IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502016AP900045AXXXMB
L.T. NO.: 502015CT005783AXXXMB

MARCIAL ALFREDO MENCIASCRUZ,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed: JUN 16 2017

Appeal from the County Court in and for Palm Beach County,
Judge Daliah Weiss.

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PER CURIAM.

Appellant Marcial Alfredo Menciascruz pleaded guilty to driving under the influence and causing damage to the person of David Rivera Cruz ("Rivera") and was ordered to pay restitution in the amount of $15,782.41. On appeal, Appellant challenges a portion of that award, arguing that the trial court abused its discretion by ordering restitution for $10,550.00 of chiropractic treatment without competent substantial evidence establishing causation between those expenses

and the offense. We agree with Appellant, reverse the award of restitution for chiropractic treatment, and remand this case to allow the State the possibility of holding another restitution hearing.

At the restitution hearing, the State entered Rivera's $10,550.00 bill for chiropractic treatment into evidence. Rivera was the only witness to testify at the hearing. Rivera testified that after the accident, he visited chiropractor Dr. Louis Miller ("Dr. Miller") to deal with cervical and lumbar pain in his back. He testified that he visited Dr. Miller's office five times in March 2015, ten times in April 2015, once in May 2015, and once in February 2016. When Rivera was asked where the cervical and lumbar pain originated from, defense counsel objected, arguing that the question calls for expert testimony. The court overruled the objection and Rivera stated that the pain was from the March 15, 2015 car accident with Appellant.

On cross-examination, Rivera acknowledged that he had been involved in a separate car accident on January 23, 2015, and admitted that he also "was hurt and received bruises" from that accident. Rivera appeared to initially seek medical treatment after that accident but found out that his insurance did not cover the treatment and declined to be treated. Rivera also confirmed that he had a CAT scan on February 24, 2015, because he was experiencing pain in his back. Rivera further stated that he spoke to his chiropractor about "more things" than his back. Defendant entered a report by Dr. Miller which states that the victim has thoracic kyphosis, lordosis, internally rotated shoulders, a short right leg, a high right pelvis, and a high right hip.

On redirect, Rivera testified that when he visited his chiropractor's office, he did not have pain from any other accident other than the one that occurred on March 15, 2015. Defense counsel objected, again arguing that expert testimony was required as to the underlying conditions, but the trial court overruled the objection.

At the conclusion of the hearing, the court found that "based upon the unrebutted testimony and evidence presented . . . [t]he State has made its case and met its burden of proof in proving that the damage or loss was caused directly or indirectly by the crash, the D-U-I offense on the night of March 15, 2015 and that the injuries sustained by Mr. Rivera were as a result of the accident . . . ." The court ordered that Defendant pay Rivera restitution in the amount of $15,782.41, of which, $10,550.00 was for the chiropractic treatment.

Restitution orders are reviewed under an abuse of discretion standard and must be proved by competent substantial evidence. *Prinz v. State*, 149 So. 3d 65, 68 (Fla. 4th DCA 2014). Section 775.089(1)(a), Florida Statutes (2014), states that the court shall order the defendant to make restitution to the victim for (1) "[d]amage or loss caused directly or indirectly by the defendant's offense," and (2) "[d]amage or loss related to the defendant's criminal episode." When an offense results in bodily injury to a victim, the restitution order shall require that the defendant "[p]ay the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a recognized method of healing." *Id.* "[T]he court must find that the loss or damage is causally connected to the offense and bears a significant relationship to the offense, and the State must establish those factors by a preponderance of the evidence." *See Glaubius v. State*, 688 So. 2d 913, 915 (Fla. 1997). To satisfy the causal connection prong, the State must establish that the damage would not have occurred "but for" the defendant's crime. *Id.* The significant relationship prong is equated with proximate causation. *Schuette v. State*, 822 So. 2d 1275, 1282 (Fla. 2002).

In *Bellot v. State*, 964 So. 2d 857, 860 (Fla. 2d DCA 2007), the appellate court found that a victim's testimony alone was not competent substantial evidence to establish causation between

the offense and restitution for medical services. In *Bellot*, the defendant attempted to snatch a bracelet off the victim's wrist and a fight ensued. 964 So. 2d at 858. The victim was ultimately taken to the hospital where he was treated for three days, during which time a number of tests were run on the victim and one of the veins in his chest was "unclogged" because, as he was told, it was "destroyed." *Id.* At the restitution hearing, the victim "testified that he had not had heart or vein problems before the accident, just high blood pressure," and when asked how his vein was destroyed, the victim testified that he knew it was from the struggle with the defendant because he "never had that" condition before. *Id.* at 860, n.2.

On appeal, the Second District Court of Appeal reversed the award of restitution for the hospital services, finding that while the State had established "but for" causation, it did not provide competent substantial evidence that the need for some or all of the post-initial tests and consultations were causally connected to the crime. *Id.* at 860. While the appellate court recognized the victim may have had a preexisting condition that was aggravated in the fight, it also recognized the possibility that the consultation and testing simply revealed a preexisting condition that was wholly unrelated to the fight but still required immediate treatment, noting that "[i]t is likely that only expert testimony could distinguish between these possibilities." *Id.* The appellate court also noted that the hospital statements were not itemized, and it could not determine the extent to which the hospital charges related to the initial treatment versus additional treatment for which the defendant may not be responsible. *Id.*

Similarly, in the instant case, we find that Rivera's testimony alone is not competent substantial evidence establishing causation between the car accident and the chiropractic treatment. The State has the burden of proving that Rivera's medical treatments are "causally connected to the offense," but the only evidence supporting causation is Rivera's assertions that

all of his chiropractic treatments were as a result of the accident. As in *Bellot*, it is likely that only expert testimony could distinguish between the possibilities that Rivera's injuries and subsequent treatments were as a result of (1) the March 15, 2015 accident, or (2) preexisting injuries exacerbated by the March 15, 2015 accident. Because the court relied solely on Rivera's testimony in finding that the treatments he received were causally connected to the March 15, 2015 accident, the trial court abused its discretion in granting restitution for the full amount of the chiropractic treatments.

Accordingly, we **REVERSE** the $10,550.00 award of restitution for chiropractic treatment and **REMAND** this case to the trial court to allow the State the possibility of holding another restitution hearing where it has the opportunity to establish causation for each portion of Rivera's chiropractic treatment.

K. MARX, KELLEY, and VOLKER, JJ., concur.

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Opinion/Decision filed: JUN 16 2017

Appeal from County Court in and for Palm Beach County, Florida;
Judge Daliah Weiss

Appealed: March 30, 2016

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DATE OF PANEL: March 28, 2017

PANEL JUDGES: K. MARX, KELLEY, VOLKER

AFFIRMED/REVERSED/OTHER: REVERSED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	DISSENTING: With Opinion	CONCURRING SPECIALLY: With/Without Opinion
6/13/17 J.	J.	J.
6/13/17 J.	J.	J.
6/15/17 J.	J.	J.