

LEGAL EAGLE



November 2026

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Published by:
Office of the State Attorney
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Alicia Cox, State Attorney
B. Krischer, Editor

Criminal Mischief

Paul Phang, a rideshare driver, dropped off a customer inside of a gated residential community. When he attempted to exit the sideways-rolling metal gate at two o'clock in the morning, the gate would not open. Phang called the posted phone number four times over a sixteen-minute period, but the phone rang repeatedly with no answer. Rather than calling the local police's non-emergency number, Phang literally took matters into his own hands.

He got out of his car and, using his bare hands, began pushing and pulling the entrance gate forward. By exerting a great amount of force to move the gate forward, Phang broke a gate post and bent the gate itself. After he had created enough space for his car to squeeze through, he got into his car and drove off.

The community spent \$1,360 to repair the damaged post and gate. The community's manager, after reviewing the video to determine how the damage had occurred, attempted to contact Paul's rideshare company to demand reimbursement. The rideshare company *required* a *police report* to process a damages claim. The manager called the police. The police tracked down Phang at his apartment. Because the damage was greater than \$1,000, the State

charged Defendant with criminal mischief as a felony.

After trial Defendant moved for a judgment of acquittal, arguing that the State had not presented sufficient evidence that he had damaged the gate "maliciously," as section 806.13(1)(a), F.S. requires be proven. The trial court denied the motion. On appeal, that ruling was affirmed.

Issue:

Did the State's evidence prove that the Defendant injured or damaged personal property, and that the injury or damage was done willfully and *maliciously*? **Yes.**

Criminal Mischief:

While this law was previously known at common law as "malicious mischief," the offense has evolved into the statutory crime of criminal mischief under § 806.13, F.S. To prove criminal mischief, the State must establish three elements, and the severity of the offense is graded by the dollar amount of damage caused. State must prove, 1. the Defendant injured or damaged specified property; 2. the property belonged to another; and 3. the injury or damage was inflicted willfully and maliciously. See, *Sanchez v. State*, (5DCA 2005).

The common law offense of malicious mischief evolved into the statutory crime of criminal mischief,

by morphing the malice requirement from the inclusion of ill will or hatred toward the owner of the property into a statutory element that specifically requires *willful and malicious intent to injure or damage the property of the owner*. As a result, although malice was incorporated into the provisions of § 806.13 as an element of the offense, the mischief criminalized under the statute requires that the Defendant specifically intended to damage or destroy the property of another, it is not enough that the defendant act with malice toward the person of the owner.

Further, “maliciously,” as used in the criminal mischief statute, means wrongfully, intentionally, without legal justification or excuse and with the knowledge that injury or damage will or may be caused to another person or the property of another person. See, *W.F. v. State*, (3DCA 2008).

“...Offense would be reduced from criminal mischief to attempted criminal mischief as State failed to prove that rocks hurled at school building by juvenile caused any damage, *since damage to property is an element of criminal mischief statute*. *N.R. v. State*, (3DCA 1984).

Court’s Ruling:

This opinion was published as a *per curiam* affirmed decision. Which means the 4th D.C.A. agreed with the trial court’s ruling. This finding represents the court as a whole instead of an opinion written by a single judge. Courts often issue brief rulings with a single word, “Affirmed,” without providing legal reasoning. In this instance Chief Judge, Johnathan Gerber, issued a concurring opinion that lends light on the legal issues

herein.

“As the jury was instructed based on standard criminal jury instruction 12.4: To prove the crime of Criminal Mischief, the State must prove the following three elements beyond a reasonable doubt:

1. [The defendant] injured or damaged real or personal property.
2. The property injured or damaged belonged to [the community].
3. The injury or damage was done willfully and maliciously.

“As the jury was further instructed from standard criminal jury instruction 12.4, ‘maliciously’ means ‘wrongfully, intentionally, without legal justification or excuse, and with the knowledge that injury or damage will or may be caused to another person or the property of another person.’ ”

“However, standard criminal jury instruction ‘maliciously’ element does not require the actor to harbor ‘ill will or hatred’ in causing the damage. As the Fifth District explained in *Sanchez v. State*, (5DCA 2005):

“The traditional common law concept of malice, within the context of the crime of malicious mischief, incorporated the general notion that the offense was committed out of ill will or hatred toward the owner of the property. The element of malice also contemplated that the malicious intent could, alternatively, be directed toward the property of the owner.

