No. 122654

E-FILED
5/3/2018 8:50 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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 Illinois Appellate Court, Fourth District, No. 4-16-0527, From the Circuit Court of McLean County, Illinois, Eleventh Judicial Circuit, No. 14 L 51, The 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 DEFENDANTS/RESPONDENTS TIM FREESMEYER. DAVE WARNER, FRANK ZAYAS and TOWN OF NORMAL, ILLINOIS

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POINTS AND AUTHORITIES

INTRODUCTION

Amicus curiae the 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 thirteen (513) 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 ("NFOP") is the world's largest organization of law enforcement officers, with more than three hundred and thirty thousand (330,000) members in more than two thousand and two hundred (2200) 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 ("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 ("Lodge 41") is the second largest Local Lodge in Illinois, representing approximately three thousand one hundred and fifty (3150) sworn and retired Troopers. 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 ("Lodge 7") is the largest Local Lodge in Illinois and represents approximately ten thousand and five hundred (10,500) sworn Chicago Police Officers. As their collective bargaining agent, Lodge 7 works to improve wages, benefits and working conditions for Chicago Police Officers. Lodge 7 also represents approximately six thousand (6000) 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. These officers are responsible for investigating crimes for prosecution. In the case at hand, the Plaintiff asks this Court to depart from precedent and require that law enforcement officers have only a "significant role" in the prosecution of a case to be liable for the tort of malicious prosecution. Such a standard would result in virtually all police officers being subject to liability simply by the nature of their profession. This increased risk of liability could have a chilling effect on law enforcement and will greatly change 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. DEFINING THE ELEMENT OF "COMMENCE OR CONTINUE" TO REQUIRE ONLY A "SIGNIFICANT ROLE" IN THE PROSECUTION WILL RESULT IN VIRTUALLY EVERY POLICE OFFICER FACING LIABILITY FOR MALICIOUS PROSECUTION

Plaintiff asks this Court to impose liability upon any police officer who plays a "significant role" in the prosecution of a case, which is a departure from well-established precedent requiring a "causal link" between a police officer's conduct and the decision to prosecute a crime. In essence, the Plaintiff argues for the application of a simple negligence standard when evaluating malicious prosecution claims against police officers. This argument is contrary to the long standing public policy of this State, as codified in the Tort Immunity Act, that police officers should NOT be liable for their conduct in the execution of the law, unless that conduct is willful and wanton. See 745 ILCS 10/2-202. Under the Act, an officer is immune from liability for acts of simple negligence.

Further, to understand the absurdity of the proposed "significant role" standard, consider the responsibilities of state's attorneys and police officers in the criminal justice system. State's attorneys prosecute crimes**.** And crimes are the very essence of police work. Police officers take an oath of office, and in doing so, they accept the very serious responsibility for not only preventing crimes, but for investigating crimes, and apprehending or detaining individuals who committed crimes or are suspected of committing crimes. Subsequently, after considering the evidence collected and presented, a state's attorney decides whether to charge and prosecute a crime. Therefore, under Plaintiff's proposed definition, every police officer, simply by virtue of his or her

job, will be unduly subject to liability for malicious prosecution. As succinctly stated by the Appellate Court, "Such a limitation [as argued by the Plaintiff] exposes police officers to undue malicious prosecution cases for performing usual investigatory work when a prosecutor makes a mistaken decision to pursue a conviction." (Opinion at p. 17).

Ironically, even though the Plaintiffs as well as the Amici Curiae argue for this relaxed standard, in support of their argument, they cite examples of scenarios that do not coincide with the facts of this case, and that actually support the Defendants' argument for the requirement of a "causal link", such as undue influence, between the conduct of a police officer and a state's attorney's decision to prosecute.

For example, Former Prosecutors as Amici Curiae argue that "due to a disparity in access to evidence", prosecutors must be assured that all of the evidence is being turned over to them by the police. (Former Prosecutors Brief at p. 11). Similarly, they express concern about a lack of "candor and forthrightness" from police investigators. (Id. at p. 11). However, there was absolutely no finding in the case at hand that any of the involved officers intentionally failed to turn over evidence or lied to the prosecution.

