No. 125617

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	)	**There Heard on Appeal from**
Police Detective; DAVE WARNER,	)	**the Circuit Court of McLean**
Former Normal Police Detective;	)	**County, Case No. 14 L 51**
FRANK ZAYAS, Former Normal	)	
Police Lieutenant; and TOWN OF	)	**The Hon. Richard L. Broch,**
NORMAL, ILLINOIS.	)	**presiding.**
	)	
Defendants-Respondents.	)	

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

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INTRODUCTION

The Appellate Court for the Fourth District of Illinois ("Fourth District") has issued an opinion that, wittingly or unwittingly, puts yet another unjustified roadblock in the way of Alan Beaman's malicious prosecution claim—one that will prevent a man who was wrongfully convicted of murder, and wrongly spent 14 years in an Illinois prison, from having his day in court. This is the third time that Mr. Beaman has been before the Illinois Supreme Court after an appeal of a Fourth District decision, and the second time on Mr. Beaman's malicious prosecution claim. Most recently, this Court unanimously reversed the Fourth District in *Beaman v. Freesmeyer*, 2019 IL 122654, after the appellate court wrongly struck down Mr. Beaman's action by relying on a different legal theory related to the "commencement or continuation" prong of a malicious prosecution claim.[1]

In this case, for the first time, the Fourth District holds that a wrongfully-convicted plaintiff cannot sustain a malicious prosecution claim unless a court has made a finding of insufficient evidence for the conviction in the criminal proceeding. No matter that Mr. Beaman received a certificate of innocence from the State of Illinois and a pardon from the Illinois governor, and that this Court previously struck down Mr. Beaman's conviction for murder while holding the State's case and evidence against Beaman to be "tenuous," the Fourth District insists that a malicious prosecution claim can never survive without the "insufficient evidence" finding by a court in the plaintiff's criminal proceedings.

[1] In that case, the Fourth District held that a police officer who provides evidence leading to a wrongful conviction could not be liable in a malicious prosecution action because he did not "commence" the action (typically, the prosecutor does). This Court disagreed and unanimously reversed.

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In this current case, the Fourth District held that no genuine issue of material fact existed with regard to the probable cause element of the "significant role" test. In support of this determination, the Fourth District went on to conclude that because the plaintiff was convicted by a jury in the circuit court, he could never have successfully met his burden of showing probable cause did not exist.[2] By saying this, the Fourth District rewrote the law on malicious prosecution claims to create a new requirement of a finding of insufficient evidence by a court. Such a requirement would unfairly prevent individuals who were wrongfully convicted of crimes from bringing malicious prosecution claims against police officers, prosecutors, and others whose actions led to their wrongful conviction in the first place. What is more, the Fourth District's reasoning on the probable cause element is circular: it ignores that juries may wrongfully convict individuals based on false or misleading evidence that is *precisely the result of* the intentional and/or wrongful actions of police officers.

The Fourth District's new "finding of insufficient evidence" standard, if it were the law, effectively places an important remedy out of reach for wrongfully-

[2] To take the Fourth District's new standard to its logical conclusion would mean that the "probable cause" element of a malicious prosecution claim could never be met for wrongfully convicted individuals. Under the Fourth District's standard, if a jury convicts an individual of a crime (for which it is later deemed that he was wrongfully convicted), then that fact alone is enough to defeat the probable cause element of a malicious prosecution claim. Yet, if the jury had not convicted plaintiff, he would have been not guilty of the crime alleged—an acquitted defendant—and the criminal case would have ended. While of course the individual that is found not guilty of a crime can still bring a malicious prosecution claim, the Fourth District provides no support for taking the momentous step of cutting off the malicious prosecution remedy to those that were wrongfully convicted. Indeed, the malicious prosecution remedy is arguably more relevant for those that have languished in prison for years for a crime they did not commit.

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convicted individuals. Moreover, such a standard is unnecessary to protect responsible police work. It will, however, have the effect of undermining police accountability and deterring misconduct. Malicious prosecution claims, already narrow and limited, may now cease to exist in most instances—even where police officers have in fact committed egregious misconduct that led to an individual's wrongful prosecution. This brief offers several examples of officer misconduct in Illinois that were found actionable but would have been immunized from a malicious prosecution claim had the Fourth District's new standard been the law. The Fourth District's decision should be reversed.

LEGAL STANDARD – THE "SIGNIFICANT ROLE" TEST

To state a claim for malicious prosecution, a plaintiff must allege facts showing: (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 v. McQueen*, 2016 IL App (2d) 150646, ¶ 70. "Liability in a malicious-prosecution case extends to all persons *who played a significant role* in causing the prosecution of the plaintiff." *Id.* at ¶ 72 (emphasis added); *see also Rodgers v. Peoples Gas, Light & Coke Co.,* 315 Ill. App. 3d 340, 348-49 (1st Dist. 2000) ("liability extends to all persons who played a significant role in causing the prosecution of the plaintiff, provided all of the elements of the tort are present").

