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

ROY L. DENTON	)	
	)	
Plaintiff	)	**Case No. 1:07-cv-211**
	)	
v.	)	**JURY DEMAND**
	)	
STEVE RIEVLEY	)	**Collier/Carter**
	)	
Defendant	)	

DEFENDANT STEVE RIEVLEY'S RESPONSE TO PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT FOR FALSE ARREST

Comes the Defendant, Steve Rievley, in his individual capacity, (herein "Officer Rievley") pursuant to Rule 56 of the *Federal Rules of Civil Procedure*, through counsel, and hereby files his Response to Plaintiff's Second Motion for Partial Summary Judgment For False Arrest. Officer Rievley respectfully asserts that the Plaintiff has brought this issue before the Court on several occasions to no avail. Accordingly, he asks this Court to deny the Plaintiff's Motion in its entirety.

I. STATEMENT OF THE CASE

The Plaintiff, Roy Denton, and his son, Dustin B. Denton filed their Complaint on September 6, 2007. In the original Complaint, the Plaintiff and his son alleged 42 U.S.C § 1983 violations, excessive force, false arrest, and common law assault. *See* Complaint. On March 28, 2008, the Plaintiff filed an Amended Complaint alleging the same causes of actions, but in this Amended

Complaint, Dustin B. Denton was terminated from the lawsuit.[1] On May 12, 2008, the Plaintiff filed a Motion for Partial Summary Judgment as to his claims for unlawful arrest and that Officer Rievley was not entitled to rely upon the doctrine of qualified immunity. (Court Doc. 20). This Court denied the Plaintiff's Motion for Partial Summary Judgment by order dated July 21, 2008. (Court Doc. 52). The Plaintiff filed a Motion to Alter or Amend the July 21, 2008 order. (Court Doc. 33 and 34) Most significantly, Officer Rievely filed a Motion for Summary Judgment as to all the Plaintiff's claims. (Court Doc. 42) The Court granted summary judgment to Officer Rievley as the Plaintiff's claims for false arrest, assault and excessive force but determined that the Plaintiff still retained his claims for warrantless entry and unlawful search of the Plaintiff's home. (Court Doc. 52). The Court also determined that Officer Rievely did not retain qualified immunity for his actions. *Id.*. Officer Rievley appealed this Court's determination that he did not retain qualified immunity for his actions to the Sixth Circuit (Court Doc. 54). The Sixth Circuit upheld this Court's decision. (Court Doc. 65).

During the pendency of the appeals process, the Plaintiff continued to file motions before this Court. He filed a Motion for Reconsideration of Plaintiff's Claim of False Arrest and Plaintiff's Memorandum in Support of Motion to Reconsider (Court Doc. 57 and 58). He also filed a Motion to Exclude Evidence Not Timely Disclosed. (Court Doc. 62). This Court issued an Order denying Plaintiff's Motion for Reconsideration of Plaintiff's Claim of False Arrest based "newly discovered evidence". (Court Doc. 64). The Plaintiff now files his Second Motion for Partial Summary Judgment for False Arrest based on nothing more than that which is as already been filed, argued and

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

decided before by this Court.

II. STATEMENT OF FACTS

For a statement of the facts, Officer Rievely relies upon the Statement of Facts in his original Motion for Summary Judgment (Court Doc. 42). As a brief recitation, however, Officer Rievely, would show this Court that he, 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 the Plaintiff. Upon arrival at the jail, Officer Rievely spoke with Brandon Denton, the Plaintiff's son, who stated that he had been attacked just minutes earlier by the Plaintiff and Dustin Denton, the Plaintiff's son (and Brandon's brother). At the end of his workshift, Brandon asked another co-worker, Jessica Carbajal, to take him home. When Brandon arrived home from work, Dustin began arguing with him and eventually began hitting him. The Plaintiff, also intoxicated, became involved in the fray, grabbing Brandon around the neck and strangling him. During the attack, Brandon's eyeglass were broken.

Officer 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. Next, Officer 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. Brandon informed Officer Rievely that both his father and brother remained at their home at 120 6th Avenue Dayton, Tennessee.

