

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

T. D. B., a child,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D11-4719

STATE OF FLORIDA ,

Appellee.

Opinion filed April 27, 2012.

An appeal from the Circuit Court for Escambia County.
Ross Goodman, Judge.

Nancy A. Daniels, Public Defender, and Diana L. Johnson, Assistant Public
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Donna A. Gerace, Assistant Attorney
General, Tallahassee, for Appellee.

WOLF, J.

Appellant challenges an adjudication of delinquency for criminal mischief.
Appellant argues the trial court erred in denying his motion for judgment of
dismissal. We agree and reverse.

The State alleged appellant caused damage to a pool. One State witness
testified she saw appellant “playing with” a weight in the pool, and she saw him

drop the weight into the pool. A second witness testified that when she confronted appellant, he stated he caused damage to the pool by accident. The State failed to present any evidence that appellant acted with malice, as required by section 806.13, Florida Statutes (2010). Evidence that damage resulted from appellant's actions alone is insufficient. See J.R.S. v. State, 569 So. 2d 1323, 1325 (Fla. 1st DCA 1990) (finding evidence that a juvenile damaged a door lock while attempting to gain entry into his locked home was insufficient to demonstrate malice).

Further, the State's evidence was entirely circumstantial. The State failed to present evidence that was inconsistent with appellant's reasonable hypothesis of innocence that he damaged the pool by accident. See State v. Law, 559 So. 2d 187, 188 (Fla. 1989) ("Where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence."). As such, we reverse.

REVERSED.

BENTON, C.J., and VAN NORTWICK, J., CONCUR.