NO. COA13-1146

NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

STATE OF NORTH CAROLINA

v. Davidson County
Nos. 12 CRS 2644
12 CRS 52622-23

DERRICK OBRIAN CARTER,
Defendant.

Appeal by defendant from judgments entered 17 April 2013 by Judge Mark E. Klass in Davidson County Superior Court. Heard in the Court of Appeals 23 April 2014.

Attorney General Roy Cooper, by Assistant Attorney General Donald W. Laton, for the State.

Kimberly P. Hoppin for defendant-appellant.

GEER, Judge.

Defendant Derrick OBrian Carter appeals from a judgment sentencing him, as a habitual felon, based on convictions for maintaining a dwelling to sell a controlled substance, possession of cocaine, possession of drug paraphernalia, resisting a public officer, and possession of marijuana. On appeal, defendant primarily challenges his conviction for resisting a public officer that arose out of defendant's refusal to allow an officer to search him pursuant to a search warrant.

Because the uncontradicted evidence showed that the officer who arrested defendant for resisting a public officer did not read or produce a copy of the warrant to defendant prior to seeking to search defendant's person -- thereby violating N.C. Gen. Stat. § 15A-252 (2013) -- the arresting officer was not engaged in lawful conduct. The State, therefore, failed to present evidence sufficient to support a conviction of resisting a public officer. Because we find defendant's remaining arguments unpersuasive, we reverse only defendant's conviction for resisting a public officer and remand for resentencing.

Facts

The State's evidence tended to show the following facts. On 11 April 2012, Detective K.N. Harvey and Investigator Michael Burns, deputies with the Davidson County Sheriff's Office, met with a confidential source and arranged for a controlled drug purchase. The confidential source agreed to make a controlled purchase of crack cocaine at 286 Shirley Road (the "Shirley Road residence"), which is a mobile home where defendant lived. Investigator Burns knew defendant previously from "numerous dealings."

The confidential source and a person accompanying the source made the controlled purchase at the Shirley Road residence as planned. After the transaction, the deputies met

the confidential source at a prearranged location and took possession of a quantity of crack cocaine obtained as a result of the controlled buy.

The following day, on 12 April 2012, the deputies applied for and obtained a search warrant authorizing a search of defendant's person and the Shirley Road residence. After obtaining the warrant, the deputies planned to "go to the residence, secure it, and basically conduct a search." Investigator Burns was the first to leave to conduct the search, but on his way to the Shirley Road residence, he passed a car going the opposite direction and noticed that defendant was riding in the passenger seat. Investigator Burns turned around, caught up with the vehicle, which was being driven by defendant's friend Perry Goble, and stopped it.

Investigator Burns approached Mr. Goble and asked him for his license. When Mr. Goble produced no license, Investigator Burns wrote him a citation. Investigator Burns then walked to the passenger side of the car where he informed defendant that defendant was the named subject of a search warrant. Investigator Burns ordered defendant out of the car multiple times to allow the officer to search him. Because defendant repeatedly refused to leave the car, Investigator Burns radioed for backup and informed defendant that he was under arrest.

Shortly after several other officers arrived, defendant got out of Mr. Goble's vehicle, and Investigator Burns handcuffed him and took him into custody for resisting a public officer. A search of defendant's person yielded only a cell phone and $406.00 in cash. Defendant was given the option of being taken to the Davidson County Sheriff's Office for processing or back to the Shirley Road residence to be present as officers searched the mobile home. Defendant chose to go to the Sheriff's Office.

Several deputies conducted a search of the Shirley Road residence, which included two bedrooms, a kitchen, and a living room. The deputies seized items they believed were controlled substances or drug paraphernalia, took photographs and notes, tested for the presence of cocaine with narcotics indicator field test kits ("NIKs"), and catalogued all the property they seized.

On top of a glass table in the kitchen, deputies found a box of small plastic bags, a utility knife, and a set of black digital scales that were all sitting next to each other. There were white crumbs on the glass tabletop as well as on the scale's plate. In the kitchen sink, deputies found a Pyrex bowl three-quarters full of water. Deputies also observed a white "splatter" on the stove next to a burner. On top of a glass table in defendant's living room, deputies found two plastic

bags that they believed to contain marijuana. Also in the living room, deputies found a wooden box that contained the remains of a marijuana "roach" and an identification card for defendant issued by the Department of Correction.

