

STATE OF MARYLAND

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IN THE 2016 APR 22 P 3:21

v.

CIRCUIT COURT FOR DIVISION

EDWARD NERO

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 JULIE POTTER**

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 Julie Potter 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 Julie Potter, 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.

9. The question raised is whether a proper or improper probable cause decision was made regarding the spring assisted knife carried by Mr. Gray.
10. Herein, the Defendant subpoenaed Assistant State's Attorney Julie Potter, an employee of the Charging Division for the Office of the State's Attorney for Baltimore City. The testimony sought to be elicited from Ms. Potter is relevant, material and essential as it is anticipated that his testimony will show that both before and after Officer Nero's arrest, the Office of the State's Attorney for Baltimore City has continued to consistently find that probable cause exists to prosecute individuals who have been arrested with spring assisted knives.
11. That the testimony of Ms. Potter is relevant and material to the issues in this case as the testimony to be elicited from Ms. Potter will show that these state's attorneys have found there to be probable cause to prosecute people arrested with spring assisted knives, the very same decision they are prosecuting Officer Nero for making.
12. That in order for any defendant to be charged by an officer, the CBIF prosecutor(s) shall review the case to determine if there is probable cause and if so, lock in the charges before the case goes to the commissioner.
13. That the testimony to be elicited will demonstrate that, in numerous cases since the arrest of Officer Nero, the CBIF prosecutors have consistently found probable cause in cases similar to this situation. Thus, such testimony is relevant and material evidence to be considered by the fact finder at trial.
14. Pursuant to Rule §4-266(c), the State has failed to state any facts to support its bald assertion that the Subpoena should be quashed in order to protect Ms. Potter from "annoyance, embarrassment, oppression, or under burden or expense." The State has failed to set forth facts or evidence from which the court may find that justice requires protecting a party or person by issuance of a protective order; thus, the court shall deny the State's Request to Quash the Subpoena Served of Assistant State's Attorney Julie Potter.

WHEREFORE, Defendant Officer Edward Nero requests that this Court deny the State's Request to Quash the Subpoena to Compel Assistant State's Attorney, Julie Potter, to appear and to testify at the May 10, 2016 trial of Defendant Edward Nero.

Respectfully Submitted,



MARC L. ZAYON

ALLISON R. LEVINE

Roland Walker & Marc L. Zayon, P.A.

201 N. Charles Street, Suite 1700

Baltimore, Maryland 21201

(410) 727-3710

Counsel for Defendant Edward Nero

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April 2016, a copy of the foregoing Response to State's Motion to Quash Subpoena Served on Assistant State's Attorney Julie Potter was emailed and hand-delivered to Janice Bledsoe, Deputy State's Attorney for Baltimore City, 120 E. Baltimore Street, 9th Floor, Baltimore, Maryland 21202.



MARC L. ZAYON