

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF INDIANA, INDIANAPOLIS DIVISION**

KRISTINE BUNCH,)	
)	
Plaintiff,)	No. 1:14-cv-00438-WTL-DKL
)	
v.)	Judge William T. Lawrence
)	
Former Indiana State Fire Marshal)	Magistrate Denise K. LaRue
Investigator, BRYAN FRANK, and Indiana)	
State Fire Marshal Investigator)	
JAMES SKAGGS,)	
)	
Defendants.)	Demand for Jury Trial

COMPLAINT

Plaintiff, KRISTINE BUNCH, by her attorneys, the People’s Law Office and the Bluhm Legal Clinic of the Northwestern University School of Law, for her complaint against Defendants BRYAN FRANK and JAMES SKAGGS, states:

Introduction

1. Kristine Bunch spent over seventeen years in jail and prison for a crime she did not commit. She was wrongfully convicted in 1996 of the arson murder of her three-year-old son, Anthony, as a result of the unconstitutional actions of the named Defendants, acting together with ATF investigator William Kinard. Immediately after Plaintiff’s home burned in an accidental fire, Defendants wrongfully leapt to the conclusion that she had intentionally set the fire and then proceeded to fabricate evidence that supported, and hide evidence that undermined, that incorrect conclusion. Years later it was revealed that the evidence which caused Plaintiff’s conviction was fabricated and unreliable, and that these Defendants had deliberately suppressed evidence which showed that the fire was not arson, but was in fact accidental.

Jurisdiction and Venue

2. 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.

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

4. Venue is proper under 28 U.S.C. § 1391(b). Defendants reside in Indiana and the events giving rise to the claims asserted herein occurred within this judicial district.

Parties

5. Plaintiff Kristine Bunch is a resident of the State of Illinois.

6. Defendants Bryan Frank and James Skaggs were at all relevant times employees of the State of Indiana assigned as investigators to the Fire Marshal's office.

Facts

7. On June 30, 1995, in the early morning, fire swept through Kristine Bunch's mobile home, killing her three-year-old son Anthony. Plaintiff attempted to save Anthony, but was unable to do so because of the fierce heat.

8. The fire was accidental in origin, likely resulting from defective electrical wiring.

9. Defendants Frank and Skaggs were investigators with the State of Indiana Fire Marshal's office who were assigned to investigate the fire as part of their official duties.

10. Almost immediately, and without sufficiently investigating the possible causes of the fire, both Frank and Skaggs, acting individually and jointly, asserted that the fire was deliberately set, that accelerants had been used to cause the fire, that there were "pour patterns" in the burned out home where accelerants had been poured, and that the fire had started in two separate locations, one of which was the bedroom in which Anthony was sleeping.

11. In the course of processing the fire scene, Frank and Skaggs deliberately destroyed the wiring that was probably the cause of the accidental fire, without adequately documenting or examining it.

12. The allegation that the fire had started in two separate places was highly inculpatory, since a fire that starts in two separate places is unlikely unless the fire has been deliberately set.

13. Frank and Skaggs lacked sufficient basis to make these allegations, but determined that they would manipulate and fabricate evidence to support their thesis that the fire was arson and was deliberately set by Plaintiff.

14. In pursuit of false evidence to support their baseless theory, Frank and Skaggs, acting together, on July 1, 1995 sent samples of evidence from the fire to the Bureau of Alcohol, Tobacco and Firearms (ATF) National Laboratory, stating that the fire was arson that was caused by a liquid accelerant and requesting that the laboratory confirm their theory by finding traces of accelerants in the samples.

15. The ATF laboratory received the samples on July 6, 1995 and the case was assigned to William Kinard, a forensic chemist.

16. Kinard conducted testing on the samples and determined that several samples had no traces of Heavy Petroleum Distillates (HPDs) or any other accelerants. In particular, Kinard determined that none of the evidence from the bedroom, where Anthony had been sleeping at the time the fire started, tested positive for HPDs or other accelerants.

17. Additionally, Kinard determined that a sample of wood from the living room, in an area that Frank and Skaggs claimed evidenced “pour patterns” did not test positive for HPDs or other accelerants.

18. Kinard also conducted testing on other areas where there was some evidence of HPDs and determined that these HPDs were consistent with kerosene standards.

19. The presence of kerosene in some of the samples was consistent with the fact that kerosene heaters had been used in the mobile home for several years, and that on many occasions, in the course of using and filling these heaters, there had been spills of kerosene onto the floor.

20. Additionally, the presence of kerosene was consistent with the fact that insecticides, which often contain kerosene, had been used in the home.

21. Kinard prepared an initial report which accurately reported that “No flammable or combustible liquid was detected in Exhibits 1, 2, 3, 6, 8 (wood), 7 (wood, carpet and carpet padding) and 9 (fiber material).”