As this Court recently held in this case, "liability for malicious prosecution 'calls for a commonsense assessment' of those persons who played a significant role in the criminal case…a person can be liable for commencing or continuing a

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malicious prosecution even if that person does not ultimately wield prosecutorial power or actively deceive prosecutors." *Beaman v. Freesmeyer*, 2019 IL 122654, ¶¶ 43, 45. Probable cause in a malicious prosecution action is "a state of facts that would lead a person of ordinary care and prudence to believe or to entertain an honest and sound suspicion that the accused committed the offense charged." *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 642 (1st Dist. 2002). A trier of fact may infer malice from a lack of probable cause if there is no credible evidence which refutes that inference. *Rodgers,* 315 Ill. App. 3d at 349.

ARGUMENT

I. The Fourth District's holding on "absence of probable cause" improperly heightens this standard to a finding of insufficient evidence to convict in plaintiff's original trial, which is clearly not required for a malicious prosecution claim, while not giving due weight to the fact that plaintiff was wrongfully convicted.

The Fourth District's interpretation of the "absence of probable cause" prong in a malicious prosecution claim is misguided, as it is based on the startling if true conclusion that "plaintiff could never successfully meet his burden of showing probable cause did not exist" based on the fact that "the jury convicted him." Fourth Dist. Opinion, ¶ 82. The Fourth District supported this holding by stating, "[n]o court, in the multiple reviews of his convictions, has ever deemed the evidence against him insufficient to sustain his conviction—quite the opposite." *Id.* Through these far-reaching statements, the Fourth District created new law (*i.e.*, that a prior finding of insufficient evidence to convict is required to prove a malicious prosecution claim—even if the evidence is improper or inaccurate), and its decision, if upheld by this Court, would prevent exonerees like the plaintiff from being able to litigate malicious prosecution claims under Illinois law. If the Fourth

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District's decision is upheld, wrongfully convicted individuals will be unable to pursue malicious prosecution claims against the very actors that caused their wrongful convictions.

Further, to reach this conclusion on the probable cause issue, the Fourth District ignores the fact that plaintiff was *wrongfully* convicted and downplays this Court's reversal of plaintiff's conviction when it states, "the supreme court reversed plaintiff's conviction on the sole ground he was entitled to a new trial due to a *Brady* violation." *Id.* at ¶ 83. What the Fourth District failed to mention is that not only was plaintiff's conviction reversed, but on remand, the State declined to re-prosecute plaintiff and dismissed the charges against him. And notably, in reversing the decision, this Court determined that it could not "have confidence in the verdict finding [Beaman] guilty of his crime given the **tenuous nature of the circumstantial evidence against him**, along with the nondisclosure of critical evidence that would have countered the State's argument that all other potential suspects had been eliminated from consideration." *People v. Beaman*, 229 Ill. 2d 56, 82 (2008) (emphasis added). This strong conclusion speaks for itself: there was never enough evidence against plaintiff to prosecute or convict him in the first place. And thus, there was no "probable cause" to proceed against him originally.

II. Even if this Court were to adopt the new "insufficient evidence" requirement set forth by the Fourth District, plaintiff's certified innocence would be all that is needed to meet this requirement.

There would be no purpose of certifying the innocence of those wrongfully convicted or issuing pardons to exonerees if courts were not going to recognize these processes as legitimate. Here, approximately five years after being released from prison in 2008, the State of Illinois declared plaintiff's innocence by issuing

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him a certificate of innocence. Two years after that, Governor Pat Quinn pardoned plaintiff "based upon innocence as if no conviction." *See* Fourth Dist. Opinion, ¶ 48. These actions signified to the citizens of Illinois (and the rest of the world) that plaintiff, although once convicted by a jury, did not commit the crime for which he spent many valuable years of his life incarcerated.

The idea that (and as the Fourth District suggests) these executive branch actions would not serve as proof that the evidence against plaintiff was insufficient to sustain his conviction shows a lack of respect for a co-equal branch of government. While defendant's counsel misleadingly states that "no court . . . has ever deemed the evidence against him insufficient to sustain his conviction," (1) a court's judgment has not been required to prove malicious prosecution, (2) even if it was, plaintiff's certificate of innocence, pardon from the Governor of Illinois, and the state's decision not to re-prosecute plaintiff are and should be enough to show that the evidence against him was indeed not sufficient, and (3) this very Court previously came to the same conclusion that the evidence against Mr. Beaman produced at his one and only trial for murder was lacking (*see People v. Beaman*, 229 Ill. 2d 56, 82 (2008): "[w]e cannot have confidence in the verdict finding [Beaman] guilty of this crime given the tenuous nature of the circumstantial evidence against him…"). The State of Illinois is not in the habit of allowing convicted persons out of prison when sufficient evidence of their guilt exists, especially in first-degree murder cases.

