



**LGIT'S ROLL CALL REPORTER  
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**Evidence at trial that the defendant gave a false name to a police officer during a traffic stop, standing alone, is insufficient to convict the defendant of obstructing or hindering a police officer in the performance of his duty.**

**QUESTION:** Can a defendant be convicted of the crime of obstructing or hindering just because he gave an officer a false name during a traffic stop?

**ANSWER:** No. In order to convict in cases of “passive” obstruction or hindering, such as where the defendant gave the officer a false name during a traffic stop, the arresting officer must testify specifically as to how the defendant’s actions impacted the investigation, *i.e.*, how the investigation was changed, lengthened, or delayed, and if the defendant’s actions required amendment of the original charges.

**CASE:** *Gerald Thomas Titus, Jr. v. State of Maryland*  
Court of Appeals of Maryland, Decided November 29, 2011

In this case, the Court of Appeals of Maryland reviewed the common law crime of obstructing or hindering a law enforcement officer in the performance of a duty. The facts established that on July 9, 2008, Corporal Mario Devivio of the Carroll County Sheriff’s Office was on routine patrol at approximately 10:45 p.m. when he observed two motorcyclists travelling parallel to one another in the southbound lane on Littlestown Pike. Deputy Devivio was behind them and observed one of the motorcycles cross the double yellow line by five feet numerous times. Deputy Devivio then made a traffic stop of the operator of that motorcycle. Deputy Devivio ran a computer check on the tag and learned that the motorcycle was registered to Gerald Thomas Titus, Jr. The deputy then approached the motorcycle operator and asked for his license and registration. The operator, who was Gerald Thomas Titus, Jr., handed the deputy a Florida driver’s license with his picture and the name Frederick John Karr, Jr. At some point during the stop, Deputy Devivio learned from an MVA check that Titus’s license was suspended and revoked in the State of Maryland. When asked about the Florida license, the operator said that Gerald Titus was his roommate and that he had borrowed the motorcycle. As the deputy and the operator conversed, the deputy detected a strong odor of alcohol and observed that the operator had bloodshot, glassy eyes. The operator said that he was coming from an inn and that he had consumed two beers.

At this point, Deputy Devivio requested the operator to perform standardized field sobriety tests. When asked if there was anything that would prevent him from performing the tests, the operator said something to the effect that he had “bad ankles.” The deputy had the

operator perform the horizontal gaze nystagmus test, the walk and turn test, and the one-leg stand test. Devivio performed poorly on all three tests and was placed under arrest.

Deputy Devivio transported Titus to the Carroll County Sheriff's Office Detention Center and read him an advisement of rights form pertaining to administering a breath test. Titus agreed to take the test and signed the name "Frederick Karr," the name on the Florida license, on the form. The breath test was to be administered by Corporal Jesse Clagett of the Westminster Police Department. When he checked Titus's mouth for contaminants he found a dime. Corporal Clagett asked Titus to spit the dime out and then re-started the twenty minute observation period. Corporal Clagett obtained two breath samples which established that Titus's blood-alcohol level was .09.

At some point days after the arrest, another officer informed Deputy Devivio that Titus used an alias. He said the person who had identified himself as "Frederick Karr" was actually Titus. Deputy Devivio went to MVA and typed in Titus's name and came up with a color photo. The photo was of Titus, the man on the motorcycle. He verified the address associated with Titus's name and that Titus was the registered owner of the motorcycle.

Several weeks later, on August 26, 2008, an unrelated search warrant was executed at Titus's residence, Deputy Devivio was present as an "assisting officer." During the execution of the warrant, the deputy saw Titus, the same person who had said he was Frederick Karr.

In addition to the initial alcohol offense, and after he learned that Titus used a false name, Deputy Devivio ensured that Titus was charged with two counts of obstructing and hindering, one concerning the false name given to him and one concerning the false name given to Corporal Clagett, the breathalyzer operator. Titus was also charged with giving a false or fictitious name to a uniformed police officer. It was unclear from the record, however, if Deputy Titus had sought amendment of the original charging document or re-filed it. At trial, the court dismissed the obstruction charge as it related to Corporal Clagett, but allowed the charge as to Deputy Devivio to be given to the jury. The jury convicted Titus on most counts, including the obstructing and hindering charge. Titus appealed.

