Estate of Jesse McKinney and Arvin J. Pearlman, the attorney, in the sum of \$90,000.00 in full payment of any and all claims which they may have against the City of Detroit, a municipal corporation, by reason of death to Jesse McKinney as a result of defendant police officer shooting him and that said amount be paid upon presentation of General Release and Satisfaction of Judgment of Lawsuit No. 76 611 985 NO, approved by the Law Department.

APPROVED:

  
\_\_\_\_\_  
Acting Corporation Counsel 

1070  
M E M O R A N D U M  
\* \* \* \* \*

RE: JESSIE A. McKINNEY, Deceased  
by his Administratrix, ANTRICE vs. JAMES ANDERSON, JOHN DOE,  
McKINNEY, and ANTRICE McKinney, THE CITY OF DETROIT and  
individually, the DETROIT POLICE DE-  
PARTMENT, jointly and  
severally,  
CIVIL ACTION NO. 76 611 985 NO

This civil suit for wrongful death arises out of an incident which occurred on September 12, 1974, at approximately 9:30 p.m. At said time, Police Officers James Anderson and Richard Cameron, while in full police uniforms and driving a marked scout car, responded to a radio run to 3407 East Ferry, "a B & E in progress in the rear". Enroute to said address, the officers were stopped by Sally Sluck, the person who had made the complaint, and informed that a man had been seen climbing the steps to the back porch of 5525 Moran in a crouched position as though attempting to sneak into the rear door of said dwelling.

Officer Anderson, who had been the passenger in the scout car, exited the vehicle and proceeded on foot through a vacant lot to approach the rear of the dwelling pointed out by Mrs. Sluck while Officer Cameron drove off intending to approach said dwelling from the front. Officer Anderson observed nothing of note on the south side of the dwelling but, while traversing the rear of said dwelling, he did observe the door slightly opened. He did not see any signs of its having been broken into.

He continued walking to the northwest corner of the dwelling preparing to turn the corner to investigate the north side when an individual lunged out from the darkness and slashed at said Officer with some type of object. Officer Anderson "back-pedalled" to avoid this individual but felt the front of his shirt being pulled. Said assailant, later identified as decedent Jesse McKinney, immediately turned and ran toward the front of the dwelling. Officer Anderson recovered, took a couple steps forward and yelled to McKinney to halt. When it became apparent that his order was being ignored, he fired one shot at McKinney and downed him at the northeast corner of the dwelling.

As Officer Anderson was approaching McKinney, he observed an open knife on the ground near McKinney's body, which the Officer picked up and put into his pocket. Then Officer Anderson observed that McKinney was bleeding from the back of his head and appeared

to be dead. An autopsy examination was later performed at the Wayne County Morgue, and the cause of death was determined to be a through and through gunshot wound of the head.

Although the facts as set forth above would arguable make this the type case which should go to trial, there are some difficult problems with it which make settlement the more reasonable approach. First, there are six witnesses who have been deposed and, based upon their testimony, present a more difficult case in which to prevail.

Three of the witnesses reside at the dwelling where the alleged B & E was taking place. These witnesses were within the house during the time of this entire incident. In fact, lights were on throughout the house with one of these individuals in the rear of the house in close proximity to the rear door which was opened. Another was watching television in the front portion of the house and the third was talking on the telephone in a room on the same side of the house as that where McKinney was fatally wounded. None of these individuals heard any noise of a person attempting to break into the house. Further, none of them heard a yell for McKinney to halt although all three heard the gun shot.

The other three witnesses happened to be sitting on the front porch of the house adjacent to the one in question herein. These individuals did not hear any noise of one attempting to break into the house next door. However, they did hear the footsteps of someone running and, then, the shot from Officer Anderson's revolver. They immediately looked off their porch and saw McKinney lying on the ground between the houses. He was lying within six feet of their position on the porch. They did not hear the officer order McKinney to halt. Finally, they did not observe Officer Anderson pick up anything prior to reaching McKinney's body.

In addition to the testimony of the above witnesses, we have that of Inspector Mary Jarrett of the crime lab for the Detroit Police Department. She inspected Police Officer Anderson's shirt, which had been allegedly cut across the front by the slashing of McKinney, and she concluded that the cut could not have been caused by a slashing motion. She indicated that the cut, based upon her tests, could have only been made by a sharp object such as a knife with even force being exerted as the shirt was cut from the inside out. She inspected the blade of the knife and was unable to find any fibers thereon matching those of the officer's shirt. She was unable to find sufficient trace evidence to support a conclusion that the knife had ever been in any of McKinney's pockets of his clothes. Unfortunately, the knife was not checked for fingerprints connecting it with McKinney.

The above set forth evidence can reasonably be interpreted to support the contention that McKinney had not committed a B & E of the dwelling in question. More importantly, it casts sufficient doubt on Officer Anderson's testimony that McKinney slashed out at him with a knife. Finally, the fact that none of the six witnesses above, in particular, the three on the porch of the adjacent house, heard any yells strongly suggest that no command to halt was ever given by Officer Anderson.

In light of this evidence, it is quite likely that a jury would find that Officer Anderson used unjustified deadly force in fatally wounding McKinney. With this highly probable outcome, the City could be exposed to a significantly large verdict. In arriving at said verdict, the jury would consider the fact that McKinney was only 24 years old at the time of his death, he was married with one child and he was employed by Chrysler Corporation, although laid off at the time in question. The fact that McKinney was living apart from his wife and child at the time of his death might work to mitigate the amount of damages which the jury would otherwise be willing to award.

Finally, this matter was scheduled for a mediation hearing by the court. The Mediation Panel heard and evaluated the case at \$90,000.00. This evaluation was made in light of the plaintiffs evaluation of \$750,000.00 and that of defendants at \$75,000.00. Your Honorable Body must approve or reject payment of the amount evaluated by the Mediation Panel for purposes of settling this case. I believe that is in the best interest of the City to approve payment of said amount and, therefore, I do recommend that your Honorable Body approve this case for settlement in the sum of \$90,000.00.

THOMAS A. SMITH      SUIT

TAS/dc