

FILED

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

* **Judge: *Collier/ Carter***

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JURY DEMAND

could not use a state law to defeat the Fourth Amendment, the entire response must fail.

Id. At Doc. 29, pgs. 6 - 8

As for the defendant's second and final claim of qualified immunity, the court did not address that issue. However, as pointed out by the plaintiff, as such shall be discussed forthwith. The plaintiff holds the position that the any claim for qualified immunity on the part of the defendant must fail as well.

This *pro se* plaintiff, is confused as to how his motion can be denied when the entire legal argument of the defendant was not even given any consideration by the court, as the defendant's argument is a moot issue. The court in it's memorandum provided a massive amount of legal authority in which it used as reasons to deny plaintiff's motion for partial summary judgment. However, the plaintiff now gives notice of his presumption that this honorable court is in *error* to rely upon the legal authorities and citations presented by this court and used as reasons to deny the plaintiff's motion. The plaintiff *respectfully* takes exception and hereby holds contention that such said authorities and citations regarding "*privacy*" and "*public places*" and "*public arrests*" are inapposite to the facts of this case.

Additionally, the defendant has never plead anything other than his "extensive training" and "his acting pursuant to state law". The first instance of anything remotely sounding like this lawsuit being some sort of privacy issue was brought up by this honorable court, not the defendant. The **ONLY** case law authorities and citations the defendant has argued in his response related only to his argument pertaining to a claimed "qualified immunity". As from the very beginning this case cannot be argued because there simply isn't no argument to be made absent a total repealing of the Fourth

Amendment, or until the Supreme Court overturns itself concerning Payton and the host of other ground rock precedents. As stated by the defendant in his response to the plaintiff's motion for partial summary judgment, "*Officer Rievley will also file his Motion for Summary Judgment as to all issues in this case...*" (id at Court File No. 29, pg. 1). The plaintiff eagerly awaits the defendant's summary judgment motion which will in all likelihood, contain the defenses of similar "*privacy issues*" as such cases may hold authority in some Fourth Amendment violations, but certainly not to be held in consideration of the facts of the plaintiff's instant lawsuit concerning the warrantless arrest inside the plaintiff's home without consent or exigent circumstances.

Therefore, plaintiff in support of this instant Motion to Alter or Amend the Court's Judgment denying the Plaintiff's Motion for Partial Summary Judgment, plaintiff respectfully submits the follow:

The plaintiff in his motion for partial summary judgment correctly presented his legal argument based upon solid authority and not doing much more than mentioning a state law, as the plaintiff knew, as any reasonable person should have known, that a state law simply cannot defeat a federal constitutional right. The plaintiff feels he stands on solid ground and has built a very strong foundation for a Fourth Amendment claim against the defendant and as such he should prevail in all aspects.

First and foremost, the plaintiff reminds the court that the defendant was served with a complaint spurring this litigation (Court File No. 1). Defendant was also served an amended complaint (Court File No. 13). Defendant answered the complaint (Court File No. 4) and throughout the various pleadings the defendant has had ample opportunity to challenge this Fourth Amendment violation claim. Instead, the defendant insisted that he

was acting pursuant to state law and never gave any authorities or citations to challenge the plaintiff's legal arguments. However, interestingly enough, the defendant now inserts a few words here and a few words there in an attempt to distort the facts and issues. For example, the defendant in his affidavit (id. At Court File 29 at ¶ 16) now asserts that he "*smelled alcohol*" on the plaintiff. In spite of the defendant never stating such a statement of fact before he either just remembered it, thought it wasn't important or perhaps had some other motive. In any event, the defendant's affidavit, *supra*, is basically filled with hearsay information from a third party along with his personal account of an incident that was alleged to have happened. However, all of the events, assertions and third party information have never been tried in a state court because there never was a trial. The plaintiff will show that the entire state offenses of "domestic assault" was dismissed with cost taxed to the petitioner, Brandon Denton. It will also be shown that the Rhea County General Sessions Court dismissed the charges due not only to Brandon Denton not showing up in court, but because Officer Rievley failed to conduct an on scene interview. Then once again, the court has already determined that state law(s) cannot defeat the plaintiff's Fourth Amendment claim and further discussion on this matter is moot, at this point in time.

