3/31 Appellee Brief

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, Roy L. Denton, Appellee, 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**.

Roy L. Denton

March 28, 2009
Date

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STATEMENT ON ORAL ARGUMENT

Appellee Roy L. Denton 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. Rievley filed a Motion for Summary Judgment based in part on the doctrine of qualified immunity. (*See 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. (*See R.51 - Memorandum*). Mr. Denton's claims for excessive force, false arrest, and assault were dismissed. (*See R.51 - Memorandum Opinion, pg. 8, 17*).

The District Court, however, found that the warrantless arrest of Mr. Denton that occurred inside Mr. Denton's home was a constitutional violation and the District Court also denied Mr. Rievley's assertion that he was entitled to qualified immunity for Mr. Denton's claims for his warrantless arrest inside his home. *Id.*

The District Court disagreed with Mr. Rievley's assertion and legal argument and determined that Mr. Rievley did enter Mr. Denton's home and that Mr. Rievley did arrest him inside the home without a warrant, consent or exigent circumstances. The court stated in its memorandum that "plaintiff should not have

been arrested in his house without a warrant". The District Court determined that such unlawful warrantless arrest inside Mr. Denton's home by Mr. Rievley was a constitutional violation. (*See R.51 - Memorandum Opinion, pg. 11, 12*).

The District Court having determined that there was a constitutional violation, the District Court then considered Mr. Rievley's assertion that he was entitled to qualified immunity. The District Court rejected Mr. Rievley's assertion of qualified immunity and determined that he was "not entitled to qualified immunity for his alleged unlawful entry into the Plaintiff's house to arrest him".

Generally, when a District Court finds that a police officer such as Mr. Rievley could not rely upon the doctrine of qualified immunity, jurisdiction is generally before this Court based upon *Mitchell v. Forsyth*, 472 U.S. 511 (1985). However, it is the position of Mr. Denton that this Court does not have jurisdiction to consider Mr. Rievley's interlocutory appeal. Before this court can address Appellant Steve Rievley's interlocutory appeal, the court must first determine whether it has jurisdiction over Mr. Rievley's claims.

As a general rule, the federal appellate courts have no jurisdiction under 28 U.S.C. § 1291 to review interlocutory decisions such as the denial of a summary judgment. Nevertheless, the collateral-order doctrine excepts a narrow range of interlocutory decisions from the general rule. See *Cohen v. Beneficial Indus. Loan* Corp., 337 U.S. 541 (1949). However, because 28 U.S.C. § 1291 gives appellate

courts jurisdiction to hear appeals only from "final decisions," interlocutory appeals are the exception, not the norm. In *Mitchell v. Forsyth, 472 U.S. 511 (1985).* There is no doubt that a decision on qualified immunity involves a claim of right that is separate from, and collateral to, rights asserted in a section 1983 action so long as the appeal ***does not challenge the facts*** of the case but rather only raises a question of law. *Mitchell, 472 U.S. at 527.* [emphasis added]

Furthermore, in this circuit, it is well established that, for appellate jurisdiction to lie over an interlocutory appeal, a defendant seeking qualified immunity must be willing to concede to the facts as alleged by the plaintiff and discuss only the legal issues raised by the case. *Shehee v. Luttrell,* 199 F.3d 295, 299 (6th Cir.1999) (citing *Berryman v. Rieger,* 150 F.3d 561, 563 (6th Cir.1998) (explaining that "in order for ... an interlocutory appeal based on qualified immunity to lie, ***the defendant must be prepared to overlook any factual dispute and to concede an interpretation of the facts in the light most favorable to the plaintiff's case***")), *cert. denied, 530 U.S. 1264, 120 S.Ct. 2724, 147 L.Ed.2d 988 (2000).* [emphasis added]

Furthermore, Mr. Rievley has manifestly not based his appeal on these facts. Virtually all the issues raised and argued within Mr. Rievley's Brief clearly rely upon Mr. Rievley's assertion of his side of the facts while glossing over Mr. Denton's facts. Under the rule of *Johnson v. Jones* - and as elaborated on in

Booher v. Northern Kentucky University Board of Regents, 163 F.3d 395 (6th Cir. 1999) by this circuit - the existence of this factual issue renders interlocutory appellate review of defendant's qualified immunity request inappropriate.

