

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MADELINE MENDOZA,)	
)	
<i>Plaintiff,</i>)	
)	No. 23-cv-2441
-vs-)	
)	<i>(Judge Durkin)</i>
REYNALDO GUEVARA, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

MARILYN MULERO,)	
)	
<i>Plaintiff,</i>)	
)	No. 23-cv-4795
-vs-)	
)	<i>(Judge Durkin)</i>
REYNALDO GUEVARA, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**DEFENDANTS' SUPPLEMENTAL BRIEF
IN SUPPORT OF DEPOSITION OF MICHAEL KREJCI**

NOW COME Defendants, by and through their undersigned attorneys, and submit this supplemental brief in support of the deposition of Michael Krejci, state as follows:

1. As this Court is aware, this consolidated action was filed by Plaintiffs Marilyn Mulero and Madilyn Mendoza and arises from their arrest and prosecution for the May 11, 1992 murders of Hector Reyes and Jimmy Cruz. In a nutshell, Plaintiffs have alleged that Plaintiff Mulero and Ms. Montanez were coerced into providing false confessions implicating both Plaintiffs in the Reyes/Cruz murders, and fabricated evidence in the form of false witness statements from persons including Yvette Rodriguez, Rhonda Riley, Jackie Serrano, and Joan Roberts. Plaintiffs allege that these facts caused or contributed to their decisions to plead guilty to the

Reyes/Cruz murders. Both Plaintiffs allege claims for Malicious Prosecution as well as allege violations of the Fourth, Fifth, and Fourteenth Amendments.

2. Michael Krejci is a former Cook County Assistant State's Attorney. He is currently in private practice in the western suburbs of Chicago. In his capacity as an Assistant State's Attorney, Mr. Krejci was one of the prosecuting attorneys for both Plaintiffs as well as their criminal co-defendant, Jacqueline Montanez. This included Mr. Krejci being one of the prosecutors directly involved in the pretrial litigation, appearing for CCSAO in both Plaintiffs' guilty plea hearings (and the lead up thereto), defending against Plaintiff Mulero's motion to quash/motion to suppress and Ms. Montanez's motion to suppress, and prosecuting Ms. Montanez at trial.
3. At the outset, as a general matter, witnesses such as Mr. Krejci are a feature of nearly every reversed conviction trial and are a cornerstone of the defense presentation in such cases (and often the plaintiff as well). Essentially every claim at issue in these cases will require an understanding of the legal process in Cook County during the relevant time (both generally and as it relates to the specific cases at issue). Juries in such trials are typically composed of non-lawyers without intimate knowledge of the legal process in Cook County criminal court and are often mis-informed through television or the media about the reality of these proceedings. Accordingly, a witness such as Mr. Krejci can walk jurors through the purpose and significance of the general procedural mechanisms in criminal cases from felony review through charging through conviction and sentencing and all other steps in between (discovery, pre-trial motions, pleas, sentencing, etc.). This presentation makes contextualizing the specific factual and legal issues in any case easier to understand for jurors through use of the legal framework set forth by an experienced prosecutor.

4. Because Mr. Krejci was directly involved in the prosecution of all three relevant individuals, he is uniquely well-suited to provide this general framework and also to testify regarding his first-hand knowledge of how each of these specific cases proceeded to disposition, how each case related to each other, and the evidence upon which each disposition was based from a prosecutorial point of view. The undersigned counsels have collectively tried many similar reversed conviction/malicious prosecution cases over the past 30+ years and in almost every single case prosecutor witnesses have been called consistent with the above topics.
5. Mr. Krejci will also be able to testify as to his personal knowledge of the underlying criminal proceedings including his knowledge and understanding of the specific evidence supporting the charging of Plaintiffs and Ms. Montanez, the continuation of their prosecutions after charging which supported the guilty pleas of both Plaintiffs and the conviction of Ms. Montanez at trial, and the context in which the final disposition of both Plaintiffs' cases occurred.
6. Mr. Krejci will testify about his knowledge and investigation of alleged claims of coercion involved in the confessions of Plaintiff Mulero and Ms. Montanez and decision to proceed notwithstanding such allegations, including opposing motions to suppress and prosecuting such claims thereafter.
7. Mr. Krejci will testify about CCSAO's knowledge of the factual and legal bases supporting the prosecution of Plaintiff Mendoza under an accountability theory, which is often a concept difficult for lay jurors to understand.
8. Mr. Krejci can testify regarding CCSAO's knowledge of the documentary evidence as well as CCSAO's production of materials to the defense attorneys.
9. Mr. Krejci can also testify as to any conversations or communications he had with defense attorneys for Plaintiffs or Ms. Montanez regarding the evidence or charges. This is particularly

relevant in this case because both Plaintiffs have essentially alleged that their own attorneys respectively coerced each Plaintiff to plead guilty to crimes which they now claim that are innocent of committing.

