

ALFRED DAWSON,

Petitioner

v.

STATE OF MARYLAND,

Respondent

IN THE

COURT OF APPEALS

OF MARYLAND

September Term, 2019

No. 134

PETITION FOR WRIT OF CERTIORARI

On January 22, 2019, following trial in the District Court for Wicomico County, before the Honorable Daniel R. Mumford (D-023-CR-18-002515), Mr. Alfred Dawson was found Guilty of Obstructing and Hindering and Not Guilty of Possession of Marijuana (over 10 grams), Possession of Paraphernalia, and Resisting Arrest. Mr. Dawson was sentenced to 30 days. On the same date, Mr. Dawson, through Counsel, filed an appeal. On May 7, 2019, on appeal and following a bench trial, in the Circuit Court for Wicomico County, before the Honorable Donald C. Davis (C-22-CR-19-000051), Mr. Dawson was found Guilty of Obstructing and Hindering and sentenced to 60 days. The Circuit Court adjudicated all claims in the action in their entirety and the rights and liabilities of all parties to the action.

This matter has not been decided by the Court of Special Appeals. Pursuant to Maryland Rule §8-303 and Courts and Judicial Proceedings §12-305, Petitioner, Alfred Dawson, through counsel, Daniel Eliezer, Assistant Public Defender, petitions this Court to issue a writ of certiorari to the Circuit Court for

Wicomico County to review that Court's decision. Copies of the docket entries evidencing the judgment of the Circuit Court are attached to this Petition. There is no written opinion of the Circuit Court or written order under Rule 2-602(b). As this case has not been decided by the Court of Special Appeals, there were no briefs filed and no opinions rendered.

QUESTION PRESENTED

1. Does there exist a sufficient factual basis to support the finding of guilt for the crime of Obstructing and Hindering in a case where a Defendant refused to exit a motor vehicle to permit law enforcement to conduct a Probable Cause search, resulting in an approximately 1-minute delay while law enforcement forcibly removed him from the vehicle before being able to ultimately complete the Probable Cause search?

PERTINENT AUTHORITY

Titus v. State, 423 Md. 548 (2011)

Nieves v. State, 160 Md. App. 647 (2011)

In re Antoine H, 319 Md. 101 (1989)

Cover v. State, 297 Md. 398 (1983)

STATEMENT OF FACTS

On June 22, 2018, Officer Doyle of Salisbury Police pulled over a vehicle for failing to stop before a stop line. Mr. Dawson was the front seat passenger. Officer Doyle testified that upon his approach he detected an odor of burnt marijuana coming from the vehicle. As such, Officer Doyle requested backup to conduct a Probable Cause search of the vehicle. Officer Adams arrived on scene, approached the passenger side of the vehicle, and asked Mr. Dawson to exit the

vehicle so that he may conduct a Probable Cause search. Mr. Dawson expressed that he would not leave the vehicle unless forcibly removed. Officer Adams and assisting officers thereupon forcibly removed Mr. Dawson from the vehicle. Removing and detaining Mr. Dawson took officers no more than approximately 1 minute to accomplish. Following Mr. Dawson's removal from the vehicle, Officer Adams successfully completed the search of the vehicle, during which he found and recovered suspected Marijuana. At trial, Officer Adams' sole claim that he was obstructed and hindered was based on the delay and added effort brought about by officers forcibly removing and detaining Mr. Dawson.¹

During Motions and Closing, Counsel argued that the State failed to show that Mr. Dawson *actually* obstructed or hindered Officer Adams. Counsel argued that while Mr. Dawson's refusal to willingly exit the vehicle may have resulted in a 1-minute delay, as officers removed him from the vehicle, Officer Adams was still ultimately able to perform his duty of searching the vehicle. Counsel cited cases such as *In re Antoine H*, 319 Md. 101 (1990) to demonstrate how a mere delay or call for additional police action is not enough to constitute "actual" obstruction. Counsel argued that to suggest otherwise would lead to the kind of overbreadth and arbitrary enforcement that ordinarily renders such laws void for vagueness. The Honorable Donald C. Davis rejected arguments by the Defense and found sufficient facts to ultimately enter in a verdict of Guilt.