Officer Rievely, along with several other officers, went to the Denton residence, arriving at approximately 2:13 a.m. The Plaintiff came to the door, and Officer Rievley asked him what happened to his son, Brandon. The Plaintiff would not answer him. Officer Rievley noted that on

the front porch, Brandon's eyeglasses lay broken, further confirming his story of assault. . He then advised the Plaintiff that he was under arrest for domestic assault. When Officer Rievley advised the Plaintiff that he would need to speak with Dustin as well, the Plaintiff turned away to go back inside the house. Officer Rievley handcuffed the Plaintiff's right arm as the Plaintiff attempted to close and lock the door. He then advised the Plaintiff that he needed to find Dustin and that he needed to give Officer Rievley his left hand. Officer Rievley was able to handcuff both the Plaintiff's hands without further incident, and he was placed in a patrol car and taken to the jail at approximately 2:18 a.m. Officer Rievley then entered the Denton residence to locate Dustin. He was located in a bedroom and was also arrested for domestic assault. He was transported to the jail at approximately 2:28 a.m.

Throughout his career as a police officer, Officer Rievley has received extensive training in the area of domestic abuse. Officer Rievley has been instructed as to the provisions of the *Tennessee Domestic Abuse* statutes, codified at *Tennessee Code Annotated* §§ 36-3-601, et seq. In his training, Officer 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. Officer Rievley had probable cause to believe that the Plaintiff committed the crime of domestic abuse when he arrested him.

III. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that summary judgment will be rendered if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The burden is on the moving party to show conclusively that no genuine issue of material fact exists, and the Court must view the facts and all inferences to be drawn therefrom in

the light most favorable to the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 475, 587 (1986); *Morris v. Crete Carrier Corp.*, 105 F.3d 279, 281-81 (6th Cir. 1997); *White v. Turfway Park Racing Ass'n., Inc.*, 909 F.2d 941, 943 (6th Cir. 1990); *60 Ivy Street Corp. v. Alexander*, 822 F.2d 1432, 1435 (6th Cir. 1987).

Once the moving party presents evidence sufficient to support a motion under Rule 56, the non-moving party is not entitled to a trial merely on the basis of allegations. *See* FED. R. CIV. P. 56 (e)(2). The non-moving party is required to come forward with some significant probative evidence which makes it necessary to resolve the factual dispute at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *White*, 909 F.2d at 943-44; *60 Ivy Street*, 822 F.2d at 1435. The moving party is entitled to summary judgment if the non-moving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof. *Celotex*, 477 U.S. at 323; *Collyer v. Darling*, 98 F.3d 211, 220 (6th Cir. 1996).

The standard for summary judgment mirrors the standard for directed verdict. The Court must determine "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52; *see also Lapeer County, Mich. v. Montgomery County, Ohio*, 108 F.3d 74, 78 (6th Cir. 1997). There must be some probative evidence from which the jury could reasonably find for the non-moving party. *Anderson*, 477 U.S. at 252; *Bailey v. Floyd County Bd. of Educ.*, 106 F.3d 135, 140 (6th Cir. 1997). If the Court concludes that a fair-minded jury could not return a verdict in favor of the non-moving party based on the evidence presented, it may enter a summary judgment. *Anderson*, 477 U.S. at 251-52; *University of Cincinnati v. Arkwright Mut. Ins. Co.*, 51 F.3d 1277, 1280; *LaPointe v. UAW*, Local 600, 8 F.3d 376, 378 (6th Cir. 1993).

IV. LAW AND ARGUMENT

A. Officer Rievley had probable cause to arrest the Plaintiff on a charge of domestic assault.

The Plaintiff would have this Court believe that he has "new evidence" that somehow entitles him to summary judgment on the issue of false arrest. He bases this "new evidence" on the "questionaire" of Jessica Carbajal, the affidavit of the Plaintiff; and the handwritten statement of Brandon Denton. The key inquiry in a false arrest claim is whether the arrest was based on probable cause. *See Anderson v. Creighton,* 483 U.S. 635, 663-64 (1987); *Pierson v. Ray,* 386 U.S. 547, 556 (1967); *Stemler,* 126 F.3d at 871. The United States Supreme Court has described "probable cause" as follows

> [p]robable cause exists where "the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed.

