

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

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 502017AP000132AXXXMB
L.T. NO.: 502017MM007669AXXXNB

DARRICK A. DORSETT,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

Opinion filed: FEB 06 2019

Appeal from the County Court in and for Palm Beach County,
Judge Leonard Hanser.

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PER CURIAM.

Appellant Darrick Dorsett was convicted of one count of Criminal Mischief stemming from an altercation with his neighbor. On appeal, Appellant argues, *inter alia*, that the trial court erred when it overruled his objection to the State's mischaracterization of the law during closing argument. We agree, and because we find this error to be reversible, we decline to address Appellant's remaining arguments on appeal.

On June 18, 2017, Appellant was working in his yard, trimming trees, and discarding unwanted branches on the curb for disposal. A truck belonging to Appellant's neighbor was parked on the street near the pile of unwanted branches. Appellant's neighbor testified that Appellant shouted expletives directed towards him and his truck and threw a pile of branches on the hood of the truck, resulting in damage to the vehicle. Appellant's primary defense theory was that he stacked the branches next to the truck, and that they unintentionally toppled over onto the truck.

Appellant's argument on appeal centers on the following statement made by the prosecutor during closing argument:

The State does not have to prove to you that he intended the branches to fall on the truck. . . . The reasonable person knows, when you stack those branches, they're falling over.

Appellant contends that this statement mischaracterized the law on criminal mischief, reducing the level of intent required to convict. The State responds that this statement was a correct characterization of the law.

"The offense of criminal mischief requires that the actor possess the specific intent to damage the property of another." *J.A. v. State*, 684 So. 2d 264, 265 (Fla. 4th DCA 1996) (citing *In re J.G.*, 655 So. 2d 1284, 1285 (Fla. 4th DCA 1995)); § 806.13, Fla. Stat. (2017). In arguing that its statement on the law was correct, the State cites caselaw from other District Courts of Appeal for the proposition that criminal mischief is a general intent crime. *See, e.g., M.H. v. State*, 936 So. 2d 1 (Fla. 3d DCA 2006). However, the Fourth District Court of Appeal has ruled directly on this issue, holding instead that criminal mischief is a specific intent crime, as indicated, *supra*. As such, the State's cases are inapplicable. *State v. Hayes*, 333 So. 2d 51, 53 (Fla. 4th DCA 1976) (District Court of Appeal decisions are binding on lower courts within their jurisdiction). The law

in this District is clear: “A defendant must possess the specific intent to damage the property of another to be found guilty” of criminal mischief. *R.E. v. State*, 13 So. 3d 97, 98 (Fla. 4th DCA 2009) (citing *J.A.*, 684 So. 2d at 265). Thus, we hold that the State’s characterization of the law on criminal mischief was incorrect, and the trial court erred when it overruled Appellant’s objection.

The next issue is whether the trial court’s error was harmless. Harmless error inquiries “place the burden on the State, as the beneficiary of the error, to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict.” *State v. DiGuilio*, 491 So. 2d 1129, 1135 (Fla. 1986). Applying the harmless error test “requires not only a close examination of the permissible evidence on which the jury could have legitimately relied, but an even closer examination of the impermissible evidence which might have possibly influenced the jury verdict.” *Id.* at 1138.

In *Profitt v. State*, 978 So. 2d 228 (Fla. 4th DCA 2008), the Fourth District Court of Appeal found that a similar error was not harmless after applying *DiGuilio*. In *Profitt*, the trial court overruled the defendant’s objection to the prosecutor’s closing argument, which included what was “patently[,] a false statement of law.” Here, we likewise find the error to be reversible. Not only did the jury hear the State’s misstatement and the Appellant’s objection thereto, but it also heard the court overrule the objection after a bench conference, which potentially drew more attention to the misstatement and reinforced the jurors’ potential misunderstanding of the law. Moreover, the error pertains to one of the main points of contention between both sides’ respective theories of the case; i.e., whether Appellant possessed the requisite intent to be guilty of Criminal Mischief. Thus, we find that the error is not harmless.

Accordingly, we **REVERSE** Appellant's conviction and **REMAND** the case to the trial court for a new trial.

CARACUZZO, KELLEY, and JOHNSON, JJ., concur.

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Opinion/Decision filed: FEB 06 2019

v.

Appeal from County Court in and for
Palm Beach County, Florida;
Judge Leonard Hanser

STATE OF FLORIDA,
Appellee.

Appealed: November 3, 2017

_____/
DATE OF PANEL: DECEMBER 17, 2018

PANEL JUDGES: CARACUZZO, KELLEY, AND JOHNSON

AFFIRMED/REVERSED/OTHER: REVERSE

PER CURIAM OPINION/DECISION BY: PER CURIAM

CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With/Without Opinion)	With/Without Opinion)
<u>Cheryl Caracuzzo</u>)))
DATE: <u>2/6/19</u> J.)))
<u>[Signature]</u> <u>2-5-19</u>)))
DATE: J.)))
<u>[Signature]</u>)))
DATE: <u>2/5/19</u> J.)))