

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

JOSE TINAJERO,)	
Plaintiff,)	Case No. 24 C 1598
)	
v.)	Judge Kness
)	
CITY OF CHICAGO, REYNALDO GUEVARA,)	Magistrate Judge Fuentes
ERNEST HALVORSEN, deceased, HECTOR)	
VERGARA, JOSEPH MOHAN, deceased, RANDY)	
TROCHE, FRANCIS CAPPITELLI, deceased,)	
EDWARD MINGEY, JACOB RUBINSTEIN,)	
and COOK COUNTY.)	
)	
Defendants.)	

**DEFENDANT JACOB RUBINSTEIN'S ANSWER
TO THE COMPLAINT, AFFIRMATIVE
DEFENSES, AND JURY DEMAND**

Defendant Jacob Rubenstein, by O'Connor & Battle, LLP, hereby submits his Answer to Plaintiff's Complaint, Affirmative Defenses, and Jury Demand. Defendant Rubenstein makes no answer on behalf of other Defendants.

1. This is a civil action arising under 42 U.S.C. § 1983. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1343 and 1367.

ANSWER: Defendant Rubenstein admits this action is brought pursuant to 42 U.S.C. §1983 and that this court had Defendant Rubenstein denies committing any acts which violated Plaintiff's rights.

2. When he was just 21 years old, plaintiff Jose Tinajero was framed for murder by notorious Chicago police detective Reynaldo Guevara and other officers.

ANSWER: Defendant Rubenstein admits, on information and belief, that Plaintiff Jose Tinajero was 21 years old when he was arrested for murder by Chicago police officers, including

Reynaldo Guevara. Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 2.

3. Plaintiff served twenty-five years of wrongful imprisonment before he was exonerated and released from custody in 2024.

ANSWER: Defendant Rubinstein admits, on information and belief, that Plaintiff served twenty-five years before he was released from custody in 2024. To the extent paragraph 3 alleges misconduct by Defendant Rubinstein, Defendant Rubinstein denies the allegations. Defendant Rubenstein is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 3.

4. The Chicago Police Department's official policies and customs of failing to discipline, supervise, and control its officers, as well as its code of silence, caused the misconduct of Guevara and the other officers.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.

5. Based on the powerful evidence that has come to light about Guevara's repeated wrongdoing and evidence of plaintiff's innocence, the Circuit Court of Cook County vacated plaintiff's conviction on January 31, 2024.

ANSWER: Defendant Rubinstein admits that the Circuit Court of Cook County vacated Plaintiff's conviction on January 31, 2024. To the extent paragraph 5 alleges misconduct by Defendant Rubinstein, Defendant Rubinstein denies the allegations. Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 5.

6. Plaintiff brings this lawsuit to secure a remedy for the grievous harms he suffered from his wrongful imprisonment.

ANSWER: To the extent paragraph 6 alleges misconduct by Defendant Rubinstein, Defendant Rubinstein denies the allegations. Defendant Rubinstein is without knowledge or information

sufficient to form a belief as to the truth of the remaining allegations in paragraph 6.

I. ANSWER TO PARTIES

7. Plaintiff Jose Tinajero is a resident of the Northern District of Illinois.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 7.

8. Defendants Reynaldo Guevara, Ernest Halvorsen, Hector Vergara, Joseph Mohan, Randy Troche, Francis Cappitelli, and Edward Mingey were, at all relevant times, acting under color of their offices as Chicago police officers.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 8.

9. Defendants Halvorsen, Mohan, and Cappitelli are deceased. Plaintiff will move for the appointment of Special Representatives for these defendants to defend this action.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 9.

10. Plaintiff refers to Reynaldo Guevara, Hector Vergara, Randy Troche, Edward Mingey, Ernest Halvorsen, Joseph Mohan, and Francis Cappitelli as the “individual officer defendants.” Plaintiff sues these defendants in their individual capacity only.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 10.

11. Defendant City of Chicago is an Illinois municipal corporation and was at all relevant time the employer of the individual officer defendants. Plaintiff asserts federal and state law claims against defendant City of Chicago and sues the City as the potential indemnitor of the individual officer defendants.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 11.

12. Defendant Jacob Rubinstein was, at all relevant times, an Assistant Cook County State’s Attorney. Plaintiff sues Rubinstein in his individual capacity only.

ANSWER: Defendant Rubinstein admits the allegations in paragraph 12.

13. Defendant Cook County is a governmental entity within the State of Illinois and was at all relevant times the employer of Rubinstein. Plaintiff asserts a state law claim against defendant Cook County, sues the County as the potential indemnitor of Rubinstein, and does not assert any federal claim against the County.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 13.

II. FALSE ARREST AND UNREASONABLE PROSECUTION OF PLAINTIFF

14. On October 12, 1998, Daniel Garcia received a fatal beating in a Chicago alley near Whipple Street and Armitage Avenue.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 14.

