

Circuit Court for Kent County  
Case No. C-14-CR-21-000077

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1535

September Term, 2021

---

JESSE STENGER

v.

STATE OF MARYLAND

---

Berger,  
Zic,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

---

Opinion by Moylan, J.

---

Filed: January 18, 2023

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The appellant, Jesse Stenger, was convicted in the Circuit Court for Kent County in a jury trial, presided over by Judge Harris P. Murphy, of 1) littering in excess of 500 pounds and 2) of failing to report a boating accident. For the littering conviction, the appellant was sentenced to one year’s incarceration, but the sentence was suspended in favor of five years of probation. As a condition of probation, the appellant was ordered to pay \$12,000 in restitution. For failing to report a boating accident, Judge Murphy ordered the appellant to pay a \$500 fine, but that fine was then suspended.

### **The Contention**

On this appeal, the appellant presents the single contention that Judge Murphy erred by imposing restitution.

### **The Accident**

On August 28, 2020, the police received a call about the top of an antenna sticking up out of the Chesapeake Bay a short distance out of Rock Hall in Kent County. The spot was about two and one-half miles from the Swan Creek Marina and from Rock Hall Harbor. The spot was on what one of the officers described as “the fastest route from Rock Hall Harbor to the marina and ramp at Swan Creek.” For someone towing a boat, the natural route would be “to leave south out of Rock Hall Harbor, [to] go past a little bit of shoal, and then [to] turn up north towards Swan Creek.”

It was determined that the antenna was attached to a sunken boat. The area where the boat sank was in public waters. It was not a legal dumping site. It was in a channel that was regularly used by boaters, both recreational and commercial. It was in a natural approach both to and from Rock Hall or to go from north on the bay into the Chester River.

According to another of the officers, the sunken boat “was a potential navigational hazard for vessels.” The sunken boat had its bow tilted upwards and boats traversing the bay “could have struck it, especially at low tide.” The boat’s bow was about 10 feet from the water’s surface “with a cable sticking up more shallow than that.

A member of the Natural Resources Police “dive team” examined the submerged boat. The name “Lil’ Bitch” was painted on its side. The boat itself, made largely of wood, was damaged and a portion of the boat was starting to separate. The boat appeared to weigh more than 500 pounds. It did not appear that the boat could be returned to working order.

From the boat’s name, the Natural Resources Police traced it back to the appellant’s family. The appellant’s father was the boat’s “managing owner.” The appellant acknowledged to the police that the boat was his. He admitted that he was towing the boat out of Rock Hall, intending to take it to the Swan Creek Marina. He there intended to disassemble the boat and to take the pieces to a landfill. In the course of its journey, however, the boat sank along the way. The appellant did not know the precise location of the sinking, because the vessel he was using to tow the boat did not have GPS plotters. When asked whether he intended to do anything about the sunken boat, the appellant replied only, “I don’t know.”

It was three to four weeks after the boat had sunk that the Natural Resources Police first talked to the appellant. About a week after that, the officers removed the boat from the bottom of the bay. Because of the boat’s large size and weight, it took two days to float the boat and tow it to shallower water. A salvage company finally removed the boat from the

bay on November 17, 2020. The appellant never did report the sinking to the police until they notified him.

### **The Order Of Restitution**

After the jury returned the verdicts of guilty in this case, the parties agreed to proceed immediately to sentencing. The only thing discussed at sentencing was the subject of restitution to the State for its cost in removing the boat from the bay. The State explained that “the purpose of this case is to have time over Mr. Stenger’s head so that he can repay the amount of money that they spent to remove the boat.” When the Court asked how much it cost to remove the boat, the State answered, “\$13,000.” The State asked that this restitution be made “a condition of supervised probation.”

At sentencing, defense counsel accepted the idea of restitution but requested that supervised probation not involve any other provision or requirement beyond the payment of the restitution:

As Mr. Stenger has indicated, he is still employed as a waterman. In terms of the timing for paying back this very large amount of restitution, I don’t know exactly how long it is going to take Mr. Stenger, but it is probably going to take awhile.

I would ask the Court to consider the possibility of this being sort of like a hybrid probation where probation collects restitution, but there is not necessarily supervision for other purposes.

(Emphasis supplied.)

The question then became one of what kind of a payment schedule would be reasonable. Judge Murphy asked if the appellant wanted to say anything else. Both the appellant and appellant’s counsel indicated that they had nothing further to say. Judge

Murphy then suspended the sentence of imprisonment and placed the appellant on probation for five years, with the special provision that the appellant pay at least \$200 a month in restitution up to a total of \$12,000.

At the conclusion of that imposition of restitution, the appellant asked the court if he could get off of probation earlier if he paid the full amount of restitution immediately. Judge Murphy replied that “if and when that amount is paid, upon a motion from the defendant, probation could be terminated early.” Judge Murphy then told the appellant that he needed to sign the probation order, which the appellant promptly did.

### **An Unpreserved Appellate Afterthought**

The appellant now contends, for the first time, that the order of restitution amounted to an illegal sentence because 1) the State had never proved what the removal costs actually were and 2) that the State had never proved that he was capable of paying as much as \$200 a month.

A moment’s review of the entire sentencing scenario makes it obvious that his current contention was not remotely preserved for appellate review. The defense was fully apprised of the amount of restitution being discussed. The defense was completely aware of any question about what the ability of the appellant to make the required restitution payments. It fully discussed the opportunity for the early termination of probation based upon early payment. There was no remote objection to restitution raising either of the contentions now being argued by the defense.

Fully aware of his failure at trial to preserve his present objection, the appellant, in a parting footnote, requests that this Court take notice of plain error. We decline to do so.

**JUDGMENT AFFIRMED;  
COSTS TO BE PAID BY  
APPELLANT.**