O.A. 3-293 07

IN THE SUPREME COURT OF FLORIDA

BOARD OF COUNTY COMMISSIONERS, PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

TOM F. SAWYER,

Respondent.

SUPREME COURT NO. 79,839

DISCRETIONARY REVIEW OF
A DECISION OF THE DISTRICT COURT
OF APPEAL OF FLORIDA, SECOND DISTRICT

AMICUS CURIAE BRIEF OF FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS (FACDL), ON BEHALF OF RESPONDENT

JAMES T. MILLER, ESQUIRE, CO-CHAIRMAN , AMICUS CURIAE COMMITTEE, FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
407 Duval County Courthouse
Jacksonville, Florida 32202
(904) 630-1548

ATTORNEY FOR AMICUS CURIAE ON BEHALF OF RESPONDENT

FLORIDA BAR NO. 0293679

ROBERT A. HARPER, JR., ESQUIRE, CO-CHAIRMAN, AMICUS CURIAE COMMITTEE, FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, TALLAHASSEE, FL

DONNIE MURRELL, JR., ESQUIRE, PRESIDENT, AMICUS CURIAE COMMITTEE, FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, WEST PALM BEACH, FL

TABLE OF CONTENTS

TABLE OF CONTENTS (CONT.): PAGE NO.

TABLE OF CITATIONS

CASES CITED (cont): PAGE NO.

CASES CITED (cont): PAGE NO.

OTHER AUTHORITIES:

OTHER AUTHORITIES (cont.):

PRELIMINARY STATEMENT

This Court granted the Florida Association of Criminal Defense Lawyers (FACDL) permission to file an Amicus Curiae Brief on behalf of Respondent.

The FACDL is a not for profit Florida corporation formed to assist in the reasoned development of the criminal justice system. Its statewide membership of 1,000 includes lawyers who are daily engaged in the defense of individuals accused of criminal activity. The founding purposes of FACDL include the promotion of study and research in criminal law and related disciplines, the promotion of the administration of criminal justice, fostering and maintaining the independence and expertise of the criminal defense lawyer, and furthering the education of the criminal defense community through meetings, forums, and seminars.

As this case involves the issue of whether defendants can recover their investigative costs when the State enters a nolle prosequi, FACDL has an interest in the outcome of this case. FACDL wishes to advance the principle of an equal application of the laws because the State can collect its investigative costs when the defendant is convicted.

FACDL will rely upon the record designations used by Petitioner and Respondent.

STATEMENT OF THE CASE AND FACTS

The FACDL adopts the Statement of the Case and Facts in Petitioner's Initial Brief and Respondent's Answer Brief.

SUMMARY OF ARGUMENT

The Second District Below did not reach the constitutional equal protection arguments raised by FACDL and Respondent. The Second District construed Section 939.06 to include investigative costs for defendants. This construction was based upon a concept of mutuality. If this Court finds that Section 939.06 does not require investigative costs for defendants based upon mutuality, the equal protection question still remains because Section 939.01 allows the State to recoup investigative costs from a defendant. Consequently, this Court must decide whether Section 939.06 must be construed to include defense investigative costs in light of Section 939.01. FACDL will address only the constitutional equal protection arguments to avoid duplication of the arguments of Petitioner, Respondent and the Amicus Curiae Briefs.

Respondent does not have a constitutional right to recover costs. However, Section 939.06 permits the recovery of some costs and Section 939.01 permits the State to recover investigative costs. Even if there is no constitutional right to a benefit, once the State grants some the right, it must grant it to all similarly situated. Dept. of Transportation v. E.T. Legg Co., 472 So.2d 1336 (Fla. 4th DCA 1985). The United States Supreme Court has held that the State may not grant a privilege and apply it in such a way as to deny equal protection. Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956); Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d (1993).

