

Filed Electronically

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON**

KENNETH WADKINS)	
)	
V.)	
)	
KRISTYN KLINGSHIRN, DEFENDANT)	CASE NO. _____
SERVE: Kristyn Klingshirn)	
Lexington Police Dept.)	JURY TRIAL DEMANDED
150 East Main Street)	
Lexington, KY 40507)	
)	
)	
)	

COMPLAINT FOR A CIVIL CASE

Comes now the Plaintiff, Kenneth Wadkins, by and through the undersigned counsel, and for his Complaint against the Defendant, Kristyn Klingshirn, states as follows:

NATURE OF THE CLAIMS

This is an action for monetary damages, to redress the unreasonable criminal prosecution of the Plaintiff for a murder that he did not commit, which prosecution was initiated by the Defendant despite a lack of probable cause.

PARTIES

- 1) At all times pertinent hereto, the Plaintiff, Kenneth Wadkins (hereinafter also referred to as "Plaintiff"), was a citizen and resident of Lexington, Fayette County, Kentucky.
- 2) At all times material hereto, the Defendant, Kristyn Klingshirn, was employed as a detective with the Lexington Police Department, employed by the Lexington-Fayette Urban County Government, and was acting within the scope of her employment.

JURISDICTION AND VENUE

- 3) This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Plaintiff's rights as secured by the United States Constitution.
- 4) This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367.
- 5) Venue is proper under 28 U.S.C. § 1391(b) as Mr. Wadkins currently resides within this judicial district, and the events giving rise to the claims asserted herein occurred in this judicial district.

FACTUAL ALLEGATIONS

- 6) In a Criminal Complaint filed with the Fayette District Court on October 21, 2021, Defendant alleged that Plaintiff had committed the murder of Wesley Brown on January 21, 2021.
- 7) In the Criminal Complaint, Defendant alleged that a "cooperating witness" had identified Plaintiff as the person who committed the murder; that she had received anonymous "Crime Stoppers" tips identifying Plaintiff as the person who committed the murder (by referencing the street-name, "Ghost"); that the "cooperating witness" had provided details of the incident which were corroborated by evidence at the scene of the murder; and, that location data from an electronic device placed Plaintiff at the scene of the murder.
- 8) Based solely on the Criminal Complaint, an arrest warrant was issued for Plaintiff.
- 9) Plaintiff was arrested, by an officer of the Lexington Police Department, on April 8, 2022, pursuant to the warrant, which was based on the Criminal Complaint sworn to by Defendant on October 21, 2021.
- 10) Plaintiff was charged with the murder of Wesley Brown on October 21, 2021.
- 11) Plaintiff was in fact, innocent of the murder of Wesley Brown.

- 12) The “cooperating witness” referred to in the Criminal Complaint of October 21, 2021, was Buford Lee Lyvers, Jr.
- 13) Buford Lee Lyvers, Jr., was well-known to the Lexington Police Department, due to his history of prior criminal charges in Fayette County, including multiple felonies, dating back to at least 1995.
- 14) Defendant omitted from her Criminal Complaint of October 21, 2021, material facts known to her which cast doubt on the existence of probable cause that Plaintiff was, in fact, the person who committed the murder of Wesley Brown.
- 15) The said material facts omitted by Defendant, from her Criminal Complaint of October 21, 2021, included, but were not limited to, the following:
 - a) The “cooperating witness” who had identified Plaintiff as the murderer, Buford Lee Lyvers, Jr., was, at the time he came forward with information, facing possible revocation of his probation stemming from his guilty plea to felony drug charges;
 - b) That Mr. Lyvers had sought favorable treatment in relation to his own criminal liability in exchange for the information he provided;
 - c) That the only alleged evidence which corroborated the identification made by Mr. Lyvers consisted of other anonymous Crime Stoppers tips, as well as evidence suggesting that Plaintiff’s mobile phone was reflected as having pinged in the area of the murder;
 - d) That she had no idea how many other people in Lexington were known to go by the street-name, “Ghost,” or if that street-name was even a common one used by other individuals;

