

Case No. 125617

IN THE
SUPREME COURT OF ILLINOIS

ALAN BEAMAN,

Plaintiff-Appellant,

v.

TIM FREESMEYER, DAVE WARNER,
FRANK ZAYAS, and the TOWN OF
NORMAL, ILLINOIS,*Defendants-Appellees.*On Appeal from the Appellate Court of
Illinois Fourth District, No. 4-16-0527On Appeal
From the Circuit Clerk of McLean County,
Illinois, No. 14 L51The Honorable Richard L. Broch
Judge Presiding

**BRIEF OF AMICI CURIAE ILLINOIS FOP LABOR COUNCIL, ILLINOIS
FRATERNAL ORDER OF POLICE, ILLINOIS TROOPERS LODGE #41, AND
CHICAGO FOP LODGE #7 IN SUPPORT OF DEFENDANT/APPELLEES TIM
FREESMEYER, DAVE WARNER, FRANK ZAYAS and
the TOWN OF NORMAL, ILLINOIS**

Tamara L. Cummings
General Counsel
IFOP Labor Council
5600 South Wolf Road
Western Springs, Illinois 60558
708 784-1010
F -708 784-0058
tcummings@fop.org
Attorney for *Amicus Curiae* Illinois FOP
Labor Council; Illinois Fraternal Order of
Police; Illinois Troopers Lodge #41 and
Chicago Lodge #7

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INTRODUCTION

Amicus curiae Illinois FOP Labor Council (hereinafter "IFOPLC") is a public sector labor union as defined in the Illinois Public Labor Relations Act, 5 ILCS 315/1, et al. The IFOPLC represents just under twelve thousand (12,000) law enforcement employees across the State of Illinois, in five hundred and nineteen (519) bargaining units. The IFOPLC represents these members in collective bargaining, discipline and a variety of other labor and employment matters. The IFOPLC strives to improve salaries, working conditions and benefits for its members, both through collective bargaining and legislation. Most of the members of the IFOPLC are sworn police officers whose duties include investigating crimes for prosecution.

The National Fraternal Order of Police (hereinafter "NFOP") is the world's largest organization of law enforcement officers, with more than three hundred and fifty-five thousand (355,000) members in more than two thousand one hundred (2100) subordinate lodges. Those subordinate lodges include the Illinois Fraternal Order of Police, the Illinois Troopers Lodge #41 and Chicago FOP Lodge #7.

The Illinois Fraternal Order of Police (hereinafter "IFOP") is the second largest FOP State Lodge in the country and represents more than thirty-three thousand (33,000) active duty and retired police officers. The IFOP aims to elevate the law enforcement profession, protect members' rights and promote fraternalism among members. Additionally, IFOP provides a variety of member benefits.

The Illinois Troopers Lodge #41 (hereinafter "Lodge 41"), is the second largest Local Lodge in Illinois, representing approximately three thousand two hundred (3200) sworn and retired Illinois State Troopers. Lodge 41 is dedicated to improving the working conditions of the men and women of the Illinois State Police via legislation and employee representation.

Chicago FOP Lodge #7 (hereinafter "Lodge 7") is the largest Local Lodge in Illinois and represents more than eight thousand (8,000) sworn Chicago Police Officers. As their collective bargaining agent, Lodge 7 works to improve wages, benefits and working conditions of Chicago Police Officers. Lodge 7 also represents approximately six thousand (6,000) retired Chicago Police Officers, and as a fraternal organization, provides many member benefits.

Amicus Curiae IFOPLC, along with IFOP, Lodge 41 and Lodge 7, collectively represent thousands of sworn law enforcement officers across the State of Illinois. In addition to many other duties, these officers are responsible for investigating crimes for prosecution. In the case at hand, the Plaintiff again asks this Court to depart from precedent and require officers to be subject to liability for malicious prosecution without properly demonstrating a causal link between an officer's conduct and the decision to "commence and continue" the prosecution of a subject. Such a standard would result in virtually all police officers being subject to liability simply by the inherent nature of their profession. This increased risk of liability could have a chilling effect on law enforcement and would greatly impact the way law enforcement officers investigate crimes, to the detriment of victims as well as the public. Amicus curiae and the supporting FOP organizations have a significant interest in the outcome of this case because it may have a drastic impact on the work of its members as well as the work of all law enforcement officers across Illinois.