The Court of Special Appeals affirmed Titus's convictions and the Court of Appeals agreed to review the case. On appeal, that court framed the issue as follows: Is evidence that a defendant gave a false name to a police officer during a traffic stop sufficient to convict him of obstructing or hindering a police officer in the performance of his duty? The Court of Appeals answered "No." In doing so, the court first observed that obstructing and hindering a law enforcement officer in the performance of his duty is a common law offense; it is not governed by statute. It then observed that Maryland courts have recognized three categories of obstructing and hindering: (1) positive direct obstruction (those cases involving physical resistance); (2) passive direct obstruction (those cases in which the subject refuses or fails to obey a command to act); and (3) positive indirect obstruction (cases in which police are not acting directly against the subject but the subject acts in way which obstructs the officers in their general duty to prevent crime, and intending to frustrate the police operation).

Courts apply a four-part test to determine if an officer was obstructed and hindered in the performance of his or her duty:

- (1) A police officer engaged in the performance of a duty;**
- (2) An act, or perhaps an omission, by the accused which obstructs or hinders the officer in the performance of that duty;**
- (3) Knowledge by the accused of facts comprising element; and**
- (4) Intent to obstruct or hinder the officer by the act or omission constituting element.**

In this case, as to the first and third elements, Deputy Devivio was clearly engaged in the performance of a police duty, making a traffic stop, and Titus was aware of the officer's intent. As to the second element, the State, through Deputy Devivio, was required to prove beyond a reasonable doubt that Titus's giving of a false name *actually* obstructed or hindered the deputy in the performance of his duty. Titus argued that since Deputy Devivio was not prevented from making the traffic stop or arrest, he was not *actually* hindered or obstructed. The State essentially argued that the element was satisfied because Titus's giving a false name was itself an intent to deceive and had made it more difficult for the deputy to perform his duties, including the delay in obtaining a correct criminal history. The Court of Appeals agreed with Titus and overturned the obstructing and hindering conviction. Although the court agreed that Titus had *intended* to obstruct and hinder by giving a false name and other erroneous information, it found that Titus had not *actually* obstructed or hindered Deputy Devivio in the making of the traffic stop or in establishing probable cause for the arrest. The court did state that the deputy's duties did not end upon making the arrest; his duties included the "filing of criminal charges against the person actually responsible for committing the offenses." Yet, despite this statement, the court concluded that the evidence was unclear whether Deputy Devivio was "actually" obstructed or hindered in this aspect of his duties. In short, there was no testimony at trial from the deputy as to how the information that Titus had given him actually "impacted" or "obstructed" the investigative process. For this reason, the conviction for obstructing and hindering was reversed.

**NOTE:** Understand that in the context of traffic stops, a person may not give the name of another person or give a false or fictitious name to any uniformed police officer who is attempting to determine the identity of a driver of a motor vehicle. Md. Code Ann., Transportation Article, § 16-112(e). This is a statutory offense separate and distinct from the common law of offense of obstructing or hindering. So, depending on the circumstances, the arresting officer may want to bring this charge, and not common law obstructing or hindering. The merits of the common law charge will have to be weighed in each case in which it is a consideration. Despite this case, most charges of obstructing or hindering remain relatively easy to prove. This is because most cases involve "active" not "passive" conduct on the part of the defendant, including actual physical resistance or a refusal to act as required. In "passive" situations, however, such as the one here, the basis for the common law charge may not be as clear. Consequently, officers must carefully consider the grounds for bringing the charge: How did the suspect's action actually impede my investigation? What did I have to do differently because of the suspect's conduct, such as the giving of a false name? Did I have to take further investigative steps because of the suspect's conduct, and, if so, what were they? What would I have done or been able to do

differently if the suspect had given you correct information? The court in this case was looking for testimony relating to how information about a vehicle operator's driving record or criminal history would normally impact a traffic stop and what specific steps the deputy had to take when he later learned that the operator had used an alias. Not finding specific testimony in the trial record, the court ruled in favor of the defendant. So, in light of the mindset of Maryland's highest court when it comes to the review of criminal cases, the mindset of officers must be: When called upon, be prepared to articulate clearly and completely each and every element of a criminal charge brought against a defendant.

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