

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON
CIVIL ACTION NO.

Electronically Filed

JOHN NORMAN, as Administrator of)	
the Estate of DESMAN LADUKE, deceased;)	
)	
v.)	COMPLAINT WITH DEMAND
)	FOR JURY TRIAL
JOSEPH HORTON, individually)	
)	
Serve: Scott Miller, Esq.)	
Sturgill Turner)	
Barker & Maloney, PLLC)	
333 West Vine Street, Suite 1500)	
Lexington, KY 40507-1681)	

*** *** ***

Comes the Plaintiff, John Norman, as Administrator of the Estate of Desman LaDuke, by counsel, and for his Complaint against Defendant, Joseph Horton, states as follows:

JURISDICTION

1. Plaintiff brings this action against Defendant, Joseph Horton, to redress the deprivation of rights secured by the Fourth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and the common law.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983.

3. Plaintiff also invokes the supplemental jurisdiction of this Court over his state law claims against the Defendant for common law violations pursuant to 28 U.S.C. § 1367 as the common law claims form part of the same case or controversy.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 as the cause of action occurred in this District.

PARTIES

5. Plaintiff, John Norman, is duly appointed and acting Administrator of the Estate of Desman LaDuke, having been so appointed by Order of the Jessamine District Court entered on November 10, 2022. The Order is attached as **Exhibit A**.

6. The decedent, Desman LaDuke, was at all times mentioned herein a citizen and resident of Nicholasville, Jessamine County, Kentucky.

7. Defendant, Joseph Horton, was, at all relevant times herein, an officer with the Nicholasville Police Department and will be served through his counsel, Scott Miller of Sturgill Turner Barker & Maloney, 333 West Main Street, Suite 1500, Lexington, KY 40507.

FACTUAL ALLEGATIONS

8. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if set forth fully herein.

9. On October 22, 2022, the decedent, 22-year-old Desman LaDuke, was alone at his residence, located at 233 Green Street, Nicholasville, Kentucky 40356 (“the LaDuke residence”).

10. Desman was struggling with his mental health, including, but not limited to, coping with the deaths of his mother and his brother, and his own will to live.

11. On the above date, upon learning that Desman was in possession of a firearm and was suffering from suicidal thoughts, one of Desman’s family members called 9-1-1 and asked that police assist LaDuke at his residence.

12. At no time did Desman act violently or make threats against other people; rather, Desman's family was only concerned with the risk he posed to himself.

13. Shortly after the 9-1-1 call was made, officers of the Nicholasville Police Department, including Defendant, Joseph Horton ("Horton"), appeared at the LaDuke residence.

14. The responding officers included members of the Special Response Team (SRT), who were highly armed. Specifically, Horton, an SRT officer, was armed with a sniper rifle.

15. Although Desman remained calm and cooperative with the officers upon their arrival, the officers proceeded to form a perimeter surrounding the LaDuke residence, with weapons drawn.

16. During the resulting stand-off, members of Desman's family pleaded with officers and asked that they be allowed to talk to Desman to de-escalate the situation. The officers refused all such requests by the family and continued escalating the tension.

17. Approximately an hour and a half into the stand-off, Horton shot Desman, who was still alone inside the home, through his bedroom window. The bullet struck Desman in the chest.

18. After Desman was shot, officers entered the LaDuke residence and drug Desman to the kitchen floor, leaving a trail of blood from his bedroom to the kitchen.

19. While Desman laid bleeding on the kitchen floor, officers continued to yell at him, including, but not limited to, telling Desman that it was his own fault that he was shot.

20. Desman was eventually taken by ambulance to University of Kentucky Hospital, where he died from his injuries later that evening.

21. When Desman was shot, he was alone in his home. He did not threaten to harm the officers, including Horton, or any other person, nor did Desman brandish or raise his gun in a threatening manner to anyone.

22. Desman did not use, threaten to use, or indicate any intent to use, any sort of force against the officers, or any other person, at any time throughout the altercation.

