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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1416

Filed: 18 December 2018

Mitchell County, No. 16CRS050531

STATE OF NORTH CAROLINA

v.

ALAN COOMBER, Defendant.

Appeal by defendant from judgment entered 3 August 2017 by Judge Robert G. Horne in Mitchell County Superior Court. Heard in the Court of Appeals 6 September 2018.

Attorney General Joshua H. Stein, by Assistant Attorney General Jarrett W. McGowan, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Kathryn L. VandenBerg, for defendant-appellant.

BERGER, Judge.

Alan Coomber ("Defendant") appeals his conviction for the Class 2 misdemeanor of resisting a public officer. We find no error.

Factual and Procedural Background

On December 28, 2016, Officer Steve Turbyfill ("Officer Turbyfill") was dispatched to Blue Ridge Regional Hospital where a male subject had threatened to kill hospital personnel. Upon arrival at the hospital in his marked patrol unit, Officer Turbyfill was directed to Defendant, who was standing outside. Officer Turbyfill, in full uniform, approached Defendant, began a conversation, and conducted a pat down for weapons.

Officer Turbyfill was notified that hospital personnel intended to seek warrants to arrest Defendant for communicating threats. Defendant was asked and refused multiple requests to produce identification. Officer Turbyfill's exchange with Defendant lasted between seven and ten minutes. Defendant was arrested for resisting, delaying, or obstructing a public officer.

A Mitchell County jury convicted Defendant of resisting, delaying, or obstructing a public officer on August 3, 2017, and he received a probationary sentence. Defendant appeals, alleging the trial court erred in denying his motion to dismiss and in failing to properly instruct the jury. We disagree.

I. Motion to Dismiss

Defendant first argues that there was insufficient evidence presented at trial to sustain a conviction for resisting, delaying, or obstructing, and that the trial court erred in denying his motion to dismiss. We disagree.

Standard of Review

"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. If so, the motion is properly denied." *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (2000) (citation and quotation marks omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). "In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994).

Analysis

"If any person shall willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office, he shall be guilty of a Class 2 misdemeanor." N.C. Gen. Stat. § 14-223 (2016). The elements 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. Sinclair, 191 N.C. App. 485, 488-89, 663 S.E.2d 866, 870 (2008). "The conduct proscribed under G.S. 14-223 is not limited to resisting an arrest but includes any resistance, delay, or obstruction of an officer in the discharge of his duties." *State v. Lynch*, 94 N.C. App. 330, 332, 380 S.E.2d 397, 398 (1989).

As this Court stated in *State v. Friend*,

> failure to provide information about one's identity during a lawful stop can constitute resistance, delay, or obstruction within the meaning of N.C. Gen.Stat. § 14-223. Although no reported North Carolina case has specifically addressed this issue, we find our opinion in *Roberts v. Swain*, 126 N.C. App. 712, 487 S.E.2d 760, *disc. review denied*, 347 N.C. 270, 493 S.E.2d 746 (1997), instructive. In *Roberts*, in response to one of the State's arguments, we held that the failure to provide one's social security number during a stop was *not* sufficient to establish probable cause to arrest based on a violation of N.C. Gen. Stat. § 14-223. However, we stated as a basis of our holding that the refusal to provide the social security number "did not hinder or prevent the police officers from completing the arrest and citation." Unlike *Roberts*, in the present case, Defendant's refusal to provide identifying information *did* hinder Officer Benton from completing the seatbelt citation. We note that our holding is in line with decisions from other jurisdictions. *See Bailey v. State*, 190 Ga. App. 683, 684, 379 S.E.2d 816, 817 (1989) (refusing to identify oneself after being stopped for a traffic violation constitutes obstruction); *Burkes v. State*, 719 So.2d 29, 30 (1998) (same), *review denied*, 727 So.2d 903 (1999), *cert. denied sub nom*, *Burkes v. Florida*, 528 U.S. 829, 120 S. Ct. 82, 145 L. Ed.2d 69 (1999); *East Brunswick Tp. v. Malfitano,* 108 N.J.Super. 244, 246-47, 260 A.2d 862, 863 (1970) (same).

State v. Friend, 237 N.C. App. 490, 493, 768 S.E.2d 146, 148 (2014) (*purgandum*[1]).