ARGUMENT

I DESPITE EXPLICIT DIRECTION FROM THIS COURT AND A THOROUGH ANALYSIS BY THE APPELLATE COURT ON REMAND, PLAINTIFF CONTINUES TO IGNORE THE REQUIREMENT OF A CAUSAL LINK BETWEEN THE DEFENDANT'S ALLEGED MISCONDUCT AND THE INITIATION OF THE PROSECUTION

The directive of this Court could not have been any clearer. Specifically, this Court said:

“On remand, the appellate court must examine whether the defendants’ conduct or actions proximately caused the commencement or continuance of the original criminal proceeding by determining whether defendants played a significant role in Beaman’s prosecution” (Supreme Court Opinion at pp. 15-6, emphasis added).

The Appellate Court heeded that directive when it examined the facts, in a light most favorable to Beaman, and found that there were no disputed facts, or reasonable inferences therefrom, that could establish that any of the Defendants is proximately liable for the commencement or continuation of Plaintiff’s prosecution. (Appellate Court Opinion at pp. 33-45).

Yet, as before, Plaintiff continues to ignore the causal link requirement of the “commencement or continuation” prong of a malicious prosecution claim. Essentially, the Plaintiff is arguing, once again, that as long as Defendants played a significant role in the prosecution of Beaman, they should be subject to liability. For example, Plaintiff argues “A rational juror could find that Beaman never would have been charged if defendants took the steps that any investigator looking for the truth would have taken, steps such as (1) identifying similar burglaries or sexual assaults in the area.....” Plaintiff continues “A reasonable juror could find that Beaman would not have been charged if the defendants examined Murray the way they examined Beaman....” (Plaintiff’s Brief at p. 27).

Similarly, the Plaintiff states “A juror could also find that the defendants acted in bad faith and concealed evidence by burying the Murray polygraph, misleading the grand jury and manipulating time trials....” (Plaintiff’s Brief at p. 28).

Plaintiff misses the point entirely. The liability of Defendants depends on the causal connection of their conduct (actions or inactions) on the decision to prosecute Beaman. It is undisputed, that other than the incomplete polygraph of Murray, the prosecution was aware of ALL of the actions and lack thereof of the Defendants, as well as all of the evidence. With this knowledge, the prosecution chose to pursue charges against Beaman. Further, as noted by the Appellate Court, according to the undisputed facts, the incomplete report added little to nothing to the prosecution's existing knowledge of Murray. (Appellate Opinion at p. 43). In other words, the incomplete polygraph was inconsequential to the decision to prosecute. Therefore, the Appellate Court properly found that the proximate cause portion of the commence and continue prong cannot be satisfied.

II ELIMINATING THE PROXIMATE CAUSE REQUIREMENT WILL RESULT IN VIRTUALLY EVERY POLICE OFFICER FACING LIABILITY FOR MALICIOUS PROSECUTION

This Court correctly noted that "suits for malicious prosecution are not favored in law". (Supreme Court Opinion at p. 7, citing Joiner v. Benton Community Bank, 82 Ill. 2d 40, 44 (1980))(citations omitted). Further, as both this Court and the Appellate Court unequivocally stated:

"Liability thus depends on whether the defendant was actively instrumental in causing the prosecution, and the presumption of prosecutorial independence can be overcome by showing that the defendant improperly exerted pressure on the prosecutor, knowingly provided misinformation to him or her, concealed exculpatory evidence or otherwise engaged in wrongful or bad-faith conduct instrumental in the initiation of the prosecution" (Supreme Court Opinion at p. 14; Appellate Court Opinion at p. 31; both citing 52 Am. Jur. 2d *Malicious Prosecution* Section 88 (2018))(emphasis added).

