

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 DUCES  
TECUM SERVED ON ASSISTANT STATE'S ATTORNEY PATRICK MOTSAJ**

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 Duces Tecum Served on Assistant State's Attorney Patrick Motsaj compelling him to appear and to produce various records 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 Patrick Motsaj, who is the Chief of the Charging Division for the Office of the State's Attorney for Baltimore City. The subpoena is to compel Mr. Motsaj to appear and testify at trial in the above-captioned case, scheduled to begin May 10, 2016, and to produce and permit inspection and copying of "all records of all cases reviewed by the SAO at CBIF from January 1, 2015, through July 1, 2015, including the charges presented, the charges declined, and the charges that were forwards for prosecution."
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 issue presented for the fact finder in this case is whether it was reasonable for Officer Nero to believe there was probable cause to arrest Mr. Freddie Gray when he was found to be in possession of a spring assisted knife.
5. Alternatively, if Officer Nero did not honestly and reasonably make a proper probable cause determination, is the remedy criminal prosecution?
6. The testimony and records to be produced are relevant, material and essential to assist the fact finder in answering both of these questions.

7. The testimony and records to be produced by Mr. Motsay will show that there have been numerous times where the Charging Division for the Office of the State's Attorney for Baltimore City has reviewed fact patterns strikingly similar to the case at hand involving spring assisted knives, and in those cases, learned state's attorneys found probable cause to exist sufficient to proceed with formal criminal charges.
8. That the testimony of Mr. Motsay, and the records to be produced, are relevant and material to the issues in this case as the testimony and the records will show that both before and after Officer Nero's arrest, these state's attorneys have continued to consistently find that there is probable cause to prosecute people arrested with spring assisted knives, the very same decision they are prosecuting Officer Nero for making.
9. That the testimony to be elicited, and the records to be provided, 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.
10. That in order for any defendant to be charged by an officer, the CBIF prosecutor reviews the case to determine if there is probable cause and if so, locks in the charges before the case goes to the commissioner.
11. Pursuant to this process, an officer who completes a statement of probable cause is required to submit said paperwork to one of the several prosecutors who work at CBIF and upon receipt, before the statement is finalized, said prosecutor reviews the officer's statement to determine whether there is sufficient probable cause to proceed with formal charges. If the prosecutor determines there is insufficient probable cause, the arrestee is released without being formally charged. It is anticipated that the records to be produced by Mr. Motsay will show that prosecutors from the Office of the State's Attorney for Baltimore City routinely dismiss charges after reviewing a statement of probable cause submitted by an officer, and in such cases, the arrestee is released without charge. It is further anticipated that none of the records to be produced by Mr. Motsay will indicate that any officer who has submitted a statement of probable cause, which was then found to be insufficient upon review by a

prosecutor, was subsequently arrested and criminally charged for their otherwise insufficient decision that probable cause existed at the time of the arrest.

12. Pursuant to Rule §4-266(c), the State has failed to state any facts to support its bald assertion that the Subpoena Duces Tecum should be quashed in order to protect Mr. Motsay 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 Duces Tecum Served of Assistant State’s Attorney Patrick Motsay.
13. Furthermore, the State’s contention that the volume of documents to be provided is unduly burdensome and in some instances, impossible, can be relieved by providing the documents electronically or by other means routinely used by State, such as, in the instant case, providing several thousand pages of documents on flash drives.

**WHEREFORE**, Defendant Officer Edward Nero requests that this Court deny the State’s Request to Quash the Subpoena Duces Tecum Served on Assistant State’s Attorney, Patrick Motsay, compelling him to testify and to produce various records at the May 10, 2016 trial of Defendant Edward Nero.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

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

  
MARC L. ZAYON