On the contrary, the evidence was uncontradicted that the prosecutors were made aware of all of the evidence that had been gathered, except for inconclusive polygraph results which were inadvertently misplaced, and after the fact found inconsequential to any prosecution decision. Based upon that evidence, a decision to prosecute was made. If the Plaintiffs are concerned about police officers hiding evidence from the prosecution or lying to the prosecution, that concern is misplaced. Had there been evidence that police investigators either lied or hid evidence in the case at hand, in all likelihood, the lower

court would have found the misconduct to be a sufficient "causal link" per the standard that the Defendants advocated for and the lower court adopted. [1]

The Former Prosecutors also make a series of quantum leaps and argue that even absent the "withholding" of evidence as referenced above, a police officer's "singular focus" on a particular suspect may color all the evidence in the case. They continue that somehow, this "singular focus" equates to bias and this so called "bias" will ipso facto lead to the charging and prosecuting of wrong suspects. (Former Prosecutors Brief at p. 12).

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 has to exclude some of those suspects and "focus" on others. The evidence determines which suspect or suspects are the subject of the investigators' "focus". And this "focus" is a routine part of investigatory work, not bias as claimed by the Former Prosecutors.

Bias is defined as:

a : an inclination of temperament or outlook; *especially* : a personal and sometimes unreasoned judgment : PREJUDICE, [or]

b : an instance of such prejudice……

"Bias." *Merriam-Webster.com*, Merriam-Webster, www.merriam-webster.com/dictionary/bias. Accessed 9 Apr. 2018.

[1] The same can be said for Amicus Curiae Innocence Network's concern about officers being immune in cases of disregarding exculpatory evidence, and destroying/preventing discovery of exculpatory evidence (Innocence Networks Brief at p. 6-7). Most likely, these acts of misconduct would be sufficient to satisfy the "causal link" standard.

Bias means, among other things, "unreasoned judgment" or "prejudice". Therefore, the Plaintiff's describing the "singular focus" that routinely stems from good, solid, investigative police work as "bias" is disingenuous. Further, just like the Court in this case found no evidence of lying or withholding evidence, there was absolutely no indication that ANY of the police investigators in this matter demonstrated bias in their investigatory work.

These inflammatory statements about police officers and their work, as well as distortions of the evidence in this case, should not distract this Court from the untenable position taken by the Plaintiff. Plaintiff argues that a police officer only needs to play a significant role in a prosecution 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 liability for doing routine police work. Further, such a standard, if adopted, would lead to adverse and dangerous consequences not only for police officers but for the citizenry that they serve and protect.

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

In recent years, there has been a drastic downward spiral in society's attitude and treatment of police officers. Sensationalized media accounts of police encounters have fueled mistrust and even outright hatred within communities, often those that depend on police services the most. Further, unlike traditional, mainstream media outlets, informal media sources such as social media, blogs and online commentary, are not regulated by any rules or ethics of conduct. Users of these informal outlets can and do produce reports that are not merely biased but are actually false, without consequence to the author. These

reports that routinely discuss police officers spew hate and fuel an already raging fire of distrust and outright violence towards police.

In addition to the very publicized verbal attacks on police, the physical assaults against police officers have skyrocketed. The Officer Down Memorial Page reports that at the time of this writing, forty-six (46) police officers have died in the line of duty in 2018, with more than half, twenty-four (24), killed by gunfire attack. https://www.odmp.org/search/year/2018. To put this in perspective, on average, at least one officer per week has been killed by gunfire in 2018. In April of this year alone, eleven (11) officers have died in the line of duty, and five (5) were killed by gunfire.

This vilification of police officers has undoubtedly had a negative effect on the law enforcement community. Recruiting and retention efforts have become strained, with some cities seeing a reduction in police recruit applications by an astounding ninety (90) percent. Patrol officers have seen their workloads increase, and in some agencies, the number of officers available to assist in a crisis has shrunk to unsafe levels.