Here, substantial evidence existed that Defendant delayed and/or obstructed an officer in the discharge of his duties. Officer Turbyfill was dispatched to Blue Ridge Regional Hospital concerning reports that an individual was making death threats to hospital staff. Upon arrival, he was directed to Defendant and informed that the victims were interested in pursuing warrants against him for communicating threats. Officer Turbyfill was in his marked patrol unit and law enforcement uniform, and Defendant testified that he "didn't have any doubt" that Officer Turbyfill was a law enforcement officer. Officer Turbyfill testified that he wanted to know Defendant's identity so he could check for outstanding warrants "and to see if he was wanted anywhere." Defendant's own evidence demonstrated that he did not produce his identification when requested by Officer Turbyfill. Defendant's failure to comply with Officer Turbyfill's lawful request for identification for seven to ten minutes delayed and/or obstructed Officer Turbyfill in concluding his investigation into the communicating threats dispatch and determining if Defendant had outstanding warrants or process against him.

[1] Our shortening of the Latin phrase "*Lex purgandum est.*" This phrase, which roughly translates "that which is superfluous must be removed from the law," was used by Dr. Martin Luther during the Heidelberg Disputation on April 26, 1518 in which Dr. Luther elaborated on his theology of sovereign grace. Here, we use *purgandum* to simply mean that there has been the removal of superfluous items, such as quotation marks, ellipses, brackets, citations, and the like, for ease of reading.

Because there was substantial evidence of each of the elements of the offense charged and Defendant was the perpetrator, we conclude that the trial court did not err in denying Defendant's motion to dismiss.

II. Jury Instruction

Defendant next contends that the trial court committed plain error by failing to provide a special instruction that defense counsel requested at trial. Specifically, Defendant asserts that the trial court's failure to instruct the jury that peacefully questioning an officer cannot amount to resisting, delaying, or obstructing an officer. We disagree.

Standard of Review

"The purpose of an instruction is to clarify the issues for the jury and to apply the law to the facts of the case." *State v. Harris*, 47 N.C. App. 121, 123, 266 S.E.2d 735, 737 (1980). "Whether a jury instruction correctly explains the law is a question of law, reviewable by this Court *de novo*." *State v. Barron*, 202 N.C. App. 686, 694, 690 S.E.2d 22, 29 (2010). "The prime purpose of a court's charge to the jury is the clarification of issues, the elimination of extraneous matters, and a declaration and an application of the law arising on the evidence." *State v. Cameron*, 284 N.C. 165, 171, 200 S.E.2d 186, 191 (1973). "[A] trial judge should not give instructions to the jury which are not supported by the evidence produced at the trial." *Id.*

"[A]n error in jury instructions is prejudicial and requires a new trial only if there is a reasonable possibility that, had the error in question not been committed, a different result would have been reached at the trial out of which the appeal arises." *State v. Castaneda*, 196 N.C. App. 109, 116, 674 S.E.2d 707, 712 (2009) (citation and quotation marks omitted).

Analysis

"At the close of the evidence or at an earlier time directed by the judge, any party may tender written instructions. A party tendering instructions must furnish copies to the other parties at the time he tenders them to the judge." N.C. Gen. Stat. § 15A-1231(a) (2017). "Where a specifically requested jury instruction is proper and supported by the evidence, the trial court must give the instruction, at least in substance." *State v. Starr*, 209 N.C. App. 106, 113, 703 S.E.2d 876, 881, *aff'd as modified*, 365 N.C. 314, 718 S.E.2d 362 (2011) (*purgandum*). However, where a defendant " 'fails to submit his request for instructions in writing,' the 'trial court's ruling denying [the] requested instructions is not error . . . .' " *Id.* (quoting *State v. McNeill,* 346 N.C. 233, 240, 485 S.E.2d 284, 288 (1997)).

Here, Defendant acknowledges the request for special instruction was not in writing. Defendant contends that the trial court committed plain error when it failed to instruct the jury that questioning an officer in a peaceable manner is not resisting, delaying, or obstructing pursuant to *State v. Leigh*, 278 N.C. 243, 179 S.E.2d 708

(1971). However, because Defendant failed to submit the request for the special instruction in writing, we conclude the trial court did not err, and need not reach Defendant's plain error argument.

Conclusion

Defendant received a fair trial, free from error.

NO ERROR.

Judges TYSON and INMAN concur.

Report per Rule 30(e).