

NO. COA14-336

NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

STATE OF NORTH CAROLINA

v.

Hertford County  
No. 12CRS 51133  
13CRS 55

WILLIAM FRIEND, III

Appeal by Defendant from judgments entered 6 September 2013  
by Judge Cy A. Grant in Hertford County Superior Court. Heard  
in the Court of Appeals 23 September 2014.

*Attorney General Roy A. Cooper, III, by Assistant Attorney  
General Marc X. Sneed, for the State.*

*Anne Bleyman, for the Defendant.*

DILLON, Judge.

William Friend, III ("Defendant") appeals from judgments  
entered upon a jury verdict finding him guilty of injury to  
personal property; assault on a government officer; resisting,  
delaying, or obstructing a public officer; and assault causing  
physical injury on a law enforcement officer.

I. Background

On the evening of 2 August 2012, Captain Sumner and Officer  
Benton were patrolling a parking lot during their town's annual

Watermelon Festival. The officers observed Defendant and his brother enter a pick-up truck with Defendant seated in the passenger side.

After Defendant's brother started the truck and put it in reverse, Captain Sumner noticed that Defendant was not wearing his seatbelt and asked him to put it on. However, Defendant did not put on his seatbelt, and he began to back the truck up. Captain Sumner asked Defendant a few more times to put his seatbelt on. However, as the truck backed into the street and began to move forward, Defendant still had not put his seatbelt on. Captain Sumner activated his blue lights and conducted a traffic stop.

During the traffic stop, Officer Benton approached the passenger side of the truck and asked Defendant for his identification. Defendant told Officer Benton that he did not have identification and refused to provide the information the officer needed to write him a seatbelt citation. Officer Benton advised Defendant that his refusal to cooperate could result in an additional charge. In response, Defendant exited the truck and turned and grabbed onto the truck bed, "bowing up" his chest and telling Officer Benton to arrest him if he thought he could.

Officer Benton then placed Defendant under arrest for resisting, delaying, or obstructing a public officer.

It took several officers to put Defendant into handcuffs. During processing at the magistrate's office, Defendant lowered his shoulder and charged into Officer Benton, though Officer Benton was able to sidestep the charge and avoid injury.

Defendant was then transported by Captain Sumner and another officer to the Hertford County Jail. Captain Sumner escorted Defendant to a holding cell at the jail, removed the handcuffs, and closed the door to the holding cell, believing it would lock behind him automatically. However, the door remained unlocked, and Defendant was able to open it. When Captain Sumner noticed Defendant standing in the holding cell doorway with the door open, he instructed Defendant to get back inside the cell. Instead, Defendant tackled Captain Sumner, knocking him unconscious and damaging his glasses. Captain Sumner suffered a concussion and scratches on the bridge of his nose and was hospitalized.

On 7 January 2013, a grand jury indicted Defendant for resisting, obstructing, or delaying a public officer (refusing to provide his identity for the seatbelt citation); assault on a government officer (charging into Officer Benton); assault

causing physical injury on a law enforcement officer (tackling Captain Sumner, giving him a concussion); and injury to personal property (damaging Captain Sumner's glasses).

Defendant was tried by a jury, who convicted him of all the charges. The trial court entered three judgments: sentencing Defendant to prison (1) for three to thirteen months for the assault on a law enforcement officer causing physical injury conviction; (2) for 150 days for the assault on a government officer conviction; and (3) for sixty days on a judgment consolidating the injury to personal property and resisting, delaying, or obstructing an officer convictions. Defendant gave notice of appeal in open court.

## II. Analysis

Defendant makes three arguments on appeal, which we address in turn.

### A. Resisting, Delaying, or Obstructing

In his first argument, Defendant contends that the trial court erred in denying his motion to dismiss the charge of resisting, delaying, or obstructing a public officer because his failure to provide Officer Benton with the information necessary to issue him a seatbelt citation did not constitute resistance, delay, or obstruction. We disagree.

The offense of resisting, delaying, or obstructing a public officer is codified in N.C. Gen. Stat. § 14-223 (2012), which makes it a misdemeanor to “willfully and unlawfully resist, delay or obstruct a public officer in discharging or attempting to discharge a duty of his office[.]”

We hold that the 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. *Id.* at 724, 487 S.E.2d at 768. 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[.]” *Id.* 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).

There are, of course, circumstances where one would be excused from providing his or her identity to an officer, and, therefore, not subject to prosecution under N.C. Gen. Stat. § 14-223. For instance, the Fifth Amendment's protection against compelled self-incrimination might justify a refusal to provide such information; however, as the United States Supreme Court has observed, "[a]nswering a request to disclose a name is likely to be so insignificant in the scheme of things as to be incriminating only in unusual circumstances." *Hiibel v. Sixth Judicial Dist. Court of Nev.*, 542 U.S. 177, 191, 124 S. Ct. 2451, 2461, 159 L. Ed.2d 292, 306 (2004). In the present case, Defendant has not made any showing that he was justified in refusing to provide his identity to Officer Benton.

Defendant cites *In re D.B.*, 214 N.C. App. 489, 714 S.E.2d 522 (2011), in support of his argument. However, we find *In re D.B.* easily distinguishable. In *In re D.B.*, an officer stopped a juvenile and conducted a *Terry* frisk. *Id.* at 493-94, 714 S.E.2d at 525-26. After the juvenile failed to provide his name, the officer retrieved what he thought was the juvenile's identification card from one of his pockets. *Id.* at 494, 714 S.E.2d at 526. Instead of an identification card, the officer recovered a stolen credit card. *Id.* at 491, 714 S.E.2d at 524. We reversed the trial court's denial of the juvenile's motion to suppress the credit card as evidence, holding that the officer exceeded the reasonable scope of a *Terry* frisk in violation of the juvenile's Fourth Amendment rights since the stolen credit card was not a weapon or immediately identifiable contraband. *Id.* at 496, 714 S.E.2d at 527. However, in *In re D.B.*, we did not address whether the juvenile's failure to provide his identity constituted a violation of N.C. Gen. Stat. § 14-223. Accordingly, Defendant's argument is overruled.

#### B. Assault Causing Physical Injury on an Officer

Defendant next asserts that the trial court erred in denying his motion to dismiss the charge of assault causing physical injury on a law enforcement officer because there was

insufficient evidence that Captain Sumner was discharging a duty of his office at the time Defendant assaulted him. We disagree.

N.C. Gen. Stat. § 14-34.7(c) (2012) proscribes assaulting and physically injuring a law enforcement officer while the officer is discharging or attempting to discharge the duties of his or her office. While unpublished and non-controlling, N.C. R. App. P. 30(e)(3), we find our decision in *State v. Hinson*, 173 N.C. App. 234, 617 S.E.2d 724, 2005 N.C. App. LEXIS 1883 (2005), instructive, and hereby adopt its reasoning. In *Hinson*, the defendant argued that he was not guilty of assaulting an officer because at the time of the assault he was engaging in lawful resistance to illegal police conduct and the officer, therefore, was not discharging his official duties within the meaning of the statute. *Id.* at 234, 617 S.E.2d at 724, 2005 N.C. App. LEXIS 1883, \*5-6. We chronicled the statute's legislative history, reasoning that the intent of the General Assembly in consistently amending the statute to make the offense a more serious crime was to allow a charge for violation of the statute regardless of whether "the officer is assaulted in a location he [has] a legal right to be," and concluded that the requirement that the officer be discharging or attempting to discharge an official duty was still met even where his conduct



appeared to violate the Fourth Amendment. *Id.* at 234, 617 S.E.2d at 724, 2005 N.C. App. LEXIS 1883, \*10-11. Thus, unlike the offense of resisting, delaying, or obstructing an officer, *see supra*, criminal liability for the offense of assaulting an officer is not limited to situations where an officer is engaging in lawful conduct in the performance or attempted performance of his or her official duties.

Defendant contends that the trial court erred in denying his motion to dismiss the charge because Captain Sumner was not discharging or attempting to discharge a duty of his office at the time of the assault. His basis for this contention is the testimony of several officers to the effect that Defendant was no longer in Captain Sumner's custody and was instead in the custody of the Hertford County Jail where Captain Sumner happened to be "hanging around" at the time of the assault. This contention lacks merit. On the day in question, Defendant had proven himself extremely uncooperative. Any concerns Captain Sumner may have had about officer safety would thus have been well-founded. By remaining at the jail to ensure the safety of other officers, Captain Sumner was discharging the duties of his office. Accordingly, this argument is overruled.

#### C. Motion to Suppress

Lastly, Defendant argues that the evidence of his two assaults on law enforcement officers should be excluded as fruits of the poisonous tree because his arrest for resisting, delaying, or obstructing was unlawful. We disagree. In light of our conclusion that Defendant's arrest for resisting, delaying, or obstructing was lawful, this argument is moot. Moreover, Defendant's entire premise is incorrect.

The doctrine of the fruit of the poisonous tree is a specific application of the exclusionary rule. *State v. McKinney*, 361 N.C. 53, 58, 637 S.E.2d 868, 872 (2006). The doctrine provides that evidence obtained as a result of illegal police conduct should be suppressed, as should "all evidence that is the 'fruit' of that unlawful conduct[.]" *Id.* However, the doctrine does not operate to exclude evidence of attacks on police officers where those attacks occur while the officers are engaging in conduct that violates a defendant's Fourth Amendment rights. *State v. Miller*, 282 N.C. 633, 640-41, 194 S.E.2d 353, 357-58 (1973). As our Supreme Court has observed, "[a]pplication of the exclusionary rule in such fashion would in effect give the victims of illegal searches a license to assault and murder the officers involved[.]" *Id.* at 641, 194 S.E.2d at 358. Thus, even assuming, *arguendo*, that the initial stop of

Defendant or his subsequent arrest were in violation of his Fourth Amendment rights, the evidence of his crimes against the officers would not be considered excludable 'fruits' pursuant to the doctrine. See *id.* Accordingly, this final argument is overruled.

### III. Conclusion

For the reasons stated above, we uphold the challenged convictions.

NO ERROR.

Judge HUNTER, Robert C. and Judge DAVIS concur.