

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

**ROY L. DENTON**

**Plaintiff**

v.

**STEVE RIEVLEY**

**Defendant**

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**Case No. 1:07-cv-211**

**JURY DEMAND**

**Collier/Carter**

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**DEFENDANT STEVE RIEVLEY’S PROPOSED JURY INSTRUCTIONS**

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COMES the Defendant Steve Rievley, by and through counsel, and submit the following proposed Jury Instructions:

**DEFENDANT’S REQUESTED JURY INSTRUCTION NO. 1  
WARRANTLESS ARREST**

To succeed on his claim of warrantless arrest, the Plaintiff must first prove by a preponderance of the evidence that the Defendant arrested him inside the Plaintiff’s home and that the Plaintiff did not knowingly make himself visible to the public. A warrantless arrest that occurs on the front porch or in the doorway of a person’s home does not violate the Fourth Amendment if the person knowingly made himself visible to the public. Likewise, a police officer may make a warrantless arrest of a person inside the home without violating the Fourth Amendment if that person knowingly makes himself visible to the public by standing in his doorway and then flees inside his home as police officers approach.

If you find that the Plaintiff has not proved by the preponderance of the evidence that the Defendant arrested him inside the Plaintiff's home, you must find in favor of the Defendant on this claim. If you find that the Plaintiff has proved by the preponderance of the evidence that he was arrested inside his home but you find that the Plaintiff knowingly made himself visible to the public, then you must find in favor of the Defendant on this claim.

*See Segura v. United States*, 468 U.S. 796, 810 (1984); *United States v. Santana*, 427 U.S. 38, 42 (1976) (citing *Katz v. United States*, 389 U.S. 347, 351 (1967))

Given: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Refused: \_\_\_\_\_

**DEFENDANT'S REQUESTED JURY INSTRUCTION NO. 2  
CONSIDER DAMAGES ONLY IF NECESSARY**

If the plaintiff has proven by a preponderance of the credible evidence that this defendant is liable on the plaintiff's claim, then you must determine the amount of damages to which the plaintiff is entitled. However, you should not infer that the plaintiff is entitled to recover damages merely because I am instructing you on the elements of damages. It is exclusively your function to decide upon liability, and I am instructing you on damages only so that you will have guidance should you decide that the plaintiff is entitled to recovery.

*Eulo v. Deval Aerodynamics, Inc.*, 47 F.R.D. 35 (E.D. Pa. 1969), *modified on other grounds*, 430 F.2d 325 (3d Cir. 1970), *cert. denied*, 401 U.S. 974 (1971).

Given: \_\_\_\_\_  
Modified: \_\_\_\_\_  
Refused: \_\_\_\_\_

**DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 3  
STATE OF MIND - GENERAL**

I instruct you that, to establish a claim under Section 1983, the plaintiff must show that the defendant acted intentionally or recklessly. If you find that the acts of the defendant was merely negligent, then, even if you find that the plaintiff was injured as a result of those acts, you must return a verdict for the defendant.

*Federal Jury Instructions, #87-75*

Given: \_\_\_\_\_

Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

**DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 4  
STATE OF MIND - INTENTIONAL**

An act is intentional if it is done knowingly, that is if it is done voluntarily and deliberately and not because of mistake, accident, negligence or other innocent reason. In determining whether the defendant acted with the requisite knowledge, you should remember that while witnesses may see and hear and so be able to give direct evidence of what a person does or fails to do, there is no way of looking into a person's mind. Therefore, you have to depend on what was done and what the people involved said was in their minds and your belief or disbelief with respect to those facts.

*Federal Jury Instructions, #87-76*

Given: \_\_\_\_\_

Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

**DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 5**

**STATE OF MIND - RECKLESSNESS**

An act is reckless if done in conscious disregard of its own probable consequences. In determining whether the defendant acted with the requisite recklessness, you should remember that while witnesses may see and hear and so be able to give direct evidence of what a person does or fails to do, there is no way of looking into a person's mind. Therefore, you have to depend on what was done and what the people involved said was in their minds and your belief or disbelief with respect to those facts.

*Federal Jury Instructions, #87-77*

Given: \_\_\_\_\_

Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

**DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 6  
BIAS**

In deciding whether to believe a witness, you should specifically note any evidence of hostility or affection which the witness may have towards one of the parties. Likewise, you should consider evidence of any other interest or motive that the witness may have in cooperating with a particular party.

It is your duty to consider whether the witness has permitted any such bias or interest to color his testimony. In short, if you find that a witness is biased, you should view his or her testimony with caution, weigh it with care and subject it to close and searching scrutiny.

*Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L.Ed.2d 347 (1974).*

Given: \_\_\_\_\_

Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

**DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 7  
QUALIFIED GOOD FAITH IMMUNITY**

If, after considering the scope of discretion and responsibility generally given to police officers in the performance of their duties, and after considering all of the surrounding circumstances of the case as they would have reasonably appeared at the time of the arrest, you find from a preponderance of the evidence that plaintiff has proved either (1) that any defendant was plainly incompetent or that (2) any defendant knowingly violated the law regarding the plaintiff's constitutional rights, you must find for the plaintiff. If, however, you find that any defendant had a reasonable belief that his actions did not violate the constitutional rights of the plaintiff, then you cannot find him liable even if the plaintiff's rights were in fact violated as a result of the defendant's objectively reasonable action.

Given: \_\_\_\_\_

Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

**DEFENDANTS' REQUESTED JURY INSTRUCTION NO. 8  
WARRANTLESS SEARCH AND SEIZURE**

A search by police officers does not violate the Fourth Amendment if voluntary consent has been obtained, either from the individual whose property is searched or from a third party who possesses common authority over the premises. Even if it is later determined that the third party does not in fact possess common authority over the premises, the search of the premises is still valid under the Fourth Amendment if the police officers reasonably believed that the third party had such authority.

In evaluating the Defendant Rievley's actions under this objective standard, you must ask:  
Would the facts available to the Defendant Rievley at the moment warrant a man of reasonable caution to believe that Brandon Denton had authority over the premises to give his consent to allow Defendant Rievley to search the residence to retrieve Brandon Denton's personal belongings requested by Brandon Denton?

*Illinois v. Rodriguez*, 497 U.S. 177, 181, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990); *Harajli v. Huron Tp.* 365 F.3d 501, 506 (6th Cir. 2004)

Given: \_\_\_\_\_

Modified: \_\_\_\_\_

Refused: \_\_\_\_\_

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of April, 2010, 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 2<sup>nd</sup> day of April, 2010

Robinson, Smith & Wells

By: s/Ronald D. Wells

cc: Roy L. Denton *-via hand delivery*  
120 6<sup>th</sup> Avenue  
Dayton, TN 37321

/BED/04022010/daytontenton.juryinstructions.wpd