- e) That the results of electronic search warrants indicated that multiple other mobile phones were reflected as having pinged in the area of the murder; and,
 - f) That she was unaware if Mr. Lyvers had identified any other individuals who were allegedly present at the scene of the murder;
- 16) Plaintiff was jailed on April 8, 2022, following his arrest.
- 17) Plaintiff's charges were presented to a Fayette County Grand Jury on June 13, 2022; and, said Grand Jury declined to indict Plaintiff on any charge related to the death of Wesley Brown.
- 18) The charge against Plaintiff was dismissed on June 13, 2022; and, he was released from custody on June 14, 2022.
- 19) Plaintiff has, before instituting this action, through counsel and/or counsel's agents, attempted to obtain from the Lexington Police Department, records establishing some of the facts alleged herein, together with all other information which was known to Defendant as of October 21, 2021.
- 20) The Lexington Police Department has refused to release the information sought, pursuant to exemptions claimed under KRS 61.878(1).
- 21) Plaintiff has reason to believe that such information, once produced by the Lexington Police Department during discovery in this matter, will not only tend to establish the facts alleged herein, but will also tend to establish the lack of probable cause for Plaintiff's arrest and prosecution.

**CAUSE OF ACTION
(MALICIOUS PROSECUTION)**

- 22) Plaintiff hereby repeats and realleges the allegations in each of the preceding paragraphs as if fully set forth herein.

- 23) Plaintiff had a clearly established right, under the Fourth Amendment to the U.S. Constitution, to be free from malicious prosecution, or unreasonable prosecutorial seizure.
- 24) As described more fully above, Defendant, while acting individually as well as under color of law, and within the scope of her employment, deprived Plaintiff of his constitutional right to be free from malicious prosecution and continued detention without probable cause.
- 25) A criminal prosecution was initiated against Plaintiff, and Defendant made, influenced, or participated in the decision to prosecute Plaintiff as alleged hereinabove.
- 26) There was a lack of probable cause for the criminal prosecution, in that Defendant did not have an objectively reasonable basis for believing that the facts alleged in her Criminal Complaint were sufficient to establish probable cause.
- 27) Plaintiff suffered a deprivation of liberty, as understood under Fourth Amendment jurisprudence, apart from his initial seizure.
- 28) The criminal proceeding was resolved in the plaintiff's favor.
- 29) As a direct, legal, and proximate result of Defendant's actions, Plaintiff has sustained economic and non-economic injuries, resulting in damages in an amount to be proven at trial.

VERIFICATION

I, KENNETH WADKINS, Plaintiff herein, verify, under penalty of perjury, that I have reviewed the foregoing, and that the statements contained herein are true and correct, to the best of my knowledge and belief.

Kenneth Wadkins
KENNETH WADKINS, PLAINTIFF

COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

Subscribed, sworn to, and acknowledged before me, the undersigned Notary Public for the state and county aforesaid, this the 12th day of June, 2023, by KENNETH WADKINS.

Akia P. White
Notary Public, State-at-Large, KY

My commission expires: 8-4-2025 Notary ID #: KYNP34647



PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court enter judgment in his favor and against Defendants, containing the following relief:

- A. An award of damages, in an amount to be determined at trial, to compensate Plaintiff for all non-monetary and/or compensatory damages, including, but not limited to, compensation for his severe mental anguish and emotional distress, humiliation, embarrassment, stress and anxiety, unreasonable incarceration, and any other emotional or mental injuries as allowed by law;
- B. An award of punitive damages;
- C. An award of costs that Plaintiff has incurred in this action, as well as Plaintiff's reasonable attorneys' fees to the fullest extent permitted by law; and
- D. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Dated: June 12, 2023

Respectfully Submitted:

/s/Daniel E. Whitley, Sr.
DANIEL E. WHITLEY, SR.
(KBA #94003)
WHITLEY LAW OFFICE PLLC
201 E. Main St., Ste. 510
LEXINGTON, KY 40507
Phone: (859) 309-2648
daniel@whitleylawoffice.com
COUNSEL FOR PLAINTIFF

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

Kenneth Wadkins

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Daniel E. Whitley, SR., Whitley Law Office PLLC 201 E. Main St., Ste. 510, Lexington, KY 40507 (859) 309-2648

DEFENDANTS

Kristyn Klingshirn

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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: Malicious Prosecution

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: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE: June 12, 2023 SIGNATURE OF ATTORNEY OF RECORD: Daniel E. Whitley, Sr.

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

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

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:

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

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

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 \$ _____ .

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: