Case No. 08-6406

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROY L. DENTON,
Plaintiff - Appellee
v.
STEVE RIEVLEY, in his individual capacity
Defendant - Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

FINAL BRIEF OF THE APPELLANT STEVE RIEVLEY

Oral Argument Waived

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Case No. 08-6406

ROY L. DENTON

Plaintiff-Appellee,

v.

STEVE RIEVLEY, in his individual capacity,

Defendant-Appellant

CORPORATE DISCLOSURE STATEMENT

Pursuant to Sixth Circuit Rule 26.1, Steve Rievley, Appellant, makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? NO.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? NO.

/s Ronald D. Wells
Ronald D. Wells

March 2, 2009
Date

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STATEMENT REGARDING ORAL ARGUMENT

Steve Rievley does not request oral argument of this appeal.

STATEMENT OF SUBJECT MATTER AND APPEAL JURISDICTION

In this case, Roy Denton asserts his constitutional rights were violated by the use of excessive force, false arrest, assault, warrantless entry and unlawful search against Mr. Rievley. Mr. Denton is a citizen and resident of Tennessee. Steve Rievley is a police officer with the City of Dayton, Tennessee and is a resident of Tennessee.

Mr. Denton asserts claims under 42 U.S.C. §§ 1983 and 1988 and various state claims. Jurisdiction for the federal claims was based upon 28 U.S.C. §§ 1331, 1343, and 1367 and jurisdiction for the state claims was based upon 28 U.S.C. § 1367.

The Appellant filed a Motion for Summary Judgment based in part on the doctrine of qualified immunity. (R.42, Motion for Summary Judgment of Steve Rievley), which was granted in part and denied in part by the Court in its Memorandum Opinion. (R.51, Memorandum). Mr. Denton's claims for excessive force, false arrest, and assault were dismissed. (R.51, Memorandum Opinion, pg. 8, 17). The Trial Court, however, denied Mr. Rievley's assertion that he was entitled to qualified immunity for Mr. Denton's claims for his alleged warrantless arrest. *Id.* A timely Notice of Appeal was filed on November 17, 2008. (R.54, Notice of Appeal). Because the District Court found that Mr. Rievley could not rely upon the doctrine of qualified immunity, jurisdiction before this Court is, therefore, based upon

Mitchell v. Forsyth, 472 U.S. 511 (1985).

In *Forsyth*, the Supreme Court considered whether the denial of qualified immunity would receive the same consideration as a denial of a Motion for Summary Judgment addressing absolute immunity. *Id*. at 526. As set forth in *Forsyth*, the entitlement that comes with qualified immunity is immunity from suit rather than just a mere defense to liability. *Id*. at 526. The *Forsyth* Court stated the entitlement is effectively lost if a case is erroneously permitted to go to trial. *Id*. In *Forsyth*, the Court held

> a District Court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an "appealable" final decision within the meaning of 28 U.S.C. § 1291, notwithstanding the absence of a final judgment.

Id; see also Behren v. Pelletier, 516 U.S. 219 (1996) holding that a district court's denial of qualified immunity is immediately appealable as a final decision and that an order rejecting the qualified immunity defense is a final judgment subject to immediate appeal.

STATEMENT OF ISSUES PRESENTED

I. The District Court erred when it found that the Appellant Steve Rievley made a warrantless arrest of the Appellee Roy L. Denton inside the home of Mr. Denton in violation of the Fourth Amendment.

II. The District Court erred when it found that Mr. Rievley was not entitled to rely upon the defense of qualified immunity for his arrest of Mr. Denton.

III. The District Court erred when it found that Mr. Rievley's entry into Mr. Denton's home to arrest Dustin Denton violated the Fourth Amendment.

STATEMENT OF CASE

The Appellee, Roy L. Denton, Roy Denton, and his son, Dustin B. Denton filed their Complaint on September 6, 2007. (R. 1, Complaint). In the original Complaint, Mr. Denton and his son alleged 42 U.S.C § 1983 violations, excessive force, false arrest, and common law assault. *Id.* On March 28, 2008, Mr. Denton filed an Amended Complaint alleging the same causes of actions, but in this Amended Complaint, Dustin B. Denton was terminated from the lawsuit.[1] (R. 13, Amended Complaint).