23. Horton was outside of the LaDuke home when he fired his weapon. There existed no reasonable basis to believe that Desman was an imminent threat to anyone other than himself.

24. At the time Horton shot Desman, no reasonable officer in Horton's position would have reasonably believed that Desman posed an imminent threat of serious bodily harm to Horton or any other person.

25. At the time Horton shot Desman, no reasonable officer in Horton's position would have reasonably believed that use of deadly force was necessary or appropriate.

26. At the time Horton shot Desman, no reasonable officer in Horton's position would have reasonably believed that shooting Desman, when he was alone in his home and not threatening anyone, was lawful.

COUNT I – Violation of 42 USC § 1983 - Excessive Force

27. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if set forth fully herein.

28. Defendant, Joseph Horton, under the color of law, deprived Desman LaDuke of rights, privileges, and immunities secured to him by the Fourth and Fourteenth

Amendments to the United States Constitution, including the right to be free of excessive force.

29. The force used by Defendant, Joseph Horton, was objectively unreasonable.

30. At the time Defendant, Joseph Horton, shot Desman LaDuke, Desman was not committing a crime, there was no threat of danger to Horton, nor any other person, nor did Desman try to resist or flee in any manner.

31. Defendant Joseph Horton's use of force against Desman violated his rights secured by the United States Constitution by depriving him of the right to be free from excessive force and unreasonable seizures as guaranteed by the Fourth Amendment and the right to be free from the deprivation of life and liberty without due process of law as guaranteed by the Fourteenth Amendment.

32. Defendant Joseph Horton's conduct violates clearly established constitutional rights of which a reasonable officer would have known.

33. Defendant Joseph Horton's use of excessive force against Desman constituted a reckless and/or callous indifference to Desman's federally protected rights.

34. As a direct and proximate cause of the foregoing negligence, Desman LaDuke suffered actual and consequential damages, deprivation of liberty, indignity, mental and physical pain and suffering, emotional distress and anguish, medical expenses, funeral bills, loss of power to earn money in the future, and death.

COUNT II – Assault and Battery

35. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if set forth fully herein.

36. Defendant, Joseph Horton, intentionally, maliciously, and in bad faith applied and threatened to apply unlawful and unnecessary force against Desman LaDuke.

37. Said physical contact was unnecessary and excessive, and the physical contact was without cause or any legal justification.

38. As a direct and proximate cause of the assault and battery inflicted upon Desman LaDuke by the Defendant, Desman sustained injuries and damages, suffered actual and consequential damages, deprivation of liberty, indignity, mental and physical pain and suffering, emotional distress and anguish, medical expenses, funeral bills, loss of power to earn in the future, and death.

COUNT III – Negligence and Gross Negligence

39. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if set forth fully herein.

40. Defendant, Joseph Horton, owed a duty to Desman LaDuke to act as a reasonably prudent police officer in his interactions with him.

41. Defendant, Joseph Horton, breached said duty of care by utilizing unauthorized and unnecessary deadly force against Desman without legal right or justification.

42. Defendant Joseph Horton's breach of the duty of care caused Desman to suffer injury and ultimately death.

43. The aforementioned conduct was negligent, grossly negligent, and exhibited a reckless and/or callous indifference to Desman's rights and safety.

44. Defendant, Joseph Horton, was not justified in his actions, nor were said actions permitted under Kentucky or federal law.

45. Defendant Joseph Horton's conduct violated Desman's clearly established constitutional rights of which a reasonable officer would have known.

46. As a direct and proximate cause of the foregoing negligence, Desman LaDuke suffered actual and consequential damages, deprivation of liberty, indignity, mental and physical pain and suffering, emotional distress and anguish, medical expenses, funeral bills, loss of power to earn in the future, and death.

COUNT IV – Wrongful Death and Survival Action

47. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if set forth fully herein.

48. Defendant, Joseph Horton, caused the wrongful death of Desman LaDuke, resulting in damages recoverable under KRS 411.130 and KRS 411.133.

49. Plaintiff's damages include the deceased's physical and mental injuries, pain and suffering, as well as the medical and other final expenses incurred as a result of the Defendant's actions.

