Case No. 125617

IN THE
SUPREME COURT OF ILLINOIS

ALAN BEAMAN, *Plaintiff-Appellant,* v. TIM FREESMEYER, Former Normal Police Detective; DAVE WARNER, Former Normal Police Detective; FRANK ZAYAS, Former Normal Police Lieutenant; and TOWN OF NORMAL, ILLINOIS, *Defendants-Appellees.*	On Appeal from the Appellate Court of Illinois, Fourth District, No. 4-16-0527 There Heard on Appeal from the Circuit Court of McClean County, Illinois, Eleventh Judicial Circuit, No. 14 L51 The Honorable Richard L. Broch Judge Presiding

REPLY BRIEF OF PLAINTIFF-APPELLANT ALAN BEAMAN

David M. Shapiro
Locke E. Bowman
Roderick and Solange MacArthur
Justice Center
Northwestern Pritzker School of Law
375 E. Chicago Avenue
Chicago, Illinois 60611
(312) 503-0844

Jeffrey Urdangen
Riley Safer Holmes & Cancila LLP
70 W. Madison Street
Suite 2900
Chicago, Illinois 60602
(312) 471-8752

Counsel for Plaintiff-Appellant

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12/23/2020 1:28 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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In their brief, the defendants egregiously misstate the factual record, inexplicably label contested facts "undisputed," and characterize the evidence in the light most favorable to them—all in violation of the most basic rules of summary judgment. They caricature the record to transform their dishonesty, concealment, and misconduct into "standard police work." *See* Def. Br. 26. Having done so, the defendants pretend that allowing a jury to consider this case would somehow require an expansion of the malicious prosecution tort.

In reality, it is the defendants who seek to rewrite the law by disregarding the Court's 2019 opinion in this case. Detectives, they contend, cannot play a significant role in the commencement or continuance of charges unless they "misle[a]d" or "unduly influence[]" a prosecutor. Def. Br. 32, 35. In substance, defendants wish to resurrect the pressure, influence, or misstatement test—the very standard this Court unanimously rejected. That ship has sailed. The Court should reject the defendants' effort to upend settled law. It should reverse the appellate court and remand the case for a trial on the merits.

I. The Malicious Prosecution Claim Should Proceed to Trial.

A. Commencement or Continuance Prong: A Reasonable Juror Could Find That The Defendants Played a Significant Role in Causing the Malicious Prosecution.

1. Defendants Misstate Virtually Every Aspect of the Record on Commencement or Continuance.

This Court's previous decision could not have been clearer about the rigorous nature of the summary judgment standard: "Summary judgment is a *drastic means* of disposing of litigation and 'should be allowed only when the right of the moving party is clear and free from doubt.'" *Beaman v. Freesmeyer*, 2019 IL 122654, ¶ 22 (emphasis added). Courts must construe the record "strictly against the movant and liberally in favor of the opponent." *Id.* Summary judgment must not be granted "where reasonable persons could

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draw divergent inferences from the undisputed material facts or where there is a dispute as to a material fact." *Id.*

Defendants' presentation of the record ignores all of these reminders about how summary judgment works. Properly understood, and with inferences drawn in Beaman's favor, the record allows a rational juror to infer that the defendants had a significant role in causing the commencement or continuance of the prosecution through intentional concealment of the Murray polygraph report, bad-faith investigation, and a pattern of dishonesty and intentional omission.

a. A Rational Juror Could Find That Defendants' Intentional Concealment of the Murray Polygraph Had A Significant Role In Causing Beaman To Be Prosecuted.

Defendants downplay the impact of the Murray polygraph report by mischaracterizing the record. First, they falsely describe their concealment of the document as a "misplacement," Def. Br. 31, when even the Fourth District acknowledged that for summary judgment purposes, "Warner intentionally concealed the . . . polygraph report," *Beaman v. Freesmeyer*, 2019 IL App (4th) 160527, ¶ 110. The federal district court reached the exact same conclusion. *Beaman v. Souk*, 7 F. Supp. 3d 805, 827 (C.D. Ill. 2014).

Second, defendants mischaracterize the report as "inconsequential to the overall investigation," Def. Br. 32, when this Court itself clearly explained that "[t]he circumstances of the polygraph examination indicate that [Murray] intentionally avoided the test. He did not comply with the polygraph examiner's instructions during the first attempt and failed to cooperate in scheduling a second attempt. Moreover, the polygraph examiner testified that the police had identified [Murray] as a suspect in the murder." *People v. Beaman*, 229 Ill. 2d 56, 76 (2008). The polygraph report states that Murrary, "the above-listed suspect[,] was to have been examined" but "[a]fter being advised several times

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to follow directions, the subject informed this examiner that he was not able to comply. Subsequently, the subject was dismissed from this laboratory." A.2586.