Because the facts, taken in a light most favorable to the Plaintiff, do NOT support the crucial requirement of a causal connection to the prosecution, the Court's decision should be affirmed. To rule otherwise would mean that police officers, the municipalities where they work

and therefore the taxpayers would be subject to an unacceptable level of liability for a tort that is disfavored in the law.

Yet Plaintiff is once again, though couched in different terms, arguing that the proximate cause requirement of the “commencement or continuation” prong of the tort of malicious prosecution should be ignored and that to be subject to liability an officer simply must have had a significant role in the prosecution. To accept this position is untenable as it would impose significant liability on ANY officer who plays ANY role in the investigation and prosecution of a crime.

The absurdity of the Plaintiff’s position becomes clear when one considers the responsibilities of prosecutors and police officers in the criminal justice system. Prosecutors charge and prosecute crimes. And crimes are the very essence of police work. Police officers take an oath, and in doing so, they accept the very serious responsibility for not only preventing crimes, but for investigating crimes as well as apprehending or detaining individuals who committed crimes or are suspected of committing crimes. Subsequently, after considering the evidence collected and the totality of the investigation by police officers, a prosecutor decides whether to charge and prosecute a crime. Under the standard that the Plaintiff espouses, EVERY police officer, simply by the nature of his or her job, would be unduly subject to liability for malicious prosecution for performing their normal investigatory duties when a prosecutor makes a mistaken decision to pursue a conviction.

Additionally, the Plaintiff again is fixated on the concept of the Defendants’ “focus” on Beaman. Plaintiffs go so far as to say (inaccurately) that the Defendants engaged in wrongful or bad-faith conduct....by...opting not to investigate alternative suspects. (Plaintiff’s Brief at p. 21). In addition to being inaccurate and misleading, the Plaintiff’s position again ignores the realities of police work.

In all police investigations, investigators pursue multiple pieces of evidence and investigative leads. These may point to multiple potential suspects initially, but to be successful, an investigation ultimately must exclude some of those potential suspects and “focus” on others. And this “focus” is a routine part of investigatory work, not indicative of wrongful or bad-faith conduct.

In essence, by glossing over the “causal link” requirement to overcome the presumption of prosecutorial independence, Plaintiff continues to argue that police officers need only play a significant role in a prosecution in order to be subject to liability. Yet having a significant role in prosecutions is part and parcel of a police officer’s job. Without requiring more, officers would be unduly subject to the disfavored tort of malicious prosecution. Further, such a low standard, if adopted, would lead to adverse and dangerous consequences, not only for police officers but for the citizenry that they serve and protect.

III THE HEIGHTENED RISK OF LIABILITY COULD HAVE A CHILLING EFFECT ON LAW ENFORCEMENT OFFICERS

In recent years, society has witnessed a drastic downward spiral in society’s attitude towards and treatment of police officers. And in the last several months, that animosity towards police has increased to outright hatred. Sensationalized and often inaccurate media accounts of police encounters have fueled mistrust and abhorrence within communities, often those very communities that depend on police services the most. And to add fuel to the raging fire, users of informal media sources such as social media, blogs and online commentary, not regulated by any ethics or rules of conduct, can and do produce reports that are not merely biased but outright false, without threat of consequence to the authors. And even mainstream media channels, supposedly bound by rules and ethics, often cite to informal media sources without regard to the veracity of the sources.

And it is against this backdrop that the death of George Floyd at the hands of Minneapolis Police Officers occurred. Most law enforcement officers condemn the actions of officers that lead to the death of George Floyd. In fact, the National FOP, the world's largest organization of sworn law enforcement officers, with more than 355,000 members, was one of the first police organizations to publicly condemn the actions of the officers during that tragic encounter. See https://fop.net/CmsDocument/Doc/pr_2020-0528_GeorgeFloyd.pdf

Understandably, the incident caused some communities and organizations to lose trust in the men and women of law enforcement. Unfortunately, and unfairly, some of these same communities and organizations have allowed this incident to define the profession of law enforcement as a whole.

The result is an unprecedented level of attacks on law enforcement. Police officers are being verbally attacked and physical assaulted. Too many have lost their lives. According to the Officer Down Memorial Page, in 2019, 147 officers died in the line of duty. Of those 147, 58 were killed violently (48 killed by gunfire, 7 killed by automobile assault and 3 by physical assault). See

<https://www.odmp.org/search/year?year=2019>

At the time of this writing, the Officer Down Memorial Page reports that 252 officers have died in the line of duty in 2020. While most members of society have been able to work safely and remotely at home during the COVID-19 pandemic, heroically, police officers and other first responders have continued to work the streets and interact with the public. Sadly, 144 of the 252 officers that died this year lost their lives due to complications of COVID-19. Of the remaining 108 deaths, 56 were due to violent physical assaults (42 killed by gunfire, 13 killed by vehicular assault and 1 killed by physical assault). See

<https://www.odmp.org/search/year/2020>

The vilification of police officers has undoubtedly had a negative effect on the law enforcement community, both mentally and physically. Studies show that the rate of PTSD and depression among police officers is 5 times higher than the civilian population. See <https://www.addictioncenter.com/news/2019/09/police-at-highest-risk-for-suicide-than-any-profession/> at p. 3. Suicide is a result of mental illness, including depression and PTSD. See https://rudermanfoundation.org/white_papers/police-officers-and-firefighters-are-more-likely-to-die-by-suicide-than-in-line-of-duty at p. 1. Thus, police officers are at a higher clinical risk for suicide than the general public. In addition to repeated exposure to trauma and catastrophic events, included in the list of prominent risk factors leading to an elevated rate of suicide is negative media attention and organizational or personal betrayal. See <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf> at p. 9. A recent study found that police officers are more likely to die by suicide than in the line of duty. See https://rudermanfoundation.org/white_papers/police-officers-and-firefighters-are-more-likely-to-die-by-suicide-than-in-line-of-duty at p. 1. In 2019, 236 law enforcement officers committed suicide. As of this writing, 149 law enforcement officers have committed in suicide in 2020. <https://bluehelp.org/>

Not surprisingly, given this climate, recruiting and retention efforts have become strained, with local and national police departments seeing a decline in police candidates. See <https://www.journal-news.com/news/local-national-police-departments-see-decline-police-candidates/5ZvoYOCU5Hh15tqo6zAMPL/>

According to a Research Study done by the Police Executive Research Forum, police agencies are having trouble keeping and hiring police officers. The survey shows a “triple threat” for police departments: there is a decrease in applications, early exits and higher rates of

retirement. Agencies participating in the survey reported that there has been a 63% decrease in applying to become a police officer. Further, more officers are leaving the profession between one and five years on the job and experienced police officers are retiring at a faster rate than ever before, further depleting the ranks.

See <https://www.policeforum.org/assets/WorkforceCrisis.pdf> at p. 8;

<https://abcnews.go.com/Politics/us-police-agencies-trouble-hiring-keeping-officers-survey/story?id=65643752#:~:text=Agencies%20participating%20in%20the%20survey,to%20become%20a%20police%20officer.&text=More%20officers%20are%20also%20leaving,before%2C%20further%20depleting%20the%20ranks>.

Along with a depletion in the ranks comes a workload increase, and in some agencies, the number of officers available to assist in a crisis has shrunk to unsafe levels. Anti-police groups are calling for the defunding of the police. However, less money means even less hiring in a profession already depleted and desperately seeking qualified police candidates. Less police officers are and will continue to be tasked with clamping down on violent crime which is rampant and on the rise. According to Chicago Police Department Crime Statistics, as of September 27, 2020, 581 murders have occurred in Chicago, up an astounding 50% from the same timeframe in 2019. https://home.chicagopolice.org/wp-content/uploads/2020/09/1_PDFsam_CompStat-Public-2020-Week-39.pdf

These trends are not limited to Chicago. For example, in Louisville, Kentucky, another city experiencing civil unrest and anti-police rioting and violence, has experienced a tremendous increase in violent crime. For example, from January to September 2020, there has been a 41% increase in homicides, as compared to the same timeframe in 2019. <https://louisville-police.org/ArchiveCenter/ViewFile/Item/85> at p. 12.