10. Mr. Krejci may also testify about Plaintiff Mulero taking a so-called “blind plea” and the frequency of such occurrence in certain criminal cases. In this regard, Plaintiff Mulero has alleged that her criminal defense attorney effectively coerced her into taking a “blind plea” (i.e. a guilty plea made without any agreement with the prosecution) to the charges in this case and has repeatedly insinuated that such “blind plea” was highly irregular. Mr. Krejci can provide testimony regarding any communications and knowledge about the circumstances of this plea as well as its use in the Cook County criminal justice system in general.
11. Mr. Krejci may also be able to testify about his knowledge of specific allegations of in-court conduct that Plaintiff Mulero made about Defendant Guevara, specifically, claims that Defendant Guevara showed up in the gallery at court proceedings with rival gang members to Plaintiff Mulero in order to intimidate her. Mr. Krejci can either confirm this occurred or, more likely, refute it. Mr. Krejci can also provide testimony as to the steps he would have taken had he become aware that such incidents occurred.
12. These fact-specific topics are necessary for Defendants to defend themselves in this case. The role of the prosecution in this case is centrally important to the liability (or lack thereof) of Defendants. While police officers are involved in the investigation prior to the charging and prosecution of an individual, it is the prosecutors alone who make the decision to charge an individual with a crime and, more importantly, whether to continue such prosecution once charges have been filed. *See e.g. Rehberg v. Paulk*, 566 U.S. 356 (2012) (“It is of course true that a detective or case agent who has performed or supervised most of the investigative work in a case may serve as an important witness in the grand jury proceeding and may very much

want the grand jury to return an indictment. But such a witness...does not make the decision to press criminal charges. Instead, it is almost always a prosecutor who is responsible for the decision to present a case to a grand jury, and in many jurisdictions, even if an indictment is handed up, a prosecution cannot proceed unless the prosecutor signs the indictment. It would thus be anomalous to permit a police officer who testifies before a grand jury to be sued for maliciously procuring an unjust prosecution when it is the prosecutor, who is shielded by absolute immunity, who is actually responsible for the decision to prosecute.”).

13. In this regard, the law is clear that a prosecutor’s knowledge of alleged evidence of malfeasance and subsequent decision to proceed with an investigation notwithstanding such knowledge can effectively absolve investigating police officers for liability in the event that the prosecution decides to proceed with the prosecution or, at minimum, act as a supervening causation for the purposes of such claims. *See e.g. Whitlock v. Brueggemann*, 682 F.3d 567, 583-85 (7th Cir. 2012)(discussing supervening causation issues and noting that “[a] prosecutor's decision to introduce the bad evidence at trial may be a second proximate cause, albeit one beyond the reach of the law if absolute immunity applies because the prosecutor is acting in a prosecutorial function,” that “causal responsibility for the violation lies with the prosecutor who chooses to put on the fabricated evidence, not with the fabrication itself” and “any resulting due process violation that occurs when the evidence is introduced at trial cannot be traced back as far as its creation”); *Buckley v. Fitzsimmons*, 20 F.3d 789, 796–97 (7th Cir. 1994)(discussing interplay of immunity and investigatory acts in Due Process violations; “[E]vents not themselves supporting recovery under § 1983 do not become actionable because they lead to injurious acts for which the defendants possess absolute immunity...[I]f the prosecutors had known the truth and proceeded anyway...then the immunized prosecutorial decisions would be the

cause of the injury.”); *Simon v. Northwestern University*, 175 F.Supp.3d 973, 982 (N.D. Ill., 2016); *Beck v. City of Chicago*, 2020 WL 7353405, at *7 (N.D. Ill. 2020).

14. Moreover, Mr. Krejci was disclosed as a witness under Fed. R. Civ. P. 26(a). Whether his deposition proceeds or not, Defendants still intend to call him as a trial witness in this case. Accordingly, barring Mr. Krejci’s deposition in this case will only serve to have the parties be somewhat uncertain as to the specific testimony and recollection of Mr. Krejci on the above issues. Thus, permitting Mr. Krejci to be deposed would clearly be in the interests of justice and assist all parties in preparing for the evidence at trial.

15. Finally, as set forth in the parties’ most recent Joint Status Report, Defendants took all reasonable steps to secure the deposition of Mr. Krejci and to complete this before the previous discovery cut-off in this case. Defendants were informed essentially at the last minute by CCSAO that this deposition would not proceed as scheduled within the discovery deadline. Thus, it would be eminently unfair to deprive Defendants of this deposition as a result of the conduct of a third party in delaying such deposition.

WHEREFORE, Defendants respectfully request this Court grant them leave to depose Michael Krejci and for any other relief as this Court deems just and reasonable.

Respectfully submitted,

By: /s/ Timothy P. Scahill
Timothy P. Scahill
Special Assistant Corporation Counsel

Steven B. Borkan
Timothy P. Scahill
Andrea F. Checkai
Whitney N. Hutchinson
BORKAN & SCAHILL, LTD.
20 South Clark Street, Suite 1700
Chicago, Illinois 60603
(312) 580-1030
Counsel for Reynaldo Guevara

/s/ Josh M. Engquist
Josh M. Engquist
Special Assistant Corporation Counsel

Josh M. Engquist
Caroline P. Golden
David A. Brueggen
Jeffrey R. Kivetz
Kyle T. Christie
Allison L. Romelfanger
Special Assistant Corporation Counsel
THE SOTOS LAW FIRM, P.C.
141 W. Jackson, Suite 1240A
Chicago, Illinois 60604
630-735-3300
Counsel for Individual Defendants

/s/ Eileen E. Rosen
Special Assistant Corporation Counsel

Eileen E. Rosen
Catherine M. Barber
Lauren Ferrise
Rock, Fusco, & Connelly
333 W. Wacker, 19th Floor
Chicago, Illinois 60606
(312) 494-1000
Counsel for Defendant City of Chicago