After deputies finished their search of the Shirley Road residence, they sent some of the material believed to be marijuana and some of the "off white rock substances" found sitting atop one of the scales to the Iredell Crime Lab for analysis. The deputies did not send the Pyrex bowl, the scales, or the knife for testing. The Crime Lab concluded that the material they received amounted to 5.1 grams of marijuana and 0.03 grams of cocaine.

Defendant was indicted for possession of cocaine with the intent to manufacture, sell, or deliver, maintaining a dwelling to sell a controlled substance, possession of marijuana, possession of drug paraphernalia, resisting a public officer, and being a habitual felon. The State elected at trial to proceed on a charge of possession of cocaine rather than possession of cocaine with the intent to sell and deliver.

The jury found defendant guilty of each of the tried charges and determined that defendant is a habitual felon. The trial court sentenced defendant to a presumptive-range term of 33 to 52 months imprisonment for the possession of cocaine

conviction and to a consecutive presumptive-range term of 33 to 52 months imprisonment for the consolidated charges of maintaining a dwelling to sell a controlled substance, possession of drug paraphernalia, resisting a public officer, and possession of marijuana. Defendant timely appealed to this Court.

I

Defendant first argues that he received ineffective assistance of counsel ("IAC") when his trial counsel failed to make a motion to suppress the evidence seized at the Shirley Road residence. To prevail on an IAC claim,

> "[f]irst, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, *a trial whose result is reliable*."

State v. Braswell, 312 N.C. 553, 562, 324 S.E.2d 241, 248 (1985) (quoting *Strickland v. Washington*, 466 U.S. 668, 687, 80 L. Ed. 2d 674, 693, 104 S. Ct. 2052, 2064 (1984)).

Our Supreme Court has held that "IAC claims brought on direct review will be decided on the merits when the cold record reveals that no further investigation is required . . . ."

State v. Fair, 354 N.C. 131, 166, 557 S.E.2d 500, 524 (2001). But, if "the reviewing court determine[s] that IAC claims have been prematurely asserted on direct appeal, it shall dismiss those claims without prejudice to the defendant's right to reassert them during a subsequent [motion for appropriate relief] proceeding." *Id.* at 167, 557 S.E.2d at 525.

We do not believe that this IAC claim can be resolved based on the record before this Court and, therefore, we dismiss this argument without prejudice to its being asserted in a motion for appropriate relief. *See State v. Johnson*, 203 N.C. App. 718, 722, 693 S.E.2d 145, 147 (2010) (finding premature defendant's IAC claim based on trial counsel's failure to make timely motion to suppress).

II

We next address defendant's contention that the trial court erred when it denied his motion to dismiss the charge of resisting, delaying, or obstructing a public officer. "This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007). "Upon defendant's motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant's being the

perpetrator of such offense." *State v. Powell*, 299 N.C. 95, 98, 261 S.E.2d 114, 117 (1980). Substantial evidence is that amount of evidence "sufficient to persuade a rational juror to accept a particular conclusion." *State v. Goblet*, 173 N.C. App. 112, 118, 618 S.E.2d 257, 262 (2005), *overruled on other grounds by State v. Tanner*, 364 N.C. 229, 695 S.E.2d 97 (2010).

The elements of the offense of resisting, delaying, or obstructing a public officer are: "(1) that the victim was a public officer; (2) that the defendant knew or had reasonable grounds to believe that the victim was a public officer; (3) that the victim was discharging or attempting to discharge a duty of his office; (4) that the defendant resisted, delayed, or obstructed the victim in discharging or attempting to discharge a duty of his office; and (5) that the defendant acted willfully and unlawfully, that is intentionally and without justification or excuse." *State v. Dammons*, 159 N.C. App. 284, 294, 583 S.E.2d 606, 612 (2003).

