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MAY 8 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

BOARD OF COUNTY COMMISSIONERS,
PINELLAS COUNTY, FLORIDA,

Defendant, Petitioner,

vs.

Case No. 79,839
DCA Case No. 91-01332

TOM F. SAWYER,

Plaintiff, Respondent.

PETITIONER'S JURISDICTIONAL BRIEF

✓
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STATEMENT OF THE CASE AND FACTS

The Respondent, TOM F. SAWYER, was indicted for first degree murder and sexual battery by a Pinellas County Grand Jury. Subsequently, the State Nolle Prosequi both charges. As a discharged criminal defendant, the Respondent submitted a trial court order certifying the payment of certain investigative expenses to the Pinellas County Board of County Commissioners for reimbursement pursuant to Chapter 939, Fla. Stat. (1989); the Board denied payment. The Respondent filed suit in the Circuit Court to recover the investigative costs.

The parties submitted Cross-Motions for Summary Judgment with a stipulated Statement of Facts. The sole issue before the trial court was whether, as a matter of law, the investigative expenses of the Respondent were included within the scope of taxable costs under Section 939.06, Fla. Stat. (1989). The trial court denied Respondent's Motion for Summary Judgment, granted Petitioner's Motion for Summary Judgment and held that the reasonably incurred and paid investigative expenses of a non-indigent discharged defendant are not taxable costs subject to reimbursement by the County.

An appeal was taken to the Second District Court of Appeal to review the trial court's order denying Respondent's Motion for Summary Judgment, and on March 20, 1992, the District Court reversed the order of the trial court. The District Court held that investigative costs are taxable costs within the meaning of Section 939.06.

Petitioner's Motion for Clarification was denied on April 10, 1992 and the Petitioner's Notice to Invoke the Discretionary Jurisdiction of this Court was timely filed on May 6, 1992.

SUMMARY OF ARGUMENT

In this case, the District Court of Appeal held that a discharged defendant's reasonable and necessary investigative costs are taxable costs under Section 939.06, Fla. Stat. (1989). The court certified that its holding is in conflict with Benitez v. State, 350 So.2d 1100 (Fla. 3d DCA 1977), cert. denied, 359 So.2d 1211 (Fla. 1978) and Osceola County v. Otte, 530 So.2d 478 (Fla. 5th DCA 1988). In the cases cited, the district courts interpreted Section 939.06 to exclude investigative costs from the meaning of taxable costs. The Petitioner asserts that the decision of the District Court expressly and directly conflicts with previous decisions of the Third and Fifth District Courts of Appeal.

JURISDICTIONAL STATEMENT

Pursuant to Article V, Section 3(b)(3), Florida Constitution (1980), this Court may exercise its discretionary jurisdiction where an appellate decision expressly and directly conflicts with the decision from another Florida appellate court. That conflict must be express and contained within the written rule announced by the majority decision. Jenkins v. State, 385 So.2d 1356 (Fla. 1980); Dodi Publishing Co. v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980).

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL ON THE SAME QUESTION OF LAW

The District Court of Appeal interpreted Section 939.06, Fla. Stat. (1989) to include investigative costs within the meaning of taxable costs. The decision of the District Court conflicts with the decisions of two other Appellate Courts holding that investigative costs are not taxable costs under Section 939.06.

In Benitez v. State, 350 So.2d 1100, 1101 (Fla. 3d DCA 1977), cert. denied, 359 So.2d 1211 (Fla. 1978), the Third District held as a matter of law that investigative costs were not recoverable taxable costs under Section 939.06. In Osceola County v. Otte, 530 So.2d 478 (Fla. 5th DCA 1988), the Fifth District ruled that investigative fees and expenses did not qualify as taxable costs under Section 939.06. In the present decision, the Second District explicitly holds that investigative costs are taxable costs within the meaning of Section 939.06. The court goes on to state:

"We certify that our holding is in conflict with Benitez and Osceola County."

The Petitioner asserts that the rule announced by the District Court directly and expressly conflicts with the decisions of other Florida district courts of appeal on the same question of law and is certified as a conflict by the District Court.

The Petitioner respectfully submits that this Court should grant discretionary review and resolve the conflict by reversing the decision of the Second District Court of Appeal.

CONCLUSION

The present decision is in direct conflict with the decision of Florida's other district courts of appeal. This Court has discretionary jurisdiction to review the decision below. This Court should exercise its discretion and review the case on the merits.

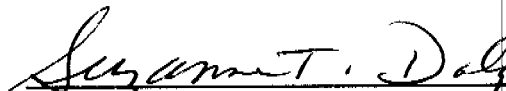
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to SONDR A GOLDENFARB, ESQ., 2454 McMullen Booth Road, Suite 501-A, Clearwater, FL 34619 and to JAMES T. MILLER, ESQ., on behalf of Florida Association of Criminal Defense Lawyers, 407 Duval County Courthouse, Jacksonville, FL 32202 this 7th day of May, 1992.



SUZANNE T. DALY
Assistant County Attorney

This is an appeal from an order of the trial court which, properly relying upon Benitez v. State, 350 So. 2d 1100 (Fla. 3d DCA 1977), cert. denied, 359 So. 2d 1211 (Fla. 1978) and Osceola County v. Otte, 530 So.2d 478 (Fla. 5th DCA 1988), denied appellant, who is a nonindigent, acquitted criminal defendant, the right of reimbursement from Pinellas County for investigative costs appellant incurred in his defense. The amount of those costs paid by defendant had been previously certified by the court, apparently in accordance with the procedure outlined in Sawyer v. State, 570 So. 2d 410 (Fla. 2d DCA 1990) and Clark v. State, 570 So. 2d 408 (Fla. 2d DCA 1990). Reimbursement to defendant had then been refused by the county. We reverse.

