

FIFTH DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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Case No. 5D2025-1370  
LT Case No. 42-2024-CJ-912-A

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K.B., A CHILD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Marion County.  
Bradley E. King, Judge.

Matthew J. Metz, Public Defender, and Susan A. Fagan,  
Assistant Public Defender, Daytona Beach, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Daniel  
Caldwell, Assistant Attorney General, Daytona Beach, for  
Appellee.

August 21, 2026

EDWARDS, J.

K.B., a child, appeals the final judgment adjudicating her delinquent of two counts of resisting arrest without violence. On appeal, K.B. argues that because both counts arose out of one continuous act, adjudication for the second count of resisting arrest

without violence violates double jeopardy. We agree and reverse as to that issue.

### *Background Facts*

This incident occurred at K.B.'s high school. Deans of the school conducted an administrative search of K.B. due to a report that she was seen with a vape device. One of two school resource officers was on standby for safety concerns while a dean conducted the search. During the search, K.B. became hostile, snatching the device away from the administrator. The school resource officer intervened to restrain K.B. and retrieve the device. Due to K.B.'s ongoing resistance, the officer arrested K.B., calling for assistance from the second officer.

K.B. continued to resist and refused to comply with the officers, even after being placed in handcuffs. Officers then escorted K.B. to their office, a twenty-second walk from where she was arrested, for the safety of herself and others, to await transport 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 the numerous 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.

After a hearing, the 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.

### *Analysis*

Although K.B. did not raise a double jeopardy challenge below, this issue may be raised for the first time on appeal because a violation of a constitutional right, here a double jeopardy violation, constitutes fundamental error. *Haag v. State*, 67 So. 3d 351, 352 (Fla. 2d DCA 2011) (citing *Hunt v. State*, 769 So. 2d 1109, 1110 (Fla. 2d DCA 2000)).

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*, 357 So. 3d 156, 162 (Fla. 4th DCA 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*, 293 So. 3d 1074, 1076 (Fla. 5th DCA 2020); *see also R.J.R. v. State*, 88 So. 3d 264, 267 (Fla. 1st DCA 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*, 75 So. 3d 397, 400 (Fla. 5th DCA 2011) (citing *Vasquez v. State*, 778 So. 2d 1068, 1070 (Fla. 5th DCA 2001)); *see also R.J.R.*, 88 So. 3d at 267 (citing *Partch v. State*, 43 So. 3d 758, 761 (Fla. 1st DCA 2010)).

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*, 246 So. 3d 1277, 1277 (Fla. 1st DCA 2018) (citing *R.J.R.*, 88 So. 3d at 267). KB'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. *See id.* (citing *Fogle v. State*, 754 So. 2d 878, 879 (Fla. 1st DCA 2000)). Her adjudication and sentence for the first count of resisting arrest without violence are affirmed.

AFFIRMED, in part; REVERSED, in part; and REMANDED for resentencing.

MAKAR, EDWARDS, and SOUD, JJ., concur.

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*Not final until disposition of any timely and  
authorized motion under Fla. R. App. P. 9.330 or  
9.331.*

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