15. Plaintiff did not have any involvement in the beating.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 15.

16. Defendants Guevara and Halvorsen investigated the murder of Daniel Garcia.

ANSWER: Defendant Rubinstein admits the allegations in paragraph 16.

17. Defendants Guevara and Halvorsen conspired, confederated, and agreed to fabricate a false story that plaintiff, John Martinez, and Thomas Kelly had jointly beaten and robbed Garcia.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17.

18. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff include the following:

- a. They caused Margarita Casiano to make a false statement implicating plaintiff in the murder;**
- b. They caused Melloney Parker to sign a false statement implicating plaintiff in the murder;**
- c. They caused plaintiff to make a false confession implicating himself in the murder;**
- d. They caused Martinez to make a false confession implicating himself and**

plaintiff in the murder;

e. **They caused Kelly to make a false confession implicating himself and plaintiff in the murder; and**

f. **They caused Melloney Parker, Esteban Rodgriguez, and Jesus Fuentes to make false eyewitness identifications implicating plaintiff in the murder.**

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18.

19. The acts of Guevara and Halvorsen in furtherance of their scheme to frame plaintiff also include the following:

a. **They prepared police reports containing the false story;**

b. **They attested to the false story through the official police reports; and**

c. **They communicated the false story to prosecutors.**

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19.

20. Defendants Vergara, Mohan, Troche, Cappitelli, and Minge either participated in the above-described acts or knew of those acts and failed to intervene to prevent the violation of plaintiff's rights.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20.

21. Defendant Rubinstein, acting in an investigatory capacity, participated in fabricating the false statements signed by Parker, Martinez, and Kelly.

ANSWER: Defendant Rubinstein denies the allegations in paragraph 21.

22. The individual officer defendants and defendant Rubinstein committed the above-described wrongful acts knowing that their acts would cause plaintiff to be held in custody and wrongfully prosecuted.

ANSWER: Defendant Rubinstein denies the allegations in paragraph 22.

23. Plaintiff was charged with murder because of the wrongful acts of the individual officer defendants and Rubinstein.

ANSWER: Defendant Rubinstein denies the allegations in paragraph 23.

24. The prosecution relied at trial on the false story, including plaintiff's coerced confession.

ANSWER: To the extent paragraph 24 alleges conduct by Defendant Rubinstein, Defendant Rubinstein denies the allegations. Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 24.

25. On September 27, 2001, a jury found plaintiff guilty of first-degree murder and robbery, and the Circuit Court of Cook County sentenced plaintiff to concurrent sentences of 30 years for murder and 10 years for robbery.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 25.

26. Martinez and Kelly were also convicted of murder.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 26.

27. Plaintiff was deprived of liberty because of the above-described wrongful acts of the individual officer defendants and defendant Rubinstein.

ANSWER: To the extent paragraph 27 alleges conduct by Defendant Rubinstein, Defendant Rubinstein denies the allegations. Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 27.

III. PLAINTIFF'S EXONERATION

28. Plaintiff challenged the above-described wrongful conviction after learning that lawyers for other wrongfully convicted individuals had discovered repeated misconduct by Guevara.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28.

29. On January 31, 2024, the Circuit Court of Cook County vacated plaintiff's convictions and granted the State's request to dismiss the case.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 29.

30. Kelly's conviction was also vacated on January 31, 2024, and Martinez's conviction had been vacated on January 17, 2023.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 30.

31. Petitioner was released from prison the day after his exoneration; he had been continuously incarcerated for 25 years.

ANSWER: On information and belief, Defendant Rubinstein admits the allegations in paragraph 31.

IV. Official Policies and Customs of the Chicago Police Department Were the Moving Force for the Misconduct of the Individual Officer Defendants

32. At all relevant times, the Chicago Police Department maintained official policies and customs that facilitated, encouraged, and condoned the misconduct of the individual officer defendants.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32.

A. Failure to Discipline

33. At all relevant times, the Chicago Police Department maintained a policy or custom of failing to discipline, supervise, and control its officers. By maintaining this policy or custom, the City caused its officers to believe that they could engage in misconduct with impunity because their actions would never be thoroughly scrutinized.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. Before plaintiff's arrest, policymakers for the City of Chicago knew that the Chicago Police Department's policies or customs for disciplining, supervising, and controlling its officers were inadequate and caused police misconduct.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34.

35. Despite their knowledge of the City's failed policies and customs for disciplining, supervising, and controlling its officers, the policymakers failed to take action

to remedy these problems.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. As a direct and proximate result of the Chicago Police Department's inadequate policies or customs for disciplining, supervising, and controlling its officers and the policymakers' failure to address these problems, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36.