- **United States v. Watson, 423 U.S. 411, 414-16 (1976)**

In denying the plaintiff's motion for partial summary judgment the court used the following reasoning, which will now be dissected, studied where exception is *respectfully* taken by the plaintiff. This court has opined that even though the plaintiff might have been arrested inside his home without a warrant and without consent or exigent circumstances the court holds that "*in contrast, warrantless arrests in public areas do not*

violate the Fourth Amendment.” *United States v. Watson*, 423 U.S. 411, 414-16 (1976).
(emp. added)

The case involving *United States v. Watson*, *supra*, is not a proper precedent case law for this instant case. Nowhere are any of the events that occurred in *Watson* even remotely similar to any circumstances or events presented in the plaintiff’s complaint and case in chief. The case of *Watson* described in the layman terms of a *pro se* litigant, was in pertinent part, a fellow named Watson who was selling stolen credit cards and a confidential informant “ratted” Watson out to a postal inspector. The informant assisted the inspector and eventually agreed to meet with Watson in a **PUBLIC** restaurant and set him up in a “sting” operation. The informant arranged the meeting where subsequently, the postal inspector arrested Watson in a **PUBLIC** restaurant without a warrant. It goes without saying that the United States Supreme Court correctly found and upheld a “*warrantless arrest in a PUBLIC restaurant*”, but in any event, the plaintiff as described in his complaint (id. at Court File No. 13, ¶22, ¶23, ¶24) was arrested inside his home, absent his consent, absent exigent circumstances and without a warrant, regardless of any position the defendant may now try to argue since the defendant’s state law authority has failed.

Additionally, the plaintiff would be remiss in his diligent effort to pursue his entitled relief if he failed to reassert to this honorable court that *Payton v. New York* was not even a case law in 1976 when *Watson* was ruled on. *Payton* which was ruled on in 1980, four years after *Watson*,. *Payton* is completely direct and on point in this case, not the case of *Watson*. *Payton* made it very clear the Supreme Court’s view on warrantless arrests inside the home absent exigent circumstances. Restated, the arrest of the plaintiff

was **NOT** in the public as was Mr. Watson being in a **PUBLIC** restaurant where he got arrested. A public restaurant is nothing compared to a person merely opening his front door only to become a victim of a warrantless abducted by any person, especially those paid by the public to protect the public that claim to possess “extensive training”. Respectfully, a reading of *Watson* will readily demonstrate that the facts in *Watson* are inapposite to the facts of this case.

Therefore, it appears to be abundantly clear that the supreme court case of *United States v. Watson*, 423 U.S. 411, 414-16 (1976) is nowhere in the ball park of legal analysis or precedent concerning any allegation anywhere in the plaintiff’s complaint and case in chief and should not even be referred to in this instant case as some sort of authority to somehow justify the defendants warrantless intrusion and arrest inside the home of the plaintiff. Accordingly, any reliance by this *honorable* court upon the case of *United States v. Watson*, 423 U.S. 411, 414-16 (1976) is objected to whereby the plaintiff claims any such reliance constitutes a plain error of this honorable court. With all due respect to this honorable court, the bottom line in layman’s words is that Officer Steve Rievley with all his extensive training, and all the circumstances that HE describes even himself, could have simply obtained a warrant, period.

- **Katz v. United States, 389 U.S. 347, 351 (1967)**

In the case of *Katz v. United States*, the petitioner was convicted in the District Court for the Southern District of California under an eight-count indictment charging him with transmitting wagering information by telephone in violation of a federal statute. The case of *Katz* was one of where FBI agents had attached electronic listening and recording devices to the *outside public telephone* booth from which he had, along with

any other person in the public, placed their calls. Katz was subsequently convicted and the Court of Appeals upheld the conviction. The Court of Appeals rejected the contention that the recordings had been obtained in violation of the Fourth Amendment, [389 U.S. 347, 349] because "[t]here was no physical entrance into the area occupied by [the petitioner]." The supreme court granted certiorari in order to consider the constitutional questions presented in that case.

The questions presented to the court were:

"A. Whether a public telephone booth is a constitutionally protected area so that evidence obtained by attaching an electronic listening recording device to the top of such a booth is obtained in violation of the right to privacy of the user of the booth. [389 U.S. 347, 350]

"B. Whether physical penetration of a constitutionally protected area is necessary before a search and seizure can be said to be violative of the Fourth Amendment to the United States Constitution."