Brinegar v. United States, 338 U.S. 160, 175-76 (1949) (quoting *Carroll v. United States,* 267 U.S. 132, 162 (1925)). An actual showing of criminal activity is not required to establish probable cause; "only a probability or substantial chance of criminal activity" is required. *United States v. Moncivais,* 401 F.3d 751, 756 (6th Cir.2005). Furthermore, the existence of probable cause in a § 1983 action, such as the one at bar, ordinarily presents a jury question, "unless there is only one reasonable determination possible." *Gardenhire,* 205 F.3d at 315.

Officer Rievley does not dispute that the right at issue is clearly established (i.e. an arrest requires probable cause). The Plaintiff, however, must present sufficient evidence to show that the actions of Officer Rievley were not objectively reasonable in light of clearly established constitutional rights. The question, then, is whether the belief of Officer Rievley that he had probable

cause to arrest Plaintiff was objectively reasonable. *See Brinegar,* 338 U.S.at 175-76. As the Plaintiff was charged with domestic assault, if it was objectively reasonable for Officer Rievley to believe that he had probable cause to arrest Plaintiff for this crime, then he is entitled to summary judgment for the same.

Under Tennessee law, "[a] person commits domestic assault who commits an assault as defined in § 39-13-101 against a person who is that person's family or household member." *State v. Duncan,* 2005 WL 3504899, *4 (Tenn. Crim. App. Dec. 21, 2005) (quoting TENN. CODE ANN. § 39-13-111). A person commits assault "who (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly causes another to reasonably fear imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative. *Id.* (quoting TENN. CODE ANN. § 39-13-101(a)). Furthermore, the domestic assault statute, § 39-13-111, defines "family or household member" as a "spouse, former spouse, person related by blood or marriage, or person who currently resides or in the past has resided with that person as if a family, or a person who has a child or children in common with that person, regardless of whether they have been married or resided together at any time." TENN. CODE ANN. § 39-13-111(a). Domestic assault is either a class A or class B misdemeanor. TENN. CODE ANN. § § 39-13-111(c)(1), 39-13-101(b)(1). Tennessee has a general rule against warrantless arrests for misdemeanor offenses. TENN. CODE ANN. § 36-3-619. If, however, " a law enforcement officer has probable cause to believe that a person has committed a crime involving domestic abuse, whether the crime is a misdemeanor or a felony ... the preferred response of the officer is arrest." TENN. CODE ANN. § 36-3-619.

Given these elements, it was objectively reasonable for Officer Rievley to believe that he had

probable cause to arrest Plaintiff. He was dispatched to the Sheriff's Department to respond to a complaint of a domestic violence incident. Brandon Denton told the deputies that his father, the Plaintiff, had hit him and strangled him. In this handwritten and signed statement by Brandon Denton, Brandon listed his address as 120 6th Avenue, Dayton, Tennessee, 37321 which is the same address as Mr. Denton, his father. Officer Rievley observed that Brandon had bruising on his face and arms as well as hand prints around his neck and he photographed these injuries as well. Officer Rievley confirmed Brandon's story by calling Jessica Carbajal who took Brandon home from work on an hour or so earlier. Ms. Carbajal told Officer Rievley that she did not see any bruises or strangulation marks on Brandon when she dropped him off at the home he shared with the Plaintiff shortly after midnight. Thus, it was reasonable for Officer Rievley to conclude that Plaintiff's actions had caused Brandon " bodily injury,"as required by the statute. Based on the relationship of Mr. Denton and Brandon, the residential addresses of the individuals involved in the assault as given to Officer Rievley by Brandon Denton, and Brandon Denton's handwritten account of the events that transpired on September 9, 2006, it is clear that there was probable cause to believe that the crime of domestic assault had been committed.