On May 12, 2008, Mr. Denton filed a Motion for Partial Summary Judgment as to his claims for unlawful arrest and that Mr. Rievley was not entitled to rely upon the doctrine of qualified immunity. (R. 20, Plaintiff's Motion for Partial Summary Judgment). The District Court denied Mr. Denton's Motion for Partial Summary Judgment by order dated July 21, 2008. (R. 33, Order denying Plaintiff's Motion for Partial Summary Judgment). Mr. Denton then filed a Motion to Alter or Amend the July 21, 2008 order which was denied. See R. 34, Plaintiff's Motion to Alter or Amend and R.51, Memorandum.

Mr. Rievley filed his Motion for Summary Judgment on August 29, 2008. (R. 42, Defendant's Motion for Summary Judgment). In his Motion for Summary

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

Judgment, Mr. Rievley asserted that his arrest of Mr. Denton was not unlawful and was based on probable cause; that he did not use excessive force in effectuating said arrest; that said arrest did not occur inside the home of Mr. Denton; and that, in the alternative, he was entitled to rely upon the doctrine of qualified immunity for his arrest of Mr. Denton.[2] The District Court granted Mr. Rievley's Motion for Summary Judgment as to probable cause and excessive force . (R. 51, Memorandum, pp. 8, 17). The District Court did find, however, that Mr. Denton's arrest was unconstitutional as it occurred inside his home and that Mr. Rievley was not entitled to rely upon qualified immunity for Mr. Denton's arrest or to search Mr. Denton's home to arrest Dustin Denton. *See Id.* at pp. 11-15.

[2]In his Motion for Summary Judgment, Mr. Rievley did not address Mr. Denton's claim for his alleged warrantless search of Mr. Denton's home. The District Court, however, did address this issue in its Memorandum of its own accord. *See* R. 51, Memorandum, pg. 15. The District Court stated that because Mr. Rievley searched Mr. Denton's home for Dustin Denton for the purposes of arresting Dustin, "such a warrantless entry for the purposes of arresting a suspect is prohibited by *Payton*." *Id.* Mr. Rievley assumes for purposes of this Brief that had he included in his Motion for Summary Judgment the issue of the search of Mr. Denton's home, the District Court would have denied said motion and Mr. Rievley would have been appealing this issue before this Court as well. Accordingly, he is appealing the District Court's finding that Mr. Rievley's alleged search of Mr. Denton's home was a violation of *Payton* for which Mr. Rievley would not have been entitled to qualified immunity.

STATEMENT OF FACTS

Mr. Rievely, along with other members of the City of Dayton Police Department, was dispatched to the jail at approximately 1:39 a.m. on September 9, 2006 to respond to an assault that occurred at the home of Mr. Denton. (R. 20, Motion for Partial Summary Judgment, *Affidavit of Complaint, attached as* Exhibit B). Upon arrival at the jail, Officer Rievely spoke with Brandon Denton, Mr. Denton's son, who stated that he had been attacked just minutes earlier by Mr. Denton and Dustin Denton, Mr. Denton's son (and Brandon's brother). *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. *Id.* 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.* Mr. Denton, 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.*

Mr. 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, Mr. 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. (R. 29, Response to Motion for Partial Summary Judgment, *Affidavit of Steve Rievley, attached as* Exhibit A, ¶ 13). Brandon informed Mr. Rievely that both his father and brother remained at their home at 120 6th Avenue Dayton, Tennessee. *Id.* at ¶ 12. Brandon also told Mr. 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.*

According to Mr. Denton's Memorandum in Support of his Motion for Partial Summary Judgment, Mr. Denton "saw lights approaching his front door and thus opened his door to investigate" around 1:30 a.m. (R. 21, Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment, p. 1). As Mr. Denton opened the door, he saw Mr. Rievley and "several other police officers converging on his front porch." *Id.* Mr. Rievley asked him what happened to his son, Brandon. *Id.* Mr. Denton claims that he "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....Officer Rievley **then entered** Mr. Denton's home..." *Id*. (emphasis added).