STATEMENT OF THE ISSUES

I. The District Court was correct and did not err when it found that the Appellant Steve Rievley made an unlawful warrantless arrest of the Appellee Roy L. Denton inside the home of Mr. Denton in violation of the Fourth Amendment.

II. The District Court was correct and did not err when it found that Mr. Rievley was not entitled to rely upon the defense of qualified immunity for his unlawful warrantless arrest of Mr. Denton while inside his home.

III. The District Court was correct and did not err when it found that Mr. Denton maintains a claim for Mr. Rievley's warrantless entry into Mr. Denton's home to arrest Dustin Denton without a warrant violated the Fourth Amendment..

STATEMENT OF THE CASE

The Appellee, Roy L. Denton, filed his Complaint on September 6, 2007. (*See R. 1 - Complaint*). In the original Complaint, Mr. Denton acting in the capacity as Power of Attorney for his son, Sgt. Dustin Denton, a member of the United States Army, signed Dustin's name to the original lawsuit so as to toll the statute of limitations in good faith trying to protect his son's right to file a complaint. Mr. Denton did this to preserve his sons civil action for a Fourth Amendment violation because he was in a combat zone in Iraq at the time.

However, upon Mr. Denton learning about the Servicemembers Civil Relief Act (SCRA) he consulted with Dustin where he expressed his desire to not be on a "*pro se*" lawsuit and that he did not want to be a party in this unrepresented case. Dustin stated he would retain an attorney and file his own complaint against Mr. Rievley by using the provisions of SCRA at the appropriate time.

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. (*See 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. (*See 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. (*See 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 pg. 12 fn.5*).

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 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.

Even though Mr. Rievley attempted to assert that everything happened on Mr. Denton's front porch, he failed to convince the District Court of such assertion. The District Court granted Mr. Rievley's Motion for Summary Judgment as to probable cause and excessive force. (*See R. 51 - Memorandum - pgs. 8, 17*). The District Court also determined and found that Mr. Denton's warrantless 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 pgs. 11-15.

STATEMENT OF THE FACTS

According to Mr. Rievely, on September 9, 2006 at 1:39 a.m. he was dispatched to the Rhea County jail to respond to an alleged assault that occurred approximately 90 minutes earlier, being sometime shortly after midnight. (*See R. 21-3 - Affidavit of Complaint, attached as Exhibit B*). Mr. Rievley arrived at the jail at 1:40 a.m. where he spoke with Brandon Denton, Mr. Denton's youngest 23 year old son who hasn't resided at Mr. Denton's home since he turned 18 and moved out.

According to Mr. Rievley, he said that Brandon told him that he had gotten off work at Taco Bell at midnight and got a ride from a co-worker to Mr. Denton's residence. The distance between Taco Bell and Mr. Denton's home is approximately one mile whereas Brandon arrived at Mr. Denton's home shortly after midnight. *Id.* According to Mr. Rievley, when Brandon arrived at Mr. Denton's home just **shortly after midnight**, Brandon told him that "***when he arrived home*** his brother started arguing with him, which ***led to Dustin*** hitting him several times". *Id.* Mr. Rievley states that he spent approximately **33 minutes** with Brandon while at the jail. (*See R. 30 - Response of Steve Rievley to Plaintiff's First Set of Admissions* ¶ *5*). Mr. Rievley having determined from his approximate 33 minute investigation of Brandon Denton's account of what allegedly happened shortly after midnight, Mr. Rievley determined that he had "***reasonable suspicion***"

(*See R. 4, pg. 2 ¶ V - Answer of Steve Rievley*) and decided to go to Mr. Denton's home to continue his investigation. Mr. Rievley along with every Dayton City police officer on duty and one county sheriff's deputy all drove to Mr. Denton's home which was about half-mile away from the jail. This within itself sounds more like a raid than a mere follow up on an alleged assault reportedly to have happened around two hours earlier. In any event, common sense would seem to dictate that if a trained police officer was going from one third party location to someone's home in the middle of the night roughly two hours after the fact of any alleged assault to continue his investigation, then in the very least such officer would have asked the person "what was his name" before telling him he was "under arrest" and dragging him out of his home. As Mr. Rievley states, he doesn't know Mr. Denton and had never been to Mr. Denton's home. (*See R. 21-2 - Answers of Steve Rievley to Interrogatories*). In essence, Mr. Rievley placed a person under arrest before he even knew the name of the person being arrested.

Mr. Rievley, accompanied by the entire night shift police department and one sheriff's deputy drove to Mr. Denton's home and arrived there at 2:13 a.m. (*See R. 21-3 - Affidavit of Complaint* and *See R. 30 - Response of Steve Rievley to Plaintiff's First Set of Admissions ¶ Response 10*). It is established in Mr. Rievley's own assertions that an assault which was alleged to had happened ***just after midnight***, he decides to go to Mr. Denton's home without a warrant and arrives at

Mr. Denton's home at 2:13 a.m. roughly two hours later. Mr. Rievley stated in an affidavit of complaint, "We arrived at 2:13 a.m., Roy came to the door and ***I asked what happened with his son. He would not answer me***". (*See R. 21-3 - Affidavit of Complaint*). However, Mr. Rievley contradicts himself in a second affidavit stating, "***I asked Roy L. Denton if he had a son named Brandon. Roy L. Denton replied that he did not***". (*See R. 29-2 Affidavit of Steve Rievley ¶ 16*). Two sworn statements on two different sworn affidavits from the same person, yet each one is completely different.

Furthermore, at 2:17 a.m. just four minutes following Mr. Rievley's arrival to Mr. Denton's home, he had already entered Mr. Denton's home arresting him by grabbing his arm as he stood three feet inside his home trying to close his door cuffing him and had him briskly taken away to jail virtually naked. Mr. Denton was clad only in silk sleeping shorts ready for bed. (*See R. 36 Affidavit of Roy L. Denton ¶ 12 - 13*). Again, 2:13 a.m. Mr. Rievely arrived at Mr. Denton's home and just four minutes later at 2:17 a.m. Mr. Denton was **in jail** virtually naked, no shirt, no shoes, no socks no drawers. Just black shiny silk baggy comfy shorts.

As Mr. Denton was being transported to jail, Mr. Rievley **went back** inside Mr. Denton's home without a warrant and searched the whole house and found and arrested Dustin Denton without a warrant *Id.* After arresting Dustin Denton from inside the home without a warrant, Mr. Rievley continued his warrantless search of

Mr. Denton's home where he gathered up various personal belongings he somehow believed belonged to Brandon in spite of Brandon, Mr. Denton or anyone there to verify what was what. (*See R. 36 Affidavit of Roy L. Denton ¶ 17 - 19*). Mr. Rievley had absolutely no idea as to what personal property possessions belonged to who in addition, he never gave anything to Brandon except for an alleged broken pair of glasses when he came back to the jail. *Id.* Mr. Rievley's Statement of the Facts is simply a meritless rehashing of immaterial argument.

The bottom line is that the District Court found that Mr. Rievley arrested Mr. Denton without a warrant, consent or exigent circumstances while Mr. Denton stood a full three feet INSIDE his home. The District Court found that Mr. Rievley conducted an unlawful search of Mr. Denton's home without a warrant and arrested Dustin Denton without a warrant. The District Court found that Mr. Rievley's warrantless entry into Mr. Denton's home was unlawful, all of which was found by the District Court to be a violation of a clear established right. For Mr. Rievley to then prowl around searching Mr. Denton's home for valuables "he" somehow felt belonged to Brandon and seizing them without a warrant is a disgrace. For police officers to enter any persons home to search it and seize "personal property" without a warrant to do so, without so much as advising the property owner of what all was taken, or stolen, from his home strongly appears to be more of an unlawful activity, not some sort of "immunity claim".

SUMMARY OF ARGUMENT

Mr. Denton restates and incorporates herein his previous position that this honorable court does not have jurisdiction to consider this interlocutory appeal as filed by Mr. Rievley and thus this interlocutory appeal should therefore be dismissed for lack of jurisdiction.

The District Court below, ***did not err*** in finding that the Appellant Steve Rievley made a ***warrantless arrest*** of the Appellee Roy L. Denton ***while inside his home***. Mr. Denton argues that Mr. Rievley while acting within his lawful capacity as a police officer made an unlawful warrantless arrest of Mr. Denton while he was inside his own home and that Mr. Rievley did so ***without warrant, without consent and/or without exigent circumstances***, all of which is in direct violation of the Fourth Amendment to the United States constitution.

The District Court below, ***did not err*** when he found that Mr. Rievley was ***not*** entitled to qualified immunity for the warrantless arrest of Mr. Denton inside his home.

The District Court below, ***did not err*** when he found that Mr. Denton maintains a claim for Mr. Rievley's warrantless enrty into Mr. Denton's home to search for and arrest a third party, who was a visitor in Mr. Denton's home.

Additionally, Mr. Denton asserts that any reliance of Mr. Rievley upon some sort of Tennessee Attorney General opinion(s) is completely devoid as to any issue

raised by Mr. Rievley in this instant interlocutory appeal.

Accordingly, it was proper that the Honorable Chief Judge Curtis L. Collier of the District Court below, found that Mr. Rievley ***did*** make a warrantless arrest of Mr. Denton inside his home in violation of clearly established law. That the District Court was correct in finding that the warrantless arrest of Mr. Denton inside his home by Mr. Rievley was a violation of Mr. Denton's Fourth Amendment right and that the District Court did not err when it found that Mr. Rievley was not entitled to rely upon a defense of qualified immunity.

Lastly, it is well established that, for appellate jurisdiction to lie over an interlocutory appeal, a defendant seeking qualified immunity must be willing to concede to the facts as alleged by the plaintiff and discuss only the legal issues raised by the case. *Shehee v. Luttrell,* 199 F.3d 295, 299 (6th Cir.1999) (citing *Berryman v. Rieger,* 150 F.3d 561, 563 (6th Cir.1998) (explaining that "in order for ... an interlocutory appeal based on qualified immunity to lie, the defendant must be prepared to overlook any factual dispute and to concede an interpretation of the facts in the light most favorable to the plaintiff's case")), *cert. denied, 530 U.S. 1264, 120 S.Ct. 2724, 147 L.Ed.2d 988 (2000).*

ARGUMENT

I. The District Court was correct and did not err 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 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). In *Payton*, police officers broke into an apartment to arrest a suspect. Such warrantless entries are "presumptively unreasonable." *United States v. Rohrig*, 98 F.3d 1506, 1515 (6th Cir. 1996) (quoting *Payton*, 445 U.S. at 586). Because "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed . . . the warrant procedure minimizes the danger of needless intrusions of that sort." *Payton*, 442 U.S. at 585-86. Thus, police must generally obtain a warrant prior to entering a home unless there are exigent circumstances. *Thacker v. City of Columbus*, 328 F.3d 244, 252 (6th Cir. 2003) (citing *Payton*, 442 U.S. at 585-86); *United States v. Johnson*, 22 F.3d 674, 680 (6th Cir. 1994). As these cases make clear, "[T]he Fourth Amendment has drawn a firm line at the *entrance* to the house." *Taylor v. Mich. Dep't of Natural Res.*, 502

F.3d 452, 456 (6th Cir. 2007) (emphasis in the original). *See R. 51 Memorandum Opinion.*

Mr. Rievley appears to rely upon *Segura v. United States,* 468 U.S. 796, 819 (1984); *United States v. Santanna,* 427 U.S. 38, 42 (1976) *(citing Katz v. United States,* 389 U.S. 347, 351 (1967)). However, any privacy or relevant issues raised by Mr. Rievley in citing these cases have been properly argued, considered and rejected by the district court. *See R. 51 Memorandum Opinion.*

It is well established that, for appellate jurisdiction to lie over an interlocutory appeal, a defendant seeking qualified immunity must be willing to concede to the facts as alleged by the plaintiff and discuss only the legal issues raised by the case. *Shehee v. Luttrell,* 199 F.3d 295, 299 (6th Cir.1999) *(citing Berryman v. Rieger,* 150 F.3d 561, 563 (6th Cir.1998) (explaining that "in order for ... an interlocutory appeal based on qualified immunity to lie, the defendant must be prepared to overlook any factual dispute and to concede an interpretation of the facts in the light most favorable to the plaintiff's case")), *cert. denied,* 530 U.S. 1264, 120 S.Ct. 2724, 147 L.Ed.2d 988 (2000). Regardless of the position Mr. Rievley may now hold, he must as a matter of law overlook any factual dispute and to concede an interpretation of the facts in the light most favorable to Mr. Denton's case. However, instead of Mr. Rievley "***conceding the interpretation of the facts in the light most favorable to Mr. Denton***", Mr. Rievley argues in an

interlocutory appeal that facts of *Santana* are similar to the facts before this court.