As the Sixth Circuit court stated in *United States v. Strickland,* 144 F.3d 412, 415 (6th Cir.1998), "the Fourth Amendment does not require that a police officer *know* a crime occurred at the time the officer arrests or searches a suspect ... The Fourth Amendment, after all, necessitates an inquiry into probabilities, not certainty." Officer Rievley respectfully submits, therefore, that it is reasonable that an officer, confronted with the situation Officer Rievley faced, could have reasonably concluded that there was probable cause to arrest the Plaintiff for domestic assault.

B. ***The Plaintiff is not entitled to summary judgment because he is not presenting any "new evidence."***

In the Plaintiff's Second Motion for Partial Summary Judgment, he presents "new evidence" which he contends was not available to him previously. This new evidence consists of an Affidavit of the Plaintiff, a "questionaire" apparently drafted by the Plaintiff and answered by Ms. Carjbajal and a handwritten statement by Brandon Denton. The Court addressed some of the Plaintiff's "new evidence" in its November 4, 2009 Order denying the Plaintiff's Motion for Reconsideration. *See* Court Doc. 64. In that Order denying the Plaintiff's Motion for Reconsideration of this Court's decision to grant Officer Rievley summary judgment on the Plaintiff's claim for false arrest, this Court specifically noted

Specifically, the Plaintiff claims in his Motion that Officer Rievley failed to disclose the statement written by Brandon Denton during the early morning hours of September 9, 2006. In fact, when Officer Rievley, who is being sued **only in his individual capacity**, made his Initial Disclosures pursuant to *Federal Rule of Civil Procedure* 26(a)(1)(B) on February 29, 2008, he specifically disclosed the following documents:

> **(1) Various documents in the file held by the Dayton Police Department related to the charges brought against Roy L. Denton.**
>
> **(2) Various documents in the filed held by the Dayton Police Department related to the proceedings against Dustin Denton.**

See Initial Disclosures of Defendant, *attached hereto as Exhibit A*. To the best of Officer Rievley's knowledge, at all times, Brandon Denton's handwritten statement was contained in the file held by the Dayton City Police Department. Thus, this information was made known to the Plaintiff as early as February 29, 2008 when the Initial Disclosures were made. *See Court Doc. 10, Notice of*

Defendant's Filing of Initial Disclosures.

Furthermore, in his Motion, the Plaintiff points out that he requested the handwritten statement of Ms. Jessica Carbajal via a subpoena to defense counsel. This statement was produced pursuant to the subpoena. Again, Ms. Carbajal's statement would have been included under the ambit of the Initial Disclosures of February 29, 2008 as "[v]arious documents in the file held by the Dayton Police Department related to the charges brought against Roy L. Denton." *Id.* The Plaintiff would have been free to have requested the file from the Dayton City Police Department if he had chosen to do so. Thus, the existence of Ms. Carbajal's statement would have been made known to the Plaintiff as early as February 29, 2008 when the Initial Disclosures were made. *See Court Doc. 10, Notice of Defendant's Filing of Initial Disclosures.*

The Plaintiff has elected not to name the City of Dayton in this lawsuit, and counsel for Officer Rievley does not represent the City of Dayton in this lawsuit. The Plaintiff is free to subpoena or otherwise request these records from the City of Dayton in order to prepare his case against Officer Rievley. Certainly, by filing and serving subpoenas on the Rhea County Sheriff's Department, and the Dayton City Hall Records Custodian for the personnel records of Police Chief Chris Sneed and Officers Brian Malone, Steve Rievley and Jason Woody, the Plaintiff has shown that he has the knowledge and the capacity for requesting records and serving subpoenas. The fact that he did not request a copy of the police file pertaining to this case is not this defendant's fault. If the Plaintiff did request such the file and was not given this file, again, it is not this defendant's fault because Officer Rievley has no control over the police file as Officer Rievley is being sued in his individual capacity.

Accordingly, Officer Rievley would request that this Court deny the Plaintiff's Motion in its entirety.

Respectfully submitted,

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By: *s /Ronald D. Wells*
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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of December, 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 31st day of December, 2009.

Robinson, Smith & Wells

By: s/Ronald D. Wells

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

/12312009/daytondentonrespmsj2.wpd