Third, defendants minimize other evidence pointing to Murray as a likely suspect, including lying to police about his alibi. Defendants wish to draw the inference that Murray merely "clarified" his whereabouts on the day of the murder after he "made a mistake" regarding his alibi, Def. Br. 14, 19, but of course a rational juror could infer intentional deception. After all, as this Court put it in 2008, Murray "gave a false alibi stating he left town the day before the murder. That false exculpatory statement could be used as probative evidence of consciousness of guilt." *Beaman*, 229 Ill. 2d at 80-81.[1]

b. A Rational Juror Could Find That The Defendants' Bad Faith Investigation Had A Significant Role In Causing Beaman To Be Prosecuted.

Curiously, defendants claim that "[i]t is a gross distortion of the record to even suggest that the investigation ended with an early focus on plaintiff." Def. Br. 29. But of course a rational juror could find exactly that. Freesmeyer himself wrote in his police report that he told Beaman *seven months before his arrest* that he "was going to be arrested for Jennifer's death at one point or another." A.1318.

In addition, Freesmeyer admitted that within hours of the discovery of the body, he already considered Beaman the primary suspect and likely killer. A.1576. Defendants do not identify any evidence implicating Beaman at that point. No work had been done to check alibis, to process fingerprints, or to obtain autopsy results; there were no eyewitnesses to the crime, or even anyone who could place Beaman in the same city as the

[1] Defendants' claim that "Freesmeyer knew very little about Murray," Def. Br. 30, could not be further from the truth, as he knew all the relevant details, including information about the polygraph, Murray's history of beating women, his drug use generally, and his steroid abuse specifically, A.1481, 1491-94, 1539; A.2677.

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victim on the day of the murder; Beaman maintained his innocence in the face of an aggressive interrogation; and no physical evidence implicated him. *See* Pl. Br. at 43-44. For some indiscernible reason, defendants take issue with the fact that Morgan Keefe was guessing when she ventured that Beaman might be the killer, Def. Br. 29, but Keefe admitted precisely that, A. 1374 ("Q. And so when you told the police that you thought Alan Beaman might have been the murderer you were guessing; right? A. Right.").

Of course, Murray was only one of many potential suspects that defendants refused to investigate. Defendants do not respond *at all* to the fact that they learned of, but did not lift a finger to investigate, the longhaired stranger who kept calling Lockmiller after she rebuffed him just two days before her death. *See* Pl. Br. 6-7. Nor do they provide any explanation for ignoring the other stranger who gave Lockmiller his phone number written in lipstick and who asked Lockmiller's friend, on the day before the murder, why she had not called him. *See id*. The defendants completely ignored these suspects, which no detective acting in good faith would have done.

Defendants seek to justify their refusal to investigate the possibility that the killer was a burglar or other type of stranger based on "undisputed evidence" that no burglary occurred. Def. Br. 43. But there was clear evidence that did point to a burglary: Not only was there a garbage bag out on the coffee table, but Lockmiller's usually tidy apartment was in disarray. A.1359-60, 1372-73, 1594-95.

Because Lockmiller lived on a busy thoroughfare in a transient college town, Defendant Zayas admitted that the Lockmiller murder investigation presented "an open case" with "so many possibilities" and that "there were a lot of different factors that pointed to a potentially broad range of suspects." A.1353. And defendants totally ignore the reality that

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the scene pointed to a killer of considerable size and power, while Beaman was thin and small. A.1360, 3221-22.

c. A Rational Juror Could Find That The Defendants' Dishonesty And Intentional Omissions Played A Significant Role In Causing Beaman To Be Prosecuted.

A rational juror could also find a pattern of dishonesty and concealment by Freesmeyer. First, defendants somehow believe that only an irrational juror could conclude that Freesmeyer lied by responding "[n]o, not necessarily" when asked whether he had "been able in the course of [his] investigation to locate *any other person anywhere who had any conceivable motive* to kill Jennifer Lockmiller." A.115 (emphasis added). It is obvious that Murray had a motive, which this Court recognized in 2008. *See Beaman*, 229 Ill. 2d at 80. Perhaps Freesmeyer was simply mistaken when he denied Murray's clear motive to the grand jury, but a rational juror in this case would be entitled to disbelieve him and to reject such testimony as self-serving. Defendants also contend that it "would not have been accurate" for Freesmeyer to "have answered that Murray was a suspect" in response to this question, Def. Br. 30, but the question was whether Murray had "any conceivable motive," not whether he was a suspect. And in any case, the argument makes no sense because this Court has recognized that Murray "was specifically identified as a suspect" by the polygraph report. *Beaman*, 229 Ill. 2d at 76.

Second, defendants do not dispute that Freesmeyer told the grand jury that no helpful information had been learned from Lockmiller's neighbors during the investigation—even though David Singley provided information that suggested the killer remained in the apartment past 2 p.m., which would exclude Beaman as the killer. Pl. Br. 14; A.3300-04; 3417-18. Instead, defendants explain away Freesmeyer's concealment of Singley's time of death evidence by suggesting that Singley may have been mistaken about a totally separate

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issue—the whereabouts of Michael Swaine's car. Def. Br. 31. Their logic appears to be that Freesmeyer may have sincerely discounted the significance of Singley's time of death evidence because Singley possibly made an unrelated mistake about the car. *See id.* The portions of the record that defendants cite for this curious theory do not support it. *See* Def. Br. 31 (citing SA034, 035, 071). In any case, a rational juror would not need to credit the confusing and self-serving claim that Freesmeyer believed he was entitled not to tell the grand jury about Singley's time of death evidence because Singley might have made a factual error about an unrelated point.

Third, defendants offer no explanation whatsoever for Freesmeyer's omission in his police report of the exculpatory time trial that showed Beaman could have made it home from the bank in time to make the 10:37 and 10:39 a.m. calls. *See* Pl. Br. 30. A juror could view the omission of the exculpatory time trial as an honest mistake, but that certainly is not the only rational inference that could be drawn. After all, Freesmeyer included fourteen time trials in his police report—every single one *except* the exculpatory time trial. A.1339, 1345-46; A.3427. *See* Oral Argument at 32:58, *Beaman*, 2019 IL 122654 ("JUSTICE BURKE: But didn't Mr. Freesmeyer leave out some information or omitted information from his police report? MR. DICIANNI: That–the bypass route did not make it into his police report, that is correct. JUSTICE BURKE: Right, so he omitted it, right?").[2]

Again, Freesmeyer's omission of the exculpatory evidence was in addition to other efforts to skew the time trials that a rational juror could view as evidence of bad faith. To unrealistically reduce the travel time to and from Lockmiller's apartment, Freesmeyer

[2] Available at: https://multimedia.illinois.gov/court/SupremeCourt/Audio/2018/091318_122654.mp3.

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drove the entire route at an *average* speed of 75 miles per hour, 10 miles per hour over the posted speed limit. Pl. Br. 13. And when Freesmeyer thought he could hurt the alibi by driving at unrealistically slow speeds, he did that too. In an attempt to undercut the fact that Beaman made it home from the bank in time to make the 10:37 and 10:39 a.m. calls, Freesmeyer drove between the bank and the Beaman residence at 55 miles per hour on a four-lane interstate highway. Pl. Br. 12.

d. A Rational Juror Could Find That Defendants' Dishonesty and Misconduct Were Necessary To Cause Beaman's Prosecution Because The Evidence Against Him Was Tenuous.

Even when investigators engage in misconduct, the evidence against a suspect will be so strong in many cases that the evidence alone—and not the misconduct—causes the prosecution. But in this case, a rational juror could find that the evidence was so weak that the prosecution would not have occurred but for the defendants' misconduct. In fact, this Court referred to the evidence against Beaman—three times—as "tenuous." *Beaman*, 229 Ill. 2d at 78, 80, 81. Similarly, Detective Zayas admitted, well after Beaman had been charged, "I don't think [the case] was ready to be sent to the State [for prosecution] yet. I think we needed to work on it some more." A.1356.

In a creative attempt to suggest that the "tenuous" evidence of Beaman's guilt was so strong as to make his prosecution inevitable, the defendants butcher the record even further and disregard summary judgment fundamentals by drawing all inferences against Beaman. Defendants claim that "Jennifer Seig told NPD detectives she believed plaintiff threatened to kill Lockmiller and Swaine if he ever caught them together," Def. Br. 10, but fail to mention that Seig told police this might have all occurred *in a dream*. SA166: ("But I don't know if that was, it's hard to explain, but I don't know if [Beaman] said that or if that's the, or if I had it in a dream or something[.]"). Defendants state that "[Heidi] Steinman told

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NPD detectives that plaintiff called Lockmiller from Rockford to tell her that he loved her and missed her," Def. Br. 13, but they fail to note that the detectives must have known this was false based on the phone records. *See* A.339 (phone records showing that in August of 1993, when Beaman was in Rockford, Lockmiller called Beaman repeatedly, and he called her only once—for 13.8 seconds).

Lacking serious evidence, defendants fixate on the tumult that had characterized Beaman and Lockmiller's previous romantic relationship and accounts that Beaman kicked the door open twice. They believe this evidence shows "indisputable motive"—but they fail to mention that any motive had dissipated by the time of the murder. *See* Def. Br. 42. In fact, Beaman had terminated the relationship well before the murder and begun seeing someone else. A.1145, 2951-54. Police knew from people who encountered Beaman in the month before the murder that he had processed the relationship and gotten over Lockmiller. See R.8739-40. Michael Swain told police that Lockmiller herself said that "things were ironed out" and that Beaman had "calmed down." R.8749. And the letters from Beaman that police found in Lockmiller's apartment were old, almost all of them from 1992. A.546-84.

Defendants note that Beaman's "fingerprints were on the murder weapon, the clock radio, which cord was used to strangle the victim," Def. Br. 30; *see also* Def. Br. 42, but a rational juror obviously could dismiss this as irrelevant. Of course Beaman's prints were there. He had repeatedly been an overnight visitor in Lockmiller's apartment and used the alarm clock. A.875-76, 953, 2332-33. Fingerprints cannot be dated. A.1587, 3253. In any case, four of Swaine's prints were found on the alarm clock, as well as an unidentified fingerprint. A.3305-07. No other physical evidence linked Beaman to the crime.

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B. Defendants' Position Disregards This Court's Prior Opinion and Resurrects the Pressure, Influence, or Misstatement Test That This Court Flatly Rejected.

The Court's previous opinion squarely rejected the pressure, influence, or misstatement test, describing the appellate court's central error as "focus[ing] its inquiry on whether the 'officer[s] pressured or exerted influence on the prosecutor's decision or made knowing misstatements upon which the prosecutor relied.'" *Beaman*, 2019 IL 122654, ¶ 47. As the Court clearly explained, "liability for malicious prosecution 'calls for a commonsense assessment' of those persons who played a significant role in the criminal case. This significant role assessment necessarily includes those persons whose participation in the criminal case was so 'active and positive' to 'amount to advice and co-operation.'" *Id.* at ¶ 45. Nonetheless, defendants' central argument remains that they cannot be liable unless the prosecutor was "unduly influenced" or "could have been misled by the police." Def. Br. 32, 35. In other words, defendants ignore the very crux of this Court's prior opinion, as if it did not exist.

Allowing a jury to assess whether the defendants had a significant role in the decision to charge Beaman does not "eliminate[ ] any role for the prosecutor, so that the investigative activities of the police are all that is needed to establish proximate cause." Def. Br. 22; *see also id* at 26. Rather, Beaman's position simply recognizes that the police helped to cause the charge through a bad-faith investigation and concealment of evidence. Their misconduct prevented Souk from exercising the full independent judgment and "prosecutorial independence" envisioned by this Court in its unanimous 2019 opinion. *See Beaman*, 2019 IL 122654, ¶ 44.

Defendants believe that "Plaintiff's attaching any significance to the Murray polygraph report requires an analysis that completely excludes Souk's role from the case," Def. Br.

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34, but in reality, Souk himself testified: "Certainly I would have been interested in what the polygrapher had to say or what had happened," A.3423. Souk continued: "I would have found it of interest and asked some questions I think, yeah." A3423. And he added: "I would have asked some questions and looked at it more, and, you know, polygraph evidence, while totally inadmissible, is useful for investigative purposes. In fact, we used [other polygraph evidence] in this case for investigative purposes." A3423.

In light of Souk's own testimony, it is surprising that defendants even suggest for summary judgment purposes that only an irrational juror could find that the concealment of the Murray polygraph affected Souk's assessment of Murray as a suspect. In their bizarre view, the federal district court simply took leave of its senses when it analyzed the evidence and concluded: "Perhaps if [Souk] had received the polygraph report, he would no longer have agreed Murray was not a viable suspect." *Beaman*, 7 F. Supp. 3d at 830 n.8. A rational juror could find that the concealment of the Murray polygraph prevented Souk from exercising full independent judgment and "prosecutorial independence." *See Beaman*, 2019 IL 122654, ¶ 44.

Just as they wish away the effect the Murray polygraph could have had on the decision to charge Beaman, so too defendants disregard the role of the dishonest investigation as a whole in causing the malicious prosecution. Defendants respond with radio silence to Souk's unequivocal statement: "Beyond any question in my mind, this case would not have been won without Tim Freesmeyer." A.3207. In describing the May 16, 1994 meeting where the prosecutors and the defendants collectively agreed on charging Beaman, defendants recite only the testimony most favorable to them (that of Tony Daniels). *See* Def. Br. 34-35. Daniels claims Souk shut him down when he challenged the decision to

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charge Beaman, Def. Br. 34-35, but Freesmeyer was adamant that none of the investigators expressed any doubt at the meeting that Beaman should be arrested, A.1458-59, and other attendees recall that all investigators voiced support to arrest Beaman for murder, A.3411.

