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

ROY L. DENTON	)	
	)	
Plaintiff	)	**Case No. 1:07-cv-211**
	)	
v.	)	**JURY DEMAND**
	)	
STEVE RIEVLEY	)	**Collier/Carter**
	)	
Defendant	)	

DEFENDANT STEVE RIEVLEY'S RESPONSE TO
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Comes the Defendant, Steve Rievley, in his individual capacity, (herein "Officer Rievley") pursuant to Rule 56 of the *Federal Rules of Civil Procedure*, through counsel, and hereby files his Response to Plaintiff's Motion for Partial Summary Judgment. Officer Rievley asserts that partial summary judgment in favor of the Plaintiff is not appropriate. Officer Rievley will also file his Motion for Summary Judgment as to all issues in this case pursuant to the Scheduling Order entered in this case. Accordingly, Officer Rievley submits that summary judgment in his favor, not the Plaintiff's, is appropriate pursuant to Rule 56 of the *Federal Rules of Civil Procedure.*

In his Motion for Partial Summary Judgment, the Plaintiff presents two main issues: 1. that Officer Rievley arrested in the Plaintiff in his home without a search warrant in violation of the Fourth Amendment and 2. that Officer Rievley is not entitled to rely upon the doctrine of qualified immunity for his actions.

I. STATEMENT OF THE CASE

The Plaintiff, Roy Denton, and his son, Dustin B. Denton filed their Complaint on September 6, 2007. In the original Complaint, the Plaintiff and his son alleged 42 U.S.C § 1983 violations, excessive force, false arrest, and common law assault. On March 28, 2008, the Plaintiff filed an Amended Complaint alleging the same causes of actions, but in this Amended Complaint, Dustin B. Denton was terminated from the lawsuit.[1] On May 12, 2008, the Plaintiff filed a Motion for Partial Summary Judgment as to his claims for unlawful arrest and that Officer Rievley was not entitled to rely upon the doctrine of qualified immunity. Officer Rievley filed a Motion for Extension of Time to Respond to the Plaintiff's Motion for Partial Summary Judgment on June 2, 2008.[2] This Motion was granted, and Officer Rievely was given until June 21, 2008 to respond to the Plaintiff's Motion for Partial Summary Judgment. Therefore, this Response is timely.

II. STATEMENT OF FACTS

In his Motion for Partial Summary Judgment, the Plaintiff does not dispute any facts. Rather, he stated that he "concede[s] and concur[s] with the articulation of the affidavit of complaint sworn to by the defendant" attached as Exhibit B to his Motion for Partial Summary Judgment.

According to the Affidavit of Complaint sworn to by Officer Rievley, and concurred with by the Plaintiff, Officer Rievely, along with other members of the City of Dayton Police Department were dispatched to the jail at approximately 1:39 a.m. on September 9, 2006 to respond to an assault

---

[1]Dustin B. Denton was terminated as a party to this lawsuit by order dated March 14, 2008.

[2]In his Motion, defense counsel mistakenly asked for additional time, up to and including, *July* 27, 2008. This was a typographical error - counsel for the defendant intended to request additional time up to and including *June* 27, 2008. Counsel for the defendant apologizes to the Court and the plaintiff for this typographical error.

that occurred at the home of the Plaintiff. Exhibit B. Upon arrival at the jail, Officer Rievely spoke with Brandon Denton, the Plaintiff's son, who stated that he had been attacked just minutes earlier by the Plaintiff and Dustin Denton. *Id.* Brandon explained that earlier in the evening while at work, his brother, Dustin, called him to speak with one of Brandon's co-workers. Because Dustin sounded intoxicated, Brandon did not allow Dustin to speak the young lady, and Dustin became upset. *Id.* At the end of his shift, Brandon asked another co-worker, Jessica Carbajal, to take him home. *Id.* When Brandon arrived home, Dustin began arguing with him and eventually began hitting him. *Id.* The Plaintiff, also intoxicated, became involved in the fray, grabbing Brandon around the neck and strangling him. *Id.* During the attack, Brandon's eyeglass were broken. *Id.*

Officer Rievely observed that Brandon had numerous abrasions on his forehead and both arms and appeared to have been strangled which was consistent with his story. *Id.* Next, Officer Rievely telephoned Ms. Carbajal who confirmed that Brandon did not have any of these injuries when she dropped him off at his house shortly after midnight. Affidavit of Officer Rievely, attached hereto and incorporated herein by reference as Exhibit 1, ¶ 13. Brandon informed Officer Rievely that both his father and brother remained at their home at 120 6th Avenue Dayton, Tennessee. *Id.* at 12. Brandon also told Officer Rievely that he wanted to retrieve some of his belongings from the home but was afraid to do so by himself after the attack. *Id.*