The third element of resisting, delaying, or obstructing a public officer -- that the victim was discharging or attempting to discharge a duty of his office -- "presupposes lawful conduct of the officer in discharging or attempting to discharge a duty of his office." *State v. Sinclair*, 191 N.C. App. 485, 489, 663 S.E.2d 866, 870 (2008). For example, in *State v. Sparrow*, 276

N.C. 499, 512, 173 S.E.2d 897, 905 (1970), the Supreme Court held that a defendant had a right to interfere with a police officer attempting to execute a search warrant when the arresting officer illegally entered the defendant's home without first complying with North Carolina's common law rule requiring the officer to announce his "authority and purpose" before entry. Although *Sparrow* recognized an officer's duty to enter a home to execute a search warrant, it explained that "one who resists an *illegal* entry is not resisting an officer in the discharge of the duties of his office." *Id.*, 173 S.E.2d at 906 (emphasis added).

Pertinent to this case, N.C. Gen. Stat. § 15A-252 (emphasis added) sets out the statutory requirements for an officer intending to execute a search warrant:

> *Before undertaking any search or seizure pursuant to the warrant, the officer must read the warrant and give a copy of the warrant application and affidavit to the person to be searched*, or the person in apparent control of the premises or vehicle to be searched. If no one in apparent and responsible control is occupying the premises or vehicle, the officer must leave a copy of the warrant affixed to the premises or vehicle.

This Court has found a violation of N.C. Gen. Stat. § 15A-252 when a defendant was not given a copy of the search warrant before the search was conducted. *See State v. Vick*, 130 N.C.

App. 207, 219, 502 S.E.2d 871, 879 (1998) (holding failure to give warrant to defendant prior to execution of search warrant was "violation of the plain language of section 15A-252").

Here, Investigator Burns testified that at the time he stopped Mr. Goble's vehicle, he "didn't have anything to show Mr. Carter and say[,] 'Mr. Carter, here is a search warrant I have for you[.]'" This uncontradicted evidence shows that Investigator Burns did not comply with N.C. Gen. Stat. § 15A-252 before searching defendant pursuant to the warrant. Consequently, Investigator Burns was not lawfully executing the warrant, and defendant had a right to resist him.

The State argues only that the stop of Mr. Goble's car was lawful and, therefore, defendant was not entitled to resist arrest. Defendant does not, however, challenge the stop of Mr. Goble's car, and the legality of the stop has no bearing on the legality of Investigator Burns' conduct in executing the search warrant. The basis for the charge of resisting a public officer was defendant's refusal to get out of the car and submit to a search of his person. Because the State failed to show that Investigator Burns complied with N.C. Gen. Stat. § 15A-252 before attempting to search defendant, we hold that the State failed to produce sufficient evidence that defendant resisted a

public officer, and the trial court erred in denying defendant's motion to dismiss that charge.

III

Defendant next argues that his constitutional right to confront an adverse witness was violated through testimony by Investigator Burns that, defendant contends, contained inadmissible hearsay statements from the confidential source "identif[ying] [defendant] as the person who sold the alleged crack cocaine to the informant." At trial, Investigator Burns testified extensively regarding the controlled purchase, including his interactions with the confidential informant and accompanying person before and after the controlled purchase.

With respect to defendant's hearsay argument, Rule 801(c) of the Rules of Evidence defines hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, *offered in evidence* to prove the truth of the matter asserted." (Emphasis added.) Defendant has not, however, pointed to any testimony by Investigator Burns that referenced any statement made by the confidential source, and we have found no such testimony in the record. Accordingly, no hearsay was admitted at trial.

We note that because defendant cites no relevant authority in support of his constitutional argument on appeal, his

confrontation argument "is considered abandoned." *State v. Black*, 197 N.C. App. 731, 736, 678 S.E.2d 689, 693 (2009); N.C.R. App. P. 28(b)(6). Nonetheless, even assuming defendant's confrontation clause argument were properly before us, "the admission of nonhearsay raises no Confrontation Clause concerns." *State v. Alexander*, 177 N.C. App. 281, 285, 628 S.E.2d 434, 436 (2006).

IV

Defendant next argues it was prejudicial error for the trial court to admit the testimony of Investigator Burns regarding field tests -- the NIKs -- he conducted to detect the presence of cocaine. Defendant contends that "[t]he State did not sufficiently establish the reliability of the field tests pursuant to 'any of the indices of reliability' under *Howerton* [*v. Arai Helmet, Ltd.*, 358 N.C. 440, 597 S.E.2d 674 (2004)] or 'any alternative indicia of reliability.'" (Quoting *State v. James*, 215 N.C. App. 588, 590, 715 S.E.2d 884, 886 (2011).) We review the trial court's admission of this testimony for abuse of discretion. *Howerton*, 358 N.C. at 458, 597 S.E.2d at 686. A trial court abuses its discretion if its decision was "'manifestly unsupported by reason'" or was "'so arbitrary that it could not have been the result of a reasoned decision.'" *State v. Peterson*, 179 N.C. App. 437, 463, 634 S.E.2d 594, 614

(2006) (quoting *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988)), *aff'd*, 361 N.C. 587, 652 S.E.2d 216 (2007).

Our Supreme Court has stated that "expert witness testimony required to establish that the substances introduced . . . are in fact controlled substances must be based on a scientifically valid chemical analysis[.]" *State v. Ward*, 364 N.C. 133, 142, 694 S.E.2d 738, 744 (2010). This Court addressed whether a trial court abused its discretion in allowing a law enforcement officer to testify that substances were cocaine based on use of a field test in *State v. Meadows*, 201 N.C. App. 707, 687 S.E.2d 305 (2010).

In *Meadows*, Captain John Lewis of the Onslow County Sheriff's Office analyzed the contents of a baggie found by another deputy sheriff using a "NarTest" machine "which displayed test results that the substance was crack cocaine." *Id.* at 708, 687 S.E.2d at 306. At trial, the trial court admitted the Captain's testimony identifying the seized substance as cocaine.

In holding that the trial court abused its discretion in admitting this testimony, this Court noted that the NarTest machine had not been approved by a state agency for identifying controlled substances and that our courts had not recognized it

as an accepted method for identifying controlled substances. *Id.* at 711, 687 S.E.2d at 308. This Court continued:

> The State did not present any evidence of the reliability of the NarTest machine beyond Captain Lewis's opinion that it was reliable based upon his personal experience of using the machine and the fact that some of the test results had been confirmed by the NarTest manufacturer. Indeed, the State's evidence does not even describe the method of analysis the NarTest machine uses or how it works; the evidence is simply that you put the substance to be analyzed into the machine and the machine uses "florescence" to determine what the substance is and prints out a result. The State did not present any evidence independent of information from the Nartest's manufacturer which would establish its reliability; although such information might exist, it is not in the record before us. We cannot find that the NarTest machine is sufficiently reliable based upon the evidence presented.
>
> As the State failed to proffer evidence to support any of the "indices of reliability" under *Howerton* or any alternative indicia of reliability, we conclude that "the expert's proffered method of proof [is not] sufficiently reliable as an area for expert testimony[.]" [358 N.C.] at 458-60, 597 S.E.2d at 686-87. Without a "sufficiently reliable" method of proof, expert testimony was not properly admissible, and we need not address whether "the witness testifying at trial qualified as an expert in that area of testimony" and whether "the expert's testimony [was] relevant[.]" *Id.* at 458, 597 S.E.2d at 686. Accordingly, allowing Captain Lewis to testify as to the results of the NarTest machine was an abuse of discretion.

Id. at 712, 687 S.E.2d at 308-09.

Here, Investigator Burns gave the following testimony concerning the NIKs at trial:

> Q What is a field test?
>
> A We as investigators are supplied with a number of field test kits for various types of drugs. They react different with certain chemicals in these drugs and provide us with a color that's noticeable so we can distinguish whether the particular item is a controlled substance or not. For example, if I dropped some -- now we are into a Cocaine test kit -- it is not going to change color but if I drop Cocaine into a test kit, it will turn real bright blue. Some of the tests are liquid ampoules that you break. And some are wipes. On a Cocaine wipe when you take it out of the pack it is pink in color. If it comes into contact with Cocaine or anything with Cocaine, that particular item will turn bright blue. At that time I tested splatter on the stove. It immediately turned blue, which I immediately identified as Cocaine.

In addition, Investigator Burns testified that the NIK wipes also turned blue and indicated the presence of cocaine when swiped against the off white residue on the Pyrex, the white residue on the scales, and the white residue on the dining room table. He also testified that he has been in law enforcement for about 18 years, he had "approximately 400 hours of training specifically in the narcotics field," he had been "exposed" to cocaine "500 plus" times, and he "wouldn't say" that the NIKs were "unreliable."