¹ All of the recited facts in this matter are based on testimony at trial and body camera footage recorded by Officers Doyle and Adams, both of which were admitted into evidence.

REASONS FOR GRANTING THE WRIT

Obstructing and Hindering

The four elements of Obstructing and Hindering were established by the Maryland Court of Appeals in *Cover v. State*, 297 Md. 398, 413 (1983), requiring:

- 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 the facts comprising element (1); and
- 4) Intent to obstruct or hinder the officer by the act or omission constituting element (2).”

Both the Maryland Court of Appeals and Court of Special Appeals have made clear that the second element “requires proof of ‘how [a defendant’s] act *actually obstructed and hindered* the police officers.” *Titus v. State*, 423 Md. 548, 560 (2011) (citing *Nieves v. State*, 160 Md. App. 647 (2004)).

Most instructive to this particular issue is the Court of Appeals’ opinion in *In re Antoine H*, 319 Md. 101 (1990), where the Court maintained that the facts fell short of demonstrating that officers were *actually* obstructed or hindered. In *In re Antoine H*, law enforcement was dispatched to execute an arrest warrant for Joseph Howard. *Id.* at 106. Officers went to Mr. Howard’s home address in an attempt to execute the warrant, but the home’s inhabitants—later the Defendants—refused entry for “10 to 15 minutes.” *Id.* Once officers were inside, the Defendants denied that Joseph Howard was present. *Id.* Regardless, officers

searched the residence and found Joseph Howard in the attic. *Id.* at 108. In its opinion, the Court reviewed the following acts by the Defendants and whether they were sufficient to constitute the crime of Obstructing and Hindering:

- 1) “failure to open the door promptly when the police sought entrance, thereby conceivably affording Howard an opportunity to hide;
- 2) the lie to the police about Howard’s presence on the premises; and
- 3) in general, the lack of cooperation with the police.” *Id.*

The Court concluded that these facts were *not* sufficient. Specifically, the Court held that the facts were “not adequate to support a finding that the police were actually hindered or obstructed” because, despite the delay and non-cooperation, law enforcement still prevailed in finding and arresting Mr. Howard:

It is clear that the denials that Howard was on the premises did not hinder or obstruct the officers in the performance of their duty. The officers did not believe the denials. They searched the house despite the denials and found Howard. **Any delay in opening the door did not, in any event, result in a failure to find and arrest him.** *Id.* at 109 (emphasis mine).

Id. at 109.

Analysis

As in *In Re Antoine H*, Mr. Dawson did not *actually* obstruct or hinder Officer Adams. The delay was only 1 minute long, far less than in *In Re Antoine H*, and Officer Adams was ultimately able to fulfill his duty of searching the vehicle after all was said and done. It is certainly true that willingly leaving the vehicle would have made it *easier* for Officer Adams to perform his duty. Indeed, surely it would have also been easier for law enforcement in *In Re Antoine H* had

the Defendants promptly opened the door rather than waiting 10 to 15 minutes. Surely it would have been easier for law enforcement had the Defendants *not* lied and instead revealed to officers that Mr. Howard was hiding in their attic. Had the Defendants fully cooperated, Officers would have been able to enter the home quickly, immediately locate Mr. Howard, and avoid the time and headache of effectuating a full-blown search of the residence. But the message of *In Re Antoine H* is that merely being uncooperative, and refusing to make law enforcement's tasks any easier, does not, by itself, constitute the crime of Obstructing and Hindering. Regardless of any delay and inconvenience, which officers are trained to encounter on a day-to-day basis, law enforcement was able to adjust their actions and effectuate their duties *regardless* of the lack of cooperation. Here, officers immediately responded to Mr. Dawson's unwillingness to leave the vehicle by swiftly removing him by force.

Had Mr. Dawson's actions resulted in the destruction of evidence, or otherwise prevented Officer Adams from being able to search the vehicle or recover the suspected marijuana, this may very well be a case of Obstructing and Hindering. But the facts suggest nothing of the sort; and upon Mr. Dawson's removal, the vehicle was searched and all duties were performed completely and successfully.

