

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

TAMARA SAGER,

Appellant,

APPELLATE DIVISION (CRIMINAL)

Case No.: 502009AP900054AXXXMB

Co. Court Case No.: 502009MM000969AXXXMB

v.

STATE OF FLORIDA,

Appellee.

Opinion filed: *May 14, 2010*

Appeal from Judge, Sandra Bosso-Pardo
County Court in and for Palm Beach County.

For Appellant, Ian Seldin, Esq., Office of the Public Defender, 421 3rd Street, West Palm Beach,
FL, 33401.

For Appellee, Michelle Zieba, Esq., Office of the State Attorney, 401 N. Dixie Highway, West
Palm Beach, FL 33401.

PER CURIAM.

Appellant pled guilty to Battery. The court adjudicated Appellant guilty and ordered her to pay restitution in an amount to be determined within sixty days. A restitution hearing was held and the victim did not appear at the hearing. It was later discovered that the victim failed to appear because the State Attorney's Office had incorrectly informed her that she did not have to appear based on confusion regarding another court date. As a result, the court ordered that no restitution be awarded to the victim. The State filed a Motion for Rehearing and the court held a rehearing. The court then ordered Appellant to pay restitution in the amount of \$2,000.00.

When the trial court entered an order awarding no restitution, the order was final, even though the victim's absence was based on prosecutorial error. See Ely v. State, 855 So. 2d 90

(Fla. 2d DCA 2003). Double jeopardy attached and the trial court was without authority to order \$2,000.00 in restitution, even within the sixty-day modification period. See id.

Accordingly, we REVERSE AND REMAND this matter to the trial court to vacate the orders of June 5 and 22, 2009, setting restitution in the amount of \$2,000.00 and reinstate the order of May 26, 2009, setting the amount of restitution at zero.

RAPP, KASTRENAKES and SMITH, JJ. concur.

<u>DYLE</u>	<u>DYLE</u>	<u>DYLE</u>
<u>JUDGE</u>	<u>JUDGE</u>	<u>JUDGE</u>
DISPOSITIVE ()	DISPOSITIVE ()	DISPOSITIVE ()
WHEEL ()	WHEEL ()	WHEEL ()