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

ROY L. DENTON, *Plaintiff*	*	**Case No. 1:07-cv-211**
	*	
	*	**Judge:** ***Collier/ Carter***
v.	*	
	*	
STEVE RIEVLEY,	*	
in his individual capacity	*	
Defendant	*	
	*	***JURY DEMAND***
	*	

PLAINTIFF ROY L. DENTON'S RESPONSE TO
DEFENDANT STEVE RIEVLEY'S MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff, Constable Roy L. Denton, *emeritus*, pro se, *(hereinafter "Constable Denton")* pursuant to Rule 56 of the Federal Rules of Civil Procedure and hereby files his Response to Defendant Steve Rievley's Motion for Summary Judgment. Constable Denton asserts that summary judgment in favor of the Defendant Officer Rievley is not appropriate. Accordingly, Constable Denton submits that summary judgment ***in his favor***, not the Defendant's, pursuant to the Motion to Alter or Amend the Judgment, as previously filed with this court July 29, 2008, is appropriate.

In his Motion for Summary Judgment, the Defendant Steve Rievley *(hereinafter "Officer Rievley")* presents several main issues as grounds for his motion.

STATEMENT OF THE CASE

The plaintiff, Roy L. Denton and his oldest son, Sgt. Dustin B. Denton *(hereinafter Sgt. Denton)* filed their Complaint on September 6, 2007. In the original Complaint, the plaintiff and Sgt. Denton claimed a deprivation of their Fourth, Fifth and Fourteenth Amendment Rights to the

United States Constitution, alleged 42 U.S.C. § 1883 violations of false arrest, unlawful entry, excessive force and assault. On March 28, 2008, the plaintiff filed an Amended Complaint alleging the same causes of action. In the Amended Complaint, Sgt. Denton was terminated from the lawsuit. On May 12, 2008, the plaintiff filed a Motion for partial Summary Judgment as to his claims for unlawful arrest and that the defendant was not entitled to rely upon qualified immunity for his alleged acts. The defendant filed a Motion for Extension of Time to Respond to the Plaintiff's Motion for Partial Summary Judgment on June 2, 2008. This Motion was granted, and the defendant was given until June 21, 2008 to respond to the Plaintiff's Motion for Partial Summary Judgment. This Court denied the Plaintiff's Motion for Partial Summary Judgment by order dated July 21, 2008. The Plaintiff has filed a Motion to Alter or Amend the July 21, 2008 order which is currently under consideration of this honorable court.

STATEMENT OF FACTS

There is a genuine DISPUTED fact that Officer Rievley did not examine all of the facts necessary to establish probable cause. Officer Rievley has testified under oath that he talked with Brandon Denton at the Rhea County jail for approximately 33 minutes. Officer Rievley did not ascertain any other information required by law so as to give him any determination to establish probable cause. In fact, Officer Rievley didn't even attempt to verify the actual residency of where Brandon Denton actually lived. Additionally, had Officer Rievley simply taken just a couple minutes he would have learned the person (*Brandon Denton*) who was alleging the assault was in fact on the run from the law, evading a felony arrest warrant for theft. Surely, even a minimum degree of police training would had revealed to Officer Rievley that it is questionable to believe anything a person accused of felony theft who was evading an arrest warrant had to say. Moreover, considering the complete credibility of the former elected official/law

enforcement officer, the defendant's action actually constitutes a complete and total reckless disregard in attempting to investigate the truthfulness of the allegations uttered to him by a common known criminal. Further, the defendant did not have any personal knowledge of any of the events alleged against the plaintiff at all. In fact, Officer Rievley has also testified that he did not even investigate not one thing concerning Constable Denton, other than Officer Rievley asking Constable Denton a hasty single question, and seeing a pair of alleged broken eyeglasses that he knew Constable Denton **DID NOT BREAK**, nor was Constable Denton ever accused of breaking. In fact, just the opposite is true. Brandon Denton alleged that his brother, Sgt. Dustin Denton "*broke his eyeglasses*", not his father, the Plaintiff Constable Roy L. Denton, *emeritus*. (See attached Exhibit 2).

For Officer Rievley to somehow look down and see a pair of broken eyeglasses and then somehow attribute that to Constable Denton where as his testimony clearly states, "*at that time he decided to arrest Roy L. Denton*" *id.* is completely incompetent police work on the part of the defendant Officer Rievley, and goes beyond the realm of rational thinking. Further, and in fact, had Officer Rievley been acting reasonably, he would have known that the broken eyeglasses he testifies of actually **ELIMINATES** any probable cause whatsoever concerning Constable Denton, thereby shifting probable cause to some other person, perhaps Sgt. Dustin Denton IF Brandon Denton was believed in what he said.