Officer Rievely, along with several other officers, went to the Denton residence, arriving at approximately 2:13 a.m. Exhibit B. The Plaintiff came to the door, and Officer Rievley asked him what happened to his son, Brandon. *Id.* The Plaintiff would not answer him. *Id.* Officer Rievley noted that on the front porch, Brandon's eyeglasses lay broken, further confirming his story of assault. *Id.* He then advised the Plaintiff that he was under arrest for domestic assault. *Id.* When

Officer Rievley advised the Plaintiff that he would need to speak with Dustin as well, the Plaintiff turned away to go back inside the house. *Id.* Officer Rievley handcuffed the Plaintiff's right arm as the Plaintiff attempted to close and lock the door. *Id.* He then advised the Plaintiff that he needed to find Dustin and that he needed to give Officer Rievley his left hand. *Id.* Officer Rievley was able to handcuff both the Plaintiff's hands without further incident, and he was placed in a patrol car and taken to the jail at approximately 2:18 a.m. *Id.* Officer Rievley then entered the Denton residence to locate Dustin. *Id.* He was located in a bedroom and was also arrested for domestic assault. *Id.* He was transported to the jail at approximately 2:28 a.m. *Id.*

Throughout his career as a police officer, Officer Rievley has received extensiive training in the area of domestic abuse. Exhibit 1, ¶ 20. Officer Rievley has been instructed as to the provisions of the *Tennessee Domestic Abuse* statutes, codified at *Tennessee Code Annotated* §§ 36-3-601, et seq. In his training, Officer Rievley was taught that an arrest of an individual whom the officer has probable cause to believe has committed the crime of domestic abuse is "the preferred response" of the officer as explicitly stated in section 36-3-619. *Id.* Furthermore, Officer Rievley was taught that the Tennessee Attorney General has issued several opinions that construe this statute to allow for the warrantless arrest of an individual whom the officer has probable cause to believe committed domestic abuse. *Id.* Officer Rievley had probable cause to believe that the Plaintiff committed the crime of domestic abuse when he arrested him. *Id.*

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that summary judgment will be rendered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The burden is on the moving party to show conclusively that no genuine issue of

material fact exists, and the Court must view the facts and all inferences to be drawn therefrom in the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 475, 587 (1986); *Morris v. Crete Carrier Corp.*, 105 F.3d 279, 281-81 (6th Cir. 1997); *White v. Turfway Park Racing Ass'n., Inc.*, 909 F.2d 941, 943 (6th Cir. 1990); *60 Ivy Street Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987).

Once the moving party presents evidence sufficient to support a motion under Rule 56, the non-moving party is not entitled to a trial merely on the basis of allegations. *See* FED. R. CIV. P. 56 (e)(2). The non-moving party is required to come forward with some significant probative evidence which makes it necessary to resolve the factual dispute at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *White*, 909 F.2d at 943-44; *60 Ivy Street*, 822 F.2d at 1435. The moving party is entitled to summary judgment if the non-moving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof. *Celotex*, 477 U.S. at 323; *Collyer v. Darling*, 98 F.3d 211, 220 (6th Cir. 1996).

The standard for summary judgment mirrors the standard for directed verdict. The Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52; *see also Lapeer County, Mich. v. Montgomery County, Ohio*, 108 F.3d 74, 78 (6th Cir. 1997). There must be some probative evidence from which the jury could reasonably find for the non-moving party. *Anderson*, 477 U.S. at 252; *Bailey v. Floyd County Bd. of Educ.*, 106 F.3d 135, 140 (6th Cir. 1997). If the Court concludes that a fair-minded jury could not return a verdict in favor of the non-moving party based on the evidence presented, it may enter a summary judgment. *Anderson*, 477 U.S. at 251-52; *University of Cincinnati v. Arkwright Mut. Ins. Co.*, 51 F.3d 1277,

1280; *LaPointe v. UAW*, Local 600, 8 F.3d 376, 378 (6th Cir. 1993).

IV. LAW AND ARGUMENT

Officer Rievley respectfully submits that the Plaintiff is not entitled to partial summary judgment for the following reasons:

A. Officer Rievley's arrest of the Plaintiff was made pursuant to *Tennessee Code Annotated* 36-3-619; and

B. Officer Rievley is entitled to qualified immunity for his actions.

1. The Plaintiff's warrantless arrest for domestic assault was permissible pursuant to *Tennessee Code Annotated* § 36-3-619.

