

STATE OF MARYLAND,

Appellant,

v.

EDWARD NERO,

Appellee

IN THE

COURT OF APPEALS

OF MARYLAND

September Term, 2015

Petition Docket No. 660

ORDER

Pending before the Court is the State of Maryland's motion to supplement its pending motion to stay proceedings in the circuit court pending resolution of this appeal. Having considered the motion and any response, the Court hereby grants the motion to supplement.

So ORDERED this 16th day of February, 2016.

/s/ Lynne A. Battaglia

SENIOR JUDGE

Filed

FEB 12 2016

Bessie M. Decker, Clerk
Court of Appeals
of Maryland

STATE OF MARYLAND,

Appellant,

v.

EDWARD NERO,

Appellee

IN THE

COURT OF APPEALS

OF MARYLAND

September Term, 2015

Petition Docket No. 6060

**MOTION TO SUPPLEMENT MOTION TO STAY CIRCUIT COURT
PROCEEDINGS**

Now comes the State of Maryland, by and through Brian E. Frosh, Attorney General; Carrie Williams, Assistant Attorney General; and Michael Schatzow, Special Assistant Attorney General; and pursuant to Rule 8-303(e) and the Court's inherent power, requests that this Court allow the State to supplement its previously filed motion to issue a stay of the circuit court proceedings in this case with a recent order entered by the circuit court and a brief discussion of that order.

In its previously filed Motion to Stay Proceedings in Circuit Court, the State wrote that it had filed a motion to stay in the circuit court, but the motion had not been ruled upon. (Motion to Stay Proceedings at 4). Yesterday, February 11, 2016, the State learned that the circuit court had denied the motion to stay on February 10, 2016. The purpose of this Motion to Supplement is to bring to the attention of this Court that order denying the stay and to make it part of the record as Attachment A.

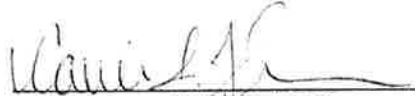
In its order, the lower court wrote that it was denying the motion to stay because it believes that a judge retains the right to refuse the State's § 9-123 request if it is used as a

tactic to reorder the schedule of related trials. That order conflates the State's request and reasons for a particular order of trials with the State's request and reasons for seeking compelled, immunized testimony. The order also ascribes a single motive to the State's immunity request (to reorder the trials) when the court found on January 20, 2016, that the State had a dual purpose in seeking immunity (to reorder the trials and obtain Porter's immunized testimony on two subjects). (H.1/20/16 65). Finally, the order is flawed in its premise that the State, and not the court, would control the sequence of related trials before or after remand from the appellate courts.

But, most importantly, the scope of the lower court's authority to examine motives and weigh public interest in the face of a statutorily compliant § 9-123 request is precisely the issue in the State's appeal. In denying the stay, the circuit court said nothing about whether continuing to exercise its fundamental jurisdiction over the Nero, Rice, and Miller trials would frustrate this Court's review of the denial of the motions to compel. It is this question on which the lower court should have been focused. If the trials of Nero, Miller, and Rice are not stayed, the circuit court's construction of Maryland's general immunity statute will be unreviewable.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland



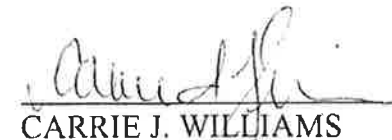
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2016, a copy of the State's Motion Supplement Motion to Stay Circuit Court Proceedings was delivered via electronic mail and first-class mail, postage pre-paid to Gary E. Proctor, 8 East Mulberry Street, Baltimore, Maryland 21202; Marc L. Zayon, 201 N. Charles St., Suite 1700, Baltimore, Maryland 21201; and delivered via electronic mail to Joseph Murtha, 1301 York Road, Suite 200, Lutherville, Maryland 21093.



CARRIE J. WILLIAMS

ATTACHMENT A

2016 FEB 10 P 2: 14

TRIAL DIVISION

STATE OF MARYLAND

* IN THE

v.

* CIRCUIT COURT FOR

* BALTIMORE CITY

EDWARD NERO

* Case No. 115141033

* * * * *

ORDER

On September 15, 2015, the State notified this Court that it intended to try the above-captioned case and related cases in a certain order. The State indicated that the order was preferable because Officer William Porter was a material witness in the cases against Sergeant Alicia White and Officer Caesar Goodson. On December 16, 2015, Officer Porter's trial ended in a mistrial. His retrial is currently scheduled for June 13, 2016.

On January 7, 2016, this Court granted the State's Motion to Compel Officer Porter to testify in the *Goodson* and *White* trials. Officer Porter appealed this Court's decision and the *Goodson* and *White* trials are stayed pending a decision by the Court of Special Appeals.

Shortly after the *Goodson* and *White* trials were stayed, this Court notified all parties that it planned to proceed with the *Nero*, *Miller*, and *Rice* trials, with Nero's scheduled to begin on February 22, 2016. It was only then, four months after the State identified Officer Porter as a material witness in two other trials, and one month after Officer Porter's mistrial, that the State notified this Court, in a January 16, 2016 letter, that Officer Porter may be a material witness in the *Nero*, *Miller*, and *Rice* cases and that it wished to postpone all five cases until after Officer Porter's retrial. One of the reasons

the State requested the Court grant the postponement was so that the State could avoid a *Kastigar* hearing and the need to put together a “clean team.”

On January 20, 2016, this Court heard arguments on the State’s Motion to Compel the testimony of Officer Porter in the *Nero*, *Miller*, and *Rice* trials and denied the State’s motion. This Court found that the State was using Md. Code, Cts. & Jud. Proc. § 9-123 in an attempt to control the schedule and order of the trials and to circumvent this Court’s ruling that postponement in these cases was not appropriate.

This Court agrees that its role is not to impose its opinion upon the State’s determination that a witness’ testimony is in the public interest. This Court believes, however, that rather than become a rubber-stamp for the State’s Attorney, there should be a two-step process in granting immunity under § 9-123 when, and only when, the motives of the requesting party are called into question. The denial of the State’s motion to compel was not based upon an imposition of the Court’s opinion on the State’s determination that a witness’ testimony was in the public interest under § 9-123, but rather based upon the Court finding that the State’s motion was simply an attempt at subterfuge because they did not agree with the Court’s order to continue with the other trials. It is this action of the State that this Court found was not in the public interest.

For these reasons, this Court finds that its denial of the State's motion to compel was appropriate. Therefore, it is this 10th day of February, hereby

ORDERED that the State's Motion to Stay Proceedings Pending trial in the above-captioned case is **DENIED**.

Judge Barry G. Williams

Judge's Signature appears on the
original document

BARRY G. WILLIAMS
JUDGE, CIRCUIT COURT FOR
BALTIMORE CITY

Clerk, please mail copies to the following:

Marc Zayon, Attorney for Edward Nero

Janice Bledsoe, Deputy State's Attorney, Office of the State's Attorney for Baltimore
City