“Thus, the question in this appeal is not whether sufficient evidence existed to show [Defendant] harbored ‘ill will or hatred’ when he damaged the gate. On the contrary, the lack of such evidence is irrelevant.”

“Instead, the question is whether, after viewing the evidence in the light most favorable to the State, sufficient evidence existed for a jury to determine that [Defendant’s] damage of the gate was committed ‘wrongfully, intentionally, without legal justification or excuse and with the knowledge that injury or damage will or may be caused to [the gate].’ ...”

“Here, such sufficient evidence existed. The security video clearly shows that when [Defendant] began pushing and pulling the entrance gate forward, the gate’s sideways-pointing wheel repeatedly became stuck in the asphalt. After about twenty-four seconds of pushing and pulling the entrance gate to no avail, [Defendant] began pushing the exit gate, causing its sideways-pointing wheel to also become stuck in the asphalt. Finally, when [Defendant] leaned heavily into the exit gate with great force, the gate bent and allowed him to scrape the gate’s wheel across the asphalt. The jury, after watching the security video, could conclude that a reasonable person in [Defendant’s] position would have known that pushing the gate with such great force in a direction for which the gate was not designed would damage the gate.”

“Further, [Defendant] damaged the gate ‘without legal justification or excuse.’ In both the circuit court and our court, [Defendant] argued he was justified in damaging the gate because he felt ‘trapped’ behind the unmanned malfunctioning gate at two o’clock in the morning, with no means to exit.”

“Paul’s final argument focuses on standard criminal jury

(Continued on page 10)



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PTSD IN FIRST RESPONDERS



**MORE THAN 18 MILLION
ADULTS SUFFER FROM
DEPRESSION
IN ANY GIVEN YEAR**

**MORE OFFICERS DIE FROM
SUICIDE THAN LINE OF
DUTY DEATHS**



SYMPTOMS OF PTSD INCLUDE

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- FEELING DISCONNECTED FROM PEOPLE
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- PANIC-LIKE SYMPTOMS: HEART BEATING FASTER THAN NORMAL, SWEATING, AN OVERALL SENSE OF UNEASE OR AGITATION
- PEOPLE CLOSE TO YOU COMMENTING ON YOU SEEMING DIFFERENT OR NOT BEING YOURSELF
- REACTING IN WAYS THAT ARE NOT CHARACTERISTIC OF YOU

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Recent Case Law

Emergency Aid

Abigail Marbut rode with her mother, Renee, from her apartment to the grocery store. Marbut became “incoherent” as Renee drove back and “passed out” before Renee reached their residence. Unable to rouse her, Renee called 911 because she feared that Marbut had overdosed on the drug GHB and reported that Marbut was “unresponsive.” An operator dispatched police officers and medical personnel to the scene.

Police officers and medical professionals arrived as Marbut began to stir in the back seat of the vehicle parked near her apartment. Marbut refused to accept any aid. She was informed she had two options: go to the hospital with the medics or go there with the officers. Marbut refused and continued to insist there was “nothing wrong” with her. Officer Pena interjected that Marbut did not “have a choice,” and Marbut shouted that she “did not do anything wrong.”

Marbut abruptly informed one of the officers that she was going inside to use the restroom. A scuffle ensued as Marbut attempted to move past the Officer, and three other Officers joined the fray. Marbut suffered a broken arm during the struggle. She sued the officers for unlawful detention and excessive force in violation of the Fourth Amendment. The trial court granted summary judgment for the Officers

based on qualified immunity. On appeal, that ruling was affirmed.

Issue:

Did the Officers have probable cause to execute a “mental-health seizure”?

Yes. Did the Officers use objectively reasonable force under the circumstances? **Yes.**

Emergency Aid:

The Fourth Amendment requires that searches be reasonable. Further, that warrantless searches and seizures inside a home are presumptively unreasonable. See, *Brigham City v. Stuart*, (S.Ct.2006). But that presumption can be overcome if the “*exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.*” *Mincey v. Arizona*, (S.Ct.1978).

However, the cases relying on the community caretaking, i.e. (actions taken “totally divorced from the detection, investigation, or acquisition of evidence of a crime”), exception, extrapolated from *Cady v. Dombrowski*, (S.Ct.1973), to permit entry into a home were rejected by the Supreme Court in *Caniglia v. Strom*, (2021).