The United States Supreme Court stated the following, "We decline to adopt this formulation of the issues. In the first place, the correct solution of Fourth Amendment problems is not necessarily promoted by incantation of the phrase "constitutionally protected area." Secondly, the Fourth Amendment cannot be translated into a general constitutional "**right to privacy**." That Amendment **protects individual privacy** against certain kinds of governmental intrusion, **but its protections go further, and often have nothing to do with privacy at all**. "The average man would very likely not have his feelings soothed any more by having his property seized openly than by having it seized privately and by stealth. . . . And a person can be just as much, if not more, irritated,

annoyed and injured by an uncereemonious public arrest by a policeman as he is by a seizure in the privacy of his office or home." *Griswold v. Connecticut*, 381 U.S. 479, 509 (dissenting opinion of MR. JUSTICE BLACK). Other provisions of the Constitution protect personal privacy from other forms of governmental invasion. But the protection of a person's general right to privacy - his right to be let alone by other people See *Warren & Brandeis, The Right to Privacy*, 4 Harv. L. Rev. 193 (1890)." (emp. added)

This honorable court relies upon *Katz, supra*, in its assertion that somehow the plaintiff by merely opening his own front door to his home he somehow is presenting himself to full public view, even to the point of not having a privacy right at all due only to his *standing inside his own home with his door open*, a door not even opened fully at that, but partially as the time was at the dark of late night (1:39 a.m.) while the plaintiff was clad only in his silk sleeping shorts.

This court also presents a reference to *Katz* citing, "What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection". However, a continuation of that same citation reveals that the court in 389 U.S. 347, 351, *the court in Katz* was relying upon in part for it's reasoning for such statement by referring to *Lewis v. United States*, 385 U.S. 206, 210 ; *United States v. Lee*, 274 U.S. 559, 563 . "[B]ut what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected. [389 U.S. 347, 352] See *Rios v. United States*, 364 U.S. 253 ; *Ex parte Jackson*, 96 U.S. 727, 733 . The fact that the telephone booth from which the petitioner made his calls was constructed partly of glass, so that he was as visible after he entered it as he would have been if he had remained outside. But what he sought to exclude when he entered the booth was not the

intruding eye - it was the uninvited ear. He did not shed his right to do so simply because he made his calls from a place where he might be seen. No less than an individual in a business office, in a friend's apartment or in a taxicab. See *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 ; and *Jones v. United States*, 362 U.S. 257 . A person in a telephone booth may rely upon the protection of the Fourth Amendment. One who occupies it, shuts the door behind him, and pays the toll that permits him to place a call is surely entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world. See *Rios v. United States*, 364 U.S. 253 . "Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. The government agents here ignored "the procedure of antecedent justification . . . that is central to the Fourth Amendment," See *Osborn v. United States*, 385 U.S. 323, 330 .]"

The United States Supreme Court **OVERTURNED** the conviction of Katz and this honorable court's reliance upon a single sentence citation from Katz does not apply to the facts of this case. It goes without having to say that *any additional assertion* that the plaintiff was somehow in full public view, outside his door, standing in his yard, or any other place on his property the factors of *sight, hearing and touch* or any other assertions relating to the plaintiff's privacy in his home is somehow devoid and lost due to nothing more than opening his front door, along with his constitutional protections afforded and guaranteed to him under the fourth amendment as opined by this honorable district court, should not be relied upon as proper precedence.

Respectfully, a reading of *Katz* will readily demonstrate that the facts in *Katz* are inapposite to the facts of this case.

- *Segura v. United States, 468 U.S. 796, 810 (1984)*

The case involving *Segura v. United States, 468 U.S. 796, 810 (1984)* is not a proper precedent citation for this instant case and should not be considered or relied upon by this court as the case facts are insurmountably different from that of this instant case. Nowhere are any of the events that occurred in *Segura* even remotely similar to any circumstances or events presented in the plaintiff's complaint and case in chief.

The case of *Segura, supra*, in pertinent part shows that the New York Drug Enforcement Task Force had been investigating and eventually arrested a couple of people named *Rivudalla-Vidal* and *Parra*, who after being arrested, told agents that "*Segura probably had cocaine in his apartment*". Acting on this information, agents arrived at *Segura's* apartment and established external surveillance where they saw and arrested him **IN THE LOBBY**. Agents then took him to a third floor apartment and knocked on the door where a female answered the door. The agents, along with the arrested *Segura* entered the apartment. Those present at the apartment were informed by the agents that *Segura* was under arrest *and that a search warrant for the apartment was being obtained*.

Therefore, a reading of this case shows it basically involves *agents securing the premises of an apartment so as to preserve evidence as they waited for a search warrant to be issued, which was delayed due to an "administrative delay"*. Eventually a warrant was secured where the agents discovered almost three pounds of cocaine, 18 rounds of .38-caliber ammunition fitting the revolver agents had found in *Colon's* possession at the time of her arrest, more than \$50,000 cash, and records of narcotics transactions. The case of *Segura* appears to be nothing compared to a person merely

opening his front door only to become a victim of a warrantless abduction by any person.