In his Affidavit, Mr. Rievley testified to much the same as Mr. Denton. Mr. Rievley testified that he and other officers arrived at Mr. Denton's home around 2:13 a.m. (R. 29, Response to Motion for Partial Summary Judgment, *Affidavit of Steve Rievley, attached as* Exhibit A). As they walked onto the porch and approached the front door, Mr. Denton opened the door. *Id.* Mr. Rievley noted that on the front

porch, Brandon's eyeglasses lay broken, further confirming his story of assault. *Id.* Mr. Rievley asked about Mr. Denton's son but the father would not reply appropriately. *Id.* He then advised Mr. Denton that he was under arrest for domestic assault. *Id.* When Mr. Rievley advised Mr. Denton that he would need to speak with Dustin as well, Mr. Denton turned away to go back inside the house. *Id.* Mr. Rievley handcuffed Mr. Denton's right arm as Mr. Denton attempted to close and lock the door. *Id.* He then advised Mr. Denton that he needed to find Dustin and that he needed to give Mr. Rievley his left hand. *Id.* Mr. Rievley was able to handcuff both Mr. Denton'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.* Mr. 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, Mr. Rievley has received extensive training in the area of domestic abuse. (R. 29, Response to Motion for Partial Summary Judgment, *Affidavit of Steve Rievley, attached as* Exhibit A, at ¶ 20). Mr. Rievley has been instructed as to the provisions of the *Tennessee Domestic Abuse* statutes, codified at *Tennessee Code Annotated* §§ 36-3-601, et seq. *Id.* In his training, Mr. 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, Mr. 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.* Mr. Rievley had probable cause to believe that Mr. Denton committed the crime of domestic abuse when he arrested him. *Id.*

SUMMARY OF ARGUMENT

The District Court erred in finding that Mr. Rievley made a warrantless arrest of Mr. Denton inside his home. Both the accounts of Mr. Rievley and Mr. Denton of those early morning hours indicate that Mr. Denton's arrest occurred on the threshold of his front door which he voluntarily opened after seeing police officers approaching his front porch. Both men stated that Mr. Rievley did not enter Mr. Denton's home until **after** Mr. Denton had already been handcuffed and placed inside a patrol car. Thus, Mr. Rievley's actions did not constitute a warrantless arrest of Mr. Denton inside his home. As such, it was improper for the District Court to deny his Motion for Summary Judgment as to the same.

In the alternative, if this Court determines that Mr. Rievley did arrest Mr. Denton improperly inside his home, Mr. Rievley contends that the District Court did err in denying his defense of qualified immunity for his actions. Mr. Rievley submits that he is entitled to qualified immunity for his actions in arresting Mr. Denton based on *Tennessee Code Annotated* § 36-3-619 which states that in a domestic violence situation, arrest is the preferred response; several Tennessee Attorney General's Opinions which have construed that same statute; and his training and experience. Furthermore, he submits that under an objectively reasonable standard, an officer confronted with the same circumstances would have believed that he would have been justified in not only making the arrest of Mr. Denton but also in entering the

home to search for Dustin Denton to effectuate his arrest as well. Accordingly, it was improper for the District Court to find that Mr. Rievley was not entitled to qualified immunity for his actions for both his arrest of Mr. Denton and his entry into his home to search for Dustin Denton.

ARGUMENT

In his Amended Complaint, Mr. Denton alleged violations of 42 U.S.C. § 1983 which enables an individual to file suit against "those who, while acting under color of state law, deprive another of a right secured by the Constitution or federal law." *Romanski v. Detroit Entm't L.L.C.*, 428 F.3d 629, 636 (6th Cir. 2005). A plaintiff in a § 1983 cause of action must establish two elements: "(1) that he was deprived of a right secured by the Constitution or laws of the United States, and (2) that he was subjected or caused to be subjected to this deprivation by a person acting under color of state law." *Gregory v. Shelby County*, 220 F.3d 433,441 (6th Cir. 2000).

With respect to Mr. Denton's § 1983 claims for warrantless entry and unlawful search, Mr. Rievley filed a Motion for Summary Judgment in the District Court, contending such claims should be dismissed because there were no constitutional violations and that he was entitled to qualified immunity for his actions. *See* R. 42, Defendant's Motion for Summary Judgment. This Court's review is de novo regarding decisions granting summary judgment, drawing all reasonable inferences in favor of the nonmoving party. *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000).