Cady held that a warrantless search of an impounded vehicle for an unsecured firearm did not violate the Fourth Amendment. In reaching this conclusion, the Court noted that the officers who patrol the “public highways” are often called to discharge noncriminal “community caretaking functions,” such as responding to disabled vehicles or

investigating accidents. But searches of vehicles and homes are constitutionally different. The very core of the Fourth Amendment’s guarantee is the right of a person to retreat into his or her home and “there be free from unreasonable governmental intrusion.” *Florida v. Jardines*, (S.Ct.2013).

“A recognition of the existence of ‘community caretaking’ tasks, like rendering aid to motorists in disabled vehicles, is *not an open-ended license to perform them anywhere.*”

Court’s Ruling:

The trial court ruled that Officer Phillips seized Marbut when he “prevented her from leaving ... to go to the restroom” and that the other officers joined the seizure when they “physically restrained” her. The officers did not dispute these rulings. In both instances, the show of authority and physical force applied by the officers made it clear that Marbut was not “free to terminate the encounter.” However, the 11th Circuit found no constitutional violation.

“Although Marbut can prove a seizure, she cannot prove that the officers seized her ‘in violation of [her] clearly established [Fourth Amendment] rights.’ ‘To be clearly established, a right must be well-established enough that every reasonable official would have understood that what he is doing violates that right.’ *Gates v. Khokhar*, (11th Cir. 2018). In other words, the officers are entitled to qualified

immunity if it is at least ‘arguable’ that a seizure was permissible. *Alston v. Swarbrick*, (11th Cir. 2020); *Jackson v. Sauls*, (11th Cir. 2000).”

“Police officers ordinarily execute searches and seizures in connection with suspected crimes. But the Fourth Amendment also permits officers to search and seize in response to non-criminal emergencies. In *Brigham City*, for example, the Supreme Court held that ‘law enforcement officers may enter a home without a warrant’ when they have ‘an objectively reasonable basis for believing’ that an occupant needs ‘emergency assistance.’ This emergency aid doctrine ‘reflects the common-sense principle that preserving life or avoiding serious injury is justification for what would be otherwise illegal absent an exigency or emergency.’ (quoting *Mincey v. Arizona*, (S.Ct.1978)).”

“Some emergency-aid cases involve ‘mental-health seizures.’ We have stated that these seizures comply with the Fourth Amendment when officers ‘have probable cause to believe [a] person is dangerous either to himself or to others.’ *Roberts v. Spielman*, (11th Cir. 2011). And we have applied this standard to seizures conducted inside and outside of the home.”

“The [trial] court ruled there was ‘probable cause to execute a mental-health seizure’ because the officers had sufficient reason to believe that Marbut ‘would be endangering herself’ if she ‘left the scene without treatment.’ ... The Supreme Court recently abrogated [rescinded] the probable-cause standard employed by those precedents.”

“The Supreme Court held in *Case v. Montana* (2026), that

‘probable-cause decisions’ do not apply to ‘emergency-aid situations.’ The petitioner in *Case* faced charges for assaulting a police officer after officers entered his home without a warrant to perform ‘a welfare check on a suicidal male.’ The [Defendant] argued that the trial court should have suppressed ‘all evidence obtained as a result of the home entry’ because the Officers lacked ‘probable cause to believe [he was] seriously injured or imminently threatened with such injury.’ But the Supreme Court declined ‘to put a new probable-cause spin’ on the emergency-aid doctrine. Because ‘the probable-cause standard ... is peculiarly related to criminal investigations,’ it is not appropriate ‘in the non-criminal, non-investigatory setting’ when officers intervene to provide emergency assistance. The proper standard in that setting is instead the inquiry established by *Brigham City*: whether ‘officers have ... an ‘objectively reasonable basis for believing’ that their intervention [is] needed to prevent serious harm.’ ”

“That *Case* addressed a warrantless entry into a home instead of a seizure outside of the home does not make it any less controlling. The Supreme Court has explained that ‘temporarily keeping a person from entering his home ... is considerably less intrusive than police entry into the home itself.’ *Illinois v. McArthur*, (S.Ct.2001). *Case* reaffirmed that principle by respecting as ever the ‘first among equals’ status the Fourth Amendment affords the home. Because officers under *Case* can intrude upon the sanctity of the home when they have an ‘objectively reasonable basis for believing’ that

intervention is needed to ‘prevent serious harm,’ the Fourth Amendment necessarily affords officers the same power when executing emergency seizures outside the home, *United States v. Toussaint*, (5th Cir. 2016). Our precedents imposing a probable-cause requirement in emergency-aid situations are no longer good law.”