22. Exhibit 8 was a sample from the bedroom where Anthony had been sleeping. Exhibit 6 was a sample from an area in the living room where Skaggs and Frank claimed there was a “pour pattern.”

23. The absence of accelerants from those samples meant that no accelerants were found both in the bedroom and in an area that Skaggs and Frank had claimed exhibited a “pour pattern.” This finding was fatal to the theory manufactured by Skaggs and Frank that the fire had been set in two separate places and that accelerants had been poured in the bedroom and living room.

24. Kinard communicated his initial report to Skaggs and Frank.

25. Skaggs and Frank recognized that Kinard’s findings were inconsistent with their manufactured and fabricated allegations that Plaintiff had deliberately killed her child by setting

an arson fire using accelerants. Working together with Kinard in a joint action, Skaggs and Frank caused Kinard's report to be altered so that it falsely stated that accelerants were found in exhibits 6 and 8.

26. In accordance with this corrupt joint action, Kinard agreed to alter his report to state that accelerants were found in exhibits 6 and 8, and concocted an "official" report which falsely so stated.

27. In addition, although Kinard had tested other areas where there were HPDs found, and had determined that these areas were consistent with the presence of kerosene, for which there was an innocent explanation, his "official" report failed to state that these HPDs were consistent only with kerosene, and falsely reported that they were consistent with a much broader array of HPDs, including "kerosene, No.1 fuel oil, Jet-A (aviation fuel), solvents for some insecticides, Diesel fuel, No.2 fuel oil (home heating oil) and some charcoal starters." Because there was no innocent explanation for some of these additional HPDs, the inclusion of these other possible sources of the HPDs was highly inculpatory.

28. Kinard communicated his real findings and test results to Skaggs and Frank, but agreed to prepare an official report that falsely reported that there were HPDs in exhibits 6 and 8 and failed to record that any HPDs that were detected in other areas were consistent only with kerosene.

29. In July, 1995, Kinard sent his original report to Skaggs and Frank

30. Also in July, 1995, Kinard sent to Skaggs and Frank his "official" report, which changed the original report to falsely state that there were HPDs in exhibits 6 and 8, and failed to record that any HPDs that were detected in other areas were consistent only with kerosene.

31. Skaggs and Frank, acting both independently and together, submitted to the Decatur County State's Attorney only the "official" report of Kinard which falsely stated that HPDs were detected in exhibits 6 and 8 and that the HPDs that were detected in other samples were consistent with a wide array of HPDs, not just kerosene.

32. Skaggs and Frank, acting both independently and together, concealed from the Decatur County State's Attorneys, defense counsel and the judge presiding over Plaintiff's trial Kinard's original report which accurately stated that HPDs were not detected in exhibits 6 and 8, and also failed to disclose that the HPDs that were detected in other samples were consistent with only kerosene.

33. In furtherance of their corrupt joint action to fabricate highly inculpatory evidence against Plaintiff, Skaggs and/or Frank met with witnesses before Plaintiff's trial and urged them to fabricate evidence that there was a chair deliberately placed in the doorway between the bedroom and the rest of the trailer, thereby blocking an escape route and rescue route from the bedroom and making it more likely that Anthony would die in the fire.

34. As a result of the actions of Skaggs and Frank, firefighter Clark testified at trial that there was a chair placed in the doorway that obstructed ingress and egress to the bedroom.

35. Because Skaggs, Frank and Kinard concealed from the prosecutors that Kinard's testing showed that there was no liquid accelerant in the sample from the bedroom and from the alleged "pour pattern" in the living room, and that all of the HPDs that were detected in other areas of the home were consistent with kerosene, the prosecutors presented evidence and argued at trial that the fire was set in two places—both the bedroom and the living room; that this in itself established arson; and that the HPDs that were detected were not necessarily caused by

kerosene spills or insecticide residue.

36. The evidence which was manufactured by Skaggs, Frank and Kinard—that the fire originated in two separate locations; that HPDs were found in multiple locations where they claimed there were “pour patterns”; and that the HPDs that were detected were consistent with a wide variety of sources, not just kerosene or insecticide residue—was the primary evidence presented against Plaintiff at trial.

37. The failure of Skaggs and Frank, working together with Kinard, to accurately present the results of the testing, and the suppression of evidence which undermined the conclusions in Kinard’s “official” report, deprived Plaintiff of the opportunity to refute the key evidence that the prosecution used against her.

38. Because of the wrongdoing of Skaggs, Frank and Kinard, acting individually, jointly and together, as set forth above, Plaintiff was convicted of the murder of her son and was sentenced to 60 years in prison.

39. Plaintiff appealed her conviction, but based on the false evidence manufactured by Skaggs, Frank and Kinard, and their suppression of the exculpatory evidence, the appeal was denied.

