

2016 APR -8 A 11: 26

STATE OF MARYLAND

CRIMINAL DIVISION

IN THE  
CIRCUIT COURT FOR  
BALTIMORE CITY

v.

EDWARD NERO

CASE No. 115141033

\* \* \* \* \*

**STATE'S SUPPLEMENT TO ITS RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO CHARGE A CRIME**

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 supplements as follows the State's Response to the Defendant's Motion to Dismiss for Failure to Charge a Crime in light of the Court of Special Appeals's recent reported opinion in *Riley v. State*, \_\_\_ Md. App. \_\_\_, 2016 Md. App. LEXIS 30 (Mar. 30, 2016):

1. On February 1, 2016, the Defendant filed a Motion to Dismiss for Failure to Charge a Crime, attacking the sufficiency of the assault count in the indictment and contending that because of his status as a police officer charged with committing an arrest-based battery, the State was required to allege that the Defendant acted with "malice." Def. Mot. at 3. The State filed a Response to this Motion on February 16, citing procedural impropriety and also an array of authority refuting the merits of this claim.

2. Subsequently, on March 30, 2016, the Court of Special Appeals decided *Riley v. State*, in which a Prince George's County police officer had been convicted of second-degree assault after shooting a handcuffed, unarmed, stolen-vehicle arrestee attempting to

flee from the officer. 2016 Md. App. LEXIS 30 at 2-6. The appellant, relying on civil law concepts, argued that his “position as a police officer . . . has some degree of immunity for his actions [such that] the State [ ] has to prove that these acts were done with malice.” *Id.* at 10. The intermediate appellate court squarely disagreed, holding that “[t]he substantive elements of assault do not change based on the identity of the defendant”; rather, assault is “a general intent crime [ ] that does not require malice.” *Id.* at 12-13. The fact that the defendant was a police officer charged with an arrest-based assault merely meant he was “entitled to raise the affirmative defense of law-enforcement justification,” which he did—but which the jury rejected. *Id.* at 13.

3. *Riley’s* holding and rationale are fully consistent with the State’s previous responsive arguments, but *Riley* provides concise, direct guidance disposing of the Defendant’s contentions. Accordingly, if this Court reaches the merits of the Defendant’s motion, the State supplementally requests that this Court consider *Riley* in evaluating the Defendant’s claims.<sup>1</sup>

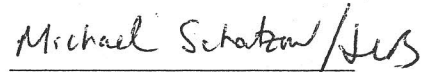
Wherefore, the State requests that this Court deny the Defendant’s Motion to Dismiss for Failure to Charge a Crime on any or all of the grounds discussed herein or previously asserted.

---

<sup>1</sup> The officer in *Riley* was also convicted of misconduct in office despite his argument that the evidence showed only that he committed an error of judgment, not “corrupt behavior.” *Id.* at 19-22. In evaluating the sufficiency of the evidence on appeal, the Court cited the trial testimony of two police-use-of-force experts who opined that the officer “used unnecessary force and unreasonable force” against the arrestee. *Id.* at 21-22. The Court found such evidence sufficient to sustain the conviction, describing misconduct as, among other possible acts, entailing any “oppressive and willful abuse of authority.” *Id.* at 22. The Court noted that because the jury found the officer guilty of second-degree assault, “the assault became an act ‘by a public officer in the exercise of the duties of his office’ which was ‘corrupt,’ and that assault constituted an ‘oppressive and willful abuse of authority.’” *Id.* at 22, n. 7. Indeed, even though misconduct in office requires “corrupt” behavior, the Court specifically rejected the notion that the predicate police assault required the “concurrence of an evil-meaning mind with an evil-doing hand.” *Id.* at 10-12.

Respectfully submitted,

Marilyn J. Mosby



Michael Schatzow (#717876)  
Chief Deputy State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6011 (telephone)  
(443) 984-6256 (facsimile)  
[mschatzow@stattorney.org](mailto:mschatzow@stattorney.org)



Janice L. Bledsoe (#68776)  
Deputy State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6012 (telephone)  
(443) 984-6256 (facsimile)  
[jbledsoe@stattorney.org](mailto:jbledsoe@stattorney.org)



Matthew Pillion (#653491)  
Assistant State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6045 (telephone)  
(443) 984-6252 (facsimile)  
[mpillion@stattorney.org](mailto:mpillion@stattorney.org)

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of April, 2016, a copy of the State's Supplement to its Response to the Defendant's Motion to Dismiss for Failure to Charge a Crime was delivered by mail and email to the Defendant's counsel at:

Marc L. Zayon  
Roland Walker & Marc L. Zayon, P.A.  
201 N. Charles Street, Suite 1700  
Baltimore, Maryland 21201  
(410) 727-3710  
[mzayon@walkerzayon.com](mailto:mzayon@walkerzayon.com)  
Attorney for Officer Edward Nero

Respectfully submitted,

Marilyn J. Mosby



Janice L. Bledsoe (#68776)  
Deputy State's Attorney  
120 East Baltimore Street  
The SunTrust Bank Building  
Baltimore, Maryland 21202  
(443) 984-6012 (telephone)  
(443) 984-6256 (facsimile)  
[jbledsoe@stattorney.org](mailto:jbledsoe@stattorney.org)