There are various theories for the universal rise in violent crime in recent years. In today's political and social climate, officers may be deciding that the risks to their livelihood, safety, reputation and liberty are too great to engage in proactive policing that historically has been effective at preventing and reducing crime.

It is against this backdrop that Plaintiff seeks to add yet an additional risk to the police profession – a risk of increased liability for simply doing their jobs. Without requiring the “causal link” described previously in this brief, virtually every officer will be subject for liability because having a significant role in the prosecution of crimes is part and parcel to their jobs. This additional risk could have a chilling effect on an already overburdened, understaffed, and highly scrutinized workforce. To further stigmatize police officers by opening the floodgates to lawsuits each and every time an investigation leads to a prosecution would not only create a disincentive to engaging in meaningful police work, but yet another deterrent to becoming a police officer in the first place. Society and in particular those communities most vulnerable to violent crime simply cannot afford even a slight compromise to public safety.

IV ADDITIONALLY, INCREASED EXPOSURE TO LIABILITY WILL RESULT IN DELAYED AND COSTLY INVESTIGATIONS TO THE DETRIMENT OF VICTIMS AND THE PUBLIC

If the elements of a malicious tort claim are relaxed, and the “causal link” requirement is removed as the Plaintiff suggests, police officers can and will assume that each and every arrest they make will subject them to liability, simply by virtue of the investigatory nature of their jobs. As a result, with each prosecution will come heightened scrutiny of the investigation, as a cause of action for malicious prosecution develops. Every action or omission will be questioned, and every decision second guessed.

Victims of crimes and their loved ones deserve closure. Further, law enforcement agencies have limited resources, both in terms of money and personnel. These resources may be further depleted if the anti-police cries for defunding are heeded. Investigations should be

guided by investigative work and not risk management principles. The higher the cost, and every dollar and every hour of work spent on one investigation means one less dollar and one less hour of work spent on another. Delayed investigations can result in resources not being properly and equitably allocated amongst investigations, jeopardizing those investigations and resulting in unsolved crimes and further harm to victims. Some delays are inevitable in any thorough investigation, however, an increased risk of liability will lead to unnecessary delays due to the great lengths officer will have to go through to ensure their investigations are scrutiny proof.

It is undisputed that the Defendants investigated the murder for approximately nine (9) months before charges were brought against Plaintiff. There were no findings of misconduct or undue influence by any of the Defendants. Yet under Plaintiff's theory of liability, the police investigation was simply not sufficient to shield the Defendants from liability. What more could or should the officers have done in order for their investigation to be considered "legitimate"? Under the Plaintiff's theory, the possibilities are endless.

The decision of this Court to reverse the Plaintiff's conviction was based on the fact that four (4) points of evidence were not disclosed by the State, in violation of Plaintiff's due process rights. All of this evidence related to an "alternate" suspect, Murray, and included 1. He failed to complete a polygraph examination; 2. He was charged with domestic battery; 3. He had physically abused his girlfriend; and 4. His use of steroids caused him to act erratically. People v. Beaman, 229 Ill. 2d 56, 74, 890 N.E. 2d 500, 511, 321 Ill. Dec. 778, 789 (2008). All of this evidence was uncovered by the Defendants and all but the inconclusive polygraph was turned over to the prosecutor. Per this Court's decision, the Defendants in their diligence uncovered four points of exculpatory evidence, so relevant that the failure of the prosecution to turn them over lead to the reversal of the Plaintiff's conviction. Yet according to the Plaintiff, the

Defendants were not acting properly and should be subject to liability for their thorough investigatory work which uncovered evidence that included the four pieces of exculpatory evidence.

