

O.A. 3-2-92

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**SUPREME COURT OF FLORIDA**

BOARD OF COUNTY COMMISSIONERS,  
PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

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

TOM F. SAWYER,

Respondent.

\_\_\_\_\_ /

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**AMICUS BRIEF BY PALM BEACH COUNTY, FLORIDA**

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**ARGUMENT  
POINT I**

**THE "CONCEPT OF MUTUALITY" AS INVOKED BY  
THE SECOND DISTRICT HAS BEEN MISAPPLIED IN  
THE INSTANT CASE**

The types of costs that are reimbursable to an acquitted defendant are not "reasonable and necessary costs" as are usually awardable in civil cases. Benitez v. State of Florida, 350 So.2d 110 (Fla. 3rd DCA 1977). The types of costs reimbursable to an acquitted defendant have been further generally limited by the Second District Court of Appeal in Doran v. State of Florida, 296 So.2d 86 (Fla. 2nd DCA 1974). In that case, the court stated:

There are many expenses which one may incur because he is charged with a crime. Yet only those items reasonably within the scope of statutory authority are taxable. Doran at 87.

Based on the general limitations imposed by Benitez and Doran, other courts have permitted or not permitted certain specific reimbursements.

Bail bond premiums and hotel expenses are not permitted. Warren v. Capuano, 269 So.2d 380 (Fla. 4th DCA 1972). An acquitted defendant's travel expenses, hotel expenses, and meal expenses are not reimbursable. Danauer v. State of Florida, 317 So.2d 792 (Fla. 1st DCA 1975). Cost of towing is not taxable. Doran, supra. Attorney's fees and jury selection experts are also non-reimbursable. Goldberg v. County of Dade, 378 So.2d 1242 (Fla. 3rd DCA 1979).

Mileage and per diem of witnesses summoned in another state are properly taxable costs. Warren v. Capuano, 269 So.2d 380 (Fla. 4th DCA 1972). Costs of depositions are taxable if they served a useful purpose in the defendant's defense. Powell v. State of

Florida, 314 So.2d 788 (Fla. 2nd DCA 1975).

The common thread that appears to run through each one of the above-referenced cases is that, to be reimbursable to an acquitted defendant, the costs incurred by the acquitted defendant must be specifically permitted by statute or by case law. If not specifically provided by statute or case law, certain costs, Palm Beach County respectfully submits, are non-reimbursable.

In the instant case, the Second District Court of Appeal, citing its decision in Powell, supra invoked the "concept of mutuality" and opined "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. Sawyer at Appendix, Pg. 2. In Powell, the Second District had reasoned that "(s)ince 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 may do likewise against the County." Sawyer at Appendix, Pg. 2.

Palm Beach County respectfully asserts that the Second District Court of Appeal has, now, in the instant case, simply misapplied its "concept of mutuality."

While it is true that a County may tax the reasonable compensation of expert witnesses as costs against a convicted defendant, pursuant to §914.06, Florida Statutes, no such County authority exists as to taxation against a convicted defendant with respect to investigative fees.

In support of its opinion that an acquitted defendant may tax his or her investigative fees against a County, the Second District cites §939.01, Florida Statutes which provides, in pertinent part as follows:

In all criminal cases the costs 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. (Emphasis added).

In other words, §939.01 (as cited by the Second District Court of Appeal) does not provide authority for any county to tax investigative costs against a convicted defendant in favor of the County. Such taxation is permissible only if requested by (and then in the exclusive favor of) various "law enforcement agencies" or by one or more "fire departments."

Palm Beach County respectfully submits that taxation of costs for investigative fees is still not mutual as to a defendant and a county (even with the Second District's decision). Interestingly, the Second District's holding in the instant case has the effect of giving an acquitted defendant a new remedy against a particular county which same right, the county would not have had against the defendant, had the defendant been found guilty. In essence, the Second District Court of Appeal has, under the guise of "mutuality," now given a unilateral right of taxation and redress to an acquitted defendant -- at the sole and unilateral expense of a Florida county.

## POINT II

ONLY THOSE ITEMS REASONABLY WITHIN THE SCOPE OF STATUTORY AUTHORITY ARE TAXABLE WITHIN THE MEANING OF SECTION 939.06, FLORIDA STATUTES

Palm Beach County would respectfully rely on Judge Schoonover's dissent in Sawyer which provides as follows:

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 (citing Buckman v. Alexander, 24 Fla. 46, 3 So. 817 (Fla. 1888). Sawyer at Appendix, Pg. 6.

Additionally, Judge Schoonover stated as follows:

If the legislature in enacting section 939.06 intended to require that an acquitted or discharged defendant be reimbursed [for a particular cost incurred in defending charges brought against defendant], it could have easily expressed that intention.

\* \* \*

Since the legislature did not expressly provide for these expenses in section 939.06, we should not read this requirement into the law. Sawyer at Appendix, Pg. 6.

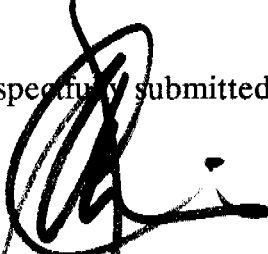
CONCLUSION

For these reasons, Palm Beach County respectfully submits that the Second District Court of Appeal should be reversed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by U.S. Mail this 10<sup>th</sup> day of November, 1992 to SUSAN DALY, ESQ., Office of County Attorney, 315 Court Street, Clearwater, FL 34616; SONDRRA GOLDENFARB, ESQ., 2454 McMullen Booth Road, Suite 501-A, Clearwater, FL 34619; JAMES T. MILLER, ESQ., Fla. Assoc. of Criminal Defense Lawyers, 407 Duval County Courthouse, Jacksonville, FL 32202; HERBERT W.A. THIELE, ESQ., Leon County Attorney's Office, 301 South Monroe Street, Tallahassee, FL 32301; JULIE E. LOVELACE, ESQ., 2031 Gardenbrook Lane, Tallahassee, FL 32301; ANDREA KARNS HOFFMAN, ESQ., Broward County Attorney's Office, 115 South Andrews Avenue, Ft. Lauderdale, FL 33301.

Respectfully submitted,

  
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**APPENDIX**

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5-23-92

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING  
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

TOM F. SAWYER,  
Appellant,  
v.  
BOARD OF COUNTY COMMISSIONERS,  
PINELLAS COUNTY, FLORIDA,  
Appellee.

Case No. 91-01332

Opinion filed March 20, 1992.

Appeal from the Circuit Court  
for Pinellas County;  
Catherine M. Harlan, Judge.

Sondra Goldenfarb and  
Joseph G. Donahey, Jr.,  
Clearwater, for Appellant.

Suzanne T. Daly,  
Assistant County Attorney,  
Clearwater, for Appellee.

James T. Miller, Jacksonville,  
Amicus Curiae by Florida  
Association of Criminal  
Defense Lawyers, for  
Appellant.

LEHAN, Judge.

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. Otta, 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 788, 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. Otta, 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.