Continuing, the supreme court in *Segura, supra*, did in fact address how ***"Homes are accorded sanctity under the Fourth Amendment because of the occupants' privacy interests"*** as this honorable court points out at *U.S. 796, 810*. However, that one sentence plucked from such a massive opinion reflects nothing more than a tip of a legal iceberg that, when as a whole and commingled with the circumstances, has absolutely no bearing at all on this instant case. In relying upon the complete citation of *Segura v. United States, 468 U.S. 796, 810 (1984)* the citation paints a much more vibrant picture that this honorable court should consider and respectfully, not rely upon a fragmental sentence pulled from the opinion.

As found in *Segura, supra, at 796, 810* "[The sanctity of the home is not to be disputed. But the home is sacred in Fourth Amendment terms not primarily because of the occupants' *possessory* interests in the premises, but because of their *privacy* interests in the activities that take place within. ***"[T]he Fourth Amendment protects people, not places."*** *Katz v. United States, 389 U. S. 347, 389 U. S. 351 (1967)*; *see also Payton v. New York, 445 U. S. 573, 445 U. S. 615 (1980)* (WHITE, J., dissenting). As we have noted, however, ***a seizure*** affects only possessory interests, ***not privacy interests***. Therefore, the heightened protection we accord privacy interests is simply not implicated ***where a seizure of premises, not a search, is at issue***. We hold, therefore, that ***securing a dwelling, on the basis of probable cause, to prevent the destruction or removal of evidence while a search warrant is being sought*** is not itself an unreasonable seizure of either the dwelling or its contents. We reaffirm at the same time, however, that, absent exigent circumstances, a warrantless search -- such as that invalidated in

Vale v. Louisiana, 399 U. S. 30, 399 U. S. 33-34 (1970) – is illegal.]" (emp. added)

Therefore, it appears to be abundantly clear that the supreme court case of *Segura v. United States*, 468 U.S. 796, 810 (1984) as relied upon by this honorable court is not proper precedent. Respectfully, plaintiff indicates that a reading of *Segura* will readily demonstrate that the facts in *Sugura* are inapposite to the facts of this case. If anything, *Segura* appears to strengthen and support the plaintiff's position. Accordingly, any reliance by this *honorable* court upon this case precedence as a reason to deny the plaintiff's motion for partial summary judgment appears to be in error.

- *United States v. Santana*, 427 U.S. 38, 42 (1976)

The plaintiff respectfully takes exception to the courts citing and reliance upon *United States v. Santana*, 427 U.S. 38, 42 (1976) as reason or precedent to deny the plaintiff's motion for partial summary judgment. To support the plaintiff's objection, legal argument and theory, the plaintiff relies predominantly upon the Syllabus, the position the court Held and its judgment.

Syllabus:

"On the basis of information that respondent Santana had in her possession marked money used to make a heroin "buy" arranged by an undercover agent, police officers went to Santana's house *where she was standing in the doorway* holding a paper bag, *but*, as the officers approached, *she retreated into the vestibule of her house, where they caught her. When she tried to escape*, envelopes containing what was later determined to be heroin fell to the floor from the paper bag, and she was found to have been carrying some of the marked money on her person. Respondent Alejandro, *who had been sitting on the front steps, was caught when he tried to make off with the dropped*

envelopes of heroin. After their indictment for possessing heroin with intent to distribute, respondents moved to suppress the heroin and marked money. The District Court granted the motion on the ground that, although the officers had probable cause to make the arrests, Santana's retreat into the vestibule did not justify a warrantless entry into the house on the ground of "*hot pursuit.*" The Court of Appeals affirmed." (*emp. added*)

Held:

1. "Santana, while standing in the doorway of her house, was in a "public place" for purposes of the Fourth Amendment, since she was not in an area where she had any expectation of privacy, and was not merely visible to the public, but was exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house. Thus, when the police, who concededly had probable cause to do so, sought to arrest her, they merely intended to make a warrantless arrest in a public place upon probable cause, and did not violate the Fourth Amendment. *United States v. Watson*, 423 U. S. 411 . P. 427 U. S. 42.

