

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

WYATT NORMAN SELLE

Appellant,

v.

Appeal No. CRC 14-00030APANO
UCN 522014AP000030XXXXCR

STATE OF FLORIDA

Appellee.

Opinion filed December 1, 2014.

Appeal from a judgment entered
by the Pinellas County Court
County Court Judge John D. Carballo

Thomas Matthew McLaughlin, Esquire
Attorney for Appellant

Bernie McCabe, State Attorney
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Wyatt Norman Selle's appeal of an order of restitution entered by the Pinellas County Court finding the State of Florida to be a victim under Florida's restitution statute. We affirm.

Background

Appellant, Wyatt Norman Selle, was charged by Misdemeanor Information with Abandoning a Derelict Vessel upon Public Waters, a First Degree Misdemeanor, in violation of Florida Statute § 823.11. The involved vessel was forty (40) feet in length. Mr. Selle, through counsel, filed a Petition for Acceptance of Plea and Sentencing in Absentia. That petition provided, in part, that Mr. Selle waives “[t]he right to appeal all matters relating to this offense if a plea of guilty or no contest is entered, including the issue of guilt or innocence.” Mr. Selle’s petition further provided:

The Defendant understands that if this plea is accepted the Court will impose the following sentence upon the Defendant: Withhold of Adjudication, \$500.00 in Fines, Fees and Costs ... 11 Months of Probation, transferable to Avon Colorado or served on a mail-in basis to Pinellas County, a special condition of probation to pay any and all financial obligations related to the case and restitution in an amount that may be determined at a future hearing. If no restitution is ordered then the court will not impose any term of probation in your case.”

Mr. Selle’s petition was accepted by the trial court and a restitution hearing was scheduled. Mr. Selle, through counsel, filed a waiver of his appearance at that hearing. At the restitution hearing the State Attorney presented testimony from three witnesses and introduced five exhibits of tangible evidence. There was testimony presented that a law enforcement officer of the Division of Law Enforcement, Florida Fish and Wildlife Conservation Commission, mailed correspondence to Mr. Selle “advising him that his vessel is wrecked, junked, or substantially dismantled and he needs to get it removed from the water bottoms of the state.” That correspondence was sent by United States Postal Service, certified mail and was returned “unable to forward.” During the restitution hearing Appellant’s counsel conceded that the fact the vessel belonged to Mr. Selle and that the amount of \$9,261.20 was paid to have it removed from the waterway

were not disputed. In his final argument, Mr. Selle's counsel contended: "the issue as to restitution in this case really is boiled down ... to two distinct points: One, whether or not the entity seeking restitution is eligible to receive restitution under the statute, as a victim. The second is to whether or not the costs incurred were borne from an activity which would be legally sufficient for restitution." At the end of the hearing the trial court ruled:

I'm not persuaded that the State of Florida is not entitled to the restitution for damages for which there was a nexus with the Defendant's criminal conduct. So, I'm going to order the restitution in that amount to the State of Florida. ... *Childers* makes it clear that governmental agencies can be victims, and so I'm going to so find.

I also find that the vessel was a navigation hazard. There were photographs introduced, but moreover, the testimony was the Anclote River is a navigable waterway and this vessel was partially submerged without -- without an anchor light or any other lights as otherwise required under state or federal law regulating that.

On May 5, 2014 the trial court entered its written order granting restitution which, in part, provided:

The State of Florida is a victim for purposes of Fl. Stat. 775.089. There is a nexis between the harm suffered by the State of Florida and the charges plead to by the defendant. The abandonment of the vessel was the criminal conduct, but for this conduct the County of Pinellas and the State of Florida would not have expended funds to recover and dispose of the vessel.

Thereafter this appeal was timely filed.

Standard of Review

The standard of review of a restitution order is abuse of discretion. *Fernandez v. State*, 98 So.3d 730, 731 (Fla. 2nd DCA 2012). Our review of a trial court's ruling on a judicial interpretation of a statute that involves a pure question of law is subject to the de

novo standard of review. See *State v. Sigler*, 967 So2d 835 (Fla. 2007); *Koile v. State*, 934 So2d 1226 (Fla. 2006).

Restitution “Victims”

“Where a governmental entity incurs financial losses because it is the victim of the defendant's criminal activity, rather than incurring costs relating to investigation, supervision or prosecution, we hold that restitution is recoverable.” *Childers v. State*, 936 So.2d 585, 598 -599 (Fla. 1st DCA 2006) (en banc).

