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APPELLATE COURT 2ND DISTRICT

**IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT**

**PEOPLE OF THE STATE OF ILLINOIS and
THE CITY OF ELGIN**

Plaintiffs-Appellees,

v.

ELIAS JUAREZ, SAUL JUAREZ, OSCAR SANCHEZ,

Defendants-Appellants.

Appeal from the Circuit Court of the Sixteenth Judicial Circuit,
Kane County, Illinois
No. 10 CH 4151
The Honorable David Akemann, Judge Presiding

RULE 367 PETITION TO MODIFY JUDGMENT

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Second Appellate Court Order 2019 IL App (2d) 180610-U.....	2
Supreme Court Rule 213.....	2
Supreme Court Rule 219.....	2
Supreme Court Rule 341(a),(b),(c),(d),(h)(1).....	5
Supreme Court Rule 342(a).....	5

ARGUMENT

NOW COME the Defendants-Appellants, Elias Juarez, Saul Juarez, Oscar Sanchez, and Ruben Sanchez, by and through their attorneys, Mauck & Baker, LLC, and pursuant to Ill. Sup. Ct. Rule 367 and for their Motion to Modify the May 13, 2019, Judgment. This Court held, *inter alia*, that the Sixteenth Judicial Circuit Court “erred in denying . . . sanctions against the State, without first holding a hearing on when the City of Elgin and, separately, the State knew or should have known of the purging of Defendants-Appellants’ names from the police gang roster.” 2019 IL App (2d) 180610-U, 1 (“Order”). The Court also ruled:

The record is silent as to when the City of Elgin and, separately, the State became (or should have become) aware of the purging of defendants’ names from the police’s gang roster. We remand for the court to assess all relevant factors, including when the City of Elgin and the State became (or should have become) aware of the purging of the gang roster, whether or not there was a Rule 213 violation, and, if so, whether Rule 219 sanctions are warranted.

Court Order at p.46.

However, delving deeper, the intricacies of the record are actually quite definitive regarding what and when Plaintiffs-Appellees knew about the complete removal of Defendants-Appellants from gang roster updates. The following facts are already in the Court Record:

- Officer Wolek, of the City of Elgin, Plaintiffs-Appellees’ sole witness, responded in the Initial Answers to Defendant’s Interrogatories for each of the Defendants-Appellants that they were placed on the gang roster’s inactive list as of August 15, 2012. E 82, E 85, E 88, E 91.
- In his deposition on March 4, 2013, Officer Wolek, testified that the Defendants-Appellants were on the gang roster’s inactive list for “possibly at least a year.” R 39. This

puts the Defendants-Appellants on the inactive list beginning on March 4, 2012 (one year before the deposition of Wolek).

- Officer Wolek also testified in the March 4th, 2013, deposition that suspected gang members are removed from the gang roster's inactive list after two years. R 30.
- Thus, according to the Initial Answers to Defendants' Interrogatories, the Defendants-Appellants were fully removed from the gang roster no later than August 15, 2014. E 82, E 85, E 88, E 91. According to Officer Wolek's deposition testimony, they were fully removed from the gang list no later than March 4, 2014. R 30, R 39.
- Patrick Crimmins, Esq., lawyer representing both the City of Elgin and the State, was present at Officer Wolek's deposition on March 4, 2013. R 28. Thus Plaintiffs and Mr. Crimmins knew about the two-year removal policy and, therefore, they also knew of the Defendants-Appellants' removal from the gang roster no later than August 15, 2014¹.
- On June 11, 2013, the State of Illinois and City of Elgin filed a 12 page Supplemental Answers to S.CT.Rule 213(f)(3) Interrogatories. Exhibit A, C 2506. In response to question three, which asked for identification of the subjects for which each Controlled Witness will testify, despite naming five witnesses (Wolek was the only one of the five to testify at trial) and specifying twelve alleged Latin King members, none of the four Defendants-Appellants are named anywhere. Thus, Exhibit A is further evidence that Plaintiffs-Appellees and Mr. Crimmins knew that the Defendants-Appellants were not on the gang roster.
- On August 9, 2016, the City of Elgin and State of Illinois filed a Motion to Quash Subpoena Duces Tecum after the roster had been sought by Defendants-Appellants and they refused to turn over a copy to Defendants-Appellants a copy of the current gang

¹ In their Response[s] to Interrogatories, Ruben Sanchez, Oscar Sanchez, and Elias Juarez declared that they left the Latin Kings in May of 2009, November of 2009, and August of 2009, respectively. Saul Juarez declared in his Response to Interrogatories that he was never a member of the Latin Kings.

roster. Exhibit B, C 3623. By taking legal action to prevent the release of the gang roster, Plaintiffs were necessarily reminded that they had no evidence whatsoever of Defendants-Appellants' being even inactive in any gang. Both the Plaintiffs-Appellees and their attorney, Mr. Crimmins, knew or should have known that the gang roster, at that time, had long since removed Defendants-Appellants' names. There was no order provided for this Motion. There is nothing in the Record showing the Plaintiffs-Appellees called it for hearing. They ever produced the roster to the Defendants-Appellants.

Because Plaintiffs-Appellees refused to furnish a copy of the gang roster, Defendants-Appellants filed a Motion in Limine on December 30, 2016 as the trial approached to avoid surprise evidence. Exhibit C, C 3615-16. The Record contains no ruling on that Motion, apparently because the court was postponing a ruling until such time as the gang roster was offered in evidence. It never was. However, the disposition of the Motion is not what matters. The existence of the Motion is additional clear evidence again that Plaintiffs-Appellees knew Defendants-Appellants were not on the gang roster.

The evidence above is already in the Court Record and establishes conclusively that the Plaintiffs-Appellees knew that the Defendants-Appellants were no longer on the gang roster as of August 15, 2019, at the latest. Thus, there is no need to remand to the lower court for determination of the date of Plaintiffs-Appellees' knowledge.

As part of the rule, the Defendants-Appellants also request \$5,000 for each Defendant-Appellant in damages as was proved up at trial and make an award of attorney's fees for the period from August 15, 2014 to the conclusion of this litigation.

WHEREFORE, the Defendants-Appellants, Elias Juarez, Saul Juarez, Oscar Sanchez and Ruben Sanchez, respectfully request that this Honorable Court rule that the Plaintiffs-Appellees,

the City of Elgin and the State of Illinois, knew or should have known that the Defendants-Appellants were removed from the gang roster by August 15, 2014, award each Defendants-Appellants \$5,000 in damages, and direct the trial court to establish and award reasonable attorney's fees and expenses accrued on or after August 15, 2014.

I, John W. Mauck, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the rule 341(d) cover, the Rule 341(h)(1) statements of points and authorities, the Rules 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 39 pages.

/s/ John W. Mauck

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