In these tough times, police officers are tasked with clamping down on violent crime and violent crime is rampant and on the rise. According to Chicago Police Department crime statistics, as of April 15, 2018, one hundred and twenty-two (122) murders have occurred in Chicago which means the City is well on its way to reaching the six hundred and fifty (650) murders that were committed during the entire year of 2017. https://home.chicagopolice.org/wp-content/uploads/2018/04/1_PDFsam_CompStat-Public-2018-Week-15.pdf . These trends are not limited to Chicago. For example, since 2015, Baltimore, a city at the epicenter of strained police-community relations, has seen its

violent crime spike to its highest level in decades. Three hundred and forty-three (343) homicides took place in Baltimore in 2017 alone.

There are various theories for the universal rise in violent crime in recent years. In today's political climate, officers may be deciding that the risks to their livelihood, safety, reputations and liberty, are too great to engage in the proactive policing that historically has been effective in reducing crime. And it is against this backdrop that Plaintiffs seek to add yet an additional risk – a risk of increased liability upon police officers simply for doing their jobs. The "significant role" standard that the Plaintiffs espouse could have a chilling effect on an already overburdened, understaffed and highly scrutinized police force. As described previously, virtually every officer has a "significant role" in the prosecution of crimes. To further stigmatize police officers by opening the floodgates to lawsuits each and every time an investigation leads to a prosecution would create a disincentive to engaging in meaningful police work. Society and in particular those communities most vulnerable to violent crime simply cannot afford even a slight compromise to public safety.

III. ADDITIONALLY, INCREASED EXPOSURE TO LIABILITY WILL RESULT IN DELAYED AND COSTLY INVESTIGATIONS TO THE DETRIMENTOF VICTIMS AND THE PUBLIC

If a "significant role" standard is adopted, officers, and particularly, investigators, 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 job. As a result, with each prosecution will come heightened scrutiny of the investigation, as a cause of action for a negligent (or willful and wanton) investigation 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. Investigations should be guided by investigative 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 officers will have to go through to ensure their investigations are scrutiny proof.

The Former Prosecutors claim that even under their "significant role" standard, "legitimate" police investigators are protected from liability. (Former Prosecutors Brief at p. 14). Implicit in this argument is their belief that the Defendants should be subject to liability, and therefore, they are not "legitimate" investigators.

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

The decision of this Court to reverse 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 named Murray,

and included evidence that 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 incomplete polygraph was turned over to the State. (the inconclusive polygraph was inadvertently misplaced). Per this Court's decision, the Defendants in their diligence uncovered four points of relevant exculpatory evidence, so relevant that the failure of the State to turn them over lead to the reversal of Plaintiff's conviction. Yet according to the Plaintiff, the officers were not acting "legitimately" and should be subject to liability for their thorough investigatory work.

If the Court adopts a "significant role" standard, 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 the bases, no matter how remote or redundant. This will lead to increased costs that will ultimately be borne by the taxpayer, a backlog of unsolved cases, and undue delay in prosecuting crimes. And the longer an investigation takes, the more difficult it becomes to prosecute a crime successfully. Witnesses disappear and victims become uncooperative as time passes. Further, the longer a dangerous subject 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 have been re-interviewed 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 repeated questioning as harassment by investigators. As for the timetable of events, Plaintiff's supervisor confirmed that the Plaintiff got off work on August 25 at 9:00 a.m. Detectives could have interviewed Plaintiff's coworkers to further confirm the time that 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 how an investigation could have been "better" or more thorough. As law enforcement professionals, investigators must strike a balance between a thorough and prompt investigation, with limited resources available. To ensure the successful prosecution of serious crimes and 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 a detriment 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 respectfully requests that this Court affirm the Appellate Court's decision in this case.

Respectfully submitted:

Amicus Curiae Illinois FOP Labor Council

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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 contained in the Rule 341(d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under 342(a) is 13 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.

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