The cases on which appellant relies, *Lewis v. State*, 874 So.2d 18, 20 (Fla. 4th DCA 2004); *Jones v. State*, 846 So.2d 662, 662–63 (Fla. 2d DCA 2003); *Sheppard v. State*, 753 So.2d 748 (Fla. 2d DCA 2000); and *Sims v. State*, 746 So.2d 546 (Fla. 2d DCA 1999), do not address the issue raised here: whether a county is barred from entitlement to restitution pursuant to section 775.089 because it is not a “person.” In each of these cases, the court recognized that section 775.089 did not allow restitution to a governmental entity for investigative, prosecutorial, or supervisory costs relating to the prosecution of the defendant because these expenses do not constitute the type of loss necessary to make the entity a “victim” within the meaning of the statute. We have no disagreement with the holdings in these cases. Unlike the case before us, however, none of these cases involved losses incurred as a result of the defendant's criminal activity. Where a governmental entity incurs financial losses because it is the victim of the defendant's criminal activity, rather than incurring costs relating to investigation, supervision or prosecution, we hold that restitution is recoverable.

Childers, 936 So.2d at 598 -599.¹ This court has previously addressed this issue in *Chabre v. State*, 19 Fla. L. Weekly Supp. 905a (Fla. 6th Cir. Ct. 2012). In that case Mr. Chabre, in the course of committing the offenses of Driving Under the Influence and Driving on A Suspended or Revoked License, drove his vehicle into a parked police cruiser of the St. Petersburg Police Department causing damage of \$4,023.27. This court,

¹ In the present case, Appellant relies on *Rodriguez v. State*, 691 So2d 568, 569 (Fla. 2nd DCA 1997) (Restitution of \$1,900 to the Sheriff's Department for money expended in the investigation of trafficking in cocaine stricken because the sheriff's department is not a victim under the statute); and *Knaus v. State*, 638 So.2d 156, (Fla. 2nd DCA 1994) (Error to impose costs of prosecution due the Sheriff's Office as restitution). These two cases, like the cases cited above in *Childers*, involved restitution for investigative, prosecutorial, or supervisory costs related to a criminal prosecution.

following *Childers*, held that the trial court restitution order requiring Mr. Chabre to pay restitution for the property damage he caused in the course of his criminal conduct was lawful and appropriate.

The Present Case

Appellant argues the trial court erred in imposing restitution to the State of Florida because the State cannot be a victim for purposes of restitution. That is, the marine salvage company was paid directly by Pinellas County, who was reimbursed by a general fund set up by the State. Further, any money owed to the State could only be ordered pursuant to a civil proceeding and there is no authorization for making any obligation to the State a condition of probation.

The difficulty with these arguments is the State of Florida can be a victim when the “involved losses incurred as a result of the defendant's criminal activity.” *See Childers*, 936 So.2d at 598 -599. Secondly, an order of restitution is required by the Florida Criminal Code unless the trial court finds clear and compelling reasons not to order restitution. Mr. Selle entered a Plea in Absentia to a violation of Florida Statute § 823.11. That statute provides “[a]ny person, firm, or corporation violating this section commits a misdemeanor of the first degree and shall be punished *as provided by law.*” Fla. Stat. § 823.11(4) (2006) (emphasis added). The Florida Criminal Code provides:

In addition to any punishment, the court *shall order* the defendant to make restitution to the victim for:

1. Damage or loss caused directly or indirectly by the defendant's offense;
and
 2. Damage or loss related to the defendant's criminal episode,
- unless it finds clear and compelling reasons not to order such restitution.

Fla. Stat. § 775.089(1)(a) (1993) (emphasis added).

The findings of the trial court that Mr. Selle's abandoned vessel was a navigation hazard, that the Anclote River is a navigable waterway, that the vessel was partially submerged without any lights as required by law, and that the "abandonment of the vessel was the criminal conduct, but for this conduct the County of Pinellas and the State of Florida would not have expended funds to recover and dispose of the vessel" were all based upon competent substantial evidence in the record. The trial court's legal conclusion that the State of Florida was a victim for purposes of Florida Statute § 775.089 was correct; the order of restitution was lawful.²

Conclusion

This court concludes that trial court restitution order should be affirmed.

IT IS THEREFORE ORDERED that the restitution order of the trial court is affirmed.

ORDERED at Clearwater, Florida this 1st day of December, 2014.

Original Order entered on December 1, 2014, by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

² In addressing the issues presented, it is not necessary for this court to comment on whether Mr. Selle, in his Petition for Acceptance of Plea and Sentencing in Absentia, waived any right to appeal the issues he has raised in this appeal.

cc: Honorable John D. Carballo
Thomas Matthew McLaughlin, Esquire
Office of the State Attorney