If the Court disregards the requirement of proximate cause to overcome the presumption of prosecutorial independence, the Defendants and all police officers will be subject to liability simply for doing their jobs. And the message sent to officers will be that doing a thorough and proper investigation, as the Defendants did here, is simply not enough to shield yourself from litigation. Given this type of scrutiny, officers will undoubtedly and most likely unnecessarily expand their investigations in order to virtually cover all bases, no matter how remote or redundant. This will lead to increased costs that will ultimately be borne by the taxpayers, a backlog of unsolved cases, and undue delay in prosecuting serious crimes. And the longer an investigation takes, the more difficult it becomes to prosecute a crime successfully. Witnesses disappear, memories fade and victims become uncooperative as time passes. Further, the longer a dangerous suspect remains free, the greater the danger to the public at large.

One need only look to the facts of this case to envision such a scenario. Given the relevant evidence regarding Murray's steroid use, investigators could have taken the additional step of interviewing Murray's doctors to determine whether steroid use would lead to violent behavior. Dozens of friends, neighbors, boyfriends, relatives and acquaintances of the victim were interviewed. They could have all been reinterviewed with a focus on Murray and his relationship with the deceased. It is difficult enough to get witnesses to cooperate in the first place; imagine how reluctant they would be if asked to give statements multiple times. Further, some witnesses might even consider repeat questioning as harassment by investigators. As for the timetable of events, Plaintiff's supervisor confirmed that Plaintiff got off work on August 25

at 9:00 a.m. Investigators could have interviewed Plaintiff's coworkers to further confirm what time he left work. Additionally, they could have asked to review security footage of the workplace to ensure Plaintiff was present during the times he claimed.

In sum, it is easy to surmise, in hindsight, how an investigation could have been "better" or more thorough. As trained professionals, police officers must strike a balance between a thorough and prompt investigation, with limited resources available. To ensure the successful prosecution of serious crimes and importantly, closure for victims, investigators' good faith police work should not subject them to tort liability. To hold them liable for simply doing their jobs to the best of their abilities would not only be detrimental to law enforcement, but also be contrary to the best interests of victims and society as a whole.

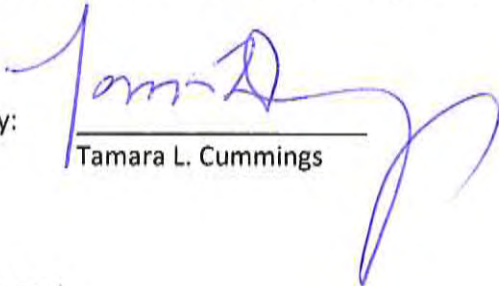
CONCLUSION

For the foregoing reasons, Amicus Curiae Illinois FOP Labor Council, the Illinois Fraternal Order of Police, the Illinois Troopers Lodge #41 and Chicago FOP Lodge #7, respectfully requests that this Court affirm the Appellate Court's decision in this matter.

Respectfully submitted:

Amicus Curiae Illinois FOP Labor Council; Illinois Fraternal Order of Police; Illinois State Trooper Lodge #41; Chicago Lodge #7

By:



Tamara L. Cummings

Tamara L. Cummings (ARDC # 6226691)
General Counsel
Illinois FOP Labor Counsel
5600 South Wolf Road
Western Springs, Illinois 60558
Phone: 708-784-1010
Fax: 708-784-0058
tcummings@fop.org

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CERTIFICATE OF COMPLIANCE

I, Tamara L. Cummings, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule (h)(1) table of contents, the Rule 341(c) certificate of compliance, the certificate of service, and those matters appended to the brief under 342(a) is 14 pages or words.

Under penalties as 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.



Tamara L. Cummings (ARDC # 6226691)
General Counsel
IFOP Labor Council
5600 South Wolf Road
Western Springs, Illinois 60558
708 784-1010
708 784-0058
tcummings@fop.org

Attorney for *Amicus Curiae* Illinois FOP Labor Council