III. The wrongful conduct of police officers in other Illinois 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 "finding of insufficient evidence" standard would

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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) fabricating evidence to obtain a false identification; (iii) the use of violence and torture against suspects; (iv) purposely framing an individual for murder because officers had a grudge against him; (v) coercing witnesses to falsely testify against a defendant; (vi) deliberately withholding exculpatory evidence; and (vii) destroying and preventing discovery of exculpatory evidence.

In each of the below cases, a court allowed a malicious prosecution claim to proceed despite the lack of a prior finding that the evidence was not sufficient[3]:

- *See Rivera v. Guevara*, 319 F. Supp. 3d 1004, 1054-55 (N.D. Ill. 2018) (denying summary judgment motion challenging lack of probable cause element of Illinois malicious prosecution where plaintiff's conviction was affirmed over a challenge to the sufficiency of the evidence in *People v. Rivera*, 254 Ill. App. 3d 1114 (1st Dist. 1993))
    - The Plaintiff, Jacques Rivera, spent 21 years in prison for a murder he did not commit before he was issued a certificate of innocence from the State of Illinois.
    - Court held that a genuine issue of material fact existed as to whether a police officer fabricated 12-year-old eyewitness's identification of shooter and offered false details of shooter's hair style and color during murder investigation.

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[3] It is worth noting that these cases are not being cited as binding precedent, as the majority of them are federal district court cases decided under Illinois law, but rather to show the various types of Illinois police misconduct that would avoid a malicious prosecution claim if the Fourth District's new standard were the law. Mr. Beaman's case was initially in federal court as well, but his state law claims were dismissed without prejudice, for lack of jurisdiction. *See Beaman v. Souk*, 7 F. Supp. 3d 805 (C.D. Ill. 2014), *aff'd*, 776 F.3d 500 (7th Cir. 2015). The federal cases cited apply Illinois law to the plaintiffs' malicious prosecution claims, and typically these cases are in federal court in the first place because plaintiffs allege constitutional violations (such as § 1983 claims) in addition to state claims.

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- *Noel v. Coltri*, No. 10 C 8188, 2017 WL 4620868, at *2, *4 (N.D. Ill. Oct. 13, 2017) (same outcome where "the appellate court upheld [plaintiff's] conviction")
  - Court held that there was a genuine issue of material fact as to plaintiff's malicious prosecution claim where plaintiff testified that an officer immediately took a swing at her when he approached her, and smashed her glasses into her face and knocked off her scarf and ear muffs; she sustained injuries on her hands, left temple, shoulder, upper eyelid, and left thigh during the arrest.

- *Grayson v. City of Aurora*, 157 F. Supp. 3d 725, 736 (N.D. Ill. 2016) (same outcome where conviction "affirmed over [plaintiff's] challenge to the sufficiency of the evidence")
  - The plaintiff, Jonathon Grayson, spent more than 11 years in prison for murder before he was exonerated.
  - Court held that plaintiff's malicious prosecution claim survived summary judgment where issues of material fact existed as to whether police officers unduly coerced plaintiff's confession by, among other things, denying him food and sleep, and not recording large portions of his interrogation over the 67 hours he was held in custody.

- *Patrick v. City of Chicago*, 213 F. Supp. 3d 1033, 1040 (N.D. Ill. 2016) (same outcome where conviction affirmed over sufficiency challenge in *People v. Patrick*, 298 Ill. App. 3d 16 (1st Dist. 1998))
  - The plaintiff, Dean Patrick, was an exonerated prisoner who had spent 21 years in state prison for a murder he did not commit.
  - The defendants' motion for summary judgment as to plaintiff's malicious prosecution claim was denied where officers allegedly coerced a confession from plaintiff, fabricated evidence, and withheld exculpatory evidence.

- *Sanders v. City of Chicago Heights*, No. 13 C 0221, 2016 WL 2866097, at *1, 14 (N.D. Ill. May 17, 2016) (same outcome where conviction affirmed in *People v. Sanders*, 288 Ill. App. 3d 1105 (1st Dist. 1997))
  - Plaintiff, Rodell Sanders, was wrongfully convicted of murder and attempted murder for which he served 20 years in prison.
  - Court held that "Sanders has offered evidence that Defendant Officers purposely framed him for murder because they had a grudge against him…Under these circumstances, Sanders has sufficiently established that Defendant Officers acted with malice to defeat summary judgment on this state law claim."