Respectfully, Mr. Rievley is completely wrong in this assertion and any reliance upon *Santana* should be rejected by this court just as such argument was rejected by the Honorable Chief Judge Collier of the District Court below. In this case, Mr. Rievley has argued to the District Court that Mr. Denton had ***stepped onto the porch*** when he was arrested. He now argues in an interlocutory appeal that if Mr. Denton was not standing on the front porch then he was "***at the very least on the threshold of his front door***" (*See Appellant Brief pg. 15*). Certainly, there is a monumental difference between a law and argument concerning Mr. Denton standing on the threshold of his home versus a totally different law and argument concerning Mr. Denton standing outside on his front porch of his home. Mr. Rievley simply cannot have it both ways.

The District Court has found that Mr. Denton was not only inside his home at the time of the arrest, but a full 3 feet inside his home when he was arrested by Mr. Rievley without a warrant. All of which is pretty much clear cut and established by the evidence considered by the District Court. Additionally, the District Court rejected the privacy and relevant issues raised by Mr. Rievley in his reliance of *Santana* and every other cited case by him, *supra.* The District Court properly found that Mr. Denton never did not voluntarily expose himself to the outside at any time. Mr. Rievley simply stepped into Mr. Denton's home as he was

trying to shut and lock his door and arrested him without a warrant. *Id.*

The record is clear that Mr. Denton has stated in his Amended Complaint that he was ***inside his home a full 3 feet***. (*See R. 13 - Amended Complaint ¶22-23*). Mr. Denton has additionally otherwise testified that he stood "***three feet inside his home***" and never stepped onto the porch. In fact, Mr. Rievley forced his way inside Mr. Denton's home crossing the threshold. (*See R. 36 - Affidavit of Roy L. Denton ¶12-13 and See R. 51 Memorandum Opinion.*).

The District Court correctly found that unlike in *Santana*, Mr. Denton "***was not in his doorway and was not even at the door voluntarily***". According to his affidavit, *Id.,* Mr. Denton was ready for bed, opened the door in response to Mr. Rievley's arrival, and stayed inside the house a full three feet from the doorway. Mr. Denton's location inside the home and his desire to avoid exposing himself to the outside prevented the police from arresting him without a warrant. (*emphasis added*) (*See R. 51 - Memorandum Opinion*).

Mr. Rievley is attempting to muddy the waters by trying to lead this honorable court astray of a factual issue. In trying to create some sort of similarity of statements, Mr. Rievley states that Mr. Denton gave an account regarding his *Memorandum in Support of Plaintiff's Motion for partial Summary judgment* - (*See R.21*) ..."Officer Rievley **then entered Mr. Denton's home...**" (*emphasis added by Mr. Rievley*). However, Mr. Rievley neglects to continue that sentence so

important to him he placed a bold emphasis on those select words, but further reading shows the actual sentence continues...Officer Rievley "**then entered Mr. Denton's home** ***without a warrant and "located" Sgt. Dustin Denton, the son of the plaintiff Mr. Denton and arrested him as well without a warrant...***"

Clearly, this shows that once Mr. Rievley had arrested Mr. Denton, he took some sort of time to have Mr. Denton transported to jail. After all, the entire event from the time Mr. Rievley arrived at Mr. Denton's home to the time Mr. Denton was arrested and on his way to jail happened in ***less that 4 minutes***. (*See R. 21-2 Affidavit of Complaint* and *R. 30 ¶15 - Response of Steve Rievley to Plaintiff's First Set of Requests for Admissions*) Without question, Mr. Rievley, ***entered*** Mr. Denton's home except for this second unlawful entry, for the purposes of searching it without a warrant to search for and find Sgt. Dustin Denton, a two tour Iraq combat soldier on leave visiting his father before deploying to Iraq, and arrest him without a warrant as well. The fact remains that Mr. Denton was already on his way to jail when Mr. Rievley entered the home, except this time to search it. Mr. Rievley then even admits to searching around the home removing personal belongings in which he at the time had absolutely no way of knowing who's was who and what was what. Absent a badge, or some sort of "color of law" such activity in removing personal property from another's home unlawfully would constitute probable cause for "theft of property".

