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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-91

Filed 21 November 2023

Henderson County, No. 20CRS700711

STATE OF NORTH CAROLINA

v.

DANIEL AARON PEACOCK

Appeal by Defendant from judgment entered 13 July 2022 by Judge Peter B. Knight in Henderson County Superior Court. Heard in the Court of Appeals 20 September 2023.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General Daniel K. Covas, for the State-Appellee.*

*Appellate Defender Glenn Gerding, by Assistant Appellate Defender David S. Hallen, for Defendant-Appellant.*

COLLINS, Judge.

Defendant, Daniel Aaron Peacock, appeals from a judgment entered upon a guilty verdict of resisting a public officer. The dispositive issue on appeal is whether the trial court erred by denying Defendant's motion to dismiss for insufficient evidence. Because the State failed to prove an essential element of the charged

offense, the trial court's denial of Defendant's motion to dismiss is reversed and Defendant's conviction is vacated.

### **I. Background**

Defendant received a citation for resisting a public officer at 1:14 pm on 29 January 2020. He was found guilty in district court and appealed to superior court where he was tried beginning 12 July 2022. At trial, the State presented the following evidence:

Deputy Jake Staggs testified that on 29 January 2020, his sergeant directed him to assist with executing a search warrant for stolen property at a home in Henderson County. Staggs and a group of six-to-eight officers arrived at the home around midday, knocked on the door and announced their presence, heard no response, and entered. The officers then forced entry into a locked bedroom where Defendant was lying in bed with a sheet over his head and body. Defendant did not comply with orders to roll onto his stomach and place his hands behind his back and instead remained in place on the bed with his hands covering his face. Staggs pulled Defendant onto the floor and commanded him to get on his stomach. Defendant remained tense and failed to comply with instructions, then reached under the bed. Staggs struck Defendant in the head to "cause him pain compliance," and was able to get Defendant's hands behind his back. Staggs placed Defendant in handcuffs and cited him at 1:14 pm for resisting a public officer.

Staggs testified that he did not have a search warrant when the officers

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entered the home, and that he never saw a search warrant for the home. Staggs was shown a completed search warrant, designated “A TRUE COPY” with a stamp from the Clerk of Superior Court of Henderson County, and the following exchange took place:

[DEFENDANT:] And this was the search warrant that you were referring to that you were executing?

[STAGGS:] Correct.

....

[DEFENDANT:] And what is the date and time on that?

[STAGGS:] 1/29 of 2020 at 2:15 p.m. by Susan Hoots (phonetic).

[DEFENDANT:] That’s more than one hour after you gave Mr. Peacock his citation; isn’t that right?

[STAGGS:] That’s correct according to that.

Defendant moved to dismiss at the close of the State’s evidence, arguing that the State had failed to offer any evidence that officers were executing or attempting to execute an official duty at the time Defendant was cited for resisting a public officer. The trial court denied Defendant’s motion. Defendant renewed his motion to dismiss at the close of all the evidence, and the trial court again denied Defendant’s motion.

The jury returned a guilty verdict for resisting a public officer, and Defendant gave oral notice of appeal.

## **II. Discussion**

Defendant argues that the trial court erred by denying his motion to dismiss

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because the State presented insufficient evidence to support a conviction for resisting a public officer. Specifically, Defendant argues that the State failed to prove that officers were executing or attempting to execute an official duty at the time Defendant was cited for resisting a public officer.

We review de novo a trial court's denial of a motion to dismiss for insufficient evidence. *State v. Chavis*, 278 N.C. App. 482, 485, 863 S.E.2d 225, 228 (2021). "In ruling on a motion to dismiss, the trial court need determine only whether there is substantial evidence of each essential element of the crime and that the defendant is the perpetrator." *State v. Chekanow*, 370 N.C. 488, 492, 809 S.E.2d 546, 549 (2018) (quotation marks and citations omitted). "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *State v. Rivera*, 216 N.C. App. 566, 568, 716 S.E.2d 859, 860 (2011) (quotation marks and citation omitted). All evidence is considered "in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor." *Chekanow*, 370 N.C. at 492, 809 S.E.2d at 549-50 (quotation marks and citation omitted).

To survive a motion to dismiss the charge of resisting a public officer, the State must present substantial evidence tending to show each of the following elements:

- (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

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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. Carter*, 237 N.C. App. 274, 279, 765 S.E.2d 56, 60 (2014) (quotation marks and citation omitted); see N.C. Gen. Stat. § 14-223 (2022). The third element – that the victim (the public officer) 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) (citation omitted). “Officers have no duty to make an illegal entry into a person’s home.” *State v. Sparrow*, 276 N.C. 499, 512, 173 S.E.2d 897, 905 (1970). Thus, “one who resists an illegal entry is not resisting an officer in the discharge of the duties of his office.” *Id.* at 512, 173 S.E.2d at 906 (citations omitted).

“The Fourth Amendment to the United States Constitution and Art. 1, [§] 20 of the North Carolina Constitution prohibit officers of the law, under ordinary circumstances, from invading the home except under authority of a search warrant issued in accord with constitutional and statutory provisions.” *State v. Allison*, 298 N.C. 135, 140, 257 S.E.2d 417, 421 (1979) (citations omitted). “A warrantless search is not unconstitutional, however, when (1) probable cause to search exists and (2) the government satisfies its burden of demonstrating that the exigencies of the situation made search without a warrant imperative.” *Id.* at 141, 257 S.E.2d at 421 (citation omitted).

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Furthermore, officers may approach the front door of a home for a “knock and talk” without a search warrant on the theory that occupants generally expect, and therefore implicitly consent to, this sort of intrusion onto their property. *See State v. Huddy*, 253 N.C. App. 148, 151-52, 799 S.E.2d 650, 654 (2017). This implicit license typically permits the visiting officer to “approach the home by the front path, knock promptly, wait briefly to be received, and then (absent invitation to linger longer) leave.” *Id.* at 152, 799 S.E.2d at 644 (citation omitted). However, the permissibility of a knock and talk does not “stand[] for the proposition that law enforcement officers may enter private property without a warrant[.]” *State v. Nance*, 149 N.C. App. 734, 742, 562 S.E.2d 557, 563 (2002).

Here, the evidence viewed in the light most favorable to the State shows the following: Officers arrived at the home around midday on 29 January 2020 without a warrant. At that time, no exigent circumstances justified their entry. The officers knocked on the door, announced their presence, and heard no response. The officers nevertheless entered the home, where they encountered Defendant. When Defendant did not comply with orders, the officers placed him in handcuffs and issued a citation for resisting a public officer at 1:14 pm. A search warrant authorizing the officers’ presence inside the home was not issued until 2:15 pm, one hour after the officers encountered Defendant.

As a warrant was required for the officers to lawfully enter the home, and no warrant had been issued when the officers entered the home and encountered Defendant, the officers’ entry into the home was unlawful. Thus, the State failed to

prove that the officers whom Defendant resisted were discharging or attempting to discharge an official duty at the time they encountered Defendant, *see Sinclair*, 191 N.C. App. at 489, 663 S.E.2d at 870, and the trial court erred by denying Defendant's motion to dismiss.<sup>1</sup>

### **III. Conclusion**

Because the State failed to prove an essential element of resisting a public officer, the trial court's denial of Defendant's motion to dismiss for insufficient evidence is reversed, and Defendant's conviction is vacated.

REVERSED.

Judges TYSON and WOOD concur.

Report per Rule 30(e).

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<sup>1</sup> In light of this conclusion, we need not address Defendant's remaining arguments.