

## Justice Kavanaugh for the Defense!

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*Thompson v. Clark*, \_\_\_ U.S. \_\_\_, 142 S. Ct. 1332, 212 L. Ed. 2d 382 (April 4, 2022) (Kavanaugh, J.), tackled the thorny question of whether a Fourth Amendment claim under 42 U.S.C. §1983 could succeed where criminal charges were dismissed before trial without any explanation by the prosecutor or judge. The various Circuit Courts of Appeals have reached different conclusions in answering that question. Compare *Kossler v. Crisanti*, 564 F. 3d 181, 187 (3d Cir. 2009) (en banc); *Cordova v. Albuquerque*, 816 F. 3d 645, 649 (10th Cir. 2016), with *Laskar v. Hurd*, 972 F. 3d 1278, 1286 (11<sup>th</sup> Cir. 2020); *Lanning v. City of Glens Falls*, 908 F.3d 19, 22 (2d Cir. 2018).

Justice Kavanaugh delivered the Opinion of the Court. Justice Alito filed a dissenting opinion, joined by Justices Thomas and Gorsuch.

Larry Thompson was charged and detained in state criminal proceedings, but, as noted above, the charges were dismissed before trial without any opinion or other explanation by either the prosecutor or the judge. After the dismissal, Thompson alleged that the police officers who initiated the criminal proceedings had “maliciously prosecuted” him without probable cause. Thompson sued and sought money damages from those officers in federal court. He advanced a Fourth Amendment claim under 42 U.S.C. §1983 for malicious prosecution.

We have always known that to maintain a Fourth Amendment claim under §1983, a plaintiff such as Thompson must demonstrate, among other things, that he obtained a favorable termination of the underlying criminal prosecution. Cf. *Heck v. Humphrey*, 512 U.S. 477, 484, 114 S. Ct. 2364, 129 L. Ed. 2d 383, and n. 4 (1994).

This case required the Court to examine prior precedents and historical practice to determine what a favorable termination actually entails. Does it suffice for a plaintiff to show that his criminal prosecution ended without a conviction? Or must the plaintiff also demonstrate that the prosecution ended with some affirmative indication of his innocence, such as an acquittal or a dismissal accompanied by a statement from the judge that the evidence was insufficient?

The Court concluded as follows: To demonstrate a favorable termination of a criminal prosecution for purposes of the Fourth Amendment claim under §1983 for malicious prosecution, a plaintiff need only show that his prosecution ended without a conviction. Thompson satisfied that requirement in this case. The Supreme Court therefore reversed the judgment of the United States Court of Appeals for the Second Circuit and remanded for further proceedings consistent with its opinion.

The status of American law as of 1871, when §1983 was passed, was relevant for the purposes of the Court’s inquiry. See *Manuel v. Joliet*, 580 U. S. 357, 370, 137 S. Ct. 911, 197 L. Ed. 2d 312 (2017); *Nieves v. Bartlett*, 587 U. S. \_\_\_, \_\_\_, 139 S. Ct. 1715, 204 L. Ed. 2d 1 (slip op., at 12); *Laskar v. Hurd*, 972 F. 3d 1278, 1286 (11<sup>th</sup> Cir. 2020). In the overwhelming majority of American jurisdictions that had considered the

issue as of 1871, a plaintiff alleging malicious prosecution did not need to show that his prosecution had ended with some affirmative indication of innocence. Since the American tort-law consensus as of 1871 did not require a plaintiff in a malicious prosecution suit to show that his prosecution ended with an affirmative indication of innocence, the Court similarly construed the Fourth Amendment claim under §1983 for malicious prosecution. In other words, in a §1983 action, it is customary for the Court to look at the equivalent state tort law.

In evaluating the tort law as of 1871, it is typical to review the “the values and purposes” of the Amendment at issue, in this case the Fourth Amendment. *Manuel, supra*, 580 U. S. at 370. The question of whether a criminal defendant was wrongly charged does not logically depend on whether the prosecutor or court explained why the prosecution was dismissed. The individual’s ability to seek redress for a wrongful prosecution cannot reasonably turn on the fortuity of whether the prosecutor or court happened to explain why the charges were dismissed. In addition, requiring the plaintiff to show that his prosecution ended with an affirmative indication of innocence would paradoxically foreclose a §1983 claim when the government’s case was weaker and dismissed without explanation before trial, but allow a claim when the government’s evidence was substantial enough to proceed to trial. That would make little sense. Finally, requiring a plaintiff to show that his prosecution ended with an affirmative indication of innocence is not necessary to protect officers from unwarranted civil suits—among other things, officers are still protected by the requirement that the plaintiff show the absence of probable cause and by qualified immunity.

The United States Supreme Court ruled that a Fourth Amendment claim under §1983 for malicious prosecution does not require the plaintiff to show that the criminal prosecution ended with some affirmative indication of innocence. A plaintiff need only show that the criminal prosecution ended without a conviction. Thompson satisfied that requirement here. The Court did not express any view on additional questions that may be relevant on remand, including whether Thompson was ever seized as a result of the alleged malicious prosecution, whether he was charged without probable cause, and whether respondent is entitled to qualified immunity. On remand, the Second Circuit or the District Court as appropriate was invited to consider those and other pertinent issues. The Court reversed the judgment of the U. S. Court of Appeals for the Second Circuit and remanded for further proceedings consistent with the opinion.

In sum:

1. A Fourth Amendment claim under § 1983 for malicious prosecution does not require the plaintiff to show that the criminal prosecution ended with some affirmative indication of innocence.
2. A plaintiff need only show that the criminal prosecution ended without a conviction.
3. Thompson satisfied that requirement here.
4. Larry Thompson was charged and detained in state criminal proceedings.

5. The charges were dismissed before trial without any explanation by the prosecutor or judge.
6. Thompson alleged that police officers who initiated the criminal proceedings had maliciously prosecuted him without probable cause.
7. Thompson sued for money damages from those officers in federal court, advancing a Fourth Amendment claim.
8. A 1983 plaintiff must demonstrate, among other things, that he obtained a favorable termination of the underlying criminal prosecution.
9. Dismissal of the charges is sufficient to support a claim.

One might be surprised to see Justice Kavanaugh on the side of the accused, but this Opinion, while receiving little publicity, is some comfort to those who believe that the police and prosecutor should be held to higher standards than has customarily been the case.

*Rieders, Travis, Dohrmann, Mowrey  
Humphrey & Waters  
161 West Third Street  
Williamsport, PA 17701  
(570) 323-8711 (telephone)  
(570) 323-4192 (facsimile)*

*Cliff Rieders is a Board-Certified Trial Advocate in Williamsport, is Past President of the Pennsylvania Trial Lawyers Association and a past member of the Pennsylvania Patient Safety Authority. None of the opinions expressed necessarily represent the views of these organizations.*