I. The District Court erred when it found that the Appellant Steve Rievley made a warrantless arrest of the Appellee Roy L. Denton inside the home of Mr. Denton in violation of the Fourth Amendment.

The Fourth Amendment has been interpreted to "prohibit the police from

making a warrant less and non-consensual entry into a suspect's home in order to make a routine felony arrest." *Payton V. New York*, 445 U.S. 573, 576 (1980). This rule in *Payton*, however, is not an absolute. Although homes are accorded sanctity under the Fourth Amendment due to the privacy interests of the occupants, those same occupants may be arrested in their home if they have given up their privacy interests by knowingly exposing themselves to the public. *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)).

The facts in *Santana* are similar to the facts in the case before this Court. In *Santana*, the officers saw the suspect standing in the doorway of her house. *Santana,* 427 U.S. at 42. As the officers approached the suspect, she ran back into her house whereupon the police officers followed her, eventually arresting her inside her home. *Id.* In upholding the arrest, the Supreme Court stated that the suspect "was not merely visible to the police but was as exposed to public view, speech, hearing, touch as if she had been standing completely outside her house." *Id.*

Even taking the facts in the light most favorable to the non-moving party (here, Mr. Denton) as required by *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 475, 587 (1986), it is clear that no constitutional violation occurred when Mr. Denton was arrested. In the present case, Mr. Denton admits in his own Introduction to his Motion for Partial Summary Judgment that he opened the front door of his

home **before** the Officers could knock on his door and step onto the front porch. *See* R. 21, Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment, p. 1. Mr. Denton further states that Mr. Rievley did not enter his home until **after** he had been arrested. *Id.* Mr. Rievley's Affidavit confirms this as well. (R. 29, Response to Motion for Partial Summary Judgment, *Affidavit of Steve Rievley, attached as* Exhibit A, ¶ 15-16).

Specifically, from Mr. Denton's own account of that night and Mr. Rievley's Affidavit, it is evident that Mr. Denton was standing at the very least on the threshold of his front door on the front porch of his home with the door open when he was arrested. Mr. Rievley testified in his Affidavit that "I informed Roy L. Denton that he was under arrest. After a short discussion, Roy L. Denton turned away from me toward the door of his house. As Roy L. Denton turned away, I grabbed his right arm. I handcuffed his right arm and then his left arm. After successfully arresting Roy L. Denton, I turned him over to Jason Woody for transportation to the local jail. Gerald Brewer, a Rhea County police officer, and I went into the Denton house in search of Dustin Denton." *See id.* at ¶¶ 17-19. Mr. Rievley's testimony makes clear that he did not enter Mr. Denton's house until **after** Mr. Denton had been arrested. *Id.* These facts are confirmed by Mr. Denton's account of the night as well. Mr. Denton, in his Introduction for his Motion for Partial Summary Judgment stated

> ...Mr. Denton saw lights approaching his front door and thus opened his

> door to investigate. Upon opening the door, Mr. Denton saw the Defendant Steve Rievley and several other police officers converging on his front porch....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 had another officer transport Mr. Denton to jail...Officer Rievley **then entered Mr. Denton's home**...**All of these statements made within this Introduction are undisputed.**

(R. 21, Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment, p. 1)(emphasis added). Thus, there could be no Fourth Amendment violation because there was no warrantless arrest inside the house of Mr. Denton as Mr. Rievley never entered the house until after the arrest had already occurred.

If there is no constitutional violation, Mr. Denton cannot recover under § 1983. *Wittstock v. Mark A. Va Sile, Inc*., 330 F.3d 899 (6th Cir. 2003). Taking the facts in the light most favorable to Mr. Denton, Mr. Rievley respectfully submits that the District Court erred when it found that he violated Mr. Denton's Fourth Amendment rights by arresting him improperly inside his home as the arrest did not occur inside the home. Furthermore, Mr. Rievley respectfully submits that he is entitled to summary judgment as a matter of law pursuant to *Federal Rule of Civil Procedure* 56 on this issue.

II. The District Court erred when it found that Mr. Rievley was not entitled to rely upon the defense of qualified immunity for his arrest of Mr. Denton.

Whether Mr. Denton's Fourth Amendment rights were violated is a separate

inquiry from whether Mr. Rievley is entitled to qualified immunity. *O'Brien v. City of Grand Rapids*, 23 F.3d 990 (6th Cir. 1994). Even if this court determines that Mr. Rievley violated Mr. Denton's constitutional rights, Mr. Denton may still be unable to recover under §1983 as Mr. Rievley contends that he is entitled to qualified immunity. *Id.* at 1000. The standard of review for the denial of qualified immunity for in an action brought under 42 U.S.C. § 1983 is de novo. *Klein v. Long*, 275 F.3d 544, 550 (6th Cir. 2001).

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.'" *Ewolski v. City of Brunswick,* 287 F .3d 492, 501 (6th Cir.2002) (quoting *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982)). The United States Supreme Court has articulated a two-part test for determining whether a law enforcement officer is entitled to qualified immunity. *See Brosseau v. Haugen,* 543 U.S. 194, 125 S.Ct. 596, 598 (2004); *Saucier v. Katz,* 533 U.S. 194, 201 (2001). Under this test, district courts must

> consider whether "the facts alleged show the officer's conduct violated a constitutional right." If the plaintiff can establish that a constitutional violation occurred, a court should ask "whether the right was clearly established ... in light of the specific context of the case, not as a broad general proposition."

Lyons v. City of Xenia, 417 F.3d 565, 571 (6th Cir.2005) (quoting *Saucier,* 533 U.S. at 201).

Once a defendant claims the affirmative defense of qualified immunity, the burden shifts to the plaintiff to demonstrate that the defendant is not entitled to the defense of qualified immunity. *Myers v. Potter,* 422 F.3d 347, 352 (6th Cir.2005). When a defendant moves for summary judgment and asserts the defense of qualified immunity, the plaintiff must "1) identify a clearly established right alleged to have been violated; and 2) establish that a reasonable officer in the defendant's position should have known that the conduct at issue was undertaken in violation of that right." *Pray v. City of Sandusky,* 49 F.3d 1154, 1158 (6th Cir.1995).

Thus, the key inquiry in determining whether a right was clearly established is "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Saucier,* 533 U.S. at 202; *see also Ewolski,* 287 F.3d at 501 ("For a right to be clearly established, '[t]he contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'"(quoting *Russo v. City of Cincinnati,* 953 F.2d 1036 (6th Cir.1992))). Although the conduct in question need not have been previously held unlawful, the unlawfulness must be apparent in light of pre-existing law. *Id.* Officials are entitled to qualified immunity " 'when their decision was *reasonable,* even if

mistaken.' " *Pray,* 49 F.3d at 1158 (quoting *Castro v. United States,* 34 F.3d 106, 112 (2d Cir.1994)). Further, "'if officers of reasonable competence could disagree on this issue, immunity should be recognized.'" *Id.* (quoting *Malley v. Briggs,* 475 U.S. 335, 349 (1986)).

In *Russo v. City of Cincinnati,* 953 F.2d 1036, 1042 (6th Cir.1992), the Sixth Circuit, addressing the applicability of qualified immunity stated that the "contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Id.* (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 Mr. Denton's arrest violated

his Fourth Amendment rights, it is clear that Mr. Rievley was **not** "on notice that his conduct would be clearly unlawful." *Id.* In fact, just the opposite is true - Mr. 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. Moreover, questions concerning warrantless arrests pursuant to *Tennessee Code Annotated* § 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).

Furthermore, the District Court in Tennessee, Eastern District, from where this Appeal is taken, has previously noted in *Cannon v. Hamilton County*, 2007 WL 3238959, * 13 (E.D. Tenn. 2007), that there is no Sixth Circuit case addressing "the impact that a domestic violence situation may have on the exigent circumstances justifying a warrantless entry to effectuate an arrest." *Id.* Thus, the "contours" of this right are not clearly established in domestic violence situations given that there is an unchallenged Tennessee statute allowing for the warrantless arrest of an individual in such domestic violence situations, Tennessee Attorney General Opinions construing that same statute fail to address the statute's implications vis á vis the Fourth Amendment,[3] and no Sixth Circuit caselaw addresses the issue.

Given all of this, a reasonable official in Mr. Rievley's position would not have been aware that he was committing a federal civil rights violation when he arrested Mr. Denton for committing domestic assault. *See Megenity v. Stenger,* 27 F.3d 1120, 1124 (6th Cir.1994). No clear directive exists from either the Tennessee legislature or the Tennessee Attorney General's office. As the District Court noted in its Memorandum, this appears to be a matter of first impression; thus there is no

[3]The District Court in its Memorandum reviewed a total of seven Opinions from the Tennessee Attorney General discussing *Tennessee Code Annotated* § 36-3-619 and noted that "none of these opinions makes any reference to the United States Constitution, the Fourth Amendment, or the right of people to be free from unlawful searches and seizures in their homes. These opinions appear to be a significant failing of the Tennessee Attorney General's opinions." *See* R. 51, Memorandum, pg. 14.

caselaw on this issue as well. In light of these circumstances, Mr. Rievley had no clear guidelines. He could only rely upon his training and his reasonable beliefs that he had probable to arrest Mr. Denton for domestic assault, that *Tennessee Code Annotated* § 36-3-619 passed constitutional muster and that the Tennessee Attorney General's Opinions construing the statute were constitutionally sound as well. Such is a tall order for any police officer at 1:40a.m confronted with a domestic violence situation where the victim may have to return home to the abuser.

As officers are not "held to the standards of a constitutional law scholar concerning the vagaries of the exigent circumstances exception to the warrant requirement of Fourth Amendment law," neither should officers be held to these same requirements as they endeavor to navigate the murky waters surrounding the Tennessee Legislature's attempt to protect victims of domestic abuse. *See O'Brien*, 23 F.3d at 1000. Considering the Tennessee Attorney General Opinions did not consider Section 36-3-619's implications upon the Fourth Amendment, it hardly seems appropriate and just to impose such a heavy burden on a police officer faced with making an arrest in a domestic violence situation in the early hours of the morning.

In this particular case, Mr. Rievley testified in his Affidavit that he was aware of the Tennessee Attorney General Opinions that construed Section § 36-3-619 to allow for the warrantless arrest of an individual whom the officer has probable cause

to believe committed domestic abuse. He also testified that he believed he had probable cause to arrest Mr. Denton for domestic abuse. *Id.* Based upon his training, his belief that he had probable cause for the arrest, his understanding of Section 36-3-619, and his understanding of Tennessee Attorney General's Opinion construing said statute, Mr. Rievley had a reasonable and good faith belief that he was not committing a constitutional violation when he arrested Mr. Denton as would any police officer confronted with the same situation. Mr. Denton has offered no proof and has not met his burden that a reasonable officer in Mr. Rievley's position should have known that the conduct at issue was undertaken in violation of" his Fourth Amendment rights." *Pray*, 49 F. 3d at 1158.

Indeed, Mr. Denton admits in his Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment that several other officers from the Dayton Police Department were at his house that night at the time of his arrest (R. 21, p. 1). He also disputes that Mr. Rievley was the ranking officer on the scene that night (R. 44, Plaintiff's Response to Defendant's Motion for Summary Judgment, p. 3). He offered no proof in any of his pleadings, as required by *Pray,* that any of these officers disagreed with Mr. Rievley's actions that night or found such actions to be constitutional violations. Accordingly, the District Court erred when it found that he was not entitled to the defense of qualified immunity for his warrantless arrest of Mr. Denton. As such, Mr. Rievley respectfully asks this Court to reverse the District

Court's denial of his Motion for Summary Judgment as to this issue.

III. The District Court erred when it found that Mr. Denton maintains a claim for Mr. Rievley's entry into Mr. Denton's home to arrest Dustin Denton.

In its Memorandum, the District Court of its own accord addressed Mr. Denton's claim for the alleged unlawful search of his home. *See* R. 51, Memorandum, p. 15. The District Court found that Mr. Rievley made an unlawful entry of Mr. Denton's home to search for Dustin Denton, the son of Mr. Denton and brother of the victim, Brandon Denton. *Id.* According to the statement made by Brandon Denton, Dustin Denton also lived at 120 6th Avenue with Mr. Denton and was engaged in the assault on Brandon. (R. 20, Motion for Partial Summary Judgment, *Affidavit of Complaint, attached as* Exhibit B). Thus, if Mr. Rievley had probable to cause arrest Mr. Denton for domestic assault as previously determined by the District Court (see R. 51, p. 8), then Mr. Rievley would have had probable cause to arrest Dustin Denton for the same. Furthermore, if this Court holds that Mr. Rievley is entitled to qualified immunity for his arrest of Mr. Denton based upon his training, *Tennessee Code Annotated* § 36-3-619, and his reliance upon the Tennessee Attorney General's Opinions construing that statute, then it stands to reason that he would have qualified immunity for his search of the home to locate Dustin Denton to effectuate his arrest under the same statute. Accordingly, Mr. Rievley respectfully submits that the District Court erred when it found that he made an unlawful entry

into Mr. Denton's home to arrest Dustin Denton, and Mr. Rievley requests that he is entitled to summary judgment in his favor as to this issue.

CONCLUSION

Mr. Rievley respectfully submits that the District Court erred when it found that he arrested Mr. Denton inside his home; rather Mr. Rievley contends that the record before the Court show that the undisputed material facts demonstrate that he arrested Mr. Denton while Mr. Denton was standing on the threshold of his front door on his front porch, with the door wide open. Accordingly, there was no constitutional violation. Therefore, Mr. Rievley is entitled to summary judgment as a matter of law on this issue pursuant to *Federal Rule of Civil Procedure* 56.

In the alternative, Mr. Rievley contends that even if there was a constitutional violation for his arrest of Mr. Denton, he is entitled to qualified immunity for his actions because reasonable officers of competence could disagree on whether the situation faced by Mr. Rievley would have permitted Mr. Denton's arrest in light of the Tennessee statute allowing for the same. Likewise, Mr. Rievley is entitled to summary judgment as a matter of law on this issue pursuant to *Federal Rule of Civil Procedure* 56.

Additionally, if this Court determines that Mr. Rievley is entitled to qualified immunity for his arrest of Mr. Denton, then Mr. Rievley respectfully submits that he

is entitled to qualified immunity for Mr. Denton's claim for entry into his home to search for Dustin Denton to effectuate his arrest based upon *Tennessee Code Annotated* § 36-3-619 and would therefore be entitled to summary judgment in his favor as a matter of law pursuant to *Federal Rule of Civil Procedure* 56 as well.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2009, 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 2nd day of March, 2009.

Robinson, Smith & Wells

By: s/Ronald D. Wells

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

ADDENDUM

Appellant, per Sixth Circuit Rule 28(d), 30(b), hereby designates the following portions of the record:

Description of Entry	Record Entry No.
Complaint or Indictment	1
Report and Recommendation of Magistrate (if applicable)	
Memorandum Opinion (from which appeal taken)	51
Judgment (from which appeal taken)	52
Notice of Appeal	54
Answer to Complaint with Jury Demand by Steve Rievely	4
Amended Complaint	13
Motion for Partial Summary Judgment by Roy Denton	20
Memorandum in Support of Partial Motion for Summary Judgment by Roy Denton	21
Response to Motion for Partial Summary Judgment by Steve Rievely (with all supporting documents)	29
Reply to Response to Motion for Partial Summary Judgment by Roy Denton	31
Memorandum	32
Order denying Plaintiff's Motion for Partial Summary Judgment	33

Motion for Summary Judgment by Steve Rievely (with all supporting documents)	42
Response to Motion for Summary Judgment by Roy Denton	44
Reply to Response to Motion for Summary Judgment by Steve Rievely (with all supporting documents)	49

CERTIFICATE OF COMPLIANCE

Pursuant to FRAP 32(a)(7)(B)(C) and Sixth Circuit Rule 32(a), the undersigned certifies that this brief complies with the type limitations of these Rules.

1. Exclusive of the exempted portions in FRAP 32(a)(7)(B)(i) and (iii), the brief contains no more than 14,000 words in its entirety.
2. The brief has been prepared in 14-point Times New Roman typeface using WordPerfect.
3. If the Court so requests, the undersigned will provide an electronic version of the brief and/or a copy of the word or line printout.
4. The undersigned understands a material misrepresentation in completing this certificate of the FRAP 32(a)(7)(B)(C) and Sixth Circuit Rule 32(a), may result in the Court's striking the brief and imposing sanctions against the person signing the brief.

s /Ronald D. Wells