

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH
DISTRICT**

Linda Weinreber Barker v. State of Florida

No. 4D21-2575 (Fla. 4th DCA Nov. 23, 2022) · No. No. 4D21-2575 · Decided November 23, 2022

SUMMARY

The Florida Fourth District Court of Appeal reviewed a restitution order entered after Linda Weinreber Barker pleaded no contest to fraudulent use of a credit card and exploitation of an elderly person. The court affirmed the \$3,005.71 restitution award because competent substantial evidence supported the victim's losses, but reversed and remanded the five percent surcharge because no fine had been imposed. The court held that Barker preserved the surcharge issue through a Rule 3.800(b)(2) motion.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fourth District
WRITING FOR THE COURT	May, J.; Gerber, J.; Artau, J.
JURISDICTION	Florida
DECIDED	November 23, 2022
DOCKET	No. 4D21-2575
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The defendant appealed a restitution order and a five-percent surcharge included in her probation order after she pleaded no contest to fraudulent use of a credit card and exploitation of an elderly adult.
STANDARD OF REVIEW	Restitution orders are reviewed for abuse of discretion; whether the surcharge was properly assessed is reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	Linda Weinreber Barker v. State of Florida

TOPICS

restitution criminal sentencing standard of review appellate procedure criminal procedure

PRACTICE AREAS

criminal procedure criminal restitution sentencing appellate procedure

QUESTIONS PRESENTED

1. Whether competent substantial evidence supported the \$3,005.71 restitution award.
2. Whether the trial court improperly assessed a five-percent surcharge when it imposed no fine.

HOLDINGS

1. The restitution award was supported by competent substantial evidence because the victim testified that Barker drafted the checks without consent and that the payments did not benefit the victim, and copies of the checks showed Barker's handwriting and signature.
2. The trial court improperly assessed the five-percent surcharge because it did not impose a fine, and the surcharge was not authorized under the circumstances.

KEY QUOTATIONS

“Competent substantial evidence must be more than mere speculation.” (at 2)

“A trial court must pronounce each fine, cost, and discretionary fee during a sentencing hearing to comply with due process.” (at 3)

FACTUAL BACKGROUND

The victim, Barker's neighbor, gave Barker permission to assist with bills and to use certain checks and credit cards while the victim was traveling. After returning, the victim discovered irregular activity and testified that Barker drafted two checks, totaling \$3,005.71, without authorization and that the payments did not benefit the victim. Copies of the checks showed Barker's handwriting and signature, and the trial court ordered restitution for both checks.

PROCEDURAL HISTORY

The circuit court sentenced Barker to twenty-four months' probation and ordered her to pay \$3,005.71 in restitution. Although the court orally pronounced costs and fees, it did not impose a fine; nevertheless, the probation order included a mandatory five-percent surcharge. Barker challenged both the restitution award and surcharge, preserving the surcharge issue through a Florida Rule of Criminal Procedure 3.800(b)(2) motion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must strike the five-percent surcharge from the probation order. The restitution order is affirmed.

CASES CITED

- Davis v. State, 244 So. 3d 374, 377 (Fla. 4th DCA 2018)
- Soriano v. State, 968 So. 2d 112, 114 (Fla. 4th DCA 2007)

- *Glaubius v. State*, 688 So. 2d 913, 916 (Fla. 1997)
- *Henry v. State*, 840 So. 2d 1170, 1171 (Fla. 4th DCA 2003)
- *Brewster v. State*, 25 So. 3d 99, 101 (Fla. 4th DCA 2010)
- *Bartolone v. State*, 327 So. 3d 331, 335 (Fla. 4th DCA 2021)
- *Anderson v. State*, 229 So. 3d 383, 386 (Fla. 4th DCA 2017)
- *Jackson v. State*, 296 So. 3d 549, 553 (Fla. 1st DCA 2020)
- *Osterhoudt v. State*, 214 So. 3d 550, 551 (Fla. 2017)

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