Overbreadth and Arbitrary Enforcement

To suggest that *any* delay or call for additional action by law enforcement constitutes Obstructing and Hindering would render the crime overbroad and subject to arbitrary enforcement. If mere delay was enough, then practically any police encounter could result in charges. Any civilian who argues with law enforcement, or has to be asked the same question twice, could arguably be subject to prosecution. A civilian asked by law enforcement to open their front door and permit entry may be subject to prosecution if they were to simply demand to know *why*: they are causing a delay and their failure to immediately cooperate will result in officers having to take further action, such as having to divulge information, attempting to persuade the civilian to open their door, or even entering the residence by force if the officer's goal was to effectuate a search or arrest. Given the nature of police-civilian interactions, where civilians may protest or speak out against perceived injustice, interpreting this crime so broadly may have serious First Amendment consequences. And while some officers may consider delays or heated interactions with civilians to be an ordinary part of the job, other officers may see fit to charge those who do not fully cooperate.

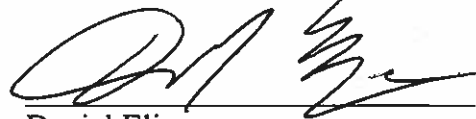
Without any guidance as to what precise action or length of delay is enough to constitute the crime, how and when to enforce it is left solely to the whims of the particular officer. When the analysis shifts from determining whether the officer's duty was *actually* obstructed to determining the extent to which a suspect

was willing to cooperate with law enforcement, the risk of inadvertently criminalizing innocent conduct inevitably grows.

CONCLUSION

Granting this petition would provide this Court the opportunity to address an otherwise neglected area of law. The case law on the subject of Obstructing and Hindering is sparse and covers very few, possible factual scenarios. If the conduct in this matter is indeed suitable for the charge of Obstructing and Hindering, it would be of great benefit to make clear the line that must be crossed to transition from mere “uncooperativeness” to “criminality.” For instance, if causing a delay may satisfy the crime, how *long* of a delay is enough? If an unwillingness to cooperate causes law enforcement to take different or additional measures to effectuate their duty, how severe must those measures be to justify criminal charges? These questions remain, to date, unanswered; and answering them would provide much needed guidance in this area of law, and to the public interest at large.

Respectfully submitted,



Daniel Eliezer
Assistant Public Defender
CPF # 1306190078

Office of the Public Defender
Appellate Division
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Salisbury, MD 21801
Office: (410) 713-3400


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DEliezer@opd.state.md.us
Counsel for Petitioner

Font: Times New Roman 13

**CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112**

I hereby certify that:

1. This petition contains 2023 words.
2. This petition complies with the font, spacing, and type size requirements stated in Rule 8-112.

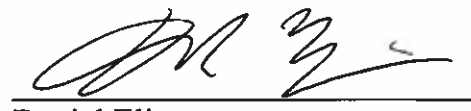


Daniel Eliezer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 2019, copies of the foregoing were hand-delivered to:

Carrie Williams
Criminal Appeals Division
Office of the Attorney General
200 St Paul Place, 17th Flr
Baltimore, MD 21202-2021



Daniel Eliezer

APPENDIX

**In The Records of the Circuit Court
For Wicomico County, State of Maryland
Among Other Proceedings
Is the Following, To Wit:**

CASE SUMMARY
CASE NO. C-22-CR-19-000051

State of Maryland vs. ALFRED EARL DAWSON

§
§
§
§

Location: **Wicomico Circuit Court**
 Filed on: **01/23/2019**

CASE INFORMATION

Offense	Statute	Deg	Date	Case Type:	Criminal - Appeal
Jurisdiction: Wicomico County					
1. OBSTRUCTING & HINDERING	CL	M	06/22/2018	Case Status:	05/07/2019 Closed
TN: 181001841576					

Related Cases

D-023-CR-18-002515 (Related Case)

Bonds

Corporate Bond #BN-C22-19-000016 \$25,000.00
 5/8/2019 Released
 1/23/2019 Posted
 Counts: 1

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	C-22-CR-19-000051
Court	Wicomico Circuit Court
Date Assigned	01/23/2019

PARTY INFORMATION

Plaintiff

State of Maryland

Attorneys
TAWES, MEGAN E.
 410-548-4880(W)
 State's Attorney - Wicomico
 County
 410-548-4880(W)

