

2016 FEB -5 A 11: 39

STATE OF MARYLAND

v.

EDWARD NERO

* * * * *

CRIMINAL DIVISION

IN THE
CIRCUIT COURT FOR
BALTIMORE CITY
CASE No. 115141033

STATE'S MOTION TO STAY PROCEEDINGS PENDING APPEAL

Now comes the State of Maryland, by and through Marilyn J. Mosby, the State's Attorney for Baltimore City; Michael Schatzow, Chief Deputy State's Attorney for Baltimore City; Janice L. Bledsoe, Deputy State's Attorney for Baltimore City; and Matthew Pillion, Assistant State's Attorney for Baltimore City; and pursuant to the Court's inherent power requests that this Court issue a stay of the above-captioned proceedings pending resolution of the appeal filed by the State on February 4, 2016, from the final judgment of this Court entered on January 20, 2016, denying the State's Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article ("CJP" hereinafter).

I. Summary of Argument

Despite the Court's good intentions in seeking to avoid delay of the Defendant's trial, the Court's denial of the State's Motion to Compel Officer William Porter's testimony ran contrary to the plain language of CJP § 9-123 and to the Legislature's intent in enacting the immunity statute. It also violated separation of powers principles by appropriating to the Judiciary a discretionary power granted to the Executive Branch. The State is now appealing these errors given their ramifications on the State's ability to prosecute this and other cases here and throughout the State. As outlined below and previously argued, this Court had no authority to engage in judicial review of the State's Attorney's vested exercise of lawful discretion in determining that Officer Porter's testimony may be necessary to the public interest in the State's prosecution of the Defendant for his role in the fatal arrest and custodial transportation of Mr.

Freddie Gray. Instead, this Court had only the power to verify that the State's Motion to Compel complied with the procedural and pleading requirements of Section 9-123. Upon finding such compliance, the Court was required to follow the mandate of the Legislature and issue the immunity order.

Though the Court has disagreed with the State's assessment of the statute's mechanics, the State's arguments about Section 9-123's power distribution are strong. Moreover, the Court acted without any express authority or guidance on this issue from either of Maryland's appellate courts—and in the face of overwhelming precedent from other jurisdictions. If, as the State firmly maintains, this Court was, in fact, wrong in its denial of the State's Motion to Compel, to deny the State any meaningful opportunity for appellate review of that decision would potentially result in a miscarriage of justice in the Defendant's trial. The People of this State deserve that opportunity, and this Court has always demonstrated a commitment to giving both the Defendant and the People a fair trial. That commitment now requires allowing a higher court to review this Court's decision before moving forward in this case. As such, this Court should exercise a discretionary power it unquestionably possesses—the power to stay the proceedings pending the State's appeal.

II. Background

On January 14, 2016, the State filed in the above-captioned case a Motion to Compel a Witness to Testify Pursuant to Section 9-123 of the Courts and Judicial Proceedings Article. The witness in question was Officer William Porter. The State's Motion, submitted and signed by the State's Attorney herself, averred that the State may call Officer Porter to testify against the Defendant and set forth her determinations that Officer Porter's testimony may be necessary to the public interest and that he is likely to refuse to testify on the basis of his privilege against

self-incrimination given his similar refusal to testify in the related cases of *State v. Caesar Goodson* (No. 115141032) and *State v. Alicia White* (No. 115141036).

On January 15, 2016, the Defendant filed an Opposition to the State's Motion to Compel. The Defendant attacked the State's Motion as lacking an explanation of "why Officer Porter is either necessary or material to the trial of Defendant Nero or how it is necessary to serve the public interest." Def. Opp. at 1. The Defendant argued that Officer Porter's testimony is, in fact, *not* necessary to the public interest based on his assessment of the State's reasons for filing the motion and his view of the motion's effect on both his and Officer Porter's constitutional rights. Def. Opp. at 2-3. As such, he urged the Court to deny the motion. Likewise, on January 19, 2016, Officer Porter filed an Opposition to the State's Motion in which he too requested that the Court deny the State's Motion on grounds that the Court should find that compelling his testimony would not be necessary to the public interest and would violate his privilege against self-incrimination. Def. William Porter's Opp. at 8.

On the morning of January 20, 2016, the State filed a Response to the Defendant's Opposition, arguing that Section 9-123 granted neither the underlying defendant nor the witness standing to make such objections to the State's request for a grant of immunity and that under the plain terms of that statute, this Court lacked the discretion to deny a motion to compel immunized testimony when presented with a motion that complied with the statute's procedural requirements. Because the State's Motion to Compel unquestionably did comply with Section 9-123, the State urged this Court to follow the statute's mandates and issue the order to compel Officer Porter's testimony under a grant of use and derivative use immunity.

On the afternoon of January 20, 2016, this Court conducted a hearing on the State's Motion to Compel. At that hearing, the State repeated the arguments presented in its Response.