There is no material difference between the testimony offered in *Meadows* that this Court concluded was inadmissible and Investigator Burns' field test testimony in this case. First, we note that NIKs similar to the ones used here have not previously been found by our courts to be a reliable method of controlled substance identification. *See James*, 215 N.C. App. at 589, 590, 715 S.E.2d at 886 (finding State "did not sufficiently establish the reliability of [a] NIK" consisting of "small 'moist towelette . . . about the size of a[n] alcohol wipe[]' . . . that . . . turned blue, thereby indicating that the substance tested positive for cocaine"). Further, the State did not present evidence describing the NIKs' method of chemical analysis, and the only testimony concerning the tests' reliability -- Investigator Burns' testimony that the NIKs were not "unreliable" -- was based only on his personal experience as a law enforcement officer.

Therefore, we hold that, in this case, the State, as in *Meadows*, failed to demonstrate the reliability of the NIKs pursuant to "any of the 'indices of reliability' under *Howerton* or any alternative indicia of reliability[.]" 201 N.C. App. at 712, 687 S.E.2d at 308-09 (quoting *Howerton*, 358 N.C. at 460, 597 S.E.2d at 687). The trial court, therefore, abused its discretion in admitting Investigator Burns' testimony to the

effect that the NIKs indicated the presence of cocaine in the Shirley Road residence.

However, defendant bears the burden of showing that "there is a reasonable possibility that . . . a different result would have been reached at the trial" had the trial court excluded the testimony regarding the field tests. N.C. Gen. Stat. § 15A-1443(a) (2013). It is well established that "[i]f there is overwhelming evidence of defendant's guilt or an abundance of other evidence to support the State's contention, the erroneous admission of evidence is harmless." *State v. Crawford*, 104 N.C. App. 591, 598, 410 S.E.2d 499, 503 (1991).

In arguing the error was prejudicial, defendant contends that without Investigator Burns' erroneously admitted testimony that the items tested with the NIK wipes had cocaine residue on them, "the jury could have concluded that the items in [defendant's] residence alleged to be drug paraphernalia were not at all associated with the use of controlled substances[.]" Given the State's other evidence, we cannot conclude that there is a reasonable possibility that the jury, in the absence of the contested testimony, would have found defendant not guilty of possession of drug paraphernalia.

N.C. Gen. Stat. § 90-113.21(a) (2013) describes "drug paraphernalia" as "equipment, products and materials of any kind

that are used to facilitate, or intended or designed to facilitate . . . manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, and concealing controlled substances and . . . introducing controlled substances into the human body." N.C. Gen. Stat. § 90-113.21(a)(5), (8), and (10) further provide that "drug paraphernalia" includes the following: scales and balances for weighing or measuring controlled substances; blenders, bowls, containers, spoons, and mixing devices for compounding controlled substances; and containers and other objects for storing or concealing controlled substances. N.C. Gen. Stat. § 90-113.21(b) sets out a number of factors, along with "all other relevant evidence," that may be considered in determining whether an object is drug paraphernalia. Two of the enumerated factors include "[t]he existence of any residue of a controlled substance on the object" and "[t]he proximity of the object to a controlled substance." N.C. Gen. Stat. § 90-113.21(b)(4) and (5).

Here, the scales, plastic bags, and utility knife found in defendant's kitchen were in close proximity to "white crumbs" that the Iredell Crime Lab determined to be crack cocaine. Investigator Burns gave unchallenged testimony that these items were typically used to package crack cocaine "for distribution."

Investigator Burns also gave detailed testimony as to why the Pyrex dish, based on its appearance, was likely used to "manufacture" crack cocaine. Additionally, defendant's own witness Tessa Scott testified that "[defendant] would normally buy one ounce of powder Cocaine and cook it into crack" and that she had seen defendant "on 15 or more occasions cooking crack cocaine at . . . Shirley Road." We hold that there was, therefore, overwhelming evidence that defendant was guilty of possessing drug paraphernalia. *See State v. Wade*, 198 N.C. App. 257, 273, 679 S.E.2d 484, 494 (2009) (holding evidence of 0.7 grams of cocaine and glass smoking pipe found on the defendant was "simply overwhelming" in support of paraphernalia conviction).

