

STATE OF MARYLAND

v.

EDWARD NERO

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IN THE 2016 APR 22 P 3:21
CIRCUIT COURT FOR
BALTIMORE CITY
CASE NO.: 115141033

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**DEFENDANT'S RESPONSE TO STATE'S MOTION TO QUASH SUBPOEANA
SERVED ON ASSISTANT STATE'S ATTORNEY JESSICA PAUGH**

Now comes Defendant, Officer Edward Nero, by undersigned counsel, and pursuant to Rule 4-266(c) requests that this Honorable Court deny the State's Motion to Quash Subpoena Served on Assistant State's Attorney Jessica Paugh compelling her to appear and to testify at the May 10, 2016 trial of Defendant, Edward Nero, and states the following in support thereof:

1. On April 11, 2016, the Defendant served a subpoena on Assistant State's Attorney Jessica Paugh, who works in the Charging Division for the Office of the State's Attorney for Baltimore City.
2. On April 18, 2016, the State filed a Motion to Quash that subpoena.
3. Pursuant to Rule §4-265, each party is vested with the broad privilege to subpoena witnesses for trial in order to present witnesses who "will offer competent and material testimony."
4. The State avers that on April 12, 2015, following a foot pursuit, the Defendant, along with Officer Garrett Miller, apprehended Mr. Freddie Gray, at which time, the officer(s) noticed a knife clipped to the inside of his front right pants pockets. Mr. Gray was then arrested, after which, Officer Miller presented an Application for Statement of Charges to the Court Commissioner stating as follows:

I, the undersigned apply for statement of charges and a summons or warrant which may lead to the arrest of the above named Defendant because on or about 12 April 2015 at 1700 Block of Presbury Street, Baltimore Maryland, the above named Defendant fled unprovoked upon noticing police presence. The Defendant was apprehended in the 1700 Block of Presbury St. after a brief foot chase. This officer noticed knife clipped to the inside of his front right pants pocket. The defendant was arrested without force or incident. **The knife was recovered by this officer and found to be a spring assisted, one hand operated knife.**

5. Upon review of the Application for Statement of Charges and having found probable cause, the Commissioner charged Mr. Freddie Gray with a violation of the Baltimore City Code Art.19 §59-22.
6. On May 26, 2015 Major Sam Cogan of the Baltimore City Sherriff's Office, on behalf of the Baltimore City State's Attorney's Office, filed a Statement of Probable Cause, charging Officer Edward Nero with two counts of Second Degree Assault, two counts of Misconduct in Office and one count of False Imprisonment. The Statement of Probable Cause states as follows:

I, the undersigned, apply for statement of charges and a summons or warrant which may lead to the arrest of the above named Defendant because on or about April 12, 2015, between 8:45 and 9:15 a.m., near the corner of North Avenue and Mount Street, Lieutenant Brian Rice of the Baltimore Police Department (BPD), while on bike patrol with Officers Garrett Miller and Edward Nero, made eye contact with Mr. Freddie Gray, Jr. (DOB 8-16-1989). Having made eye contact, Mr. Gray subsequently ran from Lt. Rice. Lt. Rice then dispatched over a departmental radio that he was involved in a foot pursuit, at which time bike patrol Officers Miller and Nero also began to pursue Mr. Gray. Having come in contact with the pursuing officers, Mr. Gray surrendered to Officers Miller and Nero in the vicinity of the 1700 block of Presbury Street. Officers Miller and Nero then handcuffed Mr. Gray and moved him to a location a few feet away from his surrendering location. Mr. Gray was then placed in a prone position with his arms handcuffed behind his back. It was at this time that Mr. Gray indicated that he could not breathe and requested an inhaler to no avail. **Officers Miller and Nero then placed Mr. Gray in a seated position and subsequently found a knife clipped to the inside of his pants pocket. The blade of the knife was folded into the handle. The knife was not a switchblade knife and is lawful under Maryland law.**

7. That based upon the charging document filed against the Defendant, it is anticipated that, at trial, the State will argue that the knife recovered from Mr. Freddie Gray is a lawful knife, and thus, there was no probable cause to arrest Mr. Gray.
8. The Baltimore City Code provides: It shall be unlawful for any person to sell, carry, or possess any knife with an automatic spring or *other device for opening and/or closing the blade*, commonly known as a switch-blade knife. Art.19, §59-22.