“As in other Fourth Amendment cases, Officers responding to an emergency are not ‘required to sift through conflicting evidence or resolve issues of credibility’ in the heat of the moment. *Huebner v. Bradshaw*, (11th Cir. 2019). People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process.”

“It is at least arguable that the Officers could seize Marbut in accordance with these principles. Binding precedent holds that the emergency-aid doctrine justifies Fourth Amendment intrusions when necessary ‘to assist a drug overdose victim.’ *United States v. Brand*, (5th Cir. 1977). And a reasonable officer on the scene could conclude that Marbut needed emergency assistance following a suspected overdose.”

“Even if the emergency-aid doctrine did not justify a seizure, the Officers could seize Marbut because they had probable cause to believe she committed a criminal offense. We have long recognized that ‘any crime for which a reasonable policeman would have probable cause will support [an] arrest,’ whether or not an officer identified the crime in the moment. *United States v. Thomas*, (11th Cir. 2025); *Brown v. City of Huntsville*, (11th Cir. 2010). It is a crime under federal and Georgia law

to possess GHB. And Marbut conceded in her briefing that the officers were ‘entitled to believe’ her mother’s report about a potential overdose on GHB. Because ‘probable cause does not require conclusive evidence and is not a high bar,’ the mother’s report and the other information the officers collected at the scene authorized a seizure. **AFFIRMED.**”

Lessons Learned:

The Supreme Court’s opinion in *Case v. Montana* emphasized the emergency nature of the police presence. “The circumstances making their entry reasonable, as just stated, were those suggesting that Case may already have shot himself or would do so absent intervention. The statements Case made to J. H., plus the visual evidence corroborating them, indicated that Case wanted to end his life. The decision of the officers to enter his home to prevent that result—even at some significant risk to themselves—was (at the least) reasonable. The Fourth Amendment did not require them, as Case now argues, to leave him to his fate.”

“We repeat today what we have held before: **An officer may enter a home without a warrant if he has ‘an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury.’** The officers’ entry satisfied that test.”

The United States Supreme Court in *Michigan v. Fisher*, (2009), explained how this warrant exception operates. The need for a search warrant can be overcome when “the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable.” Citing,

Mincey v. Arizona, (1978).

“It does not meet the needs of law enforcement or the demands of public safety to require Officers to walk away from a situation like the one they encountered here. Only when an apparent threat has become an actual harm can Officers rule out innocuous explanations for ominous circumstances. But ‘the role of a peace officer includes preventing violence and restoring order, not simply rendering first aid to casualties.’ It sufficed to invoke the emergency aid exception that it was reasonable to believe that Fisher had hurt himself (albeit nonfatally) and needed treatment that in his rage he was unable to provide, or that Fisher was about to hurt, or had already hurt, someone else. The [lower court] required more than what the Fourth Amendment demands.”

Marbut v. Phillips
U.S. Court of Appeals, 11th Cir.
(May 22, 2026)

Return of Seized Property

Defendant timely moved for return of his property within sixty days of D.C.A. affirming his conviction. He met the pleading requirements for return of the property because his motion properly alleged each of the four required elements. Therefore, the trial court erred when it summarily denied the motion without either attaching portions of the record refuting Defendant’s claim or holding an evidentiary hearing.

Issue:

Did the Defendant timely move for the return of property within sixty days of the D.C.A. resolving the appeal? **Yes.** Did the Defendant’s Motion meet the requirements for

return of the property by pleading each of the four elements as set forth in *Sanchez v. State*, (4DCA 2015)?

Yes.

Return of Seized Property:

Section 705.105(1), F.S., provides: “Title to unclaimed evidence or unclaimed tangible personal property lawfully seized pursuant to a lawful investigation in the custody of the court or clerk of the court from a criminal proceeding or seized as evidence by and in the custody of a law enforcement agency shall vest permanently in the law enforcement agency *60 days after the conclusion of the proceeding.*”

The 4th D.C.A. had the occasion to analyze this area of the law in *Sanchez v. State*, (4DCA 2015). “The applicable procedure for a motion for return of personal property is similar to one for postconviction relief. A facially sufficient motion for return of property must: 1. specifically describe the property at issue; 2. allege that the property is the personal property of the movant; 3. allege that the property was not the fruit of criminal activity; and 4. allege that the property is not being held as evidence. *West v. State*, (2DCA 2010).”