2. By retreating into a private place, Santana could not defeat an otherwise proper arrest that had been set in motion in a public place. Since there was a need to act quickly to prevent destruction of evidence, there was a true "*hot pursuit,*" which need not be an extended hue and cry "in and about [the] public streets," and thus a warrantless entry to make the arrest was Page 427 U. S. 39 justified, *Warden v. Hayden*, 387 U. S. 294, as was the search incident to that arrest. Pp. 427 U. S. 42-43." (*emp. added*)

3. ***Reversed.*** (*emp. added*)

Additionally, Santana relied upon *United States v. Watson*, 423 U. S. 411 (1976) where the court held that "*the warrantless arrest of an individual in a public place upon*

probable cause did not violate the Fourth Amendment. Thus, the first question we must decide is whether, when the police first sought to arrest Santana, she was in a public place.” (emp. added)

Although the plaintiff specifically presented his exception to this honorable courts reliance on the legal authority referenced and cited in *United States v. Watson*, 423 U.S. 411, 414-16 (1976), the plaintiff for the sake of expounding on *Santana*, *supra*, plaintiff respectfully submits; “While it may be true that, under the common law of property, **the threshold of one's dwelling is "private," as is the yard surrounding the house, it is nonetheless clear** that, under the cases interpreting the Fourth Amendment, *Santana* was in a **"public"** place. She was not in an area where she had any expectation of privacy. **"What a person knowingly exposes to the public, even in his own house or office, is not a subject of Fourth Amendment protection."** *Katz v. United States*, 389 U. S. 347, 389 U. S. 351 (1967). *She was not merely visible to the public, but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house. Hester v. United States*, 265 U. S. 57, 265 U. S. 59 (1924). Thus, when the police, who concededly had probable cause to do so, sought to arrest her, they merely intended to perform a function which we have approved in *Watson*.” (emp. added)

It is clear that the plaintiff was **NOT** exposed to public view at all. In fact, the plaintiff was inside his home and dressed for retiring awaiting on his wife to return home with McDonald's fast food for a late night “burger” with our oldest son, visiting home while on leave before his shipping off for his second deployment to Iraq. The only thing the plaintiff did was open his front door. He never conceded to nothing. He never thought

for one second to step outside. He had absolutely nothing to say to the police as he has always been at political odds with their “Chief”. The plaintiff is well versed of a lifetime raised in a small, poverty stricken town. In other words, I KNEW BETTER.

The plaintiff loudly and sternly advised the police that were standing on his porch that if they did not have a warrant to get the ~~--expletive deleted--~~ off my property. I, the plaintiff, also was not in “public view” or even in anything remotely considered a “public place”. Restated, as in paragraph 22 of the complaint clearly stated from day one, plaintiff was standing three (3) feet INSIDE HIS FRONT DOOR. He only opened the door to investigate. In fact, the plaintiff didn’t need any reason whatsoever to open his door, remove it from it’s hinges or otherwise do as he pleased WITHOUT government intrusion. The Defendant Rievley was NOT summoned, nor called to the plaintiff’s residence, nor was any police assistance requested. The defendant did NOT perform any type of “on scene interview” as REQUIRED of him pursuant to the very Domestic Abuse laws that HE states under oath as “being extensively trained” in (id. At Court File No. 29-2 ¶20).

The plaintiff respectfully contends that this honorable court is in error to use the case of *Santana, supra*, to justify its decision and in part, a reason to deny the plaintiff’s motion. The court should reconsider it’s decision to deny the plaintiff’s motion for partial summary judgment and GRANT the plaintiff’s motion as a matter of law.

The plaintiff fervently asserts that a case where a woman is holding a sack full of heroine, marked money used to buy the heroine, who is standing outside in plain view of everyone, in fact in view enough that she could interact with the fellow sitting on the steps and even watching oncoming traffic and activity. And then while she is outside in a

vestibule near the front steps where her privacy expectation could be challenged and while she indeed was arguably not just “merely visible to the public“, but was as fully exposed to public view where people could interact with her. For prime example, interacting when she heard the police yell “**POLICE**”. And most certainly she can be classified as being of, *speech, hearing, and touch just as if she had been standing completely outside her house*. The simple logic is that Santana was completely outside her door and when she saw police and she knew that she had a sack full of marked drug money, and she fled. Naturally under these circumstances the police should be allowed to give chase in “hot pursuit” and arrest such obvious drug dealer.