There is a genuine DISPUTE that Officer Rievley was **NOT** the ranking officer as he states in sworn testimony (See Court Doc. 29-2 ¶6). Therefore, a distinct genuine DISPUTE is established as to who really was in charge and who actually made the determination to load up and go to Constable Denton's home. This is an assertion requiring a jury to determine the truthfulness of the facts not in this instant summary judgment motion made pursuant to Rule 56.

There is a genuine DISPUTE that Officer Rievley did not determine probable cause based upon any facts and circumstances other than the sole information he obtained from Brandon Denton. Officer Rievley admits under oath that he arrived at the plaintiff's home at ***2:13 a.m.*** and only ***4 minutes*** later Officer Rievley arrested Constable Denton and he was on his way to jail at ***2:17 a.m.*** (See Court Doc. 21-3, Court Doc. 30 ¶14, ¶15).

There is a genuine DISPUTE as to the time frame any alleged assault upon Brandon Denton actually happened. Officer Rievley testifies under oath in his affidavit of complaint that he arrived at the jail at ***1:40 a.m.*** and spoke with Brandon Denton. Officer Rievley states that Brandon told him that an assault on him had happened "***JUST MINUTES EARLIER***". (See Court Doc. No 21-3) . However, Officer Rievley ***contradicts*** this statement and testifies under oath that "***sometime after midnight***, *his co-worker and friend, Jessica Carbajal, gave him a ride to his home*"; "after he arrived home, ***Brandon Denton's father, Roy Denton***, *and brother, Dustin Denton*, ***began hitting him.***" See Court Doc. 29-2 ¶8,¶10). Officer Rievley's ***contradictory*** testimony creates a genuine DISPUTED fact of a **time variance of approximately 90 minutes**, in and of, the two inconsistent times Officer Rievley testifies to.

Officer Rievley testifies that "*Brandon stated that* ***when he arrived home*** *his brother started arguing with him,* ***which led to Dustin hitting him several times***."..." *He stated that during the assault,* ***their father, Roy****, got involved in the fight.* ***Brandon stated that Roy grabbed him around the neck and strangled him.*** Officer Rievley's ***contradictory*** testimony creates yet another genuine DISPUTED fact.

It is a DISPUTED fact whether or not that Officer Rievley requested "*back up*" while he was at the jail. The defendant testifies under oath that "*police units were dispatched to the jail*" (See Court Doc. No 21-3) and then Officer Rievley ***contradicts*** his sworn testimony by stating

under oath "*I was the ranking officer and the closest to the jail, so I took the call*"(See Court Doc. 29-2).

It is a genuine DISPUTED fact that Officer Rievley "***decided***" to arrest the plaintiff after he saw a pair of broken eyeglasses on the front porch of the defendant's home. However, there is a ***contradiction*** to "***when***" Officer Rievley actually decided to arrest Constable Denton. Logic dictates that a jury must determine these disputed facts as to the true motive of Officer Rievley, all witnesses, the entire third shift police department and a sheriff's deputy who, to this very day, has faded into the elusive unknown. Additionally, restated, Officer Rievley knew full well that Constable Denton was NEVER accused of breaking any eyeglasses, whatsoever. Therefore, any relation between Constable Denton and an alleged pair of broken eyeglasses should have never been considered into the probable cause investigation determination ***because the defendant himself*** swore that Sgt. Dustin Denton broke Brandon's eyeglasses, **not** the plaintiff (See Court Doc. 21-3). Clearly, Officer Rievley in fact NEVER established probable cause and is simply attempting to ***contradict*** and distort the facts to continue down the bottomless pit of deception. Therefore, it is incumbent upon a jury to determine all of the DISPUTED FACTS of this instant case.

It is a genuine DISPUTED fact whether Officer Rievley left the jail with the intent of arresting Constable Denton BEFORE he arrived at Constable Denton's home. This dispute is established in part by the total lack of investigation, interview or any other examination of the facts and circumstances within Officer Rievley's knowledge at the time of an arrest. Under current law and under law in 2006, Officer Rievley simply did not ascertain whether or not probable cause even existed, except in the recesses of an untrained mind. These disputes must be animated before a jury at trial.