Defendant

J DAWSON, ALFRED EARL
 Wicomico County Detention Center
 411 Naylor Mill Rd
 SALISBURY, MD 21801
 DOB: 01/11/1989 Age: 30

ELIEZER, DANIEL ELI
Retained
 410-713-3400(W)
 Public Defender, Wicomico
 County
Retained
 410-713-3400(W)

Bond

Remitter/Bondsman

JAIME L SMILEY
 115 LANDING LANE
 ELKTON, MD 21921

Surety


Lexington National Insurance Corporation
 P.O. Box 6098
 Lutherville, MD 21094

DATE


EVENTS & ORDERS OF THE COURT

INDEX





05/08/2019






 Commitment Record Issued (Judicial Officer: Davis, Donald C.)

05/08/2019













 Writ /Summons/Pleading - Electronic Service
 Order Waiving Costs
 Sent to:: Attorney ELIEZER, DANIEL ELI; Attorney Public Defender, Wicomico
 County; State's Attorney State's Attorney - Wicomico County

CASE SUMMARY
CASE NO. C-22-CR-19-000051

- 05/08/2019 Bond Released
- 05/07/2019 Correspondence
Certified Copy of Case Summary sent to District Court.
- 05/07/2019  Order (Judicial Officer: Davis, Donald C.)
Waiving Costs.
- 05/07/2019  Property Received as Evidence
- 05/07/2019  Hearing Sheet / Open Court Proceedings (Judicial Officer: Davis, Donald C.)
- 05/07/2019  Trial - Court (9:00 AM) (Judicial Officer: Davis, Donald C.)
Concluded / Held
- 05/07/2019 **Sentence** (Judicial Officer: Davis, Donald C.)
1. OBSTRUCTING & HINDERING
06/22/2018 (M) CL (1-0043)
TN: 181001841576 :

- Confinement by Count
Local Confinement
Start: 05/02/2019
Facility: Wicomico County Detention Center
Confinement by Count
Count: 1. OBSTRUCTING & HINDERING CL
Term: 60D
Comments: 5 days credit per Judge Davis.
Total Time to Serve: 1M, 29D
Concurrent with any other outstanding sentence(s)
Credit for Time Served
Credit Term: 5D
- 05/07/2019 **Disposition** (Judicial Officer: Davis, Donald C.)
1. OBSTRUCTING & HINDERING
Guilty
TN: 181001841576 :
- 05/07/2019 **Plea** (Judicial Officer: Davis, Donald C.)
1. OBSTRUCTING & HINDERING
Not Guilty
TN: 181001841576 :
- 05/07/2019  Defendant Received Notice of Post - Trial Rights
- 05/01/2019  Jury Instructions
- 05/01/2019  Jury Instructions
Party: Plaintiff State of Maryland
- 05/01/2019  Requested Voir Dire
Filed by: Plaintiff State of Maryland
- 04/30/2019  Miscellaneous Document















CASE SUMMARY
CASE NO. C-22-CR-19-000051*Rejected Plea*

- 04/30/2019  Hearing Sheet / Open Court Proceedings (Judicial Officer: Beckstead, Kathleen Leonard)
- 04/30/2019  Conference - Pre-Trial (9:00 AM) (Judicial Officer: Beckstead, Kathleen Leonard)
Concluded / Held
- 04/05/2019  **CANCELED** Hearing - Motion (9:00 AM) (Judicial Officer: Seaton, Leah J.)
Withdrawn
- 04/04/2019  Line
Line - Withdraw Motions
Filed by: Defendant DAWSON, ALFRED EARL
- 03/05/2019  Return of Service - Served
Subpoena 05/07/2019
Date Served: 03/04/2019
Filed by: Plaintiff State of Maryland
Service For: Witness - State Adams, Jonathan
- 03/05/2019  Return of Service - Served
Subpoena 04/05/2019
Date Served: 03/04/2019
Filed by: Plaintiff State of Maryland
Service For: Witness - State Adams, Jonathan
- 03/05/2019  Return of Service - Served
Subpoena 05/07/2019
Date Served: 03/04/2019
Filed by: Plaintiff State of Maryland
Service For: Witness - State Lukaszewicz, Joshua
- 03/05/2019  Return of Service - Served
Subpoena 04/05/2019
Date Served: 03/04/2019
Filed by: Plaintiff State of Maryland
Service For: Witness - State Lukaszewicz, Joshua
- 03/05/2019  Return of Service - Served
Subpoena 05/07/2019
Date Served: 03/04/2019
Filed by: Plaintiff State of Maryland
Service For: Witness - State Doyle, Joseph
- 03/05/2019  Return of Service - Served
Sunpoena 04/05/2019
Date Served: 03/04/2019
Filed by: Plaintiff State of Maryland
Service For: Witness - State Doyle, Joseph
- 02/27/2019  Answer to Motion
to Suppress
Filed by: Plaintiff State of Maryland
- 02/27/2019  Answer to Motion / Request for Discovery