Tennessee Code Annotated § 36-3-619 provides in pertinent part that "[i]f a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest." *Id.* Domestic abuse is defined as

> inflicting, or attempting to inflict, physical injury on an adult or minor by other than accidental means, placing an adult or minor in fear of physical harm, physical restraint, malicious damage to the personal property of the abused party, including inflicting, or attempting to inflict, physical injury on any animal owned, possessed, leased, kept, or held by an adult or minor, or placing an adult or minor in fear of physical harm to any animal owned, possessed, leased, kept, or held by the adult or minor

TENN. CODE ANN. § 36-3-601(1). Furthermore, a family or household member for purposes of the Domestic Abuse Statute is defined as "a spouse, former spouse, person related by blood or marriage, or person who currently resides or in the past has resided with that person as if a family, or a person who has a child or children in common with that person, regardless of whether they have been

married or resided together at any time." TENN. CODE ANN. § 39-13-111(a). Domestic assault is either Class A or Class B misdemeanor. TENN. CODE ANN. § 39-13-111(c)(1), TENN. CODE ANN. § 39-13-101(b)(1). Although Tennessee generally has a rule against warrant less arrests for misdemeanor offences, a warrantless arrest is permitted in cases of domestic abuse, and arrest, even if without a warrant is the preferred response of the officer. TENN. CODE ANN. § 36-3-619.

Moreover, questions concerning warrantless arrests pursuant to § 36-3-619 have been submitted to the Tennessee Attorney General for opinions. According to the Tennessee Attorney General Opinions 98- 169, 00-218 and 02-116, an officer may make a warrantless arrest if the officer has probable cause to believe that a crime involving domestic abuse has occurred. *See* Tenn. Atty. Gen. Op. 98-169 (determining that "once a law enforcement officer forms probable cause to arrest a person for a crime involving domestic abuse, the probable cause will continue to support a warrantless arrest under § 36-3-619(a) for the indefinite future, unless the officer discovers facts that dispel it"); Tenn.. Atty. Gen. Op. 00-048 (determining that "an officer who has probable cause to believe a person has committed a crime involving domestic abuse ...may make a warrantless arrest of that individual, regardless of whether that individual has left the scene"); Tenn. Atty. Gen. Op. 02-116 (determining that an officer may make a warrantless arrest for domestic abuse when an offender maliciously damages property jointly owned by the offender and the abused party).

In the present case, it is clear that Officer Rievley had probable cause to arrest the Plaintiff for the domestic assault upon his son, Brandon. The Plaintiff "concede[s] and concur[s]" with the articulation of the facts as set forth by Officer Rievley in his Affidavit of Complaint. *See* Plaintiff's Motion for Partial Summary Judgment. In essence, the Plaintiff is admitting to the facts contained in that Affidavit of Complaint, including the fact that he grabbed his son, Brandon, around the neck

and strangled him. Such action surely constitutes abuse as that term is defined by *Tennessee Code Annotated.* §36-3-601(1) and gave Officer Rievley probable cause to arrest the Plaintiff.

Because Officer Rievley was acting pursuant to *Tennessee Code Annotated*, § 36-3-619 when he arrested the Plaintiff at his home without a warrant, the Plaintiff's only recourse would be to challenge the constitutionality of this statute. If the Plaintiff wishes to challenge the constitutionality of this statute, he must provide notice to the Tennessee Attorney General of his intent. *See* TENN. R. CIV. P. 24.04. Rule 24. 04 of the *Tennessee Rules of Civil Procedure* provides "[w]hen the validity of a statute of this state or an administrative rule or regulation of this state is drawn in question in any action to which the State or an officer or agency is not a party, the court shall require that notice be given the Attorney General, specifying the pertinent statute, rule or regulation." *Id.* Accordingly, the Plaintiff should not be granted partial summary judgment as to this issue. Rather, Officer Rievley, acting in accordance with the provisions of *Tennessee Code Annotated*, § 36-3-619, should be granted summary judgment as to any of the Plaintiff's claims for his warrantless arrest.[3]

2. Officer Rievley is entitled to rely upon the doctrine of qualified immunity for his actions.[4]

Even if the Court determines that Officer Rievley violated the Plaintiff's Fourth Amendment rights when he arrested him, Officer Rievley respectfully submits that he is entitled to rely upon the

---

[3]Officer Rievley is filing a Motion for Summary Judgment as to all issues pursuant to the Scheduling Order entered in this case.