B. Code of Silence

37. At all relevant times, the Chicago Police Department maintained a “code of silence” that required police officers to remain silent about police misconduct. An officer who violated the code of silence would be penalized by the Department.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37.

38. At all relevant times, police officers were trained at the Chicago Police Academy not to break the code of silence. Officers were instructed that “Blue is Blue. You stick together. If something occurs on the street that you don’t think is proper, you go with the flow. And after that situation, if you have an issue with that officer or what happened, you can confront them. If you don’t feel comfortable working with them anymore, you can go to the watch commander and request a new partner. But you never break the code of silence.”

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38.

39. This “code of silence” facilitated, encouraged, and enabled the individual officer defendants to engage in egregious misconduct for many years, knowing that their fellow officers would cover for them and help conceal their widespread wrongdoing.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39.

40. In the case of *Obrycka v. City of Chicago et al.*, No. 07-cv-2372 (N.D. Ill.), a federal jury found that, as of February 2007, “the City [of Chicago] had a widespread custom and/or practice of failing to investigate and/or discipline its officers and/or code of silence.”

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.

41. In December 2015, Chicago Mayor Rahm Emanuel acknowledged the continued existence of the code of silence within the Chicago Police Department; Emanuel, speaking in his capacity as Mayor, admitted that the code of silence leads to a culture where extreme acts of abuse are tolerated.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41.

42. In April 2016, the City’s Police Accountability Task Force found that the code of silence “is institutionalized and reinforced by CPD rules and policies that are also baked into the labor agreements between the various police unions and the City.”

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42.

43. In an official government report issued in January 2017, the United States Department of Justice found that “a code of silence exists, and officers and community members know it.”

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 43.

44. On March 29, 2019, then-Chicago Police Superintendent Eddie Johnson publicly acknowledged the code of silence, stating that some Chicago police officers “look the other way” when they observe misconduct by other Chicago police officers.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 44.

45. In October 2020, then-Chicago Police Superintendent David Brown acknowledged in public comments that the “code of silence” continues to exist.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a

belief as to the truth of the allegations in paragraph 45.

46. The same code of silence in place during the time period at issue in the *Obrycka* case and recognized by the Mayor, Superintendent Johnson, Superintendent Brown, the Task Force, and the Department of Justice was also in place when plaintiff suffered the wrongful arrest, detention, and prosecution described above.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46.

47. As a direct and proximate result of the City's code of silence, the individual officer defendants engaged in misconduct, including but not limited to the wrongful arrest, detention, and prosecution of plaintiff, as described above.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47.

C. The City's Policies and Customs Have Caused Numerous Other Wrongful Convictions

48. Chicago Police Officers, including the individual officer defendants, acting pursuant to defendant City of Chicago's "code of silence" and defective discipline policy have concocted false stories, fabricated evidence, and caused wrongful convictions in many cases.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48.

49. In each case, the officers concocted false stories and fabricated evidence because they knew that there would be no consequences for their misconduct because of defendant City of Chicago's "code of silence" and defective discipline policy.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 49.

50. These numerous cases include, but are not limited to, the following:

- a. In August of 1988, defendant Guevara caused Jacques Rivera to be falsely convicted of murder by coercing a witness to falsely identify Rivera;**
- b. In September of 1989, defendant Guevara caused Juan Johnson to be falsely convicted of murder by coercing a witness to falsely identify Johnson;**
- c. In August of 1990, defendant Guevara caused Jose Maysonet to be falsely convicted of murder by coercing him into falsely confessing;**

- d. In January of 1991, defendant Guevara caused Xavier Arcos to be falsely convicted of murder by coercing a witness to falsely identify Arcos;
- e. In May of 1993, defendants Guevara and Halvorsen caused Armando Serrano and Jose Montanez to be falsely convicted of murder by coercing a witness to falsely testify that Serrano and Montanez admitted to committing the murder;
- f. In May of 1993, defendants Guevara and Halvorsen caused Robert Busto to be falsely convicted of murder by coercing two jailhouse informants to falsely testify that Busto admitted to committing the murder;
- g. In June of 1993, defendant Guevara caused Gabriel Iglesias to be falsely convicted of murder by coercing two witnesses to falsely identify Iglesias and by coercing a jailhouse informant to falsely testify that Iglesias admitted to committing the murder;
- h. In September of 1994, defendant Guevara caused Roberto Almodovar and William Negron to be falsely convicted of murder by coercing a witness to falsely identify Almodovar and Negron;
- i. In May of 1995, defendants Guevara and Halvorsen caused Thomas Sierra to be falsely convicted of murder by coercing false testimony from two witnesses; and
- j. In April of 1998, defendant Guevara caused Gabriel Solache and Arturo Reyes to be falsely convicted of murder and kidnapping by coercing them to give false confessions.

ANSWER: Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50.

V. Claims

51. As a result of the foregoing, the individual officer defendants, the City of Chicago, and defendant Rubinstein caused plaintiff to be deprived of rights secured by the Fourth, Fifth, and Fourteenth Amendments.

ANSWER: Defendant Rubinstein denies any allegations against him. Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 51.

52. As a supplemental state law claim against defendant City of Chicago and defendant Cook County: as a result of the foregoing, plaintiff was subjected to a malicious prosecution under Illinois law.

ANSWER: Defendant Rubinstein denies any allegations against him. Defendant Rubinstein is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 52.

53. Plaintiff hereby demands trial by jury.

ANSWER: Defendant Rubinstein admits Plaintiff seeks a trial by jury but denies committing any acts that would entitle him to a jury trial.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE
Absolute Prosecutorial Immunity

At all relevant times, Jack Rubinstein was an Assistant State's Attorney working for the Cook County State's Attorneys' Office. In this capacity, he performed acts toward initiating a prosecution and presenting the State's case. Because the conduct complained of on the part of ASA Rubinstein arises out of the initiation and prosecution of criminal charges, Plaintiff's claims are barred on the basis of absolute prosecutorial immunity.

SECOND AFFIRMATIVE DEFENSE
Qualified Immunity

At all relevant times, Jack Rubinstein was an Assistant State's Attorney working for the Cook County State's Attorneys' Office. To the extent any of his actions are not protected by absolute prosecutorial immunity, he is protected by qualified immunity as his actions were at all times proper in light of clearly established law.

THIRD AFFIRMATIVE DEFENSE
Sovereign Immunity

Plaintiff's claims against Jack Rubinstein are really claims against a State official based upon his actions as an Assistant State's Attorney, functions that fall within the scope of his employment, and authority as an Assistant State's Attorney.

Plaintiff's claims against Jack Rubinstein relate to the initiation of charges against and the criminal prosecution of Plaintiff. The State's Attorney is the constitutional officer vested with

exclusive discretion in the initiation and management of a criminal prosecution. The prosecution of Plaintiff's case is, therefore, well within the scope of the State's Attorney's authority. The Illinois Court of Claims has sole and exclusive jurisdiction over Plaintiff's state law claims against Jack Rubinstein.

FOURTH AFFIRMATIVE DEFENSE
Failure to Mitigate Damages

Plaintiff has failed to mitigate the damages he claims to have sustained.

FIFTH AFFIRMATIVE DEFENSE
Statute of Limitations – State Law Claims

To the extent that any of Plaintiff's claims pursuant to Illinois State law accrued more than one year prior to the filing of Plaintiff's Complaint, these claims are time barred pursuant to 745 ILCS 10/8-101(a).

SIXTH AFFIRMATIVE DEFENSE
745 ILCS 10/2-202

Jack Rubinstein's acts or omissions at issue were taken by a public employee in the execution or enforcement of a law and did not constitute willful or wanton conduct. Accordingly, Patrick Rubinstein is immune from suit pursuant to 745 ILCS 10/2-202.

SEVENTH AFFIRMATIVE DEFENSE
745 ILCS 10/2-204

Jack Rubinstein is immune from suit pursuant to 745 ILCS 10/2-204 for any injury caused by the act or omission of another person.

EIGHTH AFFIRMATIVE DEFENSE

To the extent any injuries or damages claimed by Plaintiff were proximately caused, in whole or in part, by the negligent, willful, wanton and/or other wrongful conduct on the part of the Plaintiff, any verdict or judgment obtained by Plaintiff must be reduced by application of the

principles of comparative fault, by an amount commensurate with the degree of fault attributed to Plaintiff by the jury in this cause.

NINTH AFFIRMATIVE DEFENSE

Jack Rubinstein had no duty to intervene as alleged in the Complaint.

WHEREFORE, Defendant Jack Rubinstein respectfully requests that this Court enter judgment in his favor and against Plaintiff, Jose Tinajero, that the action be dismissed with prejudice, and that costs be assessed against Plaintiff.

JURY DEMAND

Defendant Rubinstein hereby requests a jury trial of all claims so triable.

Dated: May 13, 2024

Respectfully Submitted,

JAKE RUBINSTEIN

By: /s/ Kenneth M. Battle
One of His Attorneys

Kenneth M. Battle
Michele J. Braun
Christopher Sloss
O'CONNOR & BATTLE, LLP
111 W. Jackson Blvd., Suite 1700
Chicago, Illinois 60604
kbattle@mokblaw.com
mbraun@mokblaw.com
csloss@mokblaw.com

CERTIFICATE OF SERVICE

I, Kenneth M. Battle, an attorney, certify that a copy of the attached instrument was served via electronic case filing to all parties of record, on this 13th day of May, 2024.

/s/ Kenneth M. Battle