40. During Plaintiff’s imprisonment Skaggs, Frank and Kinard continued to conceal from competent authorities, including prosecutors, defense counsel and the court, that they had fabricated inculpatory evidence and suppressed exculpatory evidence.

41. In 2006 Plaintiff filed a Post Conviction Petition challenging her conviction.

42. In the course of the post conviction proceedings, it was first revealed that Kinard had prepared at least two reports that found no HPDs in exhibits 6 and 8—the crucial evidence from

the bedroom and the “pour pattern” in the living room—and that Kinard had also determined that the HPDs that were found in other parts of the home were consistent only with kerosene, not other HPDs.

43. It also was revealed for the first time in the course of these proceedings that Kinard had communicated his real findings to Skaggs and Frank, that these findings had been suppressed, and that subsequently his official report had been altered and fabricated to inculcate Plaintiff, as set forth above.

44. None of the exculpatory evidence set forth above had previously been revealed to the prosecutors, who therefore were unable to produce it to defense counsel.

45. On March 21, 2012 the Indiana Court of Appeals reversed Plaintiff’s conviction, finding, inter alia, that “the State's failure to turn over a report from the ATF testing of floor samples violates *Brady* . . .” In particular, the Court found:

That Kinard identified a heavy petroleum distillate in samples taken from both the living room and the bedroom was a lynchpin of the State's theory that there were multiple, and therefore incendiary, fires. Kinard acknowledged that the carbon numbers identified in samples 6 and 8 were different from those identified in samples 4, 5, and 10, and samples 6 and 8 were therefore on the “tailend of a heavy petroleum distillate.” Trial Record at 907. Nonetheless, he adhered to the conclusion expressed in Report #2 that samples 6 and 8 tested positive for a heavy petroleum distillate. Report #1, however, concluded samples 6 and 8 tested negative, a conclusion with which DeHaan agreed at the post-conviction hearing after reviewing the gas chromatographs. If sample 8 -- the only sample taken from the bedroom -- tested negative, then there is no evidence supporting an incendiary fire in the bedroom, and no evidence supporting multiple incendiary fires. If sample 6 -- taken from what was identified as a pour pattern in the living room -- tested negative, then the significance of the alleged burn pattern is significantly undercut. The undisclosed evidence is therefore exculpatory, as it directly contradicts the State's theory of the case.

The evidence is also impeaching, as Report #1's finding that samples 6 and 8 tested negative for heavy petroleum distillates could have been used to impeach Kinard's assertion in Report #2 and at trial that despite the differing carbon numbers and initial assessment, samples 6 and 8 showed the presence of a heavy petroleum distillate. Because the State did

not turn over the entire ATF file, Bunch did not have the benefit of knowing that the finding in Report #1 more strongly supported her defense than the State's theory. She also was not able to point out the change and pursue the reason the findings were altered and Kinard testified differently at trial. As either exculpatory or impeaching evidence, Report #1 was favorable to the defense.

* * * * *

The undisclosed evidence directly contradicts Kinard's trial testimony supporting fires originating in two places. Thus, there is a reasonable probability that but for the prosecutorial failure to disclose this evidence favorable to Bunch, the result of the trial would have been different. *Bagley*, 473 U.S. at 682. And since the suppression of this evidence undermines confidence in the outcome, see *id.*, we conclude that this federal constitutional error was not harmless beyond a reasonable doubt. See *Chapman v. California*, 386 U.S. 18, 24 (1967).

Bunch v. State, 964 N.E.2d 274, 302-04 (Ct. App. Ind. 2012)

46. The Indiana Supreme Court refused to overturn the decision of the Court of Appeals, and on August 22, 2012, Plaintiff was released from prison on bond.

47. On December 17, 2012 all charges against Plaintiff were dropped.

48. The actions of the Defendants caused Plaintiff to spend over 17 years of her life wrongly incarcerated. During this time she gave birth to a child but was unable to act as a mother and parent because she was locked up.

49. During her incarceration, Plaintiff missed out on the ability to share holidays, births, funerals, and other life events with loved ones, the opportunity to socialize as a free person and to pursue a career, and the fundamental freedom to live her life as an autonomous human being.

50. The continuing unlawful, intentional, willful, deliberately indifferent, reckless and/or bad faith acts and omissions of the Defendants proximately caused Plaintiff, *inter alia*, the following injuries and damages: pain, suffering and severe mental anguish; personal physical injury and physical sickness; loss of family relationships; the loss of participating in her child

growing up and participating in him having experiences for the first time; severe psychological damage; loss of educational opportunity; loss of professional opportunity; loss of income; humiliation, indignities and embarrassment; degradation and permanent loss of natural psychological development; and restrictions on all forms of personal freedom, including, but not limited to, diet, sleep, personal contact, educational opportunity, vocational opportunity, athletic opportunity, personal fulfillment, sexual activity, family relations and travel, for all of which she is entitled to monetary relief.

