

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

NELSON RUIZ COLÓN

Plaintiff

v.

CÉSAR MIRANDA RODRÍGUEZ, et al.

Defendants

CIVIL NO. 15-1754 (FAB)

ANSWER TO THE AMENDED COMPLAINT

TO THE HONORABLE COURT:

COME NOW, defendants Department of Justice, Institute of Forensic Sciences, Hon. César Miranda Rodríguez, José Capó Rivera, and Edda L. Rodríguez Morales, in their official and individual capacities, through the undersigned attorney, who very respectfully states, avers and prays as follows:

GENERAL ALLEGATIONS

1. All conclusions of law and jurisdiction contained in the Complaint are disputed insofar as applicable to the factual allegations herein.
2. All factual allegations contained in the Complaint, except those specifically admitted below, and only as qualified herein, are hereby denied.
3. Appearing defendants reserve the right to amend the answers and affirmative defenses set forth as deemed necessary.

INTRODUCTION

1. Averment 1 does not require a responsive pleading by the appearing defendant inasmuch as it is an allegation of jurisdiction, but in the event that it does, it is denied.

2. Averment 2 is denied.

3. Averment 3 is admitted.

4. Averment 4 is denied.

5. Averment 5 is denied.

6. Averment 6 is does not require a responsive pleading by the appearing defendant, but in the event that it does, it is denied.

7. Averment 7 is admitted.

8. Averment 8 is admitted as to the plaintiff always maintaining his allegation of innocence and that he has filed several requests for post-conviction remedies.

9. Averment 9 is admitted as to the first two sentences. The third sentence is admitted as to former judge Manuel Acevedo Hernández denying the request at the First Instance Court level. Defendants contend that said request was also denied in the merits in Writ of Certiorari by the Puerto Appeals Court and the Supreme Court.

10. Averment 10 is admitted.

11. Averment 11 is denied.

12. Averment 12 is admitted as to the first sentence. The second sentence is

denied for the same arguments presented in the Motion to Dismiss.

13. Averment 13 does not require a responsive pleading by the appearing defendant. Nonetheless, the defendants oppose this contention based on their arguments on the Motion to Dismiss.

JURISDICTION AND VENUE

14. Averment 14 is denied.

15. Averment 15 does not require a responsive pleading by the appearing defendant.

16. Averment 16 does not require a responsive pleading by the appearing defendant.

17. Averment 17 is denied. The defendants oppose this contention based on their arguments on the Motion to Dismiss.

THE PARTIES

18. Averment 18 is admitted.

19. Averment 19 is admitted.

20. Averment 20 is admitted.

21. Averment 21 is admitted.

PLAINTIFF'S BACKGROUND

22. Averment 22 is denied for lack of knowledge and/or information sufficient to form a belief as to the truth or falsity of the averment.

23. Averment 23 is denied for lack of knowledge and/or information sufficient to form a belief as to the truth or falsity of the averment.

24. Averment 24 is denied for lack of knowledge and/or information sufficient to form a belief as to the truth or falsity of the averment.

25. Averment 25 is denied for lack of knowledge and/or information sufficient to form a belief as to the truth or falsity of the averment.

RELATIONSHIP WITH THE VICTIM AND THE CODEFENDANTS

26. Averment 26 is denied for lack of knowledge and/or information sufficient to form a belief as to the truth or falsity of the averment.

27. Averment 27 is denied for lack of knowledge and/or information sufficient to form a belief as to the truth or falsity of the averment.

THE CRIMINAL CASE

28. Averment 28 is denied as no charges for conspiracy were filed.

29. Averment 29 is admitted. The defendants contend that the "drug addict" also testified that he saw the victim being raped and sodomized by the convicted defendants before being murdered by them.

30. Averment 30 is admitted.

31. Averment 31 is admitted.

FORENSIC EVIDENCE

32. Averment 32 is admitted.

33. Averment 33 is denied. From a search of the evidence listed by the Forensic Science Institute, no blood was obtained from the victim finger nails, only hair was present in said finger nails.

34. Averment 34 is admitted.

POST-TRIAL EVIDENCE

35. Averment 35 is admitted as to the first sentence. The second sentence is denied as the State Courts concluded that such statements did not exonerate the plaintiff.

36. Averment 36 is denied for lack of knowledge. Plaintiff claimed so in State Court, in one of the Rule 192.1 motions filed. The Court concluded that said statements were hearsay and invited the convicted defendants to produce the witnesses to testify and be cross examined, and the plaintiff failed to do so.