Section 939.06 must be construed to include defense investigative costs. Otherwise, the Florida Statutes give the State the right to recover such costs from the defendant, but the defendant cannot recover such costs from the State. A different classification or application of a statute can be justified if the different treatment is based upon a reasonable and just purpose. Carroll v. State, 361 So.2d 144 (Fla. 1978). There is no just and reasonable purpose to allow the State to collect such costs from a defendant and deny the same right to a defendant. Given the respective financial resources of the State versus any particular individual, fundamental fairness requires that both sides be able to collect investigative costs. Florida has allowed (since 1846) the State to collect certain costs from the defendant. Section 939.06 allows the defendant to collect certain costs. Section 939.06 should be construed to permit investigative costs. This construction will give the State and defendants equal protection under the laws pursuant to Sections 939.01 and 939.06.

ARGUMENT

ISSUE I

SECTION 939.06, FLORIDA STATUTES, MUST BE CONSTRUED TO ALLOW RECOVERY OF INVESTIGATIVE EXPENSES FOR A CITIZEN CHARGED WITH A CRIME, BUT WHOSE CASE IS DROPPED BY THE STATE, OTHERWISE SECTION 939.06 WILL DENY CITIZENS CHARGED WITH A CRIME OF EQUAL PROTECTION OF THE LAW BECAUSE THE STATE CAN RECOVER INVESTIGATIVE COSTS FROM CITIZENS CONVICTED OF A CRIME PURSUANT TO SECTION 939.01(1), FLORIDA STATUTES.

A. The issue in this case: Whether this Court must address the constitutional equal protection claim.

Petitioner and Respondent both address the issue of statutory construction in this cause: whether mutuality requires a statutory construction that Section 939.06 permits the recovery of defense investigative costs. The Second District in its opinion avoided the equal protection arguments raised by FACDL. FACDL respectfully submits that it is impossible to avoid these issues. Section 939.06 on its face does not specifically include investigative costs. Section 939.06 only includes the term costs - it is not defined. As Section 939.01 permits the recovery of prosecution investigative costs, the question arises as to whether Section 939.06 must be construed to permit the recovery of defense investigative costs. The answer to this question is necessarily one of equal and fair treatment - an equal protection under the law.

If Petitioner is correct about the mutuality principle (the county should not pay defense investigative costs because it does not receive any of the prosecution investigative costs), then the question still remains whether Section 939.01 denies equal protection to defendants. Regardless of who has to pay defense investigative costs, this Court must answer the question of whether Section 939.06 must be construed to permit the recovery of defense investigative costs.

B. The equal protection violation in this case: Section 939.06 denies defendants a privilege which is granted to the State under the same circumstances.

Respondent does not have a constitutional right to recover costs. Section 939.01(1) permits the State to recover all its investigative costs after a conviction. Consequently, the issue is whether once a statute grants the prosecution a privilege, may the statute deny the same privilege to a defendant. The denial of such a privilege can be an equal protection violation. In Florida Department of Transportation v. E. T. Legg Co., 472 So.2d 1336 (Fla. 4th DCA 1985); See also ABC Liquors, Inc. v. City of Ocala, 366 So.2d 146 (Fla. 1st DCA 1979). The Fourth District held that once the State grants its citizens a right, it must accord it to all.

The United States Supreme Court has considered the issue of equal protection in the context of a right/privilege which was given by a state even though the Federal Constitution did not guar-

antee such a right. For example, in Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956), the Court considered the question of whether a state had to furnish indigents with a copy for a trial transcript for appeal. The Supreme Court acknowledged that Griffin did not have a constitutional right to an appeal. 76 S.Ct. at 590. However, the Court held that once Illinois gave individuals a right of appeal, it could not discriminate against citizens due to poverty. Consequently, the Supreme Court found a violation of equal protection in the application of the law, even though there was no constitutional right to appeal. The Supreme Court followed this analysis in Douglas v. California, 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963), and decided equal protection principles required the assistance of an appointed appellate lawyer for indigents. This Court followed that principle in In Re Order of Prosecution of Criminal Appeals, 561 So.2d 1130 (Fla. 1990).

Respondent does not have an absolute, constitutional right/privilege to recover defense costs. The Legislature could repeal the privilege and prohibit the collection of any costs. However, the Florida Legislature has given both the prosecution and defense the right to recover some costs. Specifically, the Legislature has given the prosecution the right to recover investigation costs. Article I, Section 2, of the Florida Constitution requires that defendants also have the privilege to recover investigative costs.

All persons within the same statutory class or similarly situated must be treated equally. De Ayala v. Florida Farm Bureau Casualty Insurance Co., 543 So.2d 204 (Fla. 1989); Convalescent

Services of West Palm Beach, Inc. v. Department of Health and Rehabilitative Services, 424 So.2d 104 (Fla. 1st DCA 1982). This principle is the essence of the equal protection clause of the Florida Constitution. Statutory classifications may treat persons differently if there is a substantial basis for and real and practical differences affecting the different treatment of the subjects regulated by the classifications. In Re Fernandez Estate, 335 So.2d 829 (Fla. 1976). Other courts have stated that different treatment is permissible, if it bears a reasonable relationship to some legitimate State interest. LeBlanc v. State, 382 So.2d 299 (Fla. 1980). This Court in Carroll v. State, 361 So.2d 144 (Fla. 1978), enunciated the following test: "for a statutory classification not to deny equal protection, it must rest on some difference bearing a just and reasonable relation to the statute in respect to which the classification is proposed." (Emphasis supplied.)

An application of the above-described principles to this case will unequivocally demonstrate that Section 939.06 denies Respondent equal protection of the laws. First, Respondent belongs to the same class as the party covered by Section 939.01(1) (the prosecution - the State of Florida). The relevant class in this case is the parties to a criminal prosecution - the State and the Defendant. Section 939.01(1) narrows the class further - a party to a criminal prosecution which incurs investigative costs. Respondent is undeniably a member of this class - Respondent is a party to a criminal prosecution which has

incurred investigative costs. Consequently, Respondent is a member of the class covered by Sections 939.01 and 939.06.

There is no rational nor reasonable reason to allow the prosecution to collect its investigative cases against defendants, but not allow defendants to collect their investigative costs when they are acquitted or discharged. This Court in Warren v. Capuano, 282 So.2d 873 (Fla. 1973), decided that a nolle prosequi was the equivalent of an acquittal or discharge under the costs statute. If the State has the prerogative to collect its investigative costs against a convicted defendant, then an acquitted or discharged defendant should be able to collect defense investigative costs which may have led to the acquittal or discharge. The only conceivable rational reason to discriminate against defendants in this instance is to save money. However, the conservation of fiscal resources cannot be accomplished by denying equal protection by drawing invidious classifications. Silbowitz v. Secretary of H.E.W., 397 F.Supp 62, aff'd, Califano v. Silbowitz, 97 S.Ct. 1539, 430 U.S. 924, 51 L.Ed.2d 768 (1977). Therefore, under the equal protection principles embodied in Article I, Section 2, of the Florida Constitution, there is no just, rational and reasonable justification for denying an acquitted or discharged defendant the right to recover investigative costs.

The history of the laws governing costs to criminal defendants and prevailing parties amply demonstrates an equal protection violation in this cause. Therefore, FACDL will review

this history and the case law relied upon by the Second District below.

Although there is no express statutory authority for costs in this cause, this Court has the inherent power to create such costs, especially to avoid a constitutional violation. The Supreme Court in Coastal Petroleum Co. v. Mobil Oil Corp., 583 So.2d 1022 (Fla. 1991), ordered the payment of trial preparation costs even though there was no statutory authority for such costs. This Court found it had the inherent power to order such costs, based upon a construction of the common law and applicable statutes.

C. The law concerning the recovery of costs under Section 939.01, Florida Statutes (1989).

Section 939.01(1), Florida Statutes, provides that:

> "In all criminal cases the cost of prosecution, including investigative costs incurred by law enforcement agencies and by fire departments for arson investigations, if requested and documented by such agencies, shall be included and entered in the judgment rendered against the convicted person."