CASE SUMMARY






CASE NO. C-22-CR-19-000051

Filed by: Plaintiff State of Maryland

- 02/15/2019  **CANCELED Hearing - Initial Appearance (9:00 AM)** (Judicial Officer: Sarbanes, Spyros James)
Event Futile
- 02/09/2019  Summons Served
- 02/07/2019  Plea of Not Guilty Entered
- 02/07/2019  Criminal Request for Jury Trial
Filed by: Defendant DAWSON, ALFRED EARL
- 02/07/2019  Demand / Request for Presence of Chemist/Analyst
Filed by: Defendant DAWSON, ALFRED EARL
- 02/07/2019  Answer to Motion / Request for Discovery
Filed by: Defendant DAWSON, ALFRED EARL
- 02/07/2019  Motion - MD Rule 4-252 (Motions)
Filed by: Defendant DAWSON, ALFRED EARL
- 02/07/2019  Motion / Request - For Speedy Trial
Filed by: Plaintiff State of Maryland
- 02/07/2019  Defense Attorney Appearance Filed
Counsel: Attorney Public Defender, Wicomico County
For: Defendant DAWSON, ALFRED EARL
Amount: 0.00
- 02/04/2019  Certified Mail Receipt Mailed
- 02/01/2019  Attorney Appearance for State
Substitution of Appearance
Counsel: State's Attorney State's Attorney - Wicomico County
Amount: 0.00
- 01/24/2019 **Summons Issued**
DAWSON, ALFRED EARL
Served: 02/09/2019
- 01/24/2019  Summons Issued (Service Event)
Initial Appearance 2/15/19
Requested by: Plaintiff State of Maryland
Service for: Defendant DAWSON, ALFRED EARL
- 01/24/2019  Certified Mail Receipt Mailed
- 01/23/2019  Transmittal Form
- 01/23/2019 Appeal from District Court
Filed by: Defendant DAWSON, ALFRED EARL

CASE SUMMARY

CASE NO. C-22-CR-19-000051

01/23/2019	 Release From Commitment Party: Defendant DAWSON, ALFRED EARL
01/23/2019	 Appeal Bond - Posted <i>in the amount of \$25,000.00 by Back on Your Block Bail Bonds (Jaime Smiley)</i>
01/23/2019	Bond Setting Appeal Bond \$25,000.00 Any
01/22/2019	 Notice of Appeal to Circuit Court Filed Filed by: Defendant DAWSON, ALFRED EARL
01/22/2019	 Commitment Record Issued (Judicial Officer: Mumford, Daniel R.) Party: Defendant DAWSON, ALFRED EARL
11/07/2018	 Statement of Charges

TARGET DATE

TIME STANDARDS

Time to Disposition Deadlines
Statutory Deadlines

STATE OF MARYLAND, WICOMICO COUNTY, TO WIT:

I, James B. McAllister, Clerk of the Circuit Court for Wicomico County, Maryland, hereby
certify that the above and foregoing is a true and correct copy of: Certified Docket
Entries/Case Summary

Circuit Court Case Number C-22-CR-19-000051; State of Maryland vs. Alfred Earl Dawson

IN TESTIMONY WHEREOF, I hereunto subscribe my
name and affix the seal of the Circuit Court for
Wicomico County, Maryland, this 04th Day of
June, Two Thousand and Nineteen.



James B. McAllister
Clerk of the Circuit Court