Souk testified that the "purpose of the meeting" with the investigators was "to see if there was anything from the Normal Police Department to—that would have any impact on the decision, either, you know, pro or con as to whether [Beaman] should be charged." A.3413. In Souk's words, the decision to charge Beaman reflected the "totality of [the defendants'] investigation." A.3415.

In sum, a rational juror could find that the defendants' concealment and dishonesty throughout the investigation played a significant role in causing the prosecution and diminishing the prosecutor's independent judgment. As this Court unanimously recognized: "[P]rosecutors ordinarily rely on police and other agencies to investigate criminal acts. Significantly, 'it is the recognized practice that the State's Attorney sensibly defers to the investigative duties of the police.'" *Beaman*, 2019 IL 122654, ¶ 43 (citation omitted).

C. Defendants' Conduct Did Not Amount to Ordinary Police Work or Mere Negligence.

Defendants pretend that the Court would need to adopt some novel legal proposition or impugn ordinary police work in order to conclude that the facts of this case require a trial on whether they played a significant role in commencing or continuing the prosecution. In fact, defendants minimize their serious misconduct as "standard police work," Def. Br. 26, and "police work common to almost every major criminal investigation." Def. Br. 21. On the contrary, ordinary police work certainly does not include concealing exculpatory polygraphs, omitting exculpatory time trials, and lying to grand juries about critical

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evidence and suspects—all of a which a rational juror could find the defendants did here. *See supra* at 2-7.

In fact, by suggesting that their own malfeasance is business as usual for the profession as a whole, defendants disparage all police officers. *See* Def. Br. 21, 26. Allowing a jury to hold the defendants accountable for their dishonesty would not chill the work of the vast majority of law enforcement officers—those who conduct investigations with integrity. For similar reasons, defendants are dead wrong that under plaintiff's position, "no investigation could escape litigation whenever a prosecution did not succeed," Def. Br. 23. Unlike this one, most unsuccessful prosecutions do not result from dishonest misconduct by police.

Nor does plaintiff propose to create "a cause of action for negligent investigation," as defendants would have it. Def. Br. 27. Again, both the Fourth District and the federal district court found that for summary judgment purposes, Warner buried the polygraph intentionally, not negligently. *See Beaman*, 2019 IL App (4th) 160527, ¶ 110; *Beaman*, 7 F. Supp. 3d at 827. If a jury found that Freesmeyer negligently omitted the exculpatory time trial from his report or gave false grand jury testimony due to mistake or incompetence, those conclusions would support a defense verdict. Summary judgment, however, was not appropriate because rational jurors could find intentional deception and concealment as opposed to mere negligence.

II. Malice Is A Question for the Jury.

From the actions described above, a rational juror could easily find malice. After all, questions of state of mind and good faith versus bad faith or malice are quintessential factual issues at the core of the jury's function. "Good faith is a question of fact, and is for the determination of the jury." *Hardin v. Gouveneur*, 69 Ill. 140, 143 (1873); *Murphy v. Larson*, 77 Ill. 172, 177 (1875) (holding in a malicious prosecution case that whether a

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defendant "acted in good faith . . . was a question for the jury"); *Mack v. First Sec. Bank of Chicago*, 158 Ill. App. 3d 497, 503 (1st Dist. 1987) (stating that "good faith is a factual determination . . . and is properly reserved to the sound discretion of the trier of fact").

Perhaps a juror could conclude that Freesmeyer botched the case due to error rather than malice. Maybe Freesmeyer ignored the evidence exculpating Beaman out of gross incompetence rather than malice; maybe it was an innocent mistake to either floor the accelerator or to apply the break—to travel at whichever speed might hurt Beaman's alibi; maybe Freesmeyer denied the existence of viable alternative suspects before the grand jury out of mere incompetence as opposed to bad faith; and maybe Freesmeyer remembered to memorialize in his report every time trial except the one that exculpated Beaman due to an innocent mistake. Maybe Zayas assented to the arrest despite knowing the case was not ready to be sent to the State because he really didn't think about it, see Pl. Br. 45-46, and maybe Warner innocently lost the polygraph. Yes—maybe.

All of these maybes reflect what is obvious: there are competing inferences that might be drawn from the record regarding the defendants' credibility and subjective state of mind. In our system of justice, we get to the truth on these issues through a trial, which is what must occur in this case. The determination that defendants "showed an utter disregard for the truth," A.3248-49, reached by plaintiff's expert in criminal investigations, a former FBI agent with 45 years of criminal investigation experience, is not a fanciful conclusion that no rational juror could reach. The drastic remedy of resolving such questions through summary judgment has no place here because "the right of the moving party" is not "clear and free from doubt." *Beaman*, 2019 IL 122654, ¶ 22.

