

No. 122654

**IN THE
SUPREME COURT OF ILLINOIS**

ALAN BEAMAN,)	On Appeal from the Illinois
)	Appellate Court, Fourth District,
Plaintiff-Appellant,)	No. 4-16-0527,
)	
v.)	From the Circuit Court of
)	McLean County, Illinois,
TIM FREESMEYER, DAVE)	Eleventh Judicial Circuit,
WARNER, FRANK ZAYAS,)	No. 14 L 51,
and the TOWN OF NORMAL,)	
ILLINOIS,)	Honorable Richard L. Broch,
)	Judge Presiding.
Defendants-Appellees.)	

**BRIEF OF FORMER PROSECUTORS AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFF-APPELLANT ALAN BEAMAN**

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INTEREST OF *AMICI CURIAE*

Amici curiae are former state and federal prosecutors in Illinois. They have vast experience in our criminal justice system, and they have devoted decades to working with law enforcement in Illinois to investigate and prosecute criminal cases.

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William Conlon is senior counsel at Sidley. Prior to joining Sidley, Mr. Conlon was an Assistant United States Attorney in Chicago, where he served as Chief of the Civil Division of the United States Attorney's Office. Mr. Conlon has served as a member of the City of Chicago Police Board, the Illinois State Board of Ethics, the City of Chicago Board of Ethics, and the Illinois Judicial Inquiry Board.

Tyrone Fahner is a partner and former chairman of Mayer Brown. Mr. Fahner was formerly the Attorney General of Illinois. He also has served in the past as Director of the Illinois Department of Law Enforcement and as an Assistant United States Attorney for the Northern District of Illinois.

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Ronald Safer is a partner at Riley Safer Holmes & Cancila. Between 1989 and 1999, Mr. Safer was an Assistant United States Attorney for the Northern District of Illinois, where he served for a period as Chief of the Criminal Division. In that capacity, Mr. Safer successfully prosecuted more than 100 criminal cases.

John Schmidt is a partner at Mayer Brown. From 1994 to 1997, Mr. Schmidt was the Associate Attorney General of the United States with responsibility for the criminal and civil enforcement of all U.S. civil rights, antitrust, tax and environmental laws. His responsibilities also included the civil representation of the U.S. Government in all litigation challenging actions by federal officials.

Jeffrey Singer is a founder and currently of counsel to Segal McCambridge Singer & Mahoney, in its Chicago office. He served as a Cook County Assistant State's Attorney from 1976 until early 1980, trying dozens of felony trials before the court and juries in Cook County.

James Thompson is a former chairman and of counsel to Winston & Strawn. Mr. Thompson was the 37th and longest-serving Governor of Illinois. Prior to becoming governor, Mr. Thompson was the United States Attorney for the Northern District of Illinois, he argued more than 200 cases before this Court, and was an Assistant Attorney General of Illinois and an Assistant State's Attorney in Cook County. Mr. Thompson has served as chairman of the National Governors' Association, co-chairman of the Attorney General's Task Force on Violent Crime, chairman of the President's Intelligence Oversight Board, and a commissioner on the 9-11 Commission, among many other positions in public service.

Scott Turow is a partner at Dentons. Between 1978 and 1986, Mr. Turow was an Assistant United States Attorney in Chicago, where he was a lead prosecutor in Operation Greylord. Since then, Mr. Turow has served as a member of the U.S. Senate Nominations Commission for the Northern District of Illinois, the Illinois State Police Merit Board, the Illinois Commission on Capital Punishment, and the Illinois Executive Ethics Commission. He is the award-winning author of the novels *Presumed*

Innocent, The Burden of Proof, Pleading Guilty, and Personal Injuries, among other books.

Dan Webb is co-executive chairman of Winston & Strawn. Prior to joining Winston & Strawn, Mr. Webb was the United States Attorney for the Northern District of Illinois in Chicago. He also successfully prosecuted retired Admiral John Poindexter in the Iran-Contra affair. Mr. Webb has been appointed to act as a Special Prosecutor on a number of occasions in high-profile legal matters of great public interest.