The plaintiff has a tremendous time trying to grasp the legal concept as to just how a case citation of a woman by the name of Santana, as described herein above, standing outside near the front steps interacting with people holding a sack full of drugs along with marked drug money is anything remotely related to this instant case of the plaintiff. It is completely undisputed that the plaintiff was NEVER in any public view other than opening his front door at 1:30 a.m.. Clearly the plaintiff was not standing out by his mail box, nor on the exterior side of his threshold and most certainly not in some *exterior vestibule* with a sack full of drugs and marked “buy money” who sees the police and takes off running tantamount to being in a car fleeing from police trying to make it “across the county line”. Such actions sound in line with a “*hot pursuit*” theory, which could be held as an exigent circumstance.

Respectfully, a reading of *Santana* will readily demonstrate that the facts in *Santana* are inapposite to the facts of this case and this honorable court should reconsider the denial of the plaintiff’s motion and grant it as a matter of law.

- *United States v. Saari*, 272 F.3d 804, 811 (6th Cir. 2001)

This honorable court in citing *United States v. Saari* attempts to use a notation of -- *noting that voluntarily exposing oneself to the public eliminates Payton's requirement of a warrant or exigent circumstances*. The plaintiff avers that this notation is not worded "exactly" as the court has referenced such notation made in *United States v. Saari*, 272 F.3d 804, 811 (6th Cir. 2001). It may be possible that the plaintiff somehow overlooked this notation but in any event the closest notation found in *Saari* that is remotely similar to what this honorable court has written and cited is as follows --- "[*The Government argues that it was merely attempting to interview Defendant in furtherance of its investigation, and that the officers acted reasonably in protecting themselves by having their guns drawn before initiating the interview. Further, the Government contends that the Defendant voluntarily exposed himself to the public by opening his door to the police. Consequently, the Payton proscription on warrantless in-home arrests does not apply.*] The district court disagreed, holding, "*The record indicates that 'as a practical matter' defendant was under arrest from the inception of his encounter with the officers.*" *Saari*, 88 F. Supp. 2d at 838, citing *United States v. Morgan*, 743 F. 2d 1158, 1163 (6th Cir. 1984). *This Court agrees.*" (emp. added)

Clearly, in spite of this honorable court citing and referencing a *notation* in *Saari*, plaintiff respectfully gives notice that such EXACT wording simply does not exist in the case this court has cited. The closest "*notation*" found is what is described above, restated, any theory that *Saari*, *supra*, and any notation therein referred, made only by a diligent government attorney, is somehow similar to the plaintiff's complaint and case in chief is categorically made exception to and the plaintiff respectfully avers that this

honorable court is in error.

To offer additional support that the reliance upon *Saari* is in error, as well as the notation inferred that, “*noting that voluntarily exposing oneself to the public eliminates Payton’s requirement of a warrant or exigent circumstances*”, or even the actual exact wording remotely similar to a person opening a door and somehow surrendering his privacy --“*Further, the Government contends that the Defendant voluntarily exposed himself to the public by opening his door to the police. Consequently, the Payton proscription on warrantless in-home arrests does not apply*”, see *United States v. Saari*, 272 F.3d 804, *id.* at 19 (6th Cir. 2001). (emp. added)

It must be noted that no matter what form of wording the referenced notation is, the fact remains that the *Saari* court rejected all arguments presented by the government. In fact, plaintiff restates that the notation was nothing more than an attorney for the Government arguing a legal conclusion for a position for the government. A further examination dwelling deeper into *Saari*, reveals that he was not ordered from his house, he answered the door of a delivery person bringing food to the door. It was then police pointed guns at him and ordered him out. Clearly, *Saari* did not volunteer to expose himself to anyone except to the delivery person. Similarly so, this plaintiff opened his door expecting to receive delivery of McDonald’s fast food from his wife.

The plaintiff respectfully submits that it does not matter if the plaintiff opened the door voluntarily, playing hide and seek and was going to open the door to sneak outside, open the door thinking it was my wife with a burger, open the door due to police with a bull horn surrounding the house or the police pounding on the door. The simple crystal clear fact remains that the Fourth Amendment does not allow a warrantless arrest inside

the home absent exigent circumstances. In any event further discussion isn't warranted as the plaintiff in this instant case was clearly within his house with his door closed and locked.

Lastly, two things were indeed crystal clear, one, the plaintiff was at home minding his own business and two, the defendant came onto the plaintiff's property uninvited and seized the plaintiff arresting him without a warrant or exigent circumstances. His actions simply cannot be excused when the defendant states emphatically that he is "extensively trained" when all evidence seems to lean toward the maxim of *ignorantia juris non excusat*.