COUNT V – Punitive Damages

50. Plaintiff adopts and incorporates by reference each of the previous paragraphs as if set forth fully herein.

51. The aforesaid wrongful acts of Defendant, Joseph Horton, were committed with actual malice toward Desman LaDuke and with willful and wanton indifference to and deliberate disregard for human life and the rights of Desman as a civilian in the public population; therefore, Plaintiff is entitled to exemplary and punitive damages.

WHEREFORE, the Plaintiff respectfully demands judgment against the Defendant as follows:

1. For judgment entered against Defendant, Joseph Horton, individually, on each claim asserted;
2. For actual, special, punitive, statutory, and compensatory damages, in an amount greater than the jurisdictional minimum;
3. Costs of this action, including reasonable attorney's fees to the Plaintiff pursuant to The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988 (1976);
4. Such injunctive relief regarding future police training and policy implementation or enforcement as may be determined by the Court to be appropriate;
5. Trial by jury; and,
6. For any other relief to which the Plaintiff may be entitled.

RESPECTFULLY submitted this 15th day of November, 2022.

/s/ Matthew C. Minner
MATTHEW C. MINNER
JONATHAN B. FANNIN
Counsel for Plaintiff
MINNER VINES MONCUS
INJURY LAWYERS, PLLC
325 W. Main St., Suite 210
Lexington, KY 40507
Phone: (859) 550-2900
Fax: (859) 550-2902
Email: matt@mvmllaw.com
jonathan@mvmllaw.com

PLAINTIFF DEMANDS TRIAL BY STRUCK JURY

AOC-840 Doc. Code: OFID
 Rev. 12-03
 Page 1 of 1
 Commonwealth of Kentucky
 Court of Justice www.kycourts.gov
 KRS 395.105; 395.110



ORDER APPOINTING FIDUCIARY

Case No. 22-P-00339

Court _____ District _____

County JessamineDivision ProbateIN RE: Estate of DESMAN CHA'MELL LADUKE

Upon hearing the Petition of Jessie White, the Court appoints
John E. Norman to act as Administrator of said
 estate and fixes bond in the sum of \$ PA Bond ☒ with approved Surety OR ☐ with Surety having been waived.

Date

11-10, 2022

Judge's Signature

ENTERED

NOV 10 2022

DOUGLAS JESSAMINE CIRCUIT CLERK
BY: [Signature] D.C.

To be completed on copies only:

CERTIFICATE OF QUALIFICATION

I, [Signature], Clerk of the Jessamine District Court,
 certify this is a true and correct copy of the Order Appointing Fiduciary as recorded in my office. This Order and
 Qualification is in full force and effect.

Date:

Nov 10th, 2022

Clerk

By: [Signature] D.C.

EXHIBIT

A

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

**JOHN NORMAN, as Administrator of the Estate of
DESMAN LADUKE, deceased;**

(b) County of Residence of First Listed Plaintiff Jessamine
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Minner Vines Moncus Injury Lawyers, PLLC
325 West Main Street, Suite 210, Lexington, KY 40507
(859) 550-2900

DEFENDANTS

JOSEPH HORTON, individually

County of Residence of First Listed Defendant Jessamine
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Sturgill Turner Barker & Maloney, PLLC
333 West Vine Street, Suite 1500, Lexington, KY 40507
(859) 255-8581

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability LABOR <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

Brief description of cause:
Civil Rights/Wrongful Death suit arising from police shooting

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Nov 15, 2022

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Kentucky

JOHN NORMAN, as Administrator of the Estate of
DESMAN LADUKE, deceased;

Plaintiff(s)

v.

JOSEPH HORTON, individually

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* JOSEPH HORTON, individually
Serve: Scott Miller, Esq.
Sturgill Turner Barker & Maloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507-1681

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Matthew C. Minner, Esq.
Jonathan B. Fannin, Esq.
Minner Vines Moncus Injury Lawyers, PLLC
325 West Main Street, Suite 210
Lexington, KY 40507

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: