



A T T O R N E Y S

SMITH, RODGERS &  
STRICKLAND, PLLC

24 Hour Legal Support for Law Enforcement

PO Box 4803  
Greensboro, NC 27404  
Phone (336) 691-7058  
Fax (336) 969-1879  
www.policehelp.net

REECE & RALPH

Reece Trimmer  
Ralph B. Strickland, Jr.

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on resist, obstruct & delay  
NCGS 14-223

MAY 2005  
RDO

## The Statute

§ 14-223. *Resisting officers.*

*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.*

## First, some practical advice for you:

1. Every citizen has a right to criticize and question an officer's actions (The "Mere Remonstrance" Rule.)
2. Citizens who merely protest are not guilty of resist, obstruct or delay of an officer.
3. Extremely loud and hostile language that prevents an officer from using the radio is an obstruction of duty.
4. Loud and obnoxious language is not a crime unless it actually obstructs and delays performance of duty.
5. Be certain you can identify exactly what duty you were performing and how the defendant significantly obstructed your performance of duty.
6. If possible, give multiple warnings and request cooperation before charging a protesting citizen with obstructing an officer.

## A Case For You:

*State v. Burton*, 108 N.C. App. 219, 423 S.E.2d 484 (1992)

## And the case holds:

IT IS POSSIBLE, ON CERTAIN LIMITED OCCASIONS, TO CHARGE A SUSPECT WITH VIOLATING G.S. 14-223, RESIST - OBSTRUCT - DELAY, EVEN THOUGH HE NEVER EVEN TOUCHES YOU!

SOME FACTS AND LAW

An officer observed the defendant, Donald Burton, traveling 55 MPH in a 35-MPH zone. The officer stopped Burton who claimed to be a mechanic working on the car and did not have a registration card. The officer returned to his patrol car to request registration information from DMV.

Burton followed the officer to the patrol car and stood next to it at the driver's side window. He loudly protested the officer's stop. Burton's language was hostile, loud, and continuous. The language was so loud it prevented the officer from using his radio.

The officer asked Burton THREE times to go back to his car, but Burton refused to comply. The officer became concerned about his personal safety because of Burton's behavior. Finally, the officer told Burton he would be arrested for obstructing and delaying if he did not return to his car. Burton refused and continued his loud and hostile yelling. The officer told him he was under arrest.

Burton still did not cooperate. He kicked the officer in the shin and struggled against efforts to handcuff him.

Burton was convicted in District and Superior Court of assault on an officer in the performance of duty. He appealed to the North Carolina Court of Appeals on a claim the officer did not have probable cause to arrest him for obstructing and delaying. Burton alleged he had a free speech right to voice objections and question the officer. If so, Burton claimed a right to resist the illegal arrest and said he was not guilty of assault in the performance of duty.

The Court of Appeals, in an opinion by Judge Cozort, rejected Burton's appeal and affirmed his conviction on a charge of assault in performance of duty.

It is true that every citizen has a right of free speech, which can be exercised to protest or question an officer's actions. Protest by itself is lawful and cannot be the cause of retaliation or arrest. The "mere remonstrance" rule recognizes a right to remonstrate verbally without fear of punishment. Remonstrate is defined as the act of saying something in protest or objection; to argue against an action. This is true for the arrestee AND his friends.

BUT language that is so loud and hostile that it prevents an officer from using the radio to obtain needed information goes beyond mere remonstrance. It obstructs and delays performance of duty if it is so loud and uninterrupted it keeps an officer from communicating with others on a necessary matter. Getting registration information is one aspect of an officer's performance of official duty. Burton's loud yelling significantly obstructed and delayed that function.

Also, language can be criminal disorderly conduct if it is plainly likely to incite others to assault an officer and occurs in a public place, N.C.G.S. 14-288.4. Even though an officer cannot retaliate against merely provoking language, fighting words can provoke others to assault an officer, in violation of the disorderly conduct statute. The First Amendment of the US Constitution does NOT entitle a person to use fighting words plainly likely to incite imminent violence. (Note, however, that disorderly conduct can only be committed in a public place.)

Particularly important to the case are the officer's repeated warnings to Burton before placing him under arrest. Three times Burton was asked to stop yelling and he refused each time. He was next told he would be arrested if he did not return to his car. Again he continued his obstructive language and refused to comply.

By ignoring repeated warnings, Burton furnished proof that his obstruction was knowing and willful. That helped the officer justify his decision to arrest.

[A NOTE FROM REECE: The officer involved in this case was Lt. Charles Tiffin of the Durham Police Department (ultimately promoted to Major and finally retired from the force), an old friend of Ralph's and mine. Not only was Charlie promoted to Lieutenant *during* this case, he and the City of Durham were sued by Burton (but that lawsuit was dismissed). My pal Ralph, while serving as a Special Deputy Attorney General, successfully argued this case before the Court of Appeals. But, of course, even a blind pig will occasionally find an acorn.]