Accordingly, Mr. Denton respectfully submits that the District Court was not in err on any part of it's decision and that the District Court correctly found that Mr. Rievley's unlawful arrest of Mr. Denton who was inside his home did violate Mr. Denton's Fourth Amendment and that such violation was clearly established law. "Police officers may not, in their zeal to arrest an individual, ignore the fourth amendment's warrant requirement merely because it is inconvenient." *Morgan*, 743 F.2d at 1164 (quoting *Johnson v. United States*, 333 U.S. 10, 15 (1948)).

II. The District Court was correct and did not err when it found that Mr. Rievley was not entitled to rely upon the defense of qualified immunity for his unlawful warrantless arrest of Mr. Denton inside his home.

In the District Court, Mr. Rievley made two assertions regarding his claim to qualified immunity. His first assertion is that the Sixth Circuit has not addressed the impact of a domestic violence situation on exigent circumstances justifying a warrantless arrest inside a home. For this proposition, Mr. Rievley relies on *Cannon v. Hamilton County*, 2007 WL 3238959 (E.D. Tenn. Nov. 1 2007). As the District Court found, this proposition, however, is entirely unrelated to this case. The District Court correctly found that "In justifying his intrusion into the home, Defendant does not articulate any exigent circumstances, so a question about the scope of exigent circumstances cannot entitle him to qualified immunity." (*See R. 51 - Memorandum Opinion*).

It is clear that Mr. Rievley must raise a plausible legal basis for the asserted legality of the warrantless entry. *Cummings*, 418 F.3d at 686 n.4. The case of may be viewed at --- http://caselaw.lp.findlaw.com/data2/circs/6th/033259p.pdf.

As the District Court correctly found, Mr. Rievley has not claimed exigent circumstances existed, so there is no question about the scope of exigent circumstances. Rather, Mr. Rievley merely claims the arrest occurred outside the house, which is a factual question unconnected to qualified immunity analysis. Ironically, no such claim has ever been made by Mr. Rievley in any sworn testimony, or any corroboration of any kind, just his alleged reliance upon his own assortment of articulation designed to make the waters murky for the alleged purposes of protracting this litigation.

Secondly, Mr. Rievley mistakenly bases his assertion of qualified immunity on a state statute, which specifies that, when an officer has probable cause to believe a crime involving domestic violence has occurred, "the preferred response of the officer is arrest." Tenn. Code Ann. § 36-3-619(**a**). Based on that statute and some opinions of the Tennessee Attorney General, Mr. Rievley contends he is entitled to qualified immunity because a reasonable officer would not have known an in-house arrest was prohibited under these circumstances. However, just the complete opposite is true.

First of all, Mr. Rievley in spite of his claimed "extensive training in

domestic violence law" as engrained all within this record by him, he erroneously relies upon the wrong law. Most certainly, Tenn. Code Ann. § 36-3-619(**a**) may authorize a warrantless arrest under many circumstances where police are called to a location and the primary aggressor took off running or upon investigation or in the minimum an "on scene interview" a person named to be the primary aggressor could indeed be arrested, even when the assault happened outside of his presence of an officer. That was the spirit of the law. To allow an officer to respond to a domestic violence call and make an investigative determination of who was the primary aggressor and who was the victim. And if that primary aggressor took off running or whatever, he could be lawfully arrested. But this exception carved out of legislation to provide this extra tool for law enforcement for domestic situation was never meant to subvert the Fourth Amendment to the United States constitution as Mr. Rievley argues it should. Even the Tennessee Attorney General in any opinion Mr. Rievley has submitted doesn't even address such a thing.

However, in this instant case Mr. Rievley, in the opinion of Mr. Denton, is actually demonstrating an incompetence of the very domestic violence law that he claims to possess extensive training in. Had Mr. Rievley had such claimed "extensive training" of not only the law, but of all those attorney general opinions then he would have known that very next section of Tenn. Code Ann. § 36-3-619(**b**) clearly mandates that the legislature never intended for a police officer

based upon a mere allegation to then drive to someone's home some 90 minutes after the fact and go inside and arrest everyone in it, all without any kind of warrant. To the contrary of what Mr. Rievley believes to be the law, it is he himself that acted outside the scope of the very law he says he relied upon, law in which he possesses "extensive training" in. Tennessee state law is crystal clear as to where "***multiple***" persons are alleged to have been involved in some sort of domestic dispute. Tenn. Code Ann. § 36-3-619**(b)** states:

> If a law enforcement officer ***has probable cause to believe that two (2) or more persons committed a misdemeanor*** or felony, or if two (2) or more persons make complaints to the officer, ***the officer shall try to determine who was the primary aggressor. Arrest is the preferred response only with respect to the primary aggressor. The officer shall presume that arrest is not the appropriate response for the person or persons who were not the primary aggressor***. (emphasis added). (*See R. 44-2 Ex. 3 at pg. 4*)

Clearly, Mr. Rievley had determined that Dustin Denton was the "primary aggressor". A primary aggressor must be determined as required pursuant to state law. *Id.* Mr. Rievley was only authorized to arrest the "***primary aggressor***". (*See R. 44-2 Ex. at pg. 2* and *See R. 21 - Memorandum in Support of Plaintiff's Motion for partial Summary judgment ¶ 20*). As Mr. Rievley has testified himself, "Upon going onto the porch, I noticed Brandon's eyeglasses, consistent with Brandon Denton's story, lying on the porch, broken. ***At that point, I decided to arrest Roy L. Denton...***" (*See R. 29-2 - Affidavit of Steve Rievley*).

Mr. Rievley did not act in accordance of Tenn. Code Ann. § 36-3-619(**b**), in

fact, he acted in complete contradiction of it. He should have known that where two or more people were involved and he should have known that he did not have the authority to simply hop in a patrol car from a third party location and based upon his "reasonable suspicion" drive over to someone's home approximately 90 minutes after the fact and arrest everyone inside the home without a warrant.

The qualified immunity analysis depends on whether a defendant violated the clearly established federal right on which the claim against him is based. *Elder v. Holloway*, 510 U.S. 510, 515 (1994) (citing *Davis v. Scherer*, 468 U.S. 183, 197 (1984)). Therefore, Mr. Rievley's arguments about whether he complied with state law are irrelevant. However, Mr. Rievley isn't expected nor required to be "held to the standards of a constitutional law scholar" but he must understand that "qualified immunity is intended to protect all but the incompetent or willfully unlawful". The Courts have made clear that a competent official is required to know the law which governs his conduct. Mr. Rievley's assertions that he MAY have been confused about the law amounts to an admission of his incompetence, which disentitles him to qualified immunity.

As the District Court held, "the qualified immunity analysis begins with *Payton*. *Payton*'s prohibition on warrantless and nonconsensual entries into a house to make an arrest is clearly-established law. *Cummings*, 418 F.3d at 687. In the Sixth Circuit, it is also clearly established that when someone is inside his

home, police may not force him out to arrest him unless they have a warrant, consent, or exigent circumstances. *See Saari*, 272 F.3d at 809 (citing *Morgan*, 743 F.2d at 1166). Thus, it is clearly established law that Defendant could not enter Plaintiff's house to arrest him in the absence of a warrant, consent, or exigent circumstances." (*See R. 51 - Memorandum Opinion*).

The right must be "clearly established in a particularized sense" such that it is "clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Fox*, 489 F.3d at 235; *accord Saucier*, 533 U.S. at 202. Mr. Rievley is not entitled to qualified immunity for unlawfully entering Plaintiff's house arresting Mr. Denton because there is clearly established law he could not arrest Mr. Denton in his home without a warrant, consent or exigent circumstances. A right is clearly established when there is binding precedent by the Supreme Court, the court of appeals or the District Court. *Ohio Civil Serv. Employees Ass'n. v. Seiter*, 858 F.2d 1171, 1177 (6th Cir. 1988). This clearly established law comes from the Supreme Court's decisions in *Payton* described *supra*.

Accordingly, the District Court did not err when it found that Mr. Rievley was not entitled to qualified immunity for his warrantless arrest of Mr. Denton. As such, the denial of Mr. Rievley's claim to qualified immunity must fail and the District Court's order should be affirmed.

III. The District Court was correct and did not err when it found that Mr. Denton maintains a claim for Mr. Rievley's warrantless entry into Mr. Denton's home to arrest Dustin Denton without a warrant.

Mr. Rievley is mistaken insofar as his position that the District Court acted "of it's own accord" in addressing Mr. Denton's claim for the warrantless entry and unlawful search of his home. The District Court brought up the fact that Mr. Rievley did "not address the search in his motion for summary judgment nor in his reply brief, even though Mr. Denton raised the issue in his response brief" (*See R. 51 - Memorandum Opinion pg. 15*).

It is well established law that such a warrantless entry for the purpose of arresting a suspect is specifically prohibited by *Payton*. Mr. Denton was arrested and on his way to jail within a mere four (4) minutes of Mr. Rievley's arrival. Mr. Rievley then re-entered Mr. Denton's home without a warrant searching the home and room by room finding and arresting Dustin Denton, in addition to gathering up personal property that to this day is yet to be accounted for. For all practical purposes, it matters not who Mr. Rievley arrested without a warrant, it is his entering the home, searching it and arresting a guest of that home while the property owner was on his way to jail.

The warrantless arrest of Dustin Denton while visiting his father Mr. Denton in his home isn't relevant to these proceedings as to any damages to Dustin Denton who has long since been terminated from the original complaint and as a member

of the United States Armed Forces he is entitled to make full use of the Service-members Civil Relief Act and seek whatever remedy he may desire as provided for by provisions of the Act. Mr. Rievley somehow trying to claim immunity based upon not only in respect to Mr. Denton's instant case, but also some hypothetical lawsuit from any claim that Dustin Denton could file against him as provided for by SCRA. For Mr. Rievley to even ask this court to render some sort of judgment upon Dustin Denton a non-party concerning qualified immunity to this lawsuit is frivolous. As to Mr. Rievley somehow trying to consolidate the unlawful entry claims of Mr. Denton to any claim that Dustin Denton may have in the future, as protected by SCRA, resorting to some sort of legal maneuver to somehow bar Dustin Denton from filing his own complaint against Mr. Rievley is inappropriate. The District Court granted Mr. Denton's motion to amend his pro se complaint to terminate Dustin Denton from the original complaint and such was granted and Dustin Denton was terminated from the Original Complaint by the District Court under the provisions of the Service-members Civil Relief Act. (*See R. 7 - Plaintiff's Motion to Amend Complaint* and *See R. 12 Memorandum and Order).*

Accordingly, the District Court was correct in it's decision that Mr. Denton maintains his claim for Mr. Rievley's warrantless entry into Mr. Denton's home to search it and to arrest Dustin Denton and the decision and order of the District Court should be affirmed. Furthermore, any issues raised by Mr. Rievley

concerning a non-party Dustin Denton concerning any claim for qualified immunity should not be well taken by this honorable court and should be held by this honorable court as frivolous.

CONCLUSION

Mr. Rievley violated clearly established statutory and constitutional law, and more specifically, the Fourth Amendment rights of Mr. Denton. Mr. Rievley's claim to qualified immunity was appropriately denied by the District Court, and Mr. Rievley's interlocutory appeal is simply a meritless rehashing of immaterial argument, citing case law and Tennessee Attorney General opinions which are either not on point or misrepresented in his Brief.

Mr. Rievley had clear warning that his actions were illegal, and the established law is clear that warrantless searches of the home are unreasonable and the arrest of Mr. Denton inside his home without a warrant, consent or exigent circumstances is unreasonable, unlawful and a violation of the Fourth Amendment to the United States constitution. The case law presented by Mr. Rievley fails to support his own arguments made from it even slightly, and despite the fact that the issue is rather clear to the *pro se* Mr. Denton, Mr. Rievley's counsel argues that a government official who is required to know the law affecting his performance might have been reasonably confused. The law is clear, the case law is clear, and the Appellant Mr. Steve Rievley is not entitled to qualified immunity.

Respectfully submitted, this 28th day of March,, 2009

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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 it's destination, on this 28th day of MARCH, 2009.

Roy L. Denton

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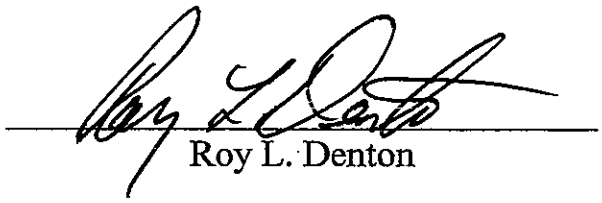
CERTIFICATE OF COMPLIANCE

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 Microsoft Works.

3. 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.



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