Defendant also contends that without Investigator Burns' testimony that he found cocaine using the NIKs, there was "not sufficient evidence that [defendant] maintained this dwelling for the purpose of keeping or selling controlled substances." N.C. Gen. Stat. § 90-108(a)(7) (2013) prohibits "knowingly keep[ing] or maintain[ing] any . . . dwelling house . . . or any place whatever . . . which is used for the keeping or selling of [controlled substances] in violation of this Article." "In determining whether a defendant maintained a dwelling *for the purpose of selling illegal drugs*, this Court has looked at

factors including the amount of drugs present and paraphernalia found in the dwelling." *State v. Battle*, 167 N.C. App. 730, 734, 606 S.E.2d 418, 421 (2005).

In addition to the overwhelming evidence that defendant possessed drug paraphernalia, Ms. Scott further testified that "[defendant] made a living selling crack cocaine" and that she was "not happy about telling the truth [about defendant selling crack cocaine] . . . [b]ecause I care about [defendant]. I don't want him to go to prison."

Thus, even without the field tests indicating the presence of cocaine at the Shirley Road residence, the evidence overwhelmingly supported defendant's conviction for maintaining the Shirley Road residence to sell crack cocaine. *See State v. Cummings*, 113 N.C. App. 368, 374-75, 438 S.E.2d 453, 457 (1994) (holding "[t]he State presented overwhelming evidence on defendant's charge[] of . . . maintaining a place to keep or sell controlled substances" where "defendant controlled the cocaine found . . . [,] defendant was involved in selling cocaine from his house, and . . . defendant possessed items of obvious drug paraphernalia, some of which were found to have cocaine residue on them"). Consequently, the admission of the evidence regarding the NIKs amounted to harmless error.

V

Finally, defendant argues that the trial court erred in admitting two items into evidence: a photograph containing an image of an identification card issued to defendant by the North Carolina Department of Correction ("ID card photo") and the actual Department of Correction ID card ("DOC ID card"). The ID card photo portrayed an image of the DOC ID card lying in a wooden box along with a marijuana "roach." Defendant argues that because "FELON" was written across the bottom of the ID card and the word "INMATE" was written across the top, the admission of the DOC ID card and the ID card photo was improper because it unfairly prejudiced him and was prohibited by Rules 403 and 404(b) of the Rules of Evidence.

At the outset, we note that the State, relying on the photo in the record on appeal, argues that the jury did not necessarily see the words "FELON" and "INMATE" written across the exhibit. However, the actual exhibit maintained by the Clerk of Superior Court shows that the words "FELON" and "INMATE" appear very clearly in the exhibit. Moreover, the ID card photo was published to the jury by being displayed using an overhead projector. The question, therefore, remains whether the trial court committed prejudicial error in allowing the admission of the ID card photo and the DOC ID card. We hold that even assuming, without deciding, that the trial court erred

in admitting the evidence without redacting the words "FELON" and "INMATE," any error was harmless.

In addition to the extensive evidence presented supporting defendant's drug-related convictions, defendant also chose to testify and, therefore, was subjected to cross-examination regarding his prior convictions. When asked whether, within the past 10 years, he had been convicted of or pled guilty to any crimes that carried a "possible jail sentence of 60 days or more," defendant responded "[d]rugs, trafficking" and, then, when asked to identify the specific offenses, stated: "I was convicted of trafficking, attempt to sell." He further confirmed that he has been convicted of "trafficking cocaine by sale of more than 28 grams." Given this testimony, which essentially told the jury he had been previously convicted of being a drug trafficker, defendant has not shown that there is a reasonable possibility that the jury would have found defendant not guilty of his drug-related charges in the absence of the admission of the DOC ID card and the ID card photo.

Conclusion

We, therefore, reverse defendant's conviction for resisting a public officer, but find no error with respect to his remaining convictions. Defendant's conviction for resisting a public officer was consolidated with his felony conviction for

maintaining a dwelling to sell a controlled substance and his other misdemeanor convictions. Our Supreme Court has held that because "it is probable that a defendant's conviction for two or more offenses influences adversely to him the trial court's judgment on the length of the sentence to be imposed when these offenses are consolidated for judgment, we think the better procedure is to remand for resentencing when one or more but not all of the convictions consolidated for judgment has been vacated." *State v. Wortham*, 318 N.C. 669, 674, 351 S.E.2d 294, 297 (1987). We, therefore, remand for resentencing.

No error in part; reversed and remanded in part.

Judges STEPHENS and ERVIN concur.