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III. A Rational Juror Could Find That Defendants Lacked Probable Cause.

Defendants wisely do not even attempt to defend the Fourth District's strange position that "plaintiff could *never* successfully meet his burden of showing probable cause did not exist" because there was not a finding of evidentiary insufficiency in his criminal case. *Beaman*, 2019 IL App (4th) 160527, ¶ 82 (emphasis added). Instead, they incorrectly contend that no reasonable juror could find probable cause lacking based on the facts. *See* Def. Br. 41-45.

A jury must decide whether defendants had probable cause to arrest and jail Beaman because the record is beset with complex facts from which competing inferences could be drawn. Defendants want the Court to take not only some of the facts as undisputed but to *adopt their inferences* about whether those facts inculpate Beaman and help to establish probable cause. A court may grant summary judgment if (1) the material facts are undisputed *and* (2) the only rational inferences that one can draw from those facts do not satisfy the elements of the claim. *Seymour v. Collins*, 2015 IL 118432, ¶ 42; *Carney v. Union Pac. R. Co.*, 2016 IL 118984, ¶ 25; *see also* Pl. Br. 39 (citing additional cases). True, under the first part of this analysis, plaintiff and defendants agree on some of the facts. The Court, however, cannot resolve the second part—the proper inferences to draw from those facts—on summary judgment in this case.

For the most part, defendants' probable cause argument merely reiterates the same pieces of information that Beaman fully discussed on pages 40-42 of his opening brief. *See* Def. Br. 17-18, 42-44. Ignoring summary judgment fundamentals, defendants' entire argument is based on viewing the record in the light most favorable to them. For example, police found Beaman's fingerprints on the alarm clock console (not the cord used to strangle the victim) along with both Michael Swaine's prints and additional prints that

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could not be identified. Pl. Br. 41. This fact is not disputed, but the inferences are the rub. A rational juror considering the fingerprints could easily say, "Of course Alan Beaman's prints were on the alarm clock. He had spent the night there and used the alarm clock, but they don't mean anything because no one can date fingerprints, and Swaine's prints were on the clock too. Plus, the unidentified prints probably belonged to the killer. At best the fingerprint evidence is irrelevant to probable cause; if anything, the unidentified prints are exculpatory."

Defendants add to their probable cause argument only a few pieces of information not fully addressed in plaintiff's opening brief, but none of this helps them. First, they take the astonishing position that the emergence of the bank video somehow *inculpates* Beaman. Def. Br. 17. In fact, the bank video proved that on the day of the murder, Beaman was some 120 miles from the crime scene at 10:11 a.m. Pl. Br. 11. But Freesmeyer decided that the bank video was evidence of guilt. A.1578, 1584. To him, Beaman seemed dishonest and guilty because he did not bring up the bank trip when Freesmeyer asked him for proof of innocence. A.1578, 1584. Second, defendants note that the killer covered the victim's face with a box fan, *see* Def. Br. 18, but such behavior is probative of a home invasion: burglars often cover the heads of their victims while conducting a search, A.1360. Of course, obvious signs that the killer rummaged through the apartment also supported this conclusion. *See* Pl. Br. 5. Third, defendants theorize that the manner of stabbing indicated a crime of passion, Def. Br. 18, but personal and emotional stabbings tend to have more wounds, indicating a frenzy, A.1361. Fourth, defendants incorrectly claim that Todd Heyse saw "two people fitting the description of plaintiff and Lockmiller around the time of the murder," Def. Br. 18, when in fact he saw the individuals four or five days after he closed

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on a real estate transaction—a transaction that occurred three weeks before the murder. R.8812, 8818-19. Moreover, Heyse saw these people while driving past the apartment building on North Main Street, a busy thoroughfare, and testified that he could not "identify either one of them again if [he] saw them." R.8802, 8809. Finally, defendants falsely claim that a neighbor, Michael VanBerringer, stated that Beaman mentioned an alibi to him after being interrogated by the police on the same day the body was discovered. *See* Def. Br. 43. There is nothing suspicious about a suspect beginning to think about their alibi after a highly accusatory interview. In any case, VanBerringer clarified that the alibi discussion may have occurred days later in "some later, similar conversation." R.11612. In short, none of defendants' new points support probable cause, and some undercut it further.

Aside from all of this non-probative information, a rational juror would also have to assess the actual evidence that made it obvious Beaman was in Rockford, some 120 miles away from the crime. After Beaman made the bank deposit and placed the 10:37 and 10:39 calls, it would have been impossible—literally—for him to travel to Normal, commit the murder, and return home by 2:15, when Carol Beaman confirmed he was at the family residence. *See* Pl. Br. 11. Singley's evidence, which established the time of death as 2 p.m. or later, made the scenario doubly impossible. *See* Pl. Br. 14. In the most recent Fourth District proceeding, Defendants even acknowledged a disputed issue on whether "opportunity was improbable." Def. App. Br. 42. It strains logic to say that cause is *probable* as a matter of law while conceding that opportunity is *improbable.*

A rational juror would also consider that no witness could place Beaman in Bloomington-Normal (much less at the victim's apartment), that he maintained his innocence both under vigorous interrogation and in conversations with a friend that police

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recorded in secret, and that no probative physical evidence connected him to the crime. Pl. Br. 10, 11. Surely a rational juror would consider the many potential killers (some known, others not) who floated in and out of the victim's life. Pl. Br. 5. No potential juror could ignore Murray, the steroid-abusing drug dealer known to beat women. He had sex with the victim and sold her drugs, could not complete a polygraph about the killing, and lied about his alibi. Pl. Br. 7-9. At the end of it all, some rational jurors would reject probable cause to arrest Alan Beaman; perhaps others would find it. The solution to this problem is a trial.

All of this means that courts must stay their hand and let the jury decide. The complex summary judgment record in this case (comprising 91 pages of briefs, 272 pages of statements of material facts and responses thereto, and 11,066 pages of exhibits) presents a thicket of competing inferences that only a factfinder can resolve.

IV. A Rational Juror Could Find That The Criminal Proceedings Against Beaman Concluded In A Manner Indicative Of Innocence.

Prosecutors dropped the charges against Beaman after this Court threw out the conviction, then Beaman won a certificate of innocence through litigation in the Circuit Court of McLean County, and the Governor pardoned him on the basis of innocence. Any one of these events would defeat summary judgment on the "indicative of innocence" prong all by itself.

First, a gubernatorial pardon on the basis of innocence alone establishes that the proceedings concluded in the plaintiff's favor. *Walden v. City of Chicago*, 391 F. Supp. 2d 660, 669 (N.D. Ill. 2005) (explaining that a 2003 pardon on the basis of innocence was "indicative of [the plaintiff's] factual innocence").

Second, a certificate of innocence is "relevant at least to the 'indicative of innocence' element of plaintiff's malicious prosecution claim." *Kluppelberg v. Burge*, 84 F. Supp. 3d

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741, 744 (N.D. Ill. 2015) (citing *Logan v. Burge*, No. 09 C 5471, 2009 WL 2967014 (N.D. Ill. filed Sept. 3, 2009)). The instant case comes to this Court on summary judgment; therefore, relevant evidence satisfies plaintiff's burden.

Defendants incorrectly contend that because the State is the opposing party in a certificate of innocence proceeding, considering the certificate here would "deprive[ ] defendants of any opportunity to litigate an element of the cause of action." Def. Br. 48. Hardly. Beaman does not contend that the certificate of innocence is preclusive on the indicative innocence prong, merely that defendants must litigate that prong before a jury.

Even if Beaman did not come to court with a certificate of innocence and a pardon from the Governor, the "indicative of innocence" prong still would be a jury question. The "dismissal of a . . . charge against the plaintiff at the instance of the prosecutor" generally suffices to show favorable termination. *Rich v. Baldwin*, 133 Ill. App. 3d 712, 715 (5th Dist. 1985). The State's Attorney's Office not only dropped the charges, but it did so after this Court unanimously declared, "We cannot have confidence in the verdict finding [Beaman] guilty of this crime given the tenuous nature of the circumstantial evidence against him[.]" *Beaman*, 229 Ill. 2d at 81. Moreover, defendants lack any admissible evidence to suggest that the proceedings did not terminate in a manner indicative of innocence. *See* Pl. Br. 46-47.

V. The Civil Conspiracy Claim Must Proceed to Trial.

The defendants' parallel malfeasance provides the strongest evidence of conspiracy. Freesmeyer lied to the grand jury, manipulated time trials, and concealed exculpatory evidence. Zayas let Beaman get arrested even though he knew the case was shoddy and incomplete. Whether Warner hid the Murray polygraph presents a genuine issue of fact, as Fourth District and federal district court recognized. Taking these facts as true, it would be

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an extraordinary coincidence if the defendants all decided in solitude to fabricate evidence that would enable the prosecution of Alan Beaman, a college student with an alibi that placed him some 120 miles from the scene. This claim, too, must go to a jury.

The intracorporate conspiracy doctrine does not bar this claim. "Courts have recognized two exceptions to the Illinois intracorporate conspiracy doctrine: (1) a conspirator acts out of self-interest rather than in the interest of the principal; and (2) when the scope of the conspirators act beyond the scope of their official duties." *Whitley v. Taylor Bean & Whitacker Mortg. Corp.*, 607 F. Supp. 2d 885, 897 n.5 (N.D. Ill. 2009). Relying on these exceptions, courts routinely refuse to apply the doctrine to police misconduct.[3] This Court should do the same. Misconduct and evidence suppression neither benefit a police department nor fall within a detective's legitimate duties.

VI. The Remaining Claims Must Proceed to Trial.

Beaman did not waive his intentional infliction of emotional distress claim, as his appellate brief addressed it with argument and citation. A.3379. This claim must rise or fall with the malicious prosecution claim. The same holds for the respondeat superior and indemnification claims—they should be reinstated with the malicious prosecution claim.

VII. Conclusion

The Court should reverse the appellate court and remand this case for trial.

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[3] *See Newsome v. James*, No. 96 C 7680, 2000 WL 528475, at *15 (N.D. Ill. Apr. 26, 2000); *Emery v. Northeast Illinois Regional Commuter R.R. Corp.*, No. 02 C 9303, 2003 WL 22176077, at *4 (N.D. Ill. Sept. 18, 2003); *Hobley v. Burge*, No. 03 C 3678, 2004 WL 1243929, at *11 (N.D. Ill. June 3, 2004); *Johnson v. Village of Maywood*, No. 12 C 3014, 2012 WL 5862756, at *3 (N.D. Ill. Nov. 19, 2012); *Salto v. Mercado*, No. 96 C 7168, 1997 WL 222874, at *1-2 (N.D. Ill. Apr. 24, 1997); *Northen v. City of Chicago*, No. 93 C 7013, 1999 WL 342441, at *4 (N.D. Ill. May 17, 1999); *Cannon v. Burge*, No. 05 C 2192, 2006 WL 273544, at *15 (N.D. Ill. Feb. 2, 2006).

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Respectfully submitted,

ALAN BEAMAN

By: s/David M. Shapiro
David M. Shapiro (ARDC # 6287364)
david.shapiro@law.northwestern.edu
Locke E. Bowman (ARDC # 6184129)
locke.bowman@law.northwestern.edu
Roderick & Solange MacArthur Justice Center
Northwestern Pritzker School of Law
357 E. Chicago Avenue
Chicago, Illinois 60611
(312) 503-0844

Jeffrey Urdangen (ARDC #3127767)
jurdangen@rshc-law.com
Riley Safer Holmes & Cancila LLP
70 W. Madison Street
Chicago, Illinois 60602
(312) 471-8752

Counsel for Plaintiff-Appellant Alan Beaman

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Case No. 125617

IN THE
SUPREME COURT OF ILLINOIS

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

CERTIFICATE OF COMPLIANCE

I, David M. Shapiro, 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) table of contents with points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 19 pages.

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.

s/David M. Shapiro

David M. Shapiro (ARDC # 6287364)
david.shapiro@law.northwesern.edu
Roderick and Solange MacArthur Justice Center
Northwestern Pritzker School of Law
357 E. Chicago Avenue
Chicago, Illinois 60611
(312) 503-0844

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	)	Appellate Court of Illinois,
Plaintiff-Appellant,	)	Fourth District, No. 4-16-0527
	)	
v.	)	There Heard on Appeal
	)	from the Circuit Court of McLean County,
	)	Illinois, Eleventh Judicial Circuit,
TIM FREESMEYER, Former Normal Police Detective; DAVE WARNER, Former Normal Police Detective; FRANK ZAYAS, Former Normal Police Lieutenant; and TOWN OF NORMAL, ILLINOIS,	)	No. 14 L 51
	)	The Honorable Richard L. Broch
	)	Judge Presiding
Defendants-Appellees.	)	

CERTIFICATE OF SERVICE

I, David M. Shapiro, an attorney, certify that on December 23, 2020, the foregoing REPLY BRIEF OF PLAINTIFF-APPELLANT ALAN BEAMAN was 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:

Thomas G. DiCianni
Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
140 South Dearborn St., 6th Floor
Chicago, Illinois 60603
TDiCianni@ancelglink.com

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.

s/David M. Shapiro

David M. Shapiro (ARDC # 6287364)
david.shapiro@law.northwesern.edu
Roderick and Solange MacArthur Justice Center
Northwestern Pritzker School of Law
357 E. Chicago Avenue
Chicago, Illinois 60611
(312) 503-0844