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APR 23 2009

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LEONARD GREEN, Clerk

ROY L. DENTON
Plaintiff - Appellee

v.

STEVE RIEVLEY
Defendant - Appellant

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Case No. 08-6406

**Plaintiff - Appellee's
Motion to Strike Appellant's REPLY Brief**

Pursuant to F.R.A.P. 27 the Plaintiff - Appellee Roy L. Denton, *pro se*, respectfully moves this honorable court to **STRIKE** portions of Mr. Steve Rievley's Reply Brief specifically the entire Page One of his **Reply Brief** as entitled "Argument" as presented to this court by and through his counsel of record. In support of this motion, Mr. Denton respectfully shows this court the following:

On April 14, 2009 Mr. Rievley, by and through counsel, filed a Reply Brief to Roy L. Denton's Appellee Brief in this instant matter before the court. Mr. Rievley, in his Reply Brief, on Page One presents an "Argument" that not only merely repeats his original argument in his original Appellant Brief, but is

predominantly filled with misrepresentations of facts.

Mr. Rievley's entire Reply Brief offers up no additional facts, case law authority or any other tangible reasoning. Specifically, the entire Page One of his Reply Brief strongly appears to be a willful false misrepresentation to this court and should be stricken as a matter of law on that basis in and of itself alone. This information regarding such assertions made by Mr. Rievley are completely unsupported by any document or pleading in this entire record and are misleading.

Mr. Rievley states to this court on Page One of his rather repetitious Reply that:

“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, page 1. Mr. Denton further states that Mr. Rievley did not enter his home until after he had been arrested. *Id.* Mr. Rievley then continues to strengthen his position of this ascertainment in that his “affidavit confirms this as well”. See R. 29 Affidavit of Steve Rievley attached as Exhibit A ¶ 15-16.”

First, a plain reading of ¶15-16 of the Affidavit of Steve Rievley provides absolutely no support to his ascertainment nor, in fact, does anything within his entire affidavit remotely support his inference that I, (Mr. Denton) opened a door at almost 2 o'clock in the morning and stepped outside onto the porch while virtually naked. In spite of all evidence and findings show that Mr. Denton was standing INSIDE his own home a full 3 foot as the district court properly found. Mr. Rievley continues to rely upon fictions within his own mind and his reliance upon ¶15-16 of his very own affidavit is completely unfounded and is actually frivolous.

The paragraphs, *Id.* are self explanatory and merely shows that Mr. Rievley, accompanied with other officers walked toward Mr. Denton's front door and as he (Mr. Rievley) stepped onto the porch he notices a pair of glasses lying broken on the porch. How does such statement remotely indicate that Mr. Denton came outside? It doesn't. Once again, Mr. Rievley is merely rehashing what he has already argued in his Appellant Brief and somehow is trying to turn an apple into an orange by willfully providing false and misleading information to this honorable court and such should be stricken.

Additionally, Mr. Rievley has stated to this court that Mr. Denton "said or admitted" something that Mr. Denton did not remotely "say or admit". Mr. Denton researched, articulated and written himself the very portion of the record Mr. Rievley references being the above referenced memorandum (*R. 21*). Mr. Rievley in his Reply Brief on Page One falsely asserts that "Mr. Denton admits that he opened the door and came outside on the front porch". Where in this entire record is it evidenced, or testified to, or even remotely implied by Mr. Denton that he ever at anytime stepped onto a front porch? Even Mr. Rievley himself has NEVER made such testimony. However, his counsel of record has taken great pains to attempt to mislead the court of the true facts. Mr. Rievley's relevant portions in which he relies on *R. 21, Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment Page One* is attached hereto as Ex. B.

As to Mr. Rievley's Second Argument as to Tennessee Code 36-3-619(b) amounts to nothing more than "statements of a lawyer" and hold no weight or authority whatsoever. Even if the entire law as Mr. Rievley mistakenly represents was only a "**mere guideline**" to lead officers in domestic situations as he attempts to have this court believe, then Mr. Rievley according to his very own words violated virtually every part of that law as well. Furthermore, his example he uses is completely devoid and argumentative and is presented to this court to cloud the issues and to protract litigation.

As to Mr. Rievley's third and final Reply argument, he now tries to "point out" that Mr. Denton who is not a lawyer, is somehow representing his son Dustin in this case. Again, this is a false assumption and is very misleading.

Once again, Mr. Denton, *pro se*, wrote his entire Appellee Brief himself and could probably recite the entire Brief from memory. In his Appellee Brief, there is absolutely no indication that Mr. Denton is attempting hold himself out to be a lawyer to anyone other than to himself. In fact, just the opposite is true:

- 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.

Clearly, Mr. Denton was not trying to represent Dustin Denton or anyone else. All Mr. Denton offered to this court was his firm position that Mr. Rievley is not entitled to some sort of immunity claim or judgment concerning a **non-party** to this instant case. Additionally, Mr. Rievley's counsel of record should clearly understand that to seek some sort of order, judgment or decree from a court concerning the non party Dustin Denton is tantamount to reaching into a bowl of names blindly choosing a name and then somehow have judgment entered against that person as well. This within itself is misleading and should be considered frivolous.

In conclusion, Mr. Rievley in his Reply Brief offered no additional case law authority and continues to rely upon *Santana* and scant other authority that the District Court correctly found did not even apply to this case as Mr. Denton was standing inside his home a full three feet and never came outside his home. Mr. Rievley did precisely what he came to the home to do which was to arrest Mr. Denton, not to further investigate as required by him to have done as a matter of the very law he somehow admits to possess "extensive training" which clearly he

does not possess.

Therefore, Mr. Denton respectfully moves this court to strike page one of Mr. Rievley's Reply Brief in its entirety and additionally, to strike the remainder of his Reply Brief as a redundant, repetitious and frivolous pleading designed to protract litigation.

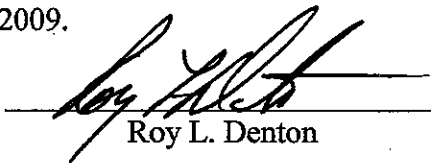
Respectfully submitted this 20th day of April, 2009



Roy L. Denton, *pro se*
120 6th Ave.
Dayton, TN 37321
423-285-5581

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 its destination, on this 20th day of April, 2009.



Roy L. Denton

Copy mailed to:

Ronald D. Wells, BPR# 011185
Suite 700 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450 --- Phone:423-756-5051

8. Brandon Denton informed me that he worked at the local Taco Bell until midnight that evening. Sometime after midnight, his co-worker and friend, Jessica Carbajal, gave him a ride to his home.

9. From my observation, Brandon Denton had red marks on his neck consistent with strangulation and abrasions on his arms and forehead.

10. Sometime after he arrived home, Brandon Denton's father, Roy Denton, and brother, Dustin Denton, began hitting him. Brandon Denton stated that his father and brother were intoxicated at the time of the attack.

11. I photographed Brandon Denton's injuries.

12. Brandon informed me that both his father and brother remained at their home at 120 6th Avenue Dayton, Tennessee. Brandon also told me that he wanted to retrieve some of his belongings from the home but was afraid to do so by himself after the attack.

13. I called and spoke with Brandon Denton's co-worker, Jessica Carbajal. Ms. Carbajal verified the Brandon Denton did not have any injuries or abrasions when she dropped him off at home, sometime after midnight.

14. I then drove to the Denton home. Brandon Denton remained at the jail.

→ * 15. When I arrived at the Denton household, I walked to the door. I was accompanied by Jason Woody and Brian Malone, Dayton City Police Department officers.

→ * 16. I asked Roy L. Denton if he had a son named Brandon. Roy L. Denton replied that he did not. At this point, I smelled alcohol on Roy L. Denton. Upon going onto the porch, I noticed Brandon's eyeglasses, consistent with Brandon Denton's story, lying on the front porch, broken. At that point, I decided to arrest Roy L. Denton and Dustin Denton, for domestic assault.

17. 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.

"EX. A"

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

X

I. INTRODUCTION

On September 9, 2006 the plaintiff Roy L. Denton was at his home located at 120 6th Ave., Dayton, Tennessee. Around 1:30 a.m. Mr. Denton saw lights approaching his front door and thus opened his door to investigate. Upon opening the door, Mr. Denton saw the Defendant Officer Steve Rievley and several other police officers converging on his front porch. Defendant Rievley made an inquiry to Mr. Denton as to *"what had happened with his son"*. 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 then managed to handcuff his other arm together. Officer Rievley then had another officer transport Mr. Denton to jail. 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. All of the statements made within this Introduction are undisputed and no genuine dispute of any fact exists as admitted in Officer Rievley's affidavit of complaint. (See attached Ex. B)

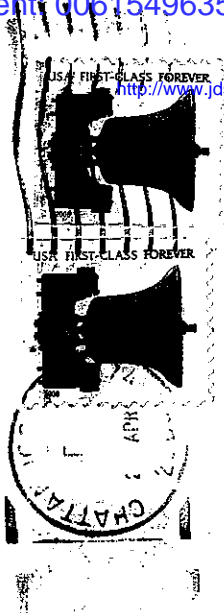
Furthermore, the plaintiff will not be discussing any disputed facts or events not relevant to this motion, but concede and concur with the articulation of the affidavit of complaint sworn to by the defendant. (see attached Ex. B)

II. LEGAL AND FACTUAL BACKGROUND

A. Fourteenth Amendment

Plaintiff sued under 42 U.S.C. § 1983 for alleged violation of his rights

"Page 1 of Kelly Birt" "EX B"



Roy L. Dard
120 6th AVE
Dayton TN 37324

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