

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. INTRODUCTION

On September 9, 2006 the plaintiff Roy L. Denton was at his home located at 120 6th Ave., Dayton, Tennessee. Around 1:30 a.m. Mr. Denton saw lights approaching his front door and thus opened his door to investigate. Upon opening the door, Mr. Denton saw the Defendant Officer Steve Rievley and several other police officers converging on his front porch. Defendant Rievley made an inquiry to Mr. Denton as to "*what had happened with his son*". Mr. Denton then turned away from Officer Rievley and attempted to shut and lock his door. As Mr. Denton was attempting to close the front door and lock it, Officer Rievley handcuffed his right arm and then managed to handcuff his other arm together. Officer Rievley then had another officer transport Mr. Denton to jail. Officer Rievley then entered Mr. Denton's home without a warrant and "located" Sgt. Dustin Denton, the son of the plaintiff Mr. Denton and arrested him as well without a warrant. All of the statements made within this Introduction are undisputed and no genuine dispute of any fact exists as admitted in Officer Rievley's affidavit of complaint. (See attached Ex. B)

Furthermore, the plaintiff will not be discussing any disputed facts or events not relevant to this motion, but concede and concur with the articulation of the affidavit of complaint sworn to by the defendant. (see attached Ex. B)

II. LEGAL AND FACTUAL BACKGROUND

A. Fourteenth Amendment

Plaintiff sued under 42 U.S.C. § 1983 for alleged violation of his rights

under the Fourth and Fourteenth Amendments to the United States Constitution.

Section 1983 allows a person to sue to vindicate the deprivation of federal constitutional and statutory rights. Section 1983 provides:

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . , subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . .”

Plaintiff alleges Rievley’s warrantless entry and arrest of him within his home violated his right to due process and equal protection under the Fourteenth Amendment to the United States Constitution. Concerning the allegations of a Fourteenth Amendment violation, given the case law and various court decisions, as researched and found by this pro se plaintiff, the plaintiff now contends that the Fourteenth Amendment is inapplicable to this action. However, because the plaintiff has a viable Fourth Amendment claim, the Court will not need to analyze his claim under the Fourteenth Amendment. See *County of Sacramento*, 523 U.S. at 843; *Phelps v. Coy*, 286 F.3d 295, 300 (6th Cir. 2002). The Fourteenth Amendment is only relevant by making the Fourth Amendment applicable to the states. This is an undisputed fact and a well established matter of law. To the extent the plaintiff has made claims under the Fourteenth Amendment, the Court should analyze them under the Fourth Amendment.

B. Fourth Amendment

The Fourth Amendment to the U.S. Constitution guarantees: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” Under 42 U.S.C. §

1983, a plaintiff may seek money damages from a government official who violates his Fourth Amendment rights. *Wilson v. Layne*, 526 U.S. 603, 609 (1999). Therefore, the Court should consider the constitutionality of (1) the warrantless entry into Plaintiff's house; (2) his arrest. Concerning the amount of force used during such arrest is subject to a dispute and therefore is not ripened for this partial summary judgment motion and will not be discussed or incorporated into this motion. Any and all other claims that are in dispute may be properly adjudicated at a future date.

1. UNLAWFUL ENTRY INTO THE HOUSE

Plaintiff contends he was arrested in his house without an arrest warrant. Defendant Rievley contends he lawfully arrested the plaintiff based on "his understanding of the Tennessee Code as it applies to domestic assault situations". (see attached ex. A, page 5)

The United States Supreme Court has held "the Fourth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." *Payton v. New York*, 445 U.S. 573, 576 (1980) (internal citations omitted). That reasoning also applies to misdemeanors. *Shreve v. Jessamine County Fiscal Court*, 453 F.3d 681, 689 (6th Cir. 2006). "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. United States District Court*, 407 U.S. 297, 313 (1972).