“If the motion is facially sufficient, the court ‘may order the State to respond’ by ‘refuting the Defendant’s argument that the property should be returned.’ In an evidentiary hearing, the ‘Defendant is required to prove the property is exclusively his own, that it was not the fruit of illegal activity, and that it is not being held for evidentiary purposes.’ In our prior opinion we also placed the burden on [Defendant] to prove ownership of the property. This is consistent with the procedure

for postconviction relief where the burden stays on the Defendant to prove his or her claims at an evidentiary hearing. See, *Justice v. State*, (2DCA 2006). If the allegations are deemed sufficient, the trial court is obliged to provide the Defendant a full evidentiary hearing to determine whether the property was in the custody of the Sheriff's Office and should be returned to the Defendant.

In *Justice v. State* the trial court erred in basing its denial of the motion on its reliance on the Sheriff's Office property and evidence receipt. "If Justice's allegations are deemed to be sufficient, the Circuit Court was obligated to provide Justice a full evidentiary hearing to determine whether the property at issue is in the custody of the Sheriff's Office and should be returned to Justice. The requirement for an evidentiary hearing was not obviated nor satisfied by the Circuit Court's reliance on the Sheriff's Office property and evidence receipt. Representations by an attorney for one of the parties regarding the facts ... do not constitute evidence."

Thus, the crucial question is, what marks the 'conclusion of the proceeding' for purposes of determining when the sixty-day period begins to run under the statute? The 3rd D.C.A. in *Montero v. State* (2025), ruled, "We have held that, where a Defendant has filed a direct appeal, the 'conclusion of the proceeding,' for purposes of determining when section 705.105(1)'s sixty-day period begins to run, is 'when the mandate issues from the appellate court on a direct appeal of a Defendant's judgment and sentence.' *Monestime v. State*, (3CA 2017)."

However, when a

Defendant does not file a direct appeal following his guilty plea the court must determine what marks the 'conclusion of the proceeding' (and the commencement of the sixty-day period within which to file a motion for return of property) in the absence of a direct appeal. The First District, in *Bracht v. State*, (1DCA 2021) held that, in the absence of a direct appeal, the 'conclusion of the proceeding' means the date the judgment and sentence became final."

The D.C.A. in *Montero* concluded, "We agree with *Bracht* and have held, in analogous procedural circumstances, that in the absence of a direct appeal, a judgment and sentence becomes final thirty days after it is imposed. See, *Pearson v. State*, (3DCA 2014) (holding 'the two-year time limitation for filing motions for postconviction relief pursuant to Florida Rule of Criminal Procedure 3.850 does not begin to run until appellate proceedings have concluded and the court issues a mandate or thirty days after the judgment and sentence become final if no direct appeal is filed.') (quoting *Saavedra v. State*, (3DCA 2011))."

Court's Ruling:

"Here, the State properly concedes error. [Defendant] timely moved for return of property within sixty days of us affirming his conviction. He met the pleading requirements for return of the property because his motion alleged each of the four elements as set forth in *Sanchez*."

"If the motion is facially sufficient, the trial court must either 'attach portions of the record conclusively refuting the claim' or hold an evidentiary hearing before summarily denying the motion. *Juste v. State*,

(3DCA 2012)); *Ooms v. State*, (1DCA 2014)."

"The trial court further erred when it summarily denied the motion without either attaching portions of the record refuting [Defendant's] claim or holding an evidentiary hearing. Therefore, we reverse and remand for the trial court to either: 1. attach portions of the record refuting the claim, or 2. hold an evidentiary hearing on [Defendant's] motion."

Lessons Learned:

In a similar case, *Gaitor v. State*, (3DCA 2024), Defendant filed a motion for return of property in March 2024, though his conviction became final upon the issuance of the mandate in June 2009. The D.C.A. noted, "There appears to be little doubt, even by Gaitor himself, that he sought relief outside the four-year statute of limitations. See § 95.11(3)(h), F.S. (setting forth a four-year limitation on an action seeking "to recover specific personal property")."

The trial court without requiring the State to respond to the pleading or setting a hearing denied the Defendant's motion out-of-hand. The D.C.A. reversed the court's order. "Because the motion to return the property was facially sufficient, the trial court should have 'ordered the State to respond by citing applicable case law and attaching portions of the record to refute the Defendant's contention that the property should be returned, after which the motion may be summarily denied.... In the alternative, the trial court may hold an evidentiary hearing." *Bolden v. State*, (2DCA 2004) (explaining that 'the applicable procedure is similar to the procedure for the consideration of a motion for postconviction

relief”).”