37. Averment 37 is denied. It is further denied, for lack of knowledge, if Ana Chávez, who is a former girlfriend of Rafael Baucage, studied together with the victim at the Aguadilla UPR Regional College.

38. Averment 38 is denied for lack of knowledge. Plaintiff claimed so in State Court, in one of the Rule 192.1 motions filed. The Court concluded that said statements were hearsay and invited the convicted defendants to produce the witnesses to testify and be cross examined, and the plaintiff failed to do so.

39. Averment 39 is admitted that Luis Piñeiro testified this at the hearing for the second motion under Rule 192.1 filed by the plaintiff in State Court. This issue has been

adjudicated by the First Instance Court and the Puerto Rico Court of Appeals, certiorari was denied by the Supreme Court.

EXHAUSTION OF REMEDIES

40. Averment 40 is denied as stated. The plaintiff has exhausted all remedies in State Court in order to obtain a new trial or the re-testing of the forensic evidence. Pursuant to the Resolutions of the State Courts, the re-testing of the forensic evidence has not been granted, because the plaintiff has failed to satisfy the standard of Rule 192.1 in order to obtain the requested remedy.

41. Averment 41 is admitted. Pursuant to the Resolutions of the State Courts, the re-testing of the forensic evidence has not been granted, because the plaintiff has failed to satisfy the standard of Rule 192.1 in order to obtain the requested remedy.

42. Averment 42 is admitted. The request by the plaintiff has not been answered since he has failed to prevail in his motions under Rule 192.1.

FIRST CAUSE OF ACTION VIOLATION OF CONSTITUTIONAL RIGHTS

43. Averment 43 is denied.

44. Averment 44 is denied for lack of knowledge as to whether Puerto Rico is the only jurisdiction that has not enacted laws providing for post-trial DNA testing.

45. Averment 45 is denied as this is an interpretation of the plaintiff.

46. Averment 46 is denied as this is an interpretation of the plaintiff.

47. Averment 47 does not require a responsive pleading by the appearing

defendant. The concurring opinion of Justice Alito states what it states, but is not the Opinion of the Supreme Court.

48. Averment 48 is this is an interpretation of the plaintiff.

49. Averment 49 is admitted. The Court of Appeals also expressed that "in Osborne, the U.S. Supreme Court held that, in cases where other incriminating evidence and an explanation for the tests results exist, science per se will not prove the innocence of an inmate. Also, it was established that for the mere fact that new technologies that were not available at the time of trial exist, it does not mean that the criminal conviction will be called into doubt."

50. Averment 50 does not require a responsive pleading by the appearing defendant.

51. Averment 51 is denied. Defendants oppose this contention based on their arguments on the Motion to Dismiss.

52. Averment 52 is denied. Defendants oppose this contention based on their arguments on the Motion to Dismiss.

SECOND CAUSE OF ACTION - DAMAGES

53. Averment 53 is denied.

54. Averment 54 is denied. The plaintiff is imprisoned after being found guilty by a jury of his peers, and remains imprisoned because of the denials of State Courts to his three motions for new trial. The appearing defendants had nothing to do with it.

55. Averment 55 is denied. The plaintiff is imprisoned after being found guilty by a jury of his peers, and remains imprisoned because of the denials of State Courts to his three motions for new trial. The appearing defendants had nothing to do with it.

56. Averment 56 is denied. The plaintiff is imprisoned after being found guilty by a jury of his peers, and remains imprisoned because of the denials of State Courts to his three motions for new trial. The appearing defendants had nothing to do with it. Plaintiff is not entitled to damages for the conclusion of the criminal case against him, and the rulings of his motions for new trial by the State Courts.

AFFIRMATIVE DEFENSES

1. This Honorable Court lacks jurisdiction over the subject matter in the instant action.

2. The complaint fails to state a claim upon which relief may be granted against the defendant.

3. There is no pendent and/or supplement jurisdiction over the subject matter as to any claims under the constitution and/or laws of the Commonwealth of Puerto Rico.

4. There is no venue.

5. The complaint fails to state a claim cognizable under any applicable federal or state statute.

6. The complaint fails to state specific acts of the appearing defendants which amount to a deprivation of any of plaintiffs' constitutional, federal or Commonwealth's

protected rights.

7. The complaint fails to state a claim cognizable under any supplemental state law claims.

8. The complaint fails to state the necessary elements under 42 U.S.C. § 1983, and Fourth and Fourteenth Amendments of the Constitution of the United States.

9. The appearing defendants are not liable under 42 U.S.C. § 1983, and Fourth and Fourteenth Amendments of the Constitution of the United States, because their conduct did not reflect a reckless disregard to plaintiff's constitutional rights.

10. Plaintiff has not been deprived of any federally protected right or privilege by the appearing defendants.

11. The complaint fails to allege any specific acts or omissions as required by 42 U.S.C. § 1983, and Fourth and Fourteenth Amendments of the Constitution of the United States, therefore, no relief can be granted.

12. The complaint fails to state the type of ill motive or intent actionable under 42 U.S.C. § 1983, and Fourth and Fourteenth Amendments of the Constitution of the United States.

13. The appearing defendants, at all times, acted according to law and in good faith in the performance of their duties.

14. The appearing defendants acted at all times within the established framework of their authority and duties and neither negligently nor intentionally violated any of plaintiff's

constitutional rights.

15. The appearing defendants were not personally involved in the alleged violations of plaintiffs' protected rights.

16. Plaintiffs' alleged damages are preexistent.

17. The complaint fails to state specific facts adequate to show that plaintiffs suffered damages.

18. The appearing defendants are entitled to qualified immunity.

19. The instant action is barred by the Eleventh Amendment.

20. The instant case is time barred.

21. In the hypothesis that plaintiff is entitled to any relief, which the appearing defendants deny, plaintiff is not entitled to recover under 42 U.S.C. § 1983, and Fourth and Fourteenth Amendments of the Constitution of the United States, nor is he entitled to punitive damages.

22. In the hypothesis that plaintiff is entitled to any relief, which the appearing defendants deny, he has failed to mitigate damages.

23. The complaint fails to state specific facts adequate to show that plaintiff suffered any damages as a result of the alleged official acts of the appearing defendants. Therefore, Plaintiff is not entitled to any damages or any other relief.

24. In the hypothesis that Plaintiff is entitled to any relief, which the appearing defendants deny, then the damages claimed are not proportional to what allegedly

happened to plaintiff and what he allegedly suffered as the result of the incident.

25. Plaintiff has a duty to mitigate damages and the alleged damages should be denied or reduced to the extent that he failed to fulfill such a duty.

26. Plaintiff's claims are precluded by the doctrines of abstention, *res judicata*, Rooker-Feldman abstention, laches, claim preclusion, issue preclusion and/or collateral estoppel.

27. Plaintiff has contributed to his damages, if any.

28. The appearing defendants' actions, if any, were objectively reasonable viewed in the light of the facts and circumstances confronting them.

29. There is no supplemental jurisdiction over the subject matter as to any claims under the Constitution or laws of the Commonwealth.

30. There is no causal link between the alleged conduct and the alleged deprivation of plaintiff's federal and/or state protected rights.

31. Plaintiff has failed to join indispensable parties.

32. Appearing defendants did not have a culpable state of mind.

33. Appearing defendants did not conspire against the plaintiff.

34. Plaintiff's damages claims are speculative and non-existent.

35. Plaintiff is not entitled to special damages for mental anguish and, emotional distress and humiliation because they were not properly pleaded.

36. The complaint claims against the appearing defendants do not rise to the level

of a constitutional violation; therefore, it is not cognizable under 42 U.S.C. § 1983, and Fourth and Fourteenth Amendments of the Constitution of the United States.

37. There is no causal connection between any acts and omissions that may be attributed to the appearing defendants and the alleged damages suffered by the Plaintiff.

38. The damages claimed by plaintiffs are excessive and unreasonable.

39. Plaintiff is not entitled to recover attorney fees, expert witness fees, costs and other litigation expenses.

40. The appearing defendant cannot be held liable for acts, omissions, fault or negligence, if any, of third parties that are not properly included as defendants in this case.

41. The appearing defendants hereby reserve the right to amend the pleading, to bring any other party, and/or to raise any other affirmative defense, according to the established procedure, that may arise as a result of the discovery.

42. Appearing defendants do not waive any other affirmative defense that may arise during discovery proceedings.

WHEREFORE, appearing codefendants, respectfully request and pray this Honorable Court that the complaint be dismissed, Plaintiffs be charged with costs and attorney's fees and grant any other relief that may be deemed proper.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record to their addresses of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of September 2015.

CÉSAR MIRANDA RODRÍGUEZ
Secretary of Justice

MARTA ELISA GONZÁLEZ Y.
Deputy Secretary
In Charge of Civil Matters

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