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

REPLY BRIEF OF THE APPELLANT STEVE RIEVLEY

Oral Argument Waived

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

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). Like the plaintiff in *Santana*, Mr. Denton, voluntarily opening his front door and standing on his front porch "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 [his] house." *United States v. Santana*, 427 U.S. 38, 42 (1976). Thus, he may be arrested in his home if he has given up his privacy interest by knowingly exposing himself 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)). Accordingly, Mr. Rievley respectfully submits that the District Court erred when it determined that he violated Mr. Denton's Fourth Amendment rights when he was arrested on his front porch, and he respectfully requests that this Court grant him

summary judgment as to 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.

In his Brief of the Appellee, Mr. Denton claims that Mr. Rievley cannot rely upon the doctrine of qualified immunity, in part, because Mr. Rievley arrested not only Dustin Denton but Roy Denton as well in what Mr. believes to be a violation of *Tennessee Code Annotated* § 36-3-619(b). Section 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. If the officer believes that all parties are equally responsible, the officer shall exercise such officer's best judgment in determining whether to arrest all, any or none of the parties.

Id. This section is meant to deal with two persons who are making complaints of domestic abuse against each other. As evidence of this, the statute gives the officer some guidelines as how best to determine who the primary aggressor is. These guidelines include, but are not limited to, a history of domestic abuse between the persons, the severity of the injuries, *whether one person acted in self-defense*, evidence from witnesses of the domestic abuse, etc. *Id.* (emphasis added). For example, if officers respond to a scene where a wife claims that her husband has hit

her and the husband then makes a complaint against the wife for striking him, this statute instructs the officers to determine who the primary aggressor was and to arrest the primary aggressor, taking into account whether the wife acted in self-defense in striking the husband. *Id.* The statute authorizes the officer to use his "best judgment in determining whether to arrest all, any or none of the parties." *Id.*

In the present case, there is no evidence that Brandon Denton attacked or abused either Roy Denton or Dustin Denton. To the contrary, all the information Mr. Rievley was given that night indicate that only Roy Denton and Dustin Denton were involved in attacking Brandon Denton. Roy Denton never claimed on that night, nor does he claim now, that Brandon Denton also attacked him. Thus, the only "primary aggressors" would have been both Roy Denton and Dustin Denton who were both equally involved in the domestic abuse of Brandon Denton according to the information received by Steve Rievley. Mr. Rievley exercised his best judgment in accordance with *Tennessee Code Annotated* § 36-3-619(b) and arrested Roy Denton and Dustin Denton for the domestic abuse of Brandon Denton. His arrest of both the father and son for the attack on Brandon Denton certainly does not abrogate Mr. Rievley's right to the defense of qualified immunity.

For the remainder of Mr. Rievley's argument as to the issue of his entitlement to the defense of qualified immunity, he would respectfully refer this Court to his Brief previously filed with this Court. 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 his Brief of the Appellee, Mr. Denton seems to argue on behalf of Dustin Denton. Mr. Rievley would respectfully point out that Mr. Denton is representing himself *pro se* and as a non-attorney, is not authorized to represent the interests of Dustin Denton. For the remainder of Mr. Rievley's argument as to this issue, he would respectfully refer this Court to his Brief previously filed with this Court. Mr. Rievley respectfully asks this Court to reverse the District Court's denial of his Motion for Summary Judgment 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 14th day of April, 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 14th day of April, 2009.

Robinson, Smith & Wells

By: s/Ronald D. Wells

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

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