Respectfully, for this honorable court to even consider the reasoning, much less suggest it where the defendant never brought it up, that the plaintiff or actually, anyone for that matter, somehow lost all constitutional protections just by merely opening their very own front door, even when he didn't even know if anyone was at the front door or not is beyond imagination. To attempt to apply a reasoning that an open door to a home invites public scrutiny because the home owner forfeits his privacy by merely having his door open is an extreme threat to any person's privacy rights as well as an apparent repealing of the Fourth Amendment. Because for such reasoning to be the case then every open door, even those who cannot afford screen doors who prop open their doors to cool themselves in the summer are subject to having no privacy rights because the open door subjects them to the public that in turn could lead to a warrantless government intrusion, search, seizure and arrest while they stand in the open door of their own home. Such reasoning devastates the doctrine of *cuius est solum eius est usque ad coelum et ad inferos*.

Respectfully, such reasoning holds no legal merit and every case citation relied upon by this honorable court in support for the authority to DENY the plaintiff's motion is in error and contended to be non-precedent case law. Respectfully, a reading of *Saari* will readily demonstrate that the facts in *Saari* are inapposite to the facts of this case.

- ***Cummings v. City of Akron*, 418 F.3d 676, 686 (6th Cir. 2005)**

This honorable court cites *Cummings v. City of Akron*, where the Sixth Circuit held police were liable for unlawfully entering a home without a warrant where the plaintiff never fully exposed himself to public view and clearly indicated he did not want to be exposed to the public. **418 F.3d 676, 686 (6th Cir. 2005)**. This case appears to be the only case cited that appears to be on point that actually supports not only the plaintiff's entire position altogether, ***but should actually require the granting of the plaintiff's motion for partial summary judgment as a matter of law. Cummings, supra***, not only strongly supports the plaintiff in this instant case, but it fully embraces the ruling of this honorable court in the case of *Vivian Hardwick vs. City of Cleveland, Cleveland Police Department and Chris Jacques, Individually (2007) with the Honorable Chief Judge Curtis L. Collier presiding*.

In *Hardwick*, Chief Judge Collier wrote in his memorandum --- "The 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 failing to report an accident (Tenn. Code Ann. § 55-10-106) and resisting arrest (Tenn. Code Ann. § 39-16-602), both of which are misdemeanors. Both parties agree Jacques arrested Plaintiff in her house. He did not have an arrest warrant. Plaintiff contends she did not consent to his entry into the house. There do not appear to be exigent circumstances. **Hence, a reasonable jury could find the entry into the house violated the Fourth Amendment. Having determined there was a constitutional violation, the Court will consider Jacques’s assertion he is entitled to qualified immunity. *Id.* At Doc 45 pgs. 7, 8 of 17. Footnotes omitted.” (emp. added)**

Continuing, in the case of *Hardwick*, *supra*, the entire case of the plaintiff in this instant case is almost identical to *Hardwick*. In each case each officer was never invited inside the home. Each officer forced their way into the home. Each plaintiff opened their front door but not with any intent to allow the officers inside their home. In each case, neither officer had a warrant, consent, nor exigent circumstances. In each case, *Payton* was, and is, clearly the controlling precedent case. Respectfully, the United States Supreme Court might very well not grant *certiorari* to settle the matter as to whether a person opened his own door voluntarily, or heard a knock, or heard a sound, or any other variable legal minds can spin in the name of diligence.

A very important observation should be made and given proper notice of such observation that in the case of *Hardwick*, *supra*, as well as this instant case, there appears to be a rather unique position taken on the part of this honorable court.

Chief Judge Collier held in *Hardwick* that when addressing the defendants motion

for summary judgment with Hardwick being the non-moving party, Chief Judge Collier cites, *“In short, if the Court concludes a fair-minded jury could not return a verdict in favor of the non-movant based on the record, the Court may enter summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); Lansing Dairy, Inc. v. Espy, 39 F.3d 1339, 1347 (6th Cir. 1994).”* Id. At Doc. 45 pg 6 of 17. (emp. added)

This rather straightforward citation of *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); Lansing Dairy, Inc. v. Espy, 39 F.3d 1339, 1347 (6th Cir. 1994)* reveals that obviously, and pretty much conclusive that the honorable Chief Judge Collier found that *a fair-minded jury could indeed return a favorable verdict* of the the non-movant (*Hardwick*). If not and to the contrary, Chief Judge Collier would presumably would have **GRANTED** summary judgment in favor of the “*movant*” Defendant Officer Chris Jacques and dismissed him as a defendant altogether. However, such was not the case in Hardwick as the defendant’s summary judgment was granted in part and denied in part.