**Count I – 42 U.S.C. § 1983
Violation of Due Process**

51. Each paragraph of this Complaint is incorporated as if restated fully herein.

52. Defendants Skaggs and Frank, together with Kinard, individually, jointly, and in conspiracy, caused the wrongful charging, prosecution and conviction of Plaintiff, and the continuation of said wrongful conviction, by coercing, constructing, altering, manipulating and fabricating the evidence that formed the basis for Plaintiff's charging, prosecution and conviction; by withholding from the prosecutors, judges and defense attorneys involved in Plaintiff's prosecution the fact that this evidence was false, fabricated, manipulated, altered, and coerced; by suppressing and destroying additional exculpatory evidence by giving a false and incomplete version of events to prosecutors; by writing false and incomplete reports; and by the additional wrongdoing set forth above, thereby unconstitutionally depriving Plaintiff of her liberty and violating her right to a fair and impartial trial and not to be wrongfully convicted, as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

53. The actions of the Defendants in depriving Plaintiff of her right to a fair trial and not

to be wrongfully convicted were the direct and proximate cause of the injuries to Plaintiff which are set forth above.

Count II – 42 U.S.C. § 1983
Malicious Prosecution

54. Each paragraph of this Complaint is incorporated as if restated fully herein.

55. The actions of Defendants Skaggs and Frank as set forth above, acting together with Kinard, wrongfully caused the initiation and continuation of the prosecution of Plaintiff and thereby violated Plaintiff's rights pursuant to the Fourth and Fourteenth Amendments of the United States Constitution to be free from unreasonable seizures and to due process.

56. Defendants Skaggs and Frank, acting together with Kinard, maliciously caused the continuation of the prosecution of Plaintiff by the wrongdoing set forth about, including by fabricating inculpatory evidence and suppressing exculpatory evidence.

57. Defendants performed the above-described acts deliberately, with reckless disregard for the truth, and with malice.

58. On December 17, 2012 the prosecution terminated in Plaintiff's favor when all charges against Plaintiff were dropped.

59. As a direct and proximate result of this violation of her constitutional rights, Plaintiff suffered the injuries set forth above, including, but not limited to, loss of liberty, physical harm, and emotional distress.

Count III – 42 U.S.C. § 1983
Conspiracy to Deprive Plaintiff of Her Constitutional Rights

60. Each paragraph of this Complaint is incorporated as if restated fully herein.

61. After the death of Anthony, Defendants Skaggs and Frank, acting together with

Kinard, and acting within the scope of their employment and under color of state law, agreed between and among themselves to act in concert in order to deprive Plaintiff of her constitutional rights, including her rights to due process and to a fair trial, all as described in the various paragraphs of this Complaint.

62. Additionally, before and after Plaintiff's conviction, Defendants Skaggs and Frank, acting together with Kinard, further conspired to deprive Plaintiff of exculpatory information to which she was lawfully entitled and which would have led to either her not being charged, her acquittal, reversal of her conviction on appeal, or her more timely exoneration.

63. In this manner, Defendants Skaggs and Frank, acting together with Kinard, conspired by concerted action to accomplish an unlawful purpose by unlawful means.

64. In furtherance of the conspiracy, each of the co-conspirators engaged in and facilitated numerous overt acts, including but not limited to those set forth above, such as fabricating evidence, withholding exculpatory evidence, coercing false statements, coercing and encouraging false testimony, and refusing to investigate that the fire was accidental in origin; and was an otherwise willful participant in a joint activity.

65. The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to Plaintiff's rights.

66. As a direct and proximate result of Defendants' conspiracy and actions in furtherance of the conspiracy, Plaintiff was wrongly convicted and imprisoned for over 17 years and suffered other grievous and continuing damages and injuries as set forth above.

WHEREFORE, Plaintiff Kristine Bunch respectfully requests that this Court enter judgment in her favor and against Defendants Frank and Skaggs awarding compensatory

damages, punitive damages, attorneys' fees, and costs against each Defendant, as well as any other relief this Court deems appropriate.

JURY DEMAND

Plaintiff, Kristine Bunch, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues so triable.

Dated: March 18, 2014

Respectfully submitted,

s/John L. Stainthorp
John L. Stainthorp, Jan Susler
People's Law Office
1180 N. Milwaukee Ave.
Chicago, IL 60642
(773) 235-0070

J. Samuel Tenenbaum
Clinical Associate Professor of Law
Bluhm Legal Clinic
Northwestern University School of Law
375 East Chicago Avenue
Chicago, IL 60611-3069
(312) 503 4808

Attorneys for Plaintiff