On April 2, 2012, in Rehberg v. Paulk, the U.S. Supreme Court (9 to 0) held that a person indicted by a grand jury, but not convicted, cannot sue a witness who testified before the grand jury. “This case requires us to decide whether a ‘complaining witness’ in a grand jury proceeding is entitled to the same immunity in an action under 42 U. S. C. §1983 as a witness who testifies at trial. We see no sound reason to draw a distinction for this purpose between grand jury and trial witnesses.”


Facts:

“Petitioner Charles Rehberg, a certified public accountant, sent anonymous faxes to several recipients, including the management of a hospital in Albany, Georgia, criticizing the hospital’s management and activities. In response, the local district attorney’s office, with the assistance of its chief investigator, respondent James Paulk, launched a criminal investigation of petitioner, allegedly as a favor to the hospital’s leadership. Respondent testified before a grand jury, and petitioner was then indicted for aggravated assault, burglary, and six counts of making harassing telephone calls. The indictment charged that petitioner had assaulted a hospital physician, Dr. James Hotz, after unlawfully entering the doctor’s home. Petitioner challenged the sufficiency of the indictment, and it was dismissed.

A few months later, respondent returned to the grand jury, and petitioner was indicted again, this time for assaulting Dr. Hotz on August 22, 2004, and for making harassing phone calls. On this occasion, both the doctor and respondent testified. Petitioner challenged the sufficiency of this second indictment, claiming that he was ‘nowhere near Dr. Hotz’ on the date in question and that ‘[t]here was no evidence whatsoever that [he] committed an assault on anybody.’ 611 F. 3d 828, 836 (CA11 2010). Again, the indictment was dismissed.

While the second indictment was still pending, respondent appeared before a grand jury for a third time, and yet another indictment was returned. Petitioner was charged with assault and making harassing phone calls. This final indictment was ultimately dismissed as well.”

Civil lawsuit filed:

“Petitioner then brought this action against respondent under Rev. Stat. §1979, 42 U. S. C. §1983. Petitioner alleged that respondent conspired to present and did present false testimony to the grand jury. Respondent moved to dismiss, arguing, among other things, that he was entitled to absolute immunity for his grand jury testimony. The United States District Court for the Middle District of Georgia denied respondent’s motion to dismiss, but the Court of Appeals reversed, holding, in accordance with Circuit precedent, that
The respondent was absolutely immune from a §1983 claim based on his grand jury testimony.”

The Court of Appeals upheld the trial judge.

U.S. Supreme Court:

“The factors that justify absolute immunity for trial witnesses apply with equal force to grand jury witnesses. In both contexts, a witness’ fear of retaliatory litigation may deprive the tribunal of critical evidence. And in neither context is the deterrent of potential civil liability needed to prevent perjurious testimony. In Briscoe, the Court concluded that the possibility of civil liability was not needed to deter false testimony at trial because other sanctions—chiefly prosecution for perjury—provided a sufficient deterrent. Id., at 342. Since perjury before a grand jury, like perjury at trial, is a serious criminal offense, see, e.g., 18 U. S. C. §1623(a), there is no reason to think that this deterrent is any less effective in preventing false grand jury testimony.”

Legal Lessons Learned: Fire & EMS personnel can use this decision to “encourage” witnesses to come forward without fear of being sued if the defendant is not convicted.