Plaintiff was charged with domestic assault (Tenn. Code Ann. § 39-13-111) which is a misdemeanor. Both the plaintiff and defendant agree Defendant

Rievley arrested the Plaintiff Denton in his house. Officer Rievley admits he did not have an arrest warrant. (see attached ex. A, page 5) Plaintiff contends he did not consent to Defendant's entry into the house. Also, there is absolutely no indications that exigent circumstances existed. Exigent circumstances exist when (1) an officer was in hot pursuit of a fleeing suspect; (2) the suspect posed an immediate threat to the arresting officer or to the public; and (3) immediate police action was necessary to prevent the destruction of vital evidence or to prevent the escape of a known criminal. *Ingram v. City of Columbus*, 185 F.3d 579, 587 (6th Cir. 1999). Defendant has not argued exigent circumstances existed, and it is not apparent from the evidence that there were exigent circumstances. Hence, there is no genuine issue as to any material fact a reasonable jury could find the defendant's entry into the house violated the Fourth Amendment. (see Ex. A and Ex. B, pages 1, 4 and 5)

Thus far, the plaintiff has undisputably shown the Court that Officer Rievley did violate the Fourth Amendment by entering his home, arresting him, and as a matter of law, the Court should determine there was a constitutional violation of the Fourth Amendment. Defendant Rievley, as sued in his individual capacity, has asserted in his Answer to the Complaint that he is entitled to qualified immunity and which should now be addressed. In this way all parties can find a cost effective, simplified way to find the balance of the scales of justice.

2. QUALIFIED IMMUNITY MUST NOT PREVAIL

Plaintiff understands that he must bear the burden of defeating qualified immunity, which is a legal issue to be decided by the Court. *Thomas v. Cohen*, 304 F.3d 563, 569 (6th Cir. 2002).

Qualified immunity is “an entitlement not to stand trial or face the other burdens of litigation.” Saucier, 533 U.S. at 200 (citing Mitchell v. Forsyth, 472 U.S. 511, 526 (1985)). It protects government officials from liability if they are performing discretionary functions as long as their “conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The right must be “clearly established in a particularized sense” such that it is “clear to a reasonable officer that his conduct was unlawful in the situation he confronted.” Fox, 489 F.3d at 235; accord Saucier, 533 U.S. at 202. A right is clearly established when there is binding precedent by the Supreme Court, the court of appeals or the district court. Ohio Civil Serv. Employees Ass’n. v. Seiter, 858 F.2d 1171, 1177 (6th Cir. 1988).

Officer Rievley is not entitled to qualified immunity for unlawfully entering Plaintiff’s house because there is clearly established law he could not arrest Plaintiff in his home without a warrant absent consent or exigent circumstances. This clearly established law comes from the Supreme Court’s decisions in Payton and Welsh, described supra. The qualified immunity analysis depends on whether a defendant violated the clearly established federal right on which the claim against him is based. Elder v. Holloway, 510 U.S. 510, 515 (1994) (citing Davis v. Scherer, 468 U.S. 183, 197 (1984)). Additionally, any dispute that may arise concerning the parties’ legal arguments about whether Rievley complied with Tennessee state law, or not, are irrelevant to this partial motion for summary judgment. Therefore, the Court should find that Defendant Rievley is not entitled to qualified immunity as a matter of law, as justice so requires.

III. ARGUMENT

Summary judgment is appropriate if “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c); see also, e.g., *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *Sigley v. City of Parma Heights*, ___ F.3d___, 2006 WL 305524 (6th Cir. Feb. 10, 2006)

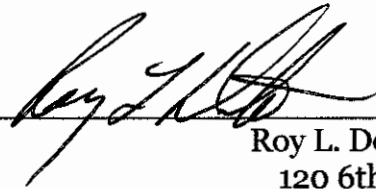
Defendant Steve Rievley has conceded that he DID NOT have an arrest warrant, that he DID NOT have a search warrant, that he DID enter the Plaintiff's home and arrested him and undisputedly, that there wasn't any exigent circumstances. Because there is no genuine issue of material fact as to this aspect of this instant civil action, plaintiff is entitled to judgment as a matter of law on his claim that the undisputed actions of the defendant violates the Fourth Amendment to the United States Constitution, as well as all holdings of the United States Supreme Court concerning the rights of the plaintiff, or any other person for that matter, to be secure in their own home.

CONCLUSION

For the foregoing reasons, the plaintiff is entitled to judgment as a matter of law and plaintiff's motion for partial summary judgment should be granted and that punitive damages in the amount of \$125,000.00 (one-hundred-twenty-five thousand dollars) be awarded to the plaintiff and any other relief deemed appropriate by the court be awarded the plaintiff.

Respectfully submitted, this 12th day of May, 2008.

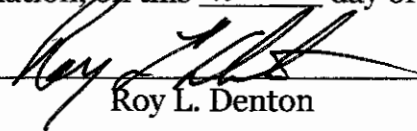
BY: _____



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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 12th day of May, 2008.


Roy L. Denton

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