Interestingly, the very part of the rather straightforward citation of Chief Judge Collier, the presiding judge in *this instant case* as well as *Hardwick*, reveals, “In short, if the Court concludes a fair-minded jury *could not return a verdict in favor of the non-movant based on the record, the Court may enter summary judgment.* *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986); Lansing Dairy, Inc. v. Espy, 39 F.3d 1339, 1347 (6th Cir. 1994).*” Id. At Doc. 45 pg 6 of 17. (emp. added)

Respectfully, it appears that two virtually identical situations have been ruled on

by the same judge but held two different rulings. Hardwick opened her door just as the plaintiff in this case did. How the door got opened voluntarily should not be a factor. Hardwick had the option of telling the officer to leave, or to simply refuse to open the door altogether. The defendant Officer Rievley admits that “*he then drove to the Denton home*”. (id. At Court File No. 29-2 ¶14. Obviously Officer Rievley wasn’t driving over to the plaintiff’s house with three (3) other police officers with no intention of knocking on the door. Therefore, whatever conditions or circumstances that the plaintiff Hardwick opened her front door or the plaintiff Denton opened his front door, should not even be considered in somehow using such reasoning, in part, to deny the plaintiff’s motion for summary judgment.

In this instant case the non-movant is the defendant Officer Rievley. Chief Judge Collier has **DENIED** the plaintiff’s motion for partial summary judgment. Ironically, in spite of the citation and authority holding that if a “fair-minded jury *could not return a verdict in favor of the non-movant based on the record, the Court may enter summary judgment*”. It is clearly a matter of law then, that the denial of the (*the movant*) plaintiff Roy L. Denton’s motion for partial summary judgment clearly establishes with this court that a “fair minded jury could not return a verdict in favor of the *non-movant...(Defendant Rievley)* in this instant case. In short, the contrasting finding of this honorable court concerning *this lawsuit* and that of *Hardwick’ lawsuit* as herein referred, must mean that the defendant Steve Rievley *cannot expect a fair jury to return a favorable verdict to him as he is the non-movant*. This must obviously translate that this honorable court has determined by denying the plaintiff’s motion for partial summary judgment that the defendant Rievley can not, and will not win because as stated by herein

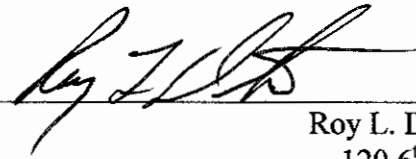
stated authority, that a fair-minded jury could not return a verdict in favor of [*defendant Rievley*] the non-movant based on the record, the Court may enter summary judgment. Because the motion of the plaintiff for partial summary judgment was denied it appears crystal clear that it is impossible for the defendant to prevail at a fair jury trial.

It is clearly established law that the zone of privacy is nowhere more clearly defined than within the unambiguous physical dimensions of an individual's home, which is at the very core of the Fourth Amendment provisions to be free from unreasonable government intrusion. "...warrantless entry into a person's home has consistently is presumptively unconstitutional and illegal." **Wayne R. LaFave**, *The Forgotten Motto of Obsta Principiis in Fourth Amendment Jurisprudence*, *Arizona Law Review* 28 (1986): 291-310

Therefore, *respectfully*, the plaintiff takes exception to this reasoning and that the findings of this honorable court appear contradictory and confusing in context and such contradiction makes this *pro se* plaintiff who is ordered to hold himself to the same strict standards as attorneys, (Court File No. 26) yet simultaneously the *pro se* plaintiff feels prejudiced by seemingly being held to a greater much higher standard than that of an attorney.

THEREFORE, for all the authorities, citations and reasons set forth herein, the plaintiff respectfully prays that the court reconsider it's order denying the plaintiff's motion for partial summary judgment and vacate the order denying such said motion and to GRANT the plaintiff's previous Motion for Partial Summary Judgment to correct a clear error of law and/or prevent manifest injustice, and as a matter of law as justice so requires.

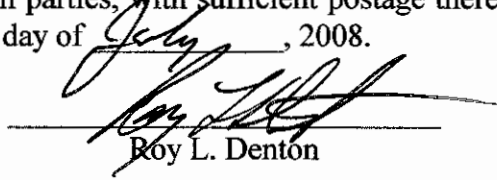
Respectfully submitted, this 28th day of July, 2008.

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 its destination, on this 28th day of July, 2008.


Roy L. Denton

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