As experienced prosecutors and practitioners in our state's criminal justice system, *amici* have an abiding interest in ensuring that police officers are properly incentivized to provide a complete and unbiased disclosure of evidence to the prosecutors and courts responsible for the fair adjudication of criminal cases. In addition, as former prosecutors, *amici* can provide this Court with important insight about how its decision will affect investigations and cases pending in the criminal justice system. In so doing, *amici* offer a perspective not presented by the parties.

ARGUMENT

Alan Beaman's criminal conviction was caused by a corruption of the criminal process, in which police officers participating in his prosecution abandoned their role as unbiased investigators and pursued Beaman at all costs, suppressing important evidence about an alternative perpetrator. This

brief argues that malicious prosecution suits help to prevent this type of injustice and ensure that our criminal justice system functions properly.

Prosecutors in Illinois depend each day on police to provide timely and accurate information about investigations. Full disclosure of evidence, open communication of leads, and fulsome reporting allow prosecutors to pursue the correct suspects and to remove dangerous criminals from the community. However, when police provide biased or unreliable information, prosecutors may inadvertently obtain improper indictments or pursue unsupported convictions without any way to identify or correct errors. Liability for malicious prosecution deters this type of investigative misconduct.

But the lower court, responding to a concern about police officer liability, drastically limited malicious prosecution actions. It defined the “commencement or continuation” element of the tort in a way that renders it nearly impossible for courts to find that police investigators are responsible for commencing or continuing a criminal proceeding. That decision contradicts longstanding precedent and removes this important deterrent against investigative misconduct. Unless it is reversed, the lower court’s decision will have a lasting negative impact on the ability of prosecutors and courts to ensure that criminal justice is fairly administered in Illinois.

This Court should reverse and hold that any police officers who play a significant role in a prosecution “commence or continue” the criminal

proceeding for purposes of malicious prosecution. Other elements of the tort will protect honest police officers from liability.

I. Beaman's Wrongful Conviction Was Caused by A Biased Investigation by Police Officers

Beaman was wrongly convicted of first-degree murder and spent more than 12 years in prison before this Court vacated his conviction, holding unanimously that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), when it suppressed material evidence. *People v. Beaman*, 299 Ill.2d 56, 59 (2008). After this Court's decision, prosecutors dropped all charges against Beaman, R. 8912, the Circuit Court for the Eleventh Judicial District issued him a certificate of innocence, R. 3479-80, and the Governor of Illinois pardoned him based on his innocence. Beaman filed suit against the police officers whose misconduct caused his wrongful conviction.

As this Court observed, Beaman's conviction was the product of a biased investigation by police officers. Though the police pursued Beaman doggedly, in fact another man named John Murray was the far more likely suspect in Jennifer Lockmiller's murder. 229 Ill. 2d at 74-75. Murray was a former sexual partner of Lockmiller and had tried to rekindle their relationship around the time she was killed. *Id.* at 76; R. 6440, 6469, 6474, 6482-83. He was a serial abuser of women, arrested for domestic battery shortly after the murder for repeatedly and severely beating a different girlfriend. *Beaman*, 229 Ill. 2d at 76; R. 7419-21, 7486-96. Murray's violent behavior was attributed to years of steroid use, which made him physically

imposing, violent, and erratic. *Beaman*, 229 Ill. 2d at 76; R. 7486-96, 7522, 7563. He was also a drug dealer who sold drugs to Lockmiller and was trying to collect a drug debt from her at the time she was killed. *Beaman*, 229 Ill. 2d at 76-77; R. 6446-47, 6669. Murray had no alibi for the day of the crime and lived close to crime scene.

During interviews with the police, Murray was nervous and evasive. R. *Beaman*, 229 Ill. 2d at 67. He lied to them about where he had been on the day of the murder and about his relationship with Lockmiller. *Id.* When police attempted to administer a polygraph examination, Murray evaded the test by refusing to cooperate with the polygrapher's instructions. *Beaman*, 229 Ill. 2d at 76; R. 6455-59, 6461, 6463, 6469, 6669-70.¹ Unsurprisingly, police identified Murray as a suspect as they uncovered the above-stated evidence during their investigation. Yet they pursued Beaman single-mindedly, and they suppressed important evidence implicating Murray throughout the criminal case. *Beaman*, 229 Ill. 2d at 68, 74-76.

The evidence implicating Beaman was exceedingly thin. *Beaman*, 229 Ill. 2d at 77-78.² Had suppressed evidence about the investigation of Murray been disclosed, it would have allowed Beaman to establish that there was a

¹ Murray's evasion continued during this civil lawsuit, in which he invoked his Fifth Amendment right not to incriminate himself in response to questions about his involvement in Lockmiller's murder.

² Beaman was irrefutably in a different city, 130 miles away, at the time of the crime. There was no physical evidence connecting him to the killing, and no witness who suggested he was the perpetrator. In police interviews and recorded conversations, Beaman strenuously denied involvement in the crime, even when threatened with the death penalty.

more likely perpetrator of the crime. *Beaman*, 229 Ill. 2d at 76-77. But instead, the biased police investigation carried over to the prosecution of the case. Contrary to the evidence, the State argued at Beaman's criminal trial that all alternative suspects had been eliminated, *id.* at 79-80, and it moved *in limine* before trial to exclude all evidence relating to Murray on the ground that he had "nothing to do with [the] case," *id.* at 59-60. That was not true.

If the police had conducted a legitimate investigation of Lockmiller's murder and disclosed what they discovered, then the criminal court could have judged the evidence fairly, neutral prosecutors could have made unbiased decisions about whether to drop charges (as they later did), and Beaman could have defended himself. Effective tort law plays an important role in ensuring that investigations are conducted properly, evidence is disclosed, and miscarriages of justice like Beaman's conviction are avoided.

II. The Decision Below Contradicts Established Precedent

But in this malicious prosecution suit, the appellate court concluded that Beaman had not raised a dispute of fact about whether the police officer defendants "commenced or continued" the criminal case against Beaman. *See Hurlbert v. Charles*, 238 Ill. 2d 248, 255 (2010) (setting out the five elements of malicious prosecution, including commencement or continuation of a criminal proceeding).

To make that showing, the lower court held, Beaman had to "establish that officer[s] pressured or exerted influence on the prosecutor's decision or

made knowing misstatements upon which the prosecutor relied.” *Beaman v. Freesmeyer*, 2017 IL App (4th) 160527, ¶ 58. The court’s decision rested heavily on the observation that “[T]he State’s Attorney, not the police, prosecutes a criminal action,” *id.* ¶ 57 (quoting *Colbert v. City of Chicago*, 851 F.3d 649 (7th Cir. 2017)), and a need to “protect[] officers in their performance of their police work,” *id.* ¶ 58.

The lower court’s definition is far too restrictive. The result under its rule is that police who conduct biased investigations are rarely if ever liable for malicious prosecution.

Contrary to the lower court’s restrictive standard, this Court established long ago that a person can be liable for commencing or continuing a malicious prosecution even if they do not ultimately wield prosecutorial power or actively deceive prosecutors. *See Gilbert v. Emmons*, 42 Ill. 143, 147 (1866). Until now, appellate courts have adhered consistently to this standard, holding that a defendant “commences or continues” criminal proceedings if he “play[s] a significant role in causing the prosecution of the plaintiff,” *Bianchi v. McQueen*, 2016 IL App (2d) 150646, ¶¶ 72-73; *see also Rodgers v. Peoples Gas, Light & Coke Co.*, 315 Ill. App. 3d 340, 348-49 (2000); *Frye v. O’Neill*, 166 Ill. App. 3d 963, 975 (1988) (citing 54 C.J.S. MALICIOUS PROSECUTION §§ 18, 19 (1987)).

This established definition of what it means to “commence or continue” a proceeding reflects that the fundamental purposes of tort law are to hold

wrongdoers liable for foreseeable consequences of their actions and to deter wrongful conduct. *See Siemieniec v. Lutheran Gen. Hosp.*, 117 Ill. 2d 230, 259 (1987); REST. (2D) TORTS § 901 (1979). The proper definition of “commence or continue” notably does not focus at all on the job title of a particular defendant. *See Rodgers*, 315 Ill. App. 3d at 348–49 (“Liability for malicious criminal prosecution is not confined to situations where the defendant signed a complaint against the plaintiff.”); *Frye*, 166 Ill. App. 3d at 975 (same). Instead, it calls for a commonsense assessment of which actors in the criminal justice system have materially influenced the criminal proceeding. Properly defined, the set of people who may be held liable includes police officers who play a significant role in the criminal case.

If this correct standard had been applied here, the lower courts readily would have concluded that Beaman had presented ample evidence that the police defendants played a significant role in his prosecution. Their biased investigation focused exclusively on Beaman, and they suppressed important evidence about a key alternative suspect. That investigative misconduct derailed any possibility of a fair prosecution, as this Court later found. But the lower court instead decided to apply a much narrower standard that shields this misconduct from liability, effectively approving it as within the appropriate bounds of a properly functioning justice system.³

³ *Amici* note that, even using the lower court’s improper definition of “commence or continue,” Beaman can establish “that officer[s] pressured or exerted influence on the prosecutor’s decision or made knowing

III. The Decision Below Will Adversely Impact Our Criminal Justice System

Allowing for liability where police play a significant role in a prosecution helps to guarantee that the criminal justice system functions properly. The lower court's definition of "commence or continue," in contrast, will undermine the accurate and effective prosecution of crimes.

As the lower court recognized, prosecutors in Illinois are by law responsible for the official commencement of most criminal actions. *See* 725 ILCS 5/111-1 *et seq.* But to execute that responsibility, prosecutors depend heavily on information provided to them by the police with whom they work. Police have access to evidence and witnesses long before prosecutors; they conduct searches of places and citizens; they call upon laboratories to test and develop new evidence; and they have unlimited discretion in deciding what leads to pursue and what evidence to ignore. Given this disparity in access to evidence, and in order to bring the correct suspects to justice, prosecutors must be assured that all of the evidence is being turned over to them by police, and that their investigation represents an evenhanded and unbiased evaluation of the evidence.

misstatements upon which the prosecutor relied." *Beaman*, 2017 IL App (4th) 160527, ¶ 58. They did so when they hid Murray's polygraph examination, which this Court later found was material. *Beaman*, 229 Ill. 2d at 76-77. By concluding otherwise, the lower court not only applied the wrong legal standard, it blessed the police defendants' withholding of key evidence about the alternative suspect from prosecutors.

At the same time, a prosecutor's reliance on the police means that it is not just extreme deception by police that will undermine a criminal prosecution. On the contrary, a police investigator's singular focus on a particular suspect may color all the evidence in the case, even though nothing has been withheld from prosecuting authorities. Police may focus on one lead to the exclusion of other evidence that might otherwise have informed prosecutorial decision making. At the charging stage, prosecutors depend upon candor and forthrightness from police investigators in assessing the quality of the evidence and in determining whether further investigation is warranted to rule out others as possible suspects. At trial, it is similarly crucial that prosecutors have a complete understanding of the nature and extent of the investigation performed by the police, including all individuals who were subjects of that investigation. Biased investigations can induce prosecutors to charge and prosecute the wrong suspects, even if the police did not exercise overt influence in the decision to prosecute. A biased investigation itself can cause a wrongful prosecution.

Requiring police to investigate neutrally and provide unbiased evidence to prosecutors is necessary from a case management perspective as well. There are far more police officers investigating crimes than prosecutors who charge suspects and bring those cases to trial. Take Cook County for example, where roughly 30,000 felonies are investigated each year by approximately 12,000 police officers, but fewer than 1,000 prosecutors charge

and try those cases. Prosecutorial oversight and policies alone could never ensure that this huge number of police officers all accurately and completely report investigative findings to prosecuting authorities. Instead, sound oversight and policies operate in conjunction with background law (statutes and tort law) to promote legitimate investigations.

It is important to consider also that legitimate investigations are the norm in our criminal justice system and that investigative misconduct is exceptionally rare by comparison. Common-law rules imposing liability for malicious prosecution principally work to ensure that “bad apple” police officers are deterred from engaging in biased investigations, manufacturing false evidence, or suppressing material evidence. These tort rules have no real effect on the vast majority of police officers, who always conduct their investigations fairly and in good faith.

When investigative misconduct occurs, however, it often has profound consequences. A study of nearly 900 cases in which individuals were exonerated after being wrongly convicted of crimes they did not commit revealed that nearly half involved “official misconduct,” most commonly suppression of evidence.⁴ Where critical investigative information is suppressed by the police, there must be some consequence or else bad police officers are free to supplant prosecutors as the prosecutorial decision makers

⁴ GROSS & SHAFFER, EXONERATIONS IN THE UNITED STATES, 1989-2012, at 40, 65-66 (2012), https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf.

in the criminal justice system. Tort law deters this behavior and ensures that police provide accurate evidence to prosecutors, who in turn retain control of prosecutorial decisions.⁵

In Beaman's case, there was clear bias in the police defendants' investigation, and the evidence they learned about a key alternative suspect was suppressed. This investigative misconduct caused Beaman's prosecution and his lengthy wrongful conviction, which this Court unanimously reversed more than a decade later. Today, no perpetrator has been brought to justice in Lockmiller's murder. This injustice was sanctioned by the court below, which defined "commenced or continued" in a way that rendered the police defendants involved in this prosecution immune for their misconduct. Worse yet, the lower court's decision incentivizes similar biased investigations by bad police officers in the future.

In contrast, the established rule that police "commence or continue" a prosecution when they play a significant role in it (and may be held liable in that circumstance for malicious prosecution) will incentivize officers like those in Beaman's case to conduct unbiased investigations and to disclose all

⁵ The lower court paradoxically focused on the fact that prosecutors are required by statute to commence prosecutions as a reason to define the "commencement" element of malicious prosecution narrowly to exclude police. *Beaman v. Freesmeyer*, 2017 IL App (4th) 160527, ¶ 57. By improperly equating these separate concepts, the lower court effectively rendered malicious prosecution a dead letter: police are never liable for commencing a malicious prosecution and prosecutors who do are immune. And that lack of liability for police would mean that officers could conduct biased investigations and displace prosecutors as the prosecutorial decision makers in our criminal justice system. There would be no check to rein them in.

relevant evidence to prosecutors. When prosecutors are educated about the entirety of a police investigation, they are in turn placed in the best position to bring accurate charges, to remove criminals from the streets, and to secure sound convictions. The criminal justice system is more efficient and fair as a result. Wrongful prosecutions, convictions, and other injustices are avoided.

IV. Legitimate Police Investigators Are Protected from Liability

Animating the appellate court’s decision to define “commence or continue” narrowly was a concern that the established definition discussed above would “expose[] police officers to undue malicious-prosecution cases for performing usual investigatory police work when a prosecutor makes a mistaken decision to pursue a conviction.” *Beaman*, 2017 IL App (4th) 160527, ¶ 54. *Amici* take seriously the concern that ordinary police work should not lead to civil liability. Criminal investigations are difficult work and police must not be chilled in their pursuit of suspects during legitimate investigations.

However, the answer to this concern is not to define the set of people who may be liable for malicious prosecution so narrowly that police are never included. A balance must be struck. Defining “commence or continue” to include all people who play a significant role in the prosecution ensures that actual participants in criminal prosecutions are subject to liability if they engage in investigative misconduct. At the same time, other elements of the tort—*i.e.*, the requirements that plaintiffs prove malice on the part of the

defendant, a lack of probable cause, and termination of the proceedings in their favor—each guarantee that police who play a significant *and legitimate* role in criminal investigations will not face civil liability.

The lower court did not appreciate the protection provided by these other elements. It struck the wrong balance, narrowing the definition of the “commence or continue” element to such an extent that the tort of malicious prosecution will cease to have deterrent effect, and the job of prosecutors and courts to ensure just criminal prosecutions will become more difficult.

CONCLUSION

Amici request that this Court hold that the “commencement or continuation” element of malicious prosecution requires a showing that the defendant played a significant role in commencing or continuing the prosecution. Beaman is entitled under that standard to a trial. For all of the foregoing reasons, this Court should reverse the judgment of the appellate court and remand the case for further proceedings.

DATED: January 16, 2018

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF COMPLIANCE

I, Steven Art, an attorney, hereby certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 17 pages.

Under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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PLEASE TAKE NOTICE that on January 16, 2018, the undersigned served and filed by electronic means the foregoing BRIEF OF FORMER PROSECUTORS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT ALAN BEAMAN with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

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CERTIFICATE OF SERVICE

I, Steven Art, an attorney, hereby certify that on January 16, 2018, the foregoing BRIEF OF FORMER PROSECUTORS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT ALAN BEAMAN were filed by electronic means with the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701. I further certify that the same were served by electronic transmission on:

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Under penalties provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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