[4]In his Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment, the Plaintiff appears to only address the issue of qualified immunity vis a vis his arrest without a warrant inside his home. Accordingly, this Response will only address the issue within that same narrow confines. As stated above, Officer Rievley is filing a Motion for Summary Judgment which will addresses all of the Plaintiff's claims.

doctrine of qualified immunity for his actions. The doctrine of qualified immunity shields government officials performing discretionary functions "from liability for civil damages insofar 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, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Qualified immunity "recognizes that government officials need to perform their duties without fear of litigation, and to be able to reasonably anticipate if their actions will give rise to liability for damages. Thus, it has been said that qualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Christophel v. Kukulinsky,* 61 F.3d 479, 484 (6th Cir.1995) (citing *Williams v. Commonwealth of Ky.,* 24 F.3d 1526, 1541 (6th Cir.), *cert. denied,* 513 U.S. 947, 115 S.Ct. 358, 130 L.Ed.2d 312 (1994); *Malley v. Briggs,* 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L.Ed.2d 271 (1986)).

Although the Plaintiff states in his Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment that "any dispute that may arise concerning the parties' legal arguments about whether [Officer] Rievley complied with Tennessee state law, or not, are irrelevant to this partial motion for summary judgment", such is simply not the case. *See Id*, sec. II. At the heart of a determination of whether qualified immunity is applicable is whether an officer understood what he was doing violated a clearly established constitutional right. *Christophel*, 61 F.3d at 484.

To determine if the doctrine is applicable, the court must conduct a two-step inquiry. *Christophel*, 61 F.3d at 484. The court must first "determine whether, based on the applicable law, the facts viewed in the light most favorable to the plaintiff show that a constitutional violation has occurred. If the court finds a constitutional violation, it must then consider whether the violation involved 'clearly established constitutional rights of which a reasonable person would have known.'"

Id. Furthermore, the "contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right" *Russo v. City of Cincinnati,* 953 F.2d 1036, 1042 (6th Cir.1992) (quoting *Anderson v. Creighton,* 483 U.S. 635, 639, 107 S.Ct. 3034, 97 L.Ed.2d 523 (1987)). As the *Russo* Court stated, "[a]lthough it need not be the case that 'the very action in question has been previously held unlawful, ... in light of pre-existing law, the unlawfulness must be apparent.'" *Id.* (quoting *Anderson,* 483 U.S. at 640). *See also Megenity v. Stenger,* 27 F.3d 1120, 1124 (6th Cir.1994) ("If we conclude that a reasonable public official would not have been aware that he was committing a [federal civil rights] violation, we then afford immunity.") As the Supreme Court stated in *Saucier v. Katz*, 533 U.S. 194 (2001), "if the law does not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate." *Id.* at 202.

In the present case, even if it is determined that the Plaintiff's arrest violated his Fourth Amendment rights, it is clear that Officer Rievley was **not** "on notice that his conduct would be clearly unlawful." *Id.* In fact, just the opposite is true - Officer Rievley was acting in accordance with a Tennessee statute that explicitly states "the preferred response of the officer is arrest" in cases where the officer has probable cause to believe that domestic abuse has occurred whether in his presence or not. TENN. CODE ANN. § 36-3-619. Furthermore, the Tennessee Attorney General has issued three separate opinions which support the validity of a warrantless arrest pursuant to this statute when the officer has such probable cause. Tenn. Atty. Gen. Op. 98- 169, 00-218 and 02-116. Thus, it cannot be said Officer Rievley's conduct was clearly unlawful nor that he should have been on notice that such conduct was unlawful. Accordingly, Officer Rievley is entitled to rely upon the doctrine of qualified immunity for his actions.

IV.CONCLUSION

For the foregoing reasons, Officer Rievley respectfully submits that the Plaintiff is not entitled to partial summary judgment as to the issues of his arrest and the applicability of the doctrine of qualified immunity. Accordingly, his Motion should be denied.

Respectfully submitted,

ROBINSON, SMITH & WELLS
Suite 700, Republic Centre
633 Chestnut Street
Chattanooga, TN 37450
Telephone: (423) 756-5051
Facsimile: (423) 266-0474

By: *s /Ronald D. Wells*
Ronald D. Wells, BPR# 011185
Attorney for Defendant, Steve Rievley

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of June, 2008, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 20th day of June, 2008.

Robinson, Smith & Wells

By: s/Ronald D. Wells

cc: Roy L. Denton
120 6th Avenue
Dayton, TN 37321

/061108/bed/daytondent.resp.wpd