

STATE OF MARYLAND

\* IN THE

\* CIRCUIT COURT

v.

\* FOR

\* BALTIMORE CITY

OFFICER EDWARD NERO

\* CASE NO. 115141033

\* \* \* \* \*

**DEFENDANT'S RESPONSE TO STATE'S MOTION TO STAY PROCEEDINGS  
PENDING APPEAL**

NOW COMES Defendant Edward Nero, by undersigned counsel and files this Response to the State's Motion to Stay Proceedings Pending Appeal and for reasons states:

1. Officer Edward Nero is pending second degree assault and related charges. The trial is currently scheduled to begin on February 22, 2016.
2. On January 13, 2016 the State filed a Motion to Compel Testimony of Officer William Porter.
3. On January 15, 2016, the State sent a letter to the Court expressing its intent to request a postponement of the trial date.
4. On January 20, 2016 this Court conducted a hearing on the State's dual requests. The Court denied both requests.
5. On February 4, 2016 the State filed a Notice of Appeal.
6. On February 5, 2016 the State filed a Motion to Stay Proceedings Pending Appeal. This Motion to Stay is yet another transparent subterfuge on the part of the State to obtain a postponement, in order to avoid trying the most legally and factually tenuous cases next.
7. The State does not cite to any Rule that enables the State to seek a stay of the proceeding, an extraordinary request at this stage of the proceedings. The Maryland Rules include

RECEIVED FOR RECORD  
 CIRCUIT COURT FOR  
 BALTIMORE CITY  
 2016 FEB - 8 P 12:10  
 CRIMINAL DIVISION

provisions to seek a stay pending an appeal in a civil matter. It is instructive, however, that the Rules governing criminal proceedings are silent on this process. The State is relying on CJP §12-301 which allows an appeal only from a *final judgment*. The statute does not include any direction regarding a stay as this would be unnecessary after a final judgment has been rendered.

8. In addition, the filing of a Notice of Appeal does not divest this Court of jurisdiction to continue the proceedings. See e.g. *Pulley v. State*, 287 Md. 406 (1980). In that this Court does retain jurisdiction, “[w]hether to grant or deny a stay of proceedings in a matter is within the discretion of the trial court, and only will be disturbed if the discretion is abused.” *Vaughn v. Vaughn*, 146 Md. App. 264, 279 (2002).
9. The trial court is best equipped to decide if the trial should be stayed pending the State’s efforts to appeal. The trial court is quite familiar with the facts of this case and all of the issues arising from the litigation. The trial court is uniquely situated to assess the legitimacy of the State’s bald allegation that the ruling at issue is a final judgment.
10. This Court “shall consider the same factors that are relevant to the granting of injunctive relief by a circuit court.” Md. Rule 8-425. The four factors relevant to the issuance of an injunction are “(1) the likelihood that the plaintiff will succeed on the merits; (2) the ‘balance of convenience’ determined by whether greater injury would be done to the defendant by granting the injunction than would result by its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.” *Schade v. Maryland State Board of Elections*, 401 Md. 1, 36 (2007). It is the moving party’s burden to establish these four factors and “failure to prove the existence