Section 939.06, Florida Statutes (1989), provides for the reimbursement to an acquitted criminal defendant of what the statute calls "taxable costs" but does not define the term. The interpretation of that term has been left to the courts. See Doran v. State, 296 So. 2d 86 (Fla. 2d DCA 1974).

Especially since section 939.01, as amended in 1987, provides for the taxation against convicted criminal defendants of investigative costs incurred by law enforcement agencies, we hold that investigative costs are also taxable costs within the meaning of section 939.06. Thus, the interpretation of the term "taxable costs" which we apply has the same rational basis as that applied by this court in Powell v. State, 314 So. 2d 786, 789 (Fla. 2d DCA 1975) ("Since under § 914.06 the county could tax the reasonable compensation of its expert witnesses as costs

against a convicted defendant, we think that an acquitted, non-indigent defendant may do likewise against the county.").

That the legislature has not changed section 939.06 since the 1974 opinion of this court in Doran may be taken to indicate legislative intent in approval of the Doran ruling, as well as that in Powell, to the effect that finding a rational basis for an interpretation of the term "taxable costs" in that section has been left to the courts. See 49 Fla. Jur. Statutes § 166 (1984) (citing White v. Johnson, 59 So. 2d 532 (Fla. 1952)).

Our interpretation of that term in section 939.06 in light of section 939.01 is consistent with Powell, based upon the concept of mutuality. That the legislature has favored mutuality in the context of civil litigation expenses is illustrated by the 1988 addition of subsection (2) to section 57.105 concerning the award of attorneys fees to a party to a litigated contract which only provides for such an award to the other party. That subsection changed the law as reflected in prior jurisprudence so that in cases in which the party who is required to take action to enforce the contract prevails, the court may award attorney's fees in favor of that party even when the contract only provides for the award of attorney's fees to the other party.

The mutuality concept relative to an effective defense in criminal litigation is implicitly involved in White v. Board of County Commissioners of Pinellas County, 537 So. 2d 1376 (Fla. 1989). White determined, albeit on constitutional, separation of powers grounds, that in a capital case an indigent citizen

prosecuted by the state through the state's counsel should not be deprived of effective counsel for his defense through an unrealistically low cap on fees which may be paid to his counsel, notwithstanding "the potential burden placed on county treasuries." Id. at 1379.

In contrast to the holding of Doran that bail bond premiums incurred by acquitted criminal defendants are not taxable against the prosecution, investigative costs represent a type of costs mutually borne by the prosecution and defense.

We recognize of course that our holding adds to governmental fiscal obligations. But if that was not intended by the legislature, the legislature could have provided otherwise, especially after the 1975 Powell opinion on which we rely in principle. Of course, the legislature might provide otherwise in the future if it should decide that our holding does not accurately reflect current legislative intent.

Since we resolve this case under statutory interpretation, we need not address the additional constitutional equal protection arguments of defendant and amicus curiae.

We certify that our holding is in conflict with Benitez and Osceola County. However, Benitez was decided before the 1987 amendment to section 939.01, and Osceola County followed Benitez in 1988 without expressed consideration of that amendment.

Upon remand the trial court shall enter judgment against the county for the investigative costs incurred by

defendant which are determined to have been reasonable and necessary.

Reversed and remanded for proceedings consistent herewith.

PATTERSON, J., Concurs.
SCHOONOVER, C.J., Dissents with opinion.

SCHOONOVER, Chief Judge, Dissenting.

I respectfully dissent. I would affirm and hold that the trial court correctly followed our sister courts' decisions in Osceola County v. Otte, 530 So. 2d 478 (Fla. 5th DCA 1988), and Benitez v. State, 350 So. 2d 1100 (Fla. 3d DCA 1977), cert. denied, 359 So. 2d 1211 (Fla. 1978).

At common law neither party could be charged with the costs of the other, and it was only by statute that such costs came to be allowed. But even then, both in England and in this country, costs were not chargeable to the sovereign or the state unless there was an express provision in the law to authorize such costs. Buckman v. Alexander, 24 Fla. 46, 3 So. 817 (Fla. 1888).

Although the determination of which costs are taxable has been left to the courts, only those items reasonably within the scope of statutory authority are taxable. Doran v. State, 296 So. 2d 86 (Fla. 2d DCA 1974). This court has held that we should be reluctant to read into the law a necessity for the imposition upon the public of staggering expenses which would be caused by requiring reimbursement of bail bond premiums incurred by those who are ultimately acquitted or discharged. Doran; see also Holton v. State, 311 So. 2d 711 (Fla. 3d DCA 1975). I am also reluctant to read into the law a requirement that the public reimburse acquitted or discharged defendants for their investigative expenses and would not do so.

If the legislature in enacting section 939.06 intended to require that an acquitted or discharged defendant be reimbursed for the investigative costs incurred in defending charges brought against them, it could have easily expressed that intention. The legislature has specifically dealt with investigative expenses in many instances. See, e.g., §§ 27.56(1)(a); 45.061(3)(a); 253.03(13); 373.129(6); 489.132(3) 631.54(5); 895.05(7); 895.07(8); 939.01(1), Fla. Stat. (1989).

Since the legislature did not expressly provide for these expenses in section 936.06, we should not read this requirement into the law. Osceola County; Benitez.