The most difficult burden the Defendant must overcome is offering proof of undisputed ownership of the claimed property.

“Although Sanchez claims that he owned the personal property found on his person, the trial court specifically found his testimony not credible. Thus, he failed to prove the property was exclusively his own. The State presented the circumstances of his possession. Certainly, the circumstantial evidence of how and when this property was found calls into question his bald statement of ownership, with nothing to back up his claim. Giving the appropriate deference to the trial court’s credibility findings, we conclude that the trial court had the discretion to reject his claim of ownership and thus deny the return of property to him.” *Sanchez v. State*, (4DCA 2015).

Dorman v. State
4th D.C.A.
(July 1, 2026)

Resisting Arrest

K.B. was a high school student. Due to a report that she was seen with a vape device, Dean of the school conducted an administrative search of K.B. One of two school resource officers was on standby for safety concerns while the Dean conducted the search. During the search, K.B. became hostile, snatching the device away from the Dean. The school resource officer intervened to restrain K.B. and retrieve the device. Due to K.B.’s ongoing resistance, the officer arrested her, while calling for backup.

K.B. continued to resist and refused to comply with both officers,

even after being placed in handcuffs. Officers then escorted K.B. to their office, for the safety of herself and others, to await transport away from school property. The initial officer exited the office, while the second officer remained with K.B., all the while K.B. continued to resist, refusing to comply with lawful commands. She repeatedly pulled away from the officer and cursed “in a most disrespectful manner.” When the first officer returned, K.B., once again, somehow retrieved the vape device *while handcuffed*, blowing the vapor in the second officer’s face. K.B. was charged with two counts of resisting arrest without violence.

After a hearing, the Juvenile Court adjudicated K.B. delinquent for two counts of resisting arrest without violence. The trial judge reasoned that two separate acts of resisting arrest without violence occurred, first against the initial officer when he initiated arrest alone, and then against the second officer when K.B. resisted his efforts while his fellow officer was outside of their office. On appeal that ruling was reversed.

Issue:

Can a Defendant be convicted of multiple Resisting an Officer charges for resisting multiple police officers in a single episode? **No.**

Double Jeopardy:

The Double Jeopardy Clause in both the State and Federal constitutions protect criminal defendants from multiple convictions and punishments for the same offense arising from the same act or acts committed *within the same criminal transaction*. The governing law on whether a Defendant should be punished for two crimes within a single criminal

episode is found in section 775.021(4), F.S.

This section provides in part: “(a) Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.”

The State argued on appeal that K.B.’s charges were predicated on two distinct criminal acts. However, Florida courts have consistently held that “a continuous resistance to an ongoing attempt to effectuate a person’s arrest or detainment constitutes only one single instance of resisting an officer.”

Single Transaction Rule:

The Florida Supreme Court in *Wallace v. State*, (Fla. 1998), explained that the statutory description of the offense determined if resisting multiple officers constituted a single act. Specifically, the Court noted that section 843.01, Resisting officer with violence to his person - read, “Who-ever knowingly and willfully resists, obstructs, or opposes **any** officer...” Because section 843.01 prohibits resisting “any” officer, as opposed to “an” officer, and the two counts were predicated on one incident during which the Defendant resisted or opposed two officers, only one conviction was permitted.

Court's Ruling:

"A Defendant may be convicted of multiple counts of resisting arrest without violence if their behavior constitutes two or more separate acts. See *Johnston v. State*, (4DCA 2023). However, **a Defendant's continuing resistance to an arrest can amount to a single act of resistance, even if several officers are involved in the effort.** See *Bruzzese v. State*, (5DCA 2020); see also *R.J.R. v. State*, (1DCA 2012)."

"When determining if K.B.'s actions constitute a continuous act, this Court must consider whether: 1. separate victims are involved; 2. whether the acts occurred in separate locations; 3. whether there has been a temporal break between the incidents; 4. whether there was an intervening act; and/or 5. a new criminal intent has formed. See *Fleming v. State*, (5DCA 2011) (citing *Vasquez v. State*, (5DCA 2001))."

"K.B.'s actions flowed from a single continuous episode. While both officers did act independently of each other during the incident, the facts reflect a *joint effort by officers to arrest and control her*. The primary location of the incident remained at the school. No intervening act or temporal break occurred during the incident. Finally, K.B.'s intent remained consistent throughout the incident, to retrieve her vape and resist the officers' efforts."