- *Fields v. City of Chicago*, No. 10 C 1168, 2014 WL 477394, at *2 (N.D. Ill. Feb. 6, 2014) (same outcome where conviction affirmed over sufficiency challenge in *People v. Fields*, 135 Ill. 2d 18 (1990))

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    - Plaintiff, Nathson Fields, was wrongfully convicted of murdering two individuals, and years later, he was released from prison and acquitted; here, the court determined that a reasonable jury could find that the police officers' behavior caused witnesses to fabricate testimony against Fields.

- *Lyons v. Vill. of Woodridge*, No. 08C 5063, 2011 WL 2292299, at *4 (N.D. Ill. June 8, 2011) (same outcome where plaintiff was convicted and attorney failed to file appeal, *see* Nat'l Registry of Exonerations, www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3398)
    - In 2006, after living with a wrongful rape conviction for almost two decades, the plaintiff, Marcus Lyons, had his conviction vacated based on DNA evidence, and the Governor granted his clemency petition.
    - Notably, here, the court determined that "a rational jury could find that [the officer] deliberately withheld [evidence] from the prosecutors to conceal the fact that he had tested the wrong [evidence] and/or to curry favor with the DuPage County State's Attorney's Office, with which he sought employment, by helping it obtain a conviction."

- *Thompson v. City of Chicago*, No. 07 C 1130, 2009 WL 674353, at *1 (N.D. Ill. Mar. 12, 2009) (same outcome where conviction overturned but not on sufficiency grounds in *People v. Pearson*, 356 Ill. App. 3d 390 (1st Dist. 2005))
    - Plaintiff, Terrace Thompson's conviction for unlawful aggravated use of weapon was vacated after the officers who arrested him (along with others in their department) were indicted and investigations into their improper activities became public.
    - On plaintiff's malicious prosecution claim, court held that there was a factual dispute for trial as to whether plaintiff had a weapon on him the day he was arrested, where officers pleaded the Fifth Amendment when asked what they knew at the relevant time.

- *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 released from prison.
    - The Cook County State's Attorney's office "nol-prossed" the cases against plaintiffs, but there was not a finding of insufficient evidence from a court.

- *Evans v. City of Chicago*, No. 04C3570, 2006 WL 463041, at *5, *6, *15, *17 (N.D. Ill. Jan. 6, 2006) (denying officers' summary judgment motion

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where conviction affirmed over sufficiency challenge in *People v. Evans*, 80 Ill. App. 3d 444 (1st Dist. 1979))

- Police officers' summary judgment motion against plaintiff's malicious prosecution claim, which focused on probable cause, failed.
- Court held that the plaintiff's fair trial depended on disputed issues of material fact as to police officers' misconduct in suppressing exculpatory evidence and manipulating witness testimony.
- "This Court will not accord preclusive effect to the rulings underlying a conviction that has subsequently been vacated and for which the Governor has granted a pardon based on innocence."
- "Vacating a judgment eliminates the preclusive effect not only of the final judgment, but also of issues determined at trial but not specifically appealed."

CONCLUSION

The Fourth District's decision to affirm the circuit court's order granting summary judgment against Mr. Beaman's malicious prosecution claim should be reversed. The Fourth District's position would unfairly prevent exonerees from pursuing malicious prosecution claims due to the lack of a previous insufficient evidence finding by a court. Contrary to the Fourth's District's position, in over a dozen cases that have already been litigated, a court allowed a malicious prosecution claim to proceed despite the lack of a prior finding that the evidence was not sufficient. The above examples show the many types of police misconduct that would be immunized from a malicious prosecution claim if the Fourth's District's new standard were the law.

Moreover, under the Fourth District's "finding of insufficient evidence" standard, courts are free to disregard executive branch decisions related to an individual's innocence, such as a pardon or a certificate of innocence, in the context of malicious prosecution claims. To argue that a wrongfully convicted person is precluded from a malicious prosecution claim because a jury convicted him is a gross injustice—especially when that person has received both a pardon based on

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their innocence, and a finding by this Court that the evidence in his case was "tenuous" and that the Court had no confidence in it—and ignores the obvious fact that police misconduct produces false, misleading, or incomplete evidence that is often the very cause of wrongful convictions. The various findings in other proceedings and venues as to an individual's innocence should not be "overruled" by a court based on the procedural technicality of the exoneree never having received a finding of insufficient evidence by his trial court. If an individual has no conviction, then that person is presumed innocent, and the evidence is both factually and legally insufficient to sustain an arrest or conviction. Here, both the Governor and this Court have determined that the evidence against Mr. Beaman does not amount to probable cause for an arrest or conviction. He should be able to proceed with his case.

Dated: August 6, 2020

Respectfully submitted,

THE INNOCENCE NETWORK

By: /s/ Thomas J. McDonell
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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 11 pages.

/s/ Thomas J. McDonell

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