IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
AT CHATTANOOGA

ROY L. DENTON, *Plaintiff*	*	**Case No. 1:07-CV-211**
	*	
	*	**Chief Judge Curtis L. Collier**
v.	*	
	*	
STEVE RIEVLEY, *in his individual capacity* *Defendant*	*	
	*	
	*	
	*	***JURY DEMAND***
	*	

PLAINTIFF ROY L. DENTON'S MOTION *IN LIMINE* FOR JUDICIAL NOTICE FOR THE EXPLANATION OF PROBABLE CAUSE AS A CONCLUSIVE FACT

Comes now, the Plaintiff Roy L. Denton, *pro se*, and moves this court for judicial notice regarding the explanation, meaning and application of "probable cause". In support of this motion, the plaintiff hereby submits the following:

MEMORANDUM AND LEGAL ARGUMENT

PROBABLE CAUSE

Judicial notice is recognized in Rule 201 of the Federal Rules of Evidence. Rule 201 provides, in part, that ***"[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."*** *(emphasis added)*

Therefore, under Rule 201 a trial court must take judicial notice of a well-known fact at the request of one of the parties, if the court is provided with information supporting the fact.

As a matter of law, as Rule 201 seems to strictly apply, in a civil jury trial, the court must inform the jury that it must accept the judicially noticed facts in the case as ***conclusively proved***.[1]

During the first jury trial of this matter, the defendant Steve Rievley testified upon direct examination his explanation of what the legal term "probable cause" means. Defendant Rievley testified that probable cause is "***basically more likely than not that a crime occurred***".

> **"[H]**owever, this court held in it's memorandum and opinion a completely different explanation of the legal term "probable cause". Under the Fourth Amendment, any arrest requires probable cause. *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Gardenhire v. Schubert*, 205 F.3d 303, 315 (6th Cir. 2000). "In order for a wrongful arrest claim to succeed under § 1983, a plaintiff must prove that the police lacked probable cause." *Parsons v. City of Pontiac*, 533 F.3d 492, 500 (6th Cir. 2008) (quoting *Fridley v. Horrighs*, 291 F.3d 867, 872 (6th Cir. 2002)). "The judicial determination of probable cause involves evaluating the historical facts leading up to the arrest, and whether those facts, viewed by an 'objectively reasonable police officer,' satisfy the legal standard of probable cause." *United States v. Moncivais*, 401 F.3d 751, 756 (6th Cir. 2005) (quoting Ornelas v. United States, 517 U.S. 690, 696 (1996)) (internal citation and quotation marks omitted). The probable cause standard is a "no technical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Maryland v. Pringle*, 540 U. S. 366, 370 (2003) (internal quotation marks omitted) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). "A police officer has probable cause only when he discovers reasonably reliable information that the suspect has committed a crime." *Parsons*, 533 F.3d at 500 (emphasis in *Parsons*) (quoting *Gardenhire*, 205 F.3d at 318); see also Fridley, 291 F.3d at 827 (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979)) ("A police officer determines the existence of probable cause by examining the facts and circumstances within his knowledge that are sufficient to inform 'a prudent person, or one of reasonable caution,' that the suspect 'has committed, is committing, or is about to commit an offense.'"). "[I]n obtaining such reliable information, an officer cannot look only at the evidence of guilt while ignoring all exculpatory evidence. Rather, the officer must consider the totality of the circumstances, recognizing both the inculpatory and exculpatory evidence, before determining if he has probable cause to make an arrest." *Parsons*, 533 F.3d at 500 (quoting *Gardenhire*, 205 F.3d at 318). "Police officers may not 'make hasty, unsubstantiated arrests with impunity,' nor 'simply turn a blind eye toward potentially exculpatory evidence known to them in an effort to pin a crime on someone.'" *Id.* at 501 (quoting *Ahlers v. Schebil*, 188 F.3d 365, 371-72 (6th Cir. 1999)). However, the statement

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[1] *Fed. R. of Evid. Rule 201(1)(g)* Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed.

of a supposed victim can be enough to support probable cause. *See Thacker v. City of Columbus*, 328 F.3d 244, 257 (6th Cir. 2003) (citing *Klein v. Long*, 275 F.3d 544, 551-52 (6th Cir. 2001)). In determining the existence of probable cause, the Court may "consider only the information possessed by the arresting officer at the time of the arrest." *Id.* at 501 (quoting *Harris v. Bornhorst*, 513 F.3d 503, 511 (6th Cir. 2008)). The existence, *vel non*, of probable cause is a jury question, "unless there is only one reasonable determination possible." *Id.* (quoting *Fridley*, 291 F.3d at 872)." *See Court Doc. No. 51*

It is imperative that a jury be fully instructed as to what a legal term actually means and is explained and such explanation must not come from a witness. The defendant as a witness, is not an authority on the law. The only authority on the law in the courtroom is the judge.

Therefore, in the interest of fairness and justice, pursuant to *Fed. R. of Evid.* Rule 201(1)(g) it is therefore imperative that this court take judicial notice of it's own explanation of "probable cause" so that such explanation of the legal term be instructed upon the jury to be a "***conclusive fact***" so as to prevent a manifest injustice.

Respectfully submitted this 13th day of August, 2010.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 13th day of August, 2010.

Roy L. Denton

Copy mailed to:

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