Since 1846, Florida law has allowed the State to recover the costs of prosecution from a convicted defendant. In Stone v. State, 500 So.2d 572 (Fla. 2d DCA 1986), this Court noted that the State's authority to assess costs against a defendant dated back to December 29, 1846, Ch. 76, Laws of Florida (1846). The 1846 law and its progeny generally allowed the State to recover the costs of prosecution, unless the defendant was indigent. See 500 So.2d

at 576, fn. 3. In 1987, the legislature amended Section 939.01 to include, in addition to the standard costs of prosecution, the costs of investigation incurred by law enforcement agencies. Consequently, in 1987, the legislature expanded the traditional definition of costs of prosecution (the costs actually incurred by the prosecuting agency) to now include costs of investigation by law enforcement.

The State can collect the costs of prosecution against a defendant, even if the court withholds adjudication of guilt. See Arthur v. State, 543 So.2d 349 (Fla. 5th DCA 1989); Clinger v. State, 533 So.2d 316 (Fla. 5th DCA 1988). In State v. Zataar, 16 FLW C78, Circuit Court, Volusia County, April 9, 1991, the Circuit Court held that Section 939.01(1)(a), Florida Statutes, allowed the State Attorney to recover attorney fees from a defendant who was found guilty of a lesser-included offense after a jury trial. Section 939.01(1)(a) states that:

> "Investigative costs which are recovered shall be returned to the appropriate investigative agency which incurred the expense. Costs shall include actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees." (Emphasis supplied.)

At common law and under the prior provisions of Chapter 939, such investigative costs and attorney fees were not recoverable. See Benitez v. State, 350 So.2d 1100 (Fla. 3d DCA 1977), (for a discussion of the legislative history of such costs). However, in 1987 the Legislature significantly expanded 939.01(1) to allow the recovery of investigative costs, by the

State, including the salaries of permanent employees. Given this changed Legislative intent, this Court must then consider whether Section 939.06 should permit the recovery of such costs by a defendant.

D. The law concerning the recovery of costs under Section 939.06, Florida Statutes.

Section 939.06, Florida Statutes, states:

> "No defendant in a criminal prosecution who is acquitted or discharged shall be liable for any costs on fees of the court or any ministerial office, or for any charge of subsistence while detained in custody. If he shall have paid any taxable costs in the case, the clerk or judge shall give him a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to him by the county."

Section 939.06, on its face, does not provide for the payment of investigative costs. The Fifth and Third District Courts of Appeal 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), held that investigative costs were not taxable costs because Section 939.06 did not expressly include such costs.

The Benitez, supra, court noted that it would not judicially legislate investigative costs into the ambit of Section 939.06. The Benitez court also noted that if it decided investigative costs were taxable costs then all reasonable and necessary costs would be within the scope of Section 939.06. The Third District then noted that such a view would place an incalculable burden upon the State and such costs would include attorney's

fees, loss of time and remuneration for the strain of a criminal trial. 350 So.2d at 1102.

FACDL concedes that Section 939.06 does not explicitly include investigative costs. However, the question is whether the Section must be construed to include such costs, in light of Section 939.01 which allows the State to recover such costs.

This Court need not follow the frightening "slippery slope" described by the Benitez court. The Court need not decide whether a defendant can recover all reasonable and necessary costs. Notwithstanding the hyperbole used by the Benitez court, the narrow issue in this case is the question of investigative costs only. Although it is true that a court should not judicially legislate Section 939.06 to include investigative costs by fiat, this case presents a constitutional question which must be resolved. The question is whether Section 939.06 denies criminal defendants equal protection under the law by not providing for the recovery of investigative costs like Section 939.01(1).

E. The general policy in Florida concerning the awarding of costs/fees to prevailing parties in litigation.

This Court should review other decisions and statutes in the area of costs for the prevailing party to determine if Section 939.06 is reasonable and just. Florida law has provided that if a statute awards costs/attorney fees to one prevailing party, it must also award costs to the other party, unless there is a strong

public policy which supports the different treatment. For example, Section 57.041, Florida Statutes (1989), (general costs of civil litigation), provides for costs to either prevailing party. Section 57.105, Florida Statutes (1989), awards attorney's fees to either prevailing party if the action or defense is patently unsupportable. Section 57.105, Florida Statutes, as amended by Ch. 88-160, Laws of Florida, also provides for attorney fees to any of the prevailing parties, even if the cause involves a contract which provides for such fees for only one party after successful litigation. Consequently, the general rule is that either prevailing party can recover costs.

Unilateral costs/fee awards are proper when the statute advances a strong public policy which is both reasonable and just - this public policy will defeat an equal protection challenge. For example, in Bayfront Medical Center, Inc. v. Kim Oang Thi Ly, 465 So.2d 1383 (Fla. 2d DCA 1985). The District Court rejected an equal protection claim that a statute was unconstitutional because it required only unsuccessful plaintiffs, who were not indigent, to pay attorney fees incurred by prevailing defendants in medical malpractice actions. The Second District upheld the statute because it bore a reasonable relationship to the legitimate State objective of protecting indigent's right of access to the courts. See also Frankwitz v. Propst, 464 So.2d 1225 (Fla. 4th DCA 1985); Davis v. North Shore Hospital, 452 So.2d 937 (Fla. 3d DCA 1983). In Hunter v. Flowers, 43 So.2d 435 (Fla. 1949), the Supreme Court upheld a statute which assessed attorney fees against a property owner if it unsuccessfully defended a lawsuit brought by a

laborer's lien claimant. The Supreme Court upheld the law due to the strong public policy of encouraging settlement of such claims. See 73 ALR 3d 515, Annotation: Validity of statute allowing attorney's fees to successful claimant.

F. The decision in Powell v. State, 314 So.2d 788 (Fla. 2d DCA 1975).

The general rule in Florida is that fundamental fairness requires costs/fees to either prevailing party, unless there is a strong public policy which bears a just and rational purpose to the statute in question and which justifies a difference in treatment of the parties. In Powell v. State, 314 So.2d 788 (Fla. 2d DCA 1975), the Court applied this principle to a situation significantly similar to the instant case. In Powell, supra, the issue was whether an acquitted defendant could tax the costs of expert witnesses against the county.

The Powell court found that, pursuant to Section 914.06, Florida Statutes (1973), the county could tax the reasonable compensation of its expert witnesses as costs against a convicted defendant. The Second District found that an acquitted defendant could do the same against the county. Section 939.06, Florida Statutes (1973), the same statute in question in this case, did not specifically provide for the taxing of expert witness costs. However, the Second District construed Section 939.06 to include such costs. Although the Powell court did not expressly enunciate its reasoning, it is clear it found that, as a matter of fairness

and equal protection under the laws, defendants could recover the same type of costs which could be recovered from them. The Powell court ostensibly found that Section 939.06 would have been unconstitutional if it had not permitted the recovery of the same type of costs as could be collected by the State.

This Court must similarly construe Section 939.06 to include the recovery of investigative costs because 939.01 allows the State to recover such costs. Section 939.01 would lack a just and reasonable relationship to its purpose - allowing the State when it wins a case (getting a conviction) to collect its investigative costs, if it did not allow the other side to collect its investigative costs if it prevailed (obtained an acquittal or a discharge by nolle prosequi, as in this case).

There is no strong public policy in allowing only the State to collect investigative costs in criminal cases. All citizens contribute, in some way through tax dollars, to the cost of the criminal justice system. If a citizen is convicted, then it is not unreasonable to require that citizen to pay for the specific costs of the prosecution. However, it is simply unfair to deny an acquitted or discharged citizens the right to recover the reasonable costs of their investigation.

It is FACDL's experience that defense investigation can lead to the early dismissal of a case, thereby saving the State money in the long run. The state attorneys and local sheriffs are often overburdened and these agencies may not have the time or resources to investigate a case adequately. If defense investigation leads to or aids in an acquittal or discharge, then

the citizen should be able to recover the costs of investigation. This view is the only fair way to construe Section 939.06 because 939.01 permits the State to recover such costs against a convicted citizen. Absent the authority in Section 939.01, neither the State nor Respondent would have a right to recover investigative costs. See Doran v. State, 296 So.2d 86 (Fla. 2d DCA 1974). However, Section 939.01 permits the recovery of costs against citizens and so "what's good for the goose, is good for the gander."

G. Case law from other jurisdictions on the issue of fees/costs to prevailing parties to a lawsuit.

FACDL has been unable to find a case which directly considered the question of equal protection under statutes which have guarded investigative costs to one prevailing party, but not the other side. However, cases from other jurisdictions on the issue of attorney fees to only one prevailing party will help this Court correctly decide this cause. Other State courts gave decided, like Florida, that attorney fees must be available to either prevailing party, unless there is a rational and fair reason to award fees only to one side. See 73 ALR 3d 515, Attorney Fees to Successful Claimant.

The Supreme Court of South Carolina in Southeastern Home Bldg. & Refurbishing, Inc. v. Platt, 325 S.E.2d 328 (S.C. 1985), decided this question. A South Carolina statute allowed attorney's fees to prevailing claimants in mechanic's lien actions, but provided for no fee award to the prevailing defen-

dant. The main ostensible purpose of the statute was to ease the financial burden upon laborers and material men of bringing such suits. The South Carolina Supreme Court found this reason to be admirable, but found that it did not justify an unfair burden upon landowners and other defendants. Consequently, Southeastern Home Building & Refurbishing, Inc. v. Platt, supra, is applicable, by analogy, to this cause.

The only apparent reason not to allow acquitted/discharged defendants to recover investigative costs is the possible financial burden upon the State. This alleged burden does not justify placing an unfair financial burden upon a defendant. The collection of investigative costs from convicted defendants will probably more than offset the costs to the State. It is also unfair to place the financial burden upon the defendant, given the relative degrees of collective wealth of the State and individual defendants. A Delaware court in Gaster v. Coldiron, 297 A.2d 384 (Del.Sup.Ct. 1972), invalidated a similar mechanic's lien law on equal protection grounds. The Delaware court similarly rejected the economic argument that the purpose of the statute was to protect laborers.

Other courts have invalidated, on equal protection grounds, statutes which authorized attorney fees to only one prevailing party. Each of these cases found that the alleged purpose of the statute did not overcome the claim that it was unfair and unequitable to give only one prevailing side attorney fees. See Builders Supply Depot v. O'Connor, 88 P. 982 (Cal. 1907); Davidson v. Jennings, 60 P. 354 (Colo. 1900); Union Terminal Co. v. Turner

Const. Co., 247 F. 727 (5th Cir. 1918); Fidelity Phoenix Fire Ins. Co. v. Purlee, 135 N.E. 385 (Inc. 1922); Sorenson v. Webb, 71 So. 273 (Miss. 1916); Solberg v. Sunburst Oil & Gas Co., 235 P. 761 (Mont. 1925); Chicago, R.I. & P.R. Co. v. Mashore, 96 P. 630 (Ok. 1908); Openshaw v. Halfin, 68 P. 138 (Ut. 1902).

Some courts have upheld laws which allow attorney fees only to one prevailing party. Most of these cases involve a state interest which reflects a strong public policy or attempts to ease the burden of bringing certain types of lawsuits. The United States Supreme Court in Missouri P.R. Co. v. Larabee, 234 U.S. 459, 34 S.Ct. 979 (1914), reviewed a law which awarded attorney fees to a successful plaintiff in a mandamus proceeding, but not to a successful defendant. The Supreme Court decided the classification was justifiable due to the difference between the extraordinary proceeding of mandamus and an ordinary judicial proceeding. See also K & T.R. Co. v. Cade, 233 U.S. 642, 34 S.Ct. 678 (1914).

Other courts have upheld such laws either to facilitate the bringing of certain types of lawsuits, encourage settlements or ease the financial burden of bringing lawsuits. See e.g. Dow v. Beidelman, 5 S.W. 718 (Ark. 1887); Alturas v. Superior Court of Modoc County, 97 P.2d 816 (Cal. 1940); Sarasota County v. Barg, 302 So.2d 737 (Fla. 1974); Iowa Nat. Mut. Ins. Co. v. Osawatomie, 458 F.2d 1124 (10th Cir. 1972); McMillen v. Arthur G. McKee P. Co., 533 P.2d 1095 (Mont. 1975); Gomes v. Bristol Mfg. Comp., 184 A.2d 787 (R.I. 1962).

The policy reasons enunciated in the above-cited cases do not exist in this cause. A criminal case is significantly different than the type of civil cases discussed in the above cases. First, the parties are the State and an individual. A valid purpose of a cost statute should not be to discourage criminal legal actions. Secondly, the imposition of costs upon a citizen cannot discourage criminal actions because the State alone initiates the action. Thirdly, the imposition of costs upon a citizen alone cannot rationally be used to encourage settlement because citizens have a constitutional right to trial and the State has the entire burden of proof in a criminal case.

The only applicable reason derived from the civil cases is the easing of the financial burden of bringing/defending a lawsuit. However, this reason compels the recovery of costs for citizens as well as the State, given the respective wealth of the State and any one individual. One simply cannot logically argue that awarding costs to the State will significantly ease the State's financial burden of bringing criminal actions. The collection of costs from a convicted citizen would add little to the State coffers, but such costs could financially destroy an individual. The respective inequality of the two parties makes the collection of costs against the citizen (without allowing concomitant collection from the State) unjust and unfair. If the State can collect from the individual when it wins (a conviction), individuals should be able to collect costs when they prevail.

CONCLUSION

This Court should approve of the decision of the Second District.

Respectfully submitted,

JAMES T. MILLER, ESQUIRE, ON BEHALF OF FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
407 Duval County Courthouse
Jacksonville, Florida 32202
(904) 630-1548

ATTORNEY FOR AMICUS CURIAE ON BEHALF OF RESPONDENT

ROBERT A. HARPER, JR., ESQUIRE, CO-CHAIRMAN, AMICUS CURIAE COMMITTEE, FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, TALLAHASSEE, FL

DONNIE MURRELL, JR., ESQUIRE, PRESIDENT, AMICUS CURIAE COMMITTEE, FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, WEST PALM BEACH, FL

FLORIDA BAR NO. 0293679

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing has been furnished, by mail, to Counsel for Petitioner Suzanne Daly, Assistant County Attorney, 315 Court St., Clearwater, FL 34616; Counsel for Respondent Sondra Goldenfarb, 2454 McMullen Booth Road, Ste. 501-A, Clearwater, FL 34619; Herbert W. A. Theile, Esq., Julie E. Lovelace, Esq., Cassandra K. Jackson, Esq., located at 301 S. Monroe St. - 5th Floor, Tallahassee FL 32302; Andrea Karns Hoffman, Esq., 115 S. Andrews Ave., Fort Lauderdale, FL 33301; Cory J. Ciklin, Esq., P. O. Box 1989, West Palm Beach, FL 33402; Augusto E. Maxwell, Esq., 1611 N.W. 12th Ave., West Wing 109, Miami, FL 33136; and Angela B. Wright, Esq., P. O. Box 1110, Tampa, FL 33601 and this 25th day of November, 1992.

James T. Miller

JAMES T. MILLER, ESQUIRE, ON BEHALF OF FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS