No. 122654

IN THE

SUPREME COURT OF ILLINOIS

ALAN BEAMAN,	)	
	)	**Appeal from the Appellate**
Plaintiff-Petitioner,	)	**Court of Illinois, Fourth**
	)	**District,**
v.	)	**No. 4-16-0527**
	)	
TIM FREESMEYER, Former Normal Police Detective; DAVE WARNER, Formal Normal Police Detective; FRANK ZAYAS, Formal Normal Police Lieutenant; and TOWN OF NORMAL, ILLINOIS.	)	**There Heard on Appeal from the Circuit Court of McLean County, Case No. 14 L 51**
	)	
	)	**The Hon. Richard L. Broch, presiding.**
	)	
Defendants-Respondents.	)	

BRIEF OF *AMICUS CURIAE* INNOCENCE NETWORK IN SUPPORT OF PLAINTIFF-PETITIONER ALAN BEAMAN

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Points and Authorities

INTRODUCTION

The Fourth District's decision in this case contradicts those of the First and Second Districts by holding that a malicious prosecution claim must establish a threshold showing that "a police officer pressured or exerted influence on the prosecutor's decision or made knowing misstatements upon which the prosecutor relied." And with this standard, the Fourth District, unlike the First and Second Districts, shifts the focus away from police officers to prosecutors, who ordinarily have immunity. As a result, a malicious prosecution claim, already narrow and limited, ceases to exist merely by a prosecutor, often long after the events in question (25 years in this case), maintaining there was no police pressure or misstatements.

The Fourth District's standard effectively places an important remedy out of reach for wrongfully-convicted individuals. And the Fourth District stands alone with this standard. Moreover, such a standard is unnecessary to protect responsible police work. It will, however, have the effect of undermining police accountability and deterring misconduct. The decisions of the First and Second District do not create such a needless impediment to asserting a malicious prosecution claim and should be followed here and the Fourth District's decision should be reversed.

ARGUMENT

I. The Fourth District's "pressure, influence, or misstatement" standard effectively immunizes police officers from malicious prosecution claims.

The first element of a malicious prosecution claim is "the commencement or continuance of an original criminal or civil judicial proceeding by the

defendants." *Bianchi v. McQueen*, 2016 IL App (2d) 150646, ¶ 70.[1] The First and Second Districts in *Rodgers v. Peoples Gas, Light & Coke Co.*, 315 Ill. App. 3d 340 (1st Dist. 2000), and *Bianchi*, 2016 IL App (2d) 150646, interpreted the "commencement or continuance" element to mean that "[l]iability in a malicious-prosecution case extends to all persons who played *a significant role* in causing the prosecution of the plaintiff." *Rodgers*, 315 Ill. App. 3d at 349 (emphasis added); *Bianchi*, 2016 IL App (2d) 150646, ¶ 72 (emphasis added).

The Fourth District's decision here takes an entirely different approach. It rejects the significant-role test of the First and Second Districts and in its place imposes another standard: that "in order to find a police officer . . . responsible for commencing or continuing a criminal action against a plaintiff, the plaintiff must establish that the officer *pressured or exerted influence on the prosecutor's decision or made knowing misstatements upon which the prosecutor relied*." *See* Fourth Dist. Opinion, ¶ 58 (emphasis added). Hence, the Fourth District seeks to limit malicious prosecution claims by focusing on the prosecutor's decision to pursue a conviction, rather than on the actual conduct of police officers.

The Fourth District maintained that it rejected the significant-role test because it "exposes police officers to undue malicious prosecution cases for performing usual investigatory police work when a prosecutor makes a mistaken decision to pursue a conviction." *Id.* ¶ 54. But the significant-role test does not chill

[1] The full set of elements for a malicious prosecution claim are as follows: (1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendants; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) malice; and (5) damages. *Bianchi*, 2016 IL App (2d) 150646, ¶ 70.

usual investigatory police work or expose officers to undue liability. All of the elements of malicious prosecution must be met to hold an officer liable for malicious prosecution, including malice and the absence of probable cause. *See Bianchi*, 2016 IL App (2d) 150646, ¶ 70. As long as the usual investigatory police work was not conducted maliciously against an innocent defendant, there can be no malicious prosecution claim against the officer.

Therefore, the significant-role test does not open the door to unfounded malicious prosecution claims. On the other hand, the Fourth District's approach would insulate even reckless or intentional wrongful conduct by police officers without a court ever having analyzed whether their actions were malicious or lacked probable cause, so long as a prosecutor states that the wrongful conduct or evidence did not affect the decision to prosecute.

Finally, a "mistaken decision by the prosecutor to pursue a conviction" should never in and of itself defeat a malicious prosecution claim against a police officer. There is a natural incentive for a municipality—normally a defendant in such cases—to shift the sole responsibility to make the prosecution decision onto the prosecutor, who has immunity, especially since this would shield the municipality from liability. Yet, this ignores that prosecutors rely mostly on the investigatory work of police officers in making their decisions to pursue a conviction. The Fourth District's standard overlooks this reality and bars malicious prosecution claims so long as the prosecutor claims that a decision to prosecute was "independent" of a police officer's misstatements.

II. The Fourth District's standard puts prosecutors in an impossible position of being the gatekeeper for a claim against the very police officers who they must rely on to build their case.

Under the Fourth District's "pressure, influence, or misstatement" test, prosecutors are put in the difficult position of either (i) admitting pressure, influence, or misleading statement by officers in making a decision to pursue a conviction, or (ii) minimizing the role of police officers and stating that the decision was not the product of pressure, influence, or misstatements by the officers.

Prosecutors of course usually rely on police officers to build their cases. This causes an inherent conflict because the prosecutor will typically not be inclined to undermine police-prosecutor relationships by testifying as to police misconduct or misstatements. Under the Fourth District's standard, the prosecutor is placed in the role of effectively being the gatekeeper as to whether a malicious prosecution case may go forward against the very police officers with whom they must work closely.

A more realistic approach is to presume, in the absence of contrary evidence, that prosecutors do rely on police work in bringing a prosecution, even if that police work might include misstatements and omissions. *See People v. Ringland*, 2017 IL 119484, ¶ 24. ("The State's Attorney does not possess the technical facilities nor the manpower that the police have. *Consequently, it is the recognized practice that the State's Attorney sensibly defers to the investigative duties of the police*." *Id.* (emphasis in original) (citations omitted)). This is in essence the First and Second District test, which requires "significant involvement"

by officers and therefore avoids the inherently difficult and unnecessary assessment of a prosecutor's state of mind and memory of what prompted a long-ago decision to prosecute.

III. The Fourth District's standard would undermine the deterrence function of a malicious prosecution claim.

The purpose of a malicious prosecution claim is to provide a legal remedy for an individual who was wrongfully or overzealously prosecuted. *See* Restatement (Second) of Torts § 668. "Allowing malicious prosecution claims has the effect of deterring groundless suits and providing compensation for defendants who have been wronged." John T. Ryan, Jr., *Malicious Prosecution Claims Under Section 1983: Do Citizens Have Federal Recourse?*, 64 Geo. Wash. L. Rev. 776, 778 (1996). This is not a new concept. In 1698, Chief Justice Holt of the Court of King's Bench (England's then-highest court) held that an action for malicious prosecution could be based upon damages "done to the person; as where a man is put in danger to lose his life, or limb, or liberty, which has been always allowed a good foundation of such an action." *Savile v. Roberts*, 1 Raym. Ld. 374, 378 (K.B. 1698).

Modern-day malicious prosecution theory balances four competing policy interests—encouraging honest accusers, resolving litigation quickly, deterring groundless suits, and compensating victims of groundless suits. Note, *Groundless Litigation and the Malicious Prosecution Debate: A Historical Analysis*, 88 Yale L.J. 1218, 1220 (1979). "Malicious prosecution claims protect the integrity of the judiciary from abuse by those who would otherwise use its machinery to harass and do injustice to an opponent." Ryan, 64 Geo. Wash. L. Rev. at 779. Here, however, by narrowing the whole concept of malicious prosecution against police

officers to the point of virtually eliminating it, the Fourth District standard undermines the important policy of deterrence that has always been part of the tort.

While Illinois does provide limited compensation for wrongfully convicted individuals, *see* 705 ILCS 505/8(c),[2] these statutes do not hold police officers accountable for maliciously targeting innocent defendants. Therefore, if under the Fourth District's standard, malicious prosecution claims are so narrowed as to have no meaningful deterrent effect, then one of the principal purposes of the tort will have been lost. And when the deterrence function is diminished, an important check on police misconduct is lost.

IV. The wrongful conduct of police officers in other cases would most likely have been immune from a malicious prosecution trial if the Fourth District's position were the law.

The Fourth District's rule would immunize police officers' wrongful conduct and prevent many malicious prosecution claims brought by wrongfully convicted individuals. Below are specific examples of the misconduct that might have had no remedy if the Fourth District's position were the law, including: (i) coerced confessions, (ii) coercive tactics to obtain a false identification, including witness intimidation, (iii) the use of violence and torture against suspects, (iv) disregarding exculpatory alibi evidence, and (v) destroying and preventing discovery of

[2] 705 ILCS 505/8(c) provides: "the court shall make no award in excess of the following amounts: for imprisonment of 5 years or less, not more than $85,350; for imprisonment of 14 years or less but over 5 years, not more than $170,000; for imprisonment of over 14 years, not more than $199,150." Under the statute, for example, a wrongfully convicted defendant who spends 13 years in prison for a crime he did not commit may only recover up to $170,000 total, or $13,076 per year he was imprisoned.

exculpatory evidence.

Although each of these instances of misconduct undoubtedly resulted in a wrongful conviction, under the Fourth District's rule, the police officers could avoid liability for malicious prosecution:

- *Patrick v. City of Chicago*, 213 F. Supp. 3d 1033 (N.D. Ill. 2016) (denying defendants' motion for summary judgment on malicious prosecution claim against officers who coerced confession from plaintiff, fabricated evidence, and withheld exculpatory evidence).
    - The plaintiff, Deon Patrick, was an exonerated prisoner who had spent 21 years in state prison for a murder he did not commit.

- *Jimenez v. City of Chicago*, 732 F.3d 710 (7th Cir. 2013) (affirming malicious prosecution verdict against police detective who used coercive tactics to lead witnesses to falsely identify plaintiff).
    - The plaintiff, Thaddeus Jimenez, was wrongfully convicted of murder at the age of 15 and spent 16 years in prison before his murder conviction was vacated.

- *Aguirre v. City of Chicago*, 382 Ill. App. 3d 89 (1st Dist. 2008) (affirming malicious prosecution verdict against police officers who coerced false statements and confessions through physical abuse, false promises, and deprivation of food).
    - The three plaintiffs were wrongfully convicted of kidnapping and murder; 5 years after their conviction, the actual killer confessed to the murder and plaintiffs were exonerated.

- *Rivera v. Lake Cty.*, 974 F. Supp. 2d 1179 (N.D. Ill. 2013) (denying motion to dismiss malicious prosecution claims against officers who manufactured false and fraudulent police reports, used abusive questioning and coercive tactics to elicit false statements from plaintiff and witnesses, and withheld exculpatory evidence).
    - The plaintiff, Juan Rivera, spent 18 years in prison for a rape and murder that he did not commit before his conviction was overturned by the Illinois Appellate Court. During a 4-day interrogation, officers deprived Rivera of sleep, subjected him to multiple polygraph tests (telling him he had failed each time when in fact he had passed), "hog tied" all of his limbs together so that he was immobile and helpless, and finally forced him to sign a statement implicating himself that the officers themselves had written.

- *Tillman v. Burge*, 813 F. Supp. 2d 946 (N.D. Ill. 2011) (denying motion to dismiss malicious prosecution claims against officers who suppressed, destroyed, and prevented discovery of exculpatory evidence, including evidence of officers' use of torture to coerce confessions).
    - The plaintiff, Michael Tillman, served nearly 24 years in prison for a rape and murder before his conviction was vacated and all charges were dismissed by a Cook County Special Prosecutor. He received a certificate of innocence from the Circuit Court of Cook County. During his interrogation, Tillman was violently beaten and tortured, including having officers hold a gun to his head and repeatedly subject him to near-suffocation by placing a plastic bag over his head.

None of these decisions, which all held in favor of malicious prosecution plaintiffs, indicates that the officers exerted any pressure or influence on the prosecutor's decision to pursue a conviction. As to the Fourth District's prong related to "knowing misstatements upon which the prosecutor relied," it is unclear what would actually constitute a "knowing misstatement" by police officers.

First, it would be inherently difficult for plaintiffs to prove that a misstatement by an officer was a "knowing" misstatement because it calls for an evaluation of the officer's subjective frame of mind, often, as in this case, long after the fact. Second, the term "misstatement" is vague and could be construed to exclude an officer's choice to falsify evidence, omit exculpatory evidence, torture the defendant, and many other categories of police misconduct.

Finally, the requirement that the misstatement must be *relied on* by the prosecutor in making his decision to prosecute creates a conflict of interest-burdened inquiry into the prosecutor's state of mind, often in the distant past, as in Mr. Beaman's case. In fact, even if an officer makes knowingly fraudulent reports about an innocent individual, that is not enough to satisfy the Fourth District's standard. The prosecutor can immunize the police officer from liability

simply by stating that those misstatements were not material in the decision to pursue a conviction.

CONCLUSION

The Fourth District's position would effectively immunize misconduct by police officers, decrease police accountability and the incentive for necessary reforms, and put an important remedy out of reach for wrongfully-convicted persons. The Fourth District's "pressure, influence, or misstatement" standard overlooks that it places prosecutors in the position of being the gatekeepers over whether such malicious prosecution claims go forward, and therefore, such a standard would be difficult to apply fairly, accurately, and evenhandedly. This standard should be rejected in favor of the First and Second Districts' "significant role" standard and the Fourth District's decision should be reversed.

Dated: January 31, 2018

Respectfully submitted,

THE INNOCENCE NETWORK

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RULE 341 CERTIFICATE OF COMPLIANCE FOR BRIEF OF *AMICUS CURIAE* INNOCENCE NETWORK IN SUPPORT OF PLAINTIFF-APPELLEE ALAN BEAMAN

I, Thomas J. McDonell, certify that this brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, is 9 pages.

/s/ Thomas J. McDonell

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