

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-240416
Plaintiff-Appellee,	:	TRIAL NOS. C/23/CRB/10209/A/B
vs.	:	
DAVID LEE TUCKER,	:	<i>JUDGMENT ENTRY</i>
Defendant-Appellant.	:	

We sua sponte remove this cause from the regular calendar and place it on the court’s accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

On the morning of June 19, 2023, Deputy Darrin Bernard of the Hamilton County Sheriff’s Department was patrolling Three Rivers Parkway when he observed a truck with no license plate on the side of the road. David Lee Tucker was sleeping in the passenger seat of the truck when the deputy roused him. Tucker provided his first and last name but declined to show identification. The interaction quickly soured when Bernard radioed for backup and alleged Tucker was being “noncompliant.” The two men exchanged words, and Bernard agreed Tucker was free to leave.

Tucker exited from the truck, retrieved the keys from the ignition, and turned to go. Deputy Bernard insisted he was taking the keys. Tucker turned away, and a brief scuffle ensued. Other officers arrived on scene and helped Bernard secure Tucker in handcuffs. Tucker was ultimately convicted of obstructing official business and resisting arrest.

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Tucker’s sole assignment of error challenges the weight and sufficiency of the evidence supporting his convictions. R.C. 2921.31(A) criminalizes the offense of obstructing official business and directs that “[n]o person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity, shall do any act that hampers or impedes a public official in the performance of the public official’s lawful duties.” The State acknowledges that, while Tucker’s dialogue with the deputy was loud and profanity-laden, his noncooperation did not rise to the level of criminal conduct. Fulfilling its obligation to pursue justice, the State thus concedes that Tucker’s convictions should be reversed. *See* Prof.Cond.R. 3.8, Comment 1 (“A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded justice and that guilt is decided upon the basis of sufficient evidence.”).

We concur. A thorough review of the trial testimony and footage from Bernard’s body-worn camera reveals that, at a minimum, Tucker did not have a purpose to prevent, obstruct, or delay Bernard in the performance of his official duties. Moreover, in the absence of a lawful arrest for the offense of obstructing official business, Tucker’s conviction for resisting arrest under R.C. 2921.33(A) fails as a matter of law. *See State v. Pitts*, 2022-Ohio-4172, ¶ 13 (1st Dist.) (stating, “[a] ‘lawful arrest’ is an element of resisting arrest, and the prosecution must prove beyond a reasonable doubt that the arrest was lawful”).

Because the evidence was not sufficient to sustain Tucker’s convictions for obstructing official business and resisting arrest, we sustain the assignment of error, reverse the convictions, and discharge Tucker from further prosecution thereon.

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The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

KINSLEY, P.J., ZAYAS and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on 1/24/2025 per order of the court.

By: _____
Administrative Judge