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

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

REPLY TO DEFENDANT STEVE RIEVLEY'S RESPONSE TO PLAINTIFF ROY L. DENTON'S MOTION TO STRIKE

Comes now, the Plaintiff Roy L. Denton, to REPLY to the Defendant Steve Rievley's Response to Plaintiff Roy L. Denton's Motion to Strike and respectfully submits as follows:

The reliance of the case law provided to this honorable court by Defendant Steve Rievley is not on point and is not a precedent for any of the assertions within this instant Motion to Strike and should not be well taken by this court. Defendant's assertion that ***United States v. Horton, 847 F.2d 313, 324 (6th Cir. 1988)*** (citing ***United States v. Wright, 783 F.2d 1091 (D.C.Cir.1986)*** (*substance of telephone call should have been admitted because it was offered not to prove the truth of the matters asserted but their effect on the listener*); ***United States v. Herrera, 600 F.2d 502 (5th Cir. 1979)*** (*threatening statements properly admissible when used to show reaction to them and not the truth of the matters asserted*); ***United States v. Cline, 570 F.2d 731 (8th Cir. 1978)*** (*statement admitted for purposes of establishing that it was said was not hearsay*) sounds good in theory, but simply has no bearing on this Motion.

Clearly, each of these cases as above referred involve an "***effect***" upon a person as a result of another person's statements. In other words, person "**A**" telephones person "**B**" and *threatens*, *coerces* or otherwise *intimidates* person "**B**" to do something that person "**A**" wants person "**B**" to do, or else a bad "***effect***" will result upon person "**B**".

Applying this logic to this instant case, the defendant is somehow reaching that person "**A**" (*Brandon Denton*) came to person "**B**" (*Steve Rievley*) and uttered out an assortment of allegations against person "**C**" (*Roy Denton*) and person "**D**" (*Sgt. Dustin Denton*). However, person "**B**" failed to have any such statements made to him by third party person "**A**" attested to, or otherwise sworn or subscribed to. Contrary to what Defendant Rievley now asserts, it is improbable, that Brandon Denton "*scared*", "*intimidated*" or "*caused such durress*" upon an armed police officer that such officer was somehow "***effected***" to the point that he loaded up in his car, taking the entire city police shift with him, along with a county deputy to boot, and without asking for so much of the "*name*" of the plaintiff, entered into his home, forcibly arrested him and hauled him off to jail within 4 minutes. In all due respect, for a trained police officer to remotely insinuate that Brandon Denton somehow "***effected***" him, causing him to act in one way or another is preposterous and should not be well taken by this court.

Any inferences as to "what Officer Rievley" says he ***"reasonably believed"*** in so far as to what some third party told him does not qualify as an exemption to Rule 803 in any regard and should not be well taken by this court. Additionally, other than his word, there is no basis to allow what the defendant "*now*" remembers approximately ***two years after the fact*** what an individual may had uttered to him, or to testify and swear to such third party hearsay statements as true, and present such to this honorable court as "fact" should not be well taken by this court.

A ***present sense impression***, pursuant to Rule 803 (1), is a statement made by a declarant

that conveys his or her sense of the state of an event or the condition of something. The statement must be spontaneously made while the person was perceiving (*i.e. contemporaneous with*) the event or condition, or "***immediately thereafter.***" The subject matter and content of the statement are limited to descriptions or explanations of the event or condition, therefore opinions, inferences, or conclusions about the event or condition ***are not*** present sense impressions. An example of present sense impression is of a person saying, "*it's cold*" or "*we're going really fast*".

Furthermore, under the Federal Rules of Evidence, a statement of present sense impression is an exception to the prohibition on use of hearsay as evidence at a trial or ***hearing***, and is therefore admissible only to prove the truth of the statement itself (*i.e. to prove that it was in fact cold at the time the person was speaking, or to prove that the person was indeed traveling very fast*). The basis for this exception is the belief that the statement is likely reliable and true, as there is no time for reflection, distortion, or fabrication.

Clearly, it is established within this instant record that Brandon Denton ***stated*** to the defendant that he walked to the jail which is not less that one-quarter mile, nor more than one-half mile from the residence of the Plaintiff Roy L. Denton. The record clearly shows that a time variance of well over one hour had actually transpired, although the defendant attempts to indicate that any alleged events had "*just happened minutes before*". Any purported statements made by Brandon Denton to the defendant was not contemporaneous with any alleged event and in any regard, the defendant could have simply obtained a written statement from Brandon Denton and Jessica Carbajal thereby establishing a legal right to in the least obtain or assist a person to seek a criminal summons, or arrest warrant. However, even this simple duty of a reasonable trained law enforcement officer, absent exigent circumstances was ignored.

Therefore, any assertion or reliance upon the *present sense impression* exemption of an

event alleged to had happened "*just after midnight*" yet was reported **approximately 99 minutes** later by a third party declarant, to the defendant, should not be well taken by this court.

The Sixth Amendment's Confrontation Clause provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." This bedrock procedural guarantee has long applied to both federal and state courts. ***Pointer v. Texas, 380 U. S. 400, 406 (1965).*** As noted, ***Roberts*** says that an unavailable witness's out-of-court statement may be admitted so long as it has adequate indicia of reliability--i.e., falls within a "firmly rooted hearsay exception" or bears "particularized guarantees of trustworthiness." ***Ohio v. Roberts, 448 U. S. 66 (1980).***

An ***excited utterance***, in the law of evidence, is a statement made by a person in response to a startling or shocking event or condition. The statement must be spontaneously made by the declarant while still under the stress of excitement from the event or condition. Clearly, this instant record shows that the defendant Rievley never saw Brandon Denton, or otherwise spoke with him, until well ***over one hour after*** any alleged assault. Also, the defendant even states that Brandon Denton was merely "*afraid*" and "*nervous*", each which are symptomatic of a person standing in a county jail uttering allegations to police when inside his own unreliable, unstable and mentally deficient mind, he was on the run from the law due to an active arrest warrant issued for his arrest for the robbery of a convinience store. Spontaneity of the declarant is a key to admissibility. An excited utterance does not have to be made at time of the startling event, but must be made while the declarant is still in a state of surprise or shock from the incident. The declarant's reflective powers must be stilled, meaning that, while making the statement, the declarant would not have had a chance to reflect upon the startling event, fabricate a purposefully false statement, and then say it. Brandon Denton had plenty of time, in fact well over one hour,

to fabricate purposefully false statements as the defendant knew that Brandon Denton was unreliable and very capable of doing.

For purposes of the defendant somehow relying upon the "***excited utterance***" exception, the defendant is correct in asserting that the plaintiff is not "*on trial*" for domestic assault but instead, has sued a police officer in his individual capacity for his unlawful entry into plaintiff's home, without consent or exigent circumstances, based totally on statements that were merely asserted to him which had been uttered to the defendant almost two years ago in addition, to not remotely attempting to investigate any allegations made to him by a person known to the defendant to be unreliable at that time.

Under the Sixth Amendment, the plaintiff enjoys a federal constitutional right to be "*confronted with the witnesses against him.*" According to the supreme court's description of that right in ***Ohio v. Roberts, 448 U. S. 56 (1980)***, it does not bar admission of an unavailable witness's statement against a criminal defendant if the statement bears "adequate 'indicia of reliability.' " *Id., at 66.* To meet that test, evidence must either fall within a "firmly rooted hearsay exception" or bear "particularized guarantees of trustworthiness." *Ibidem.* It is obvious that Defendant Rievley has not met that test.

Without belaboring the point, plaintiff asserts that Defendant Rievley is not entitled to assert that his hearsay statements as moved to be stricken by the plaintiff, are somehow excepted from the Federals Rules of Evidence due only, or in part, to this instant case being a civil proceeding involving a Fourth Amendment constitutional and not a state law criminal court violation. Moreover, ***Ohio v. Roberts, 448 U.S. 56 (1980)*** and as discussed in ***Crawford v. Washington, 541 U.S. 36 (2004)*** strongly appear to settle this issue in favor of the plaintiff. The plaintiff respectfully asserts that the defendant is not entitled to rely upon the excited utterance

exception and assertion such should not be well taken.

Lastly, as to the defendant's attorney, Mr. Ronald D. Wells, concerning the appearance of plagiarism, the plaintiff as referred to his instant *Motion to Strike*, plaintiff *respectfully* submits that Mr. Wells is wrongfully asserting that the plaintiff somehow "*feels*", "*charges*", "*asserts*" or "*complains*" anything about plagiarism. Instead, as shown at ***Section C. Court Doc. No. 45 page 10***, the plaintiff simply gives this honorable court "notice" and if the court in it's wisdom finds such conduct exists, to then strike all relevant portions as moved within his motion.

Therefore, for the foregoing reasons, Plaintiff Roy L. Denton respectfully moves this court to grant his Motion to Strike in it's entirety.

Respectfully submitted, this 3rd day of October, 2008.

BY: _____

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706-221-2918

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 3rd day of Oct, 2008.

_____
Roy L. Denton

Copy mailed to:

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