"Therefore, K.B.'s multiple convictions of resisting arrest without violence arise from the same continuous act and constitute a double jeopardy violation. See *Johnson v. State*, (1DCA 2018). K.B.'s adjudication and sentence for the second count is therefore reversed and

remanded to the trial court to vacate the second adjudication of resisting arrest without violence and resentence her accordingly. Her adjudication and sentence for the first count of resisting arrest without violence are affirmed."

Lessons Learned:

Interestingly, the Florida Supreme Court decided this issue in *Wallace v. State*, (Fla.1998), though that case was not cited above. The Supreme Court held that a Defendant could be convicted of only one count of resisting an officer with violence, based on his altercation with the two police officers arriving at his home in response to report of domestic disturbance. The United States Supreme Court has reached a similar result in *Ladner v. United States*, (1958).

In analyzing the intent of the statute, the Court found it susceptible to two equally plausible constructions with regard to the purpose the statute was intended to achieve: preventing hindrance of the government and protection of individual officers. They ruled:

"Clearly one may resist, oppose, or impede the officers or interfere with the performance of their duties without placing them in personal danger. Such a congressional aim would, of course, be served by considering the act of hindrance as the unit of prosecution without regard to the number of federal officers affected by the act. For example, the locking of the door of a building to prevent the entry of officers intending to arrest a person within would be an act of hindrance denounced by the statute. We cannot find clearly from the statute, even when read in the light of its legisla-

tive history, that the Congress intended that the person locking the door might commit *as many crimes as there are officers denied entry*. And if we cannot find this meaning in the supposed case, we cannot find that Congress intended that a single act of assault affecting two officers constitutes two offenses under the statute."

**K.B. v. State
5th D.C.A.
(Aug. 21, 2026)**



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Criminal Mischief

instruction 12.4's inclusion of the words 'wrongfully' and 'intentionally' to describe the definition of 'maliciously' in the criminal mischief statute. According to [Defendant], because his intent was not to damage the gate, but merely to exit from the malfunctioning gate, his damaging of the gate was neither 'wrongful' nor 'intentional' as a matter of law, thus deserving of a judgment of acquittal."

"We disagree. As the State argued in the circuit court and here, [Defendant] could have attempted to contact the local police's non-emergency number for assistance rather than attempting to open the gate himself. Or at worst, when [Defendant] realized the gate was putting up a fight against being opened manually, and was likely to break upon further force being applied, [Defendant] could have stopped trying to force open the gate. Given these alternatives, a sufficient question of fact existed for the jury to determine whether [Defendant's] continued application of great force

to open the gate and gain his exit was both 'wrongful' and 'intentional.' "

"In rendering this opinion, we do not mean to minimize the frustrating circumstances which [Defendant] faced that night. However, many people have faced that predicament under various scenarios, and chose either a better solution, or the patience, to avoid damaging a malfunctioning gate. Unfortunately, [Defendant] chose to damage the gate so he could exit the property."

"While some may question the fairness of [Defendant] having a felony conviction on his record, that outcome is beyond our purview. Ultimately, [Defendant] poor choices led to that outcome. The Circuit Court, the jury, and we have performed our duty to follow the law as written in deciding this case."

Lessons Learned:

While not an element of the present case, the severity of criminal mischief is determined by the dollar value of the damage caused. Once damage is established, the value of the property damage is relevant only to the severity of the crime. *Valdes v.*

State, (3DCA 1987). If the damage to property is \$200 or less, the offense is a misdemeanor of the second degree. If the damage is greater than \$200 but less than \$1,000, it is a misdemeanor of the first degree. While damage of \$1,000. or more elevates the offense to a felony.

"A plain reading of the criminal mischief statute reveals that the amount of damage is an essential element of the crime of felony criminal mischief. The only difference between second-degree misdemeanor mischief and third-degree felony mischief is the value of the damaged property. Felony criminal mischief requires proof of the amount of damage, whereas second-degree misdemeanor mischief does not. Absent proof of the amount of damage, an act of criminal mischief, as defined by the criminal mischief statute, is a misdemeanor of the second degree. The value of damage, therefore, is clearly an *essential element* of felony criminal mischief." *Marrero v. State*, (Fla. 2011).

Phang v. State
4th D.C.A.
(Sept. 2, 2026)