Officer Rievley under oath in an affidavit of complaint that, "*We went to the Denton residence located at 120 6th Ave.*"..."*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 Court Do. No 21-3)

Officer Rievley ***contradicts*** his sworn testimony (See Court Doc. 21-3) and testifies under oath in an affidavit of Steve Rievley: "***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.*" (See Court Doc. No. 29-2). This is another complete contradiction of sworn testimony and must be presented to a jury at trial as a matter of law.

By virtue of Officer Rievley's omission of testimony, no sobriety tests nor any other test, observation or anything was conducted so as to determine sobriety or intoxication as **NOW** alleged by Officer Rievley. This omission on the part of Officer Rievley creates a genuine DISPUTED fact. (See Court Doc. No. 30 ¶22).

In a plaintiff's request for admission, "***Admit*** *that* ***no*** *information of any kind concerning Roy L. Denton concerning his demeanor, or any information as to his telephone number, race, date of birth, is contained in the Dayton Police Dept. Family Violence Investigation Form*" bearing a Complaint number 06-08297B and dated September 9, 2006. **Response**: "*it is admitted that there is* ***no*** *mention of Roy L. Denton's demeanor*" (See Court Doc. 30 ¶22). Officer Rievley now claims that Constable Denton was intoxicated. However, over one year ago when facts were fresh in Officer Rievley, he never made any mention of intoxication concerning Constable Denton who was at his own home. In fact, by his own sworn testimony, Officer Rievley never ever made any assertion as to Constable Denton's demeanor. *id.* The court should find this extremely suspect and impeachable ***contradictory*** sworn testimony and mandate Officer Rievley to in the least clarify which of his version(s) is/are true and which is/are not as justice so requires

truthfulness. Such repetitive ***contradictory*** testimony given by Officer Rievley is/are genuine DISPUTED FACT(s) that should be determined before a jury at trial.

There is a genuine DISPUTED fact in that the defendant testifies that he smelled alcohol on Constable Denton AFTER he said he asked Constable Denton a single question, "***what happened with his son",*** in which Officer Rievley testifies that Constable Denton ***did not answer***. If the Plaintiff Constable Denton did not answer, how did the Defendant Officer Rievley smell anything? However, Officer Rievley then once again ***contradicts*** his sworn testimony by testifying that he asked Constable Denton a totally different single question, Officer Rievley asked Constable Denton, "***if he had a son named Brandon. Roy L. Denton replied that he did not".*** *id.* Therefore, it is disputed as to what, if anything was smelled by Officer Rievley. He ***contradicts*** himself once again in stating that Constable Denton said that he "*didn't have a son named Brandon*", and then smelled alcohol, but on the other hand turns around and states that the plaintiff "DID NOT ANSWER". This is ***contradictory*** and stands in genuine dispute and as such requires a jury to determine these facts at trial.

Officer Rievley testifies under oath that when he left the jail to go to the plaintiff's home at 2:13 in the morning, Brandon Denton was left at the jail and was safe. (See Court Doc. 29-2 ¶14 *and* Court Doc. No. 30 ¶6). Clearly, Officer Rievley had ample time to attempt to gain an arrest warrant, and moreover, he could have simply advised Brandon Denton on how to obtain one. Naturally, had Officer Rievley done this, Constable Denton would not had been arrested and jailed for 17 plus hours in addition to suffering a financial loss due to bail and other expenses and embarrassment. It is **disputed** that the intent of Officer Rievley in arresting the plaintiff was simply that---to arrest him. This would be shown at trial to be nothing new for the police in Rhea County, Tennessee. Additionally, it is clear that even the general sessions judge didn't find

probable cause existed due to the LACK of the investigatory on scene interview as required by the domestic violence laws of the state of Tennessee. Officer Rievley's assertion that the charges were merely "*dropped*" due to Brandon Denton ignoring a subpoena and not appearing in court is in direct **dispute** and is a genuine disputed fact that requires a jury to determine at trial.

Officer Rievley testified that when he arrived at the plaintiff's home "***Roy*** (the plaintiff) ***came to the door***". (See Court Doc. 21-3).

Officer Rievley testified that when he arrived at the plaintiff's home, "***I walked to the door***". (See Court Doc. No. 29-2).

Officer Rievley once again ***contradicts*** his testimony in asserting in his instant motion for summary judgment that, "*the plaintiff opened the front door of his home before the officers could knock on his door and stepped out onto the front porch. The defendant refers to Affidavit of Steve Rievley, ¶15-16.* (See Court Doc. No. 42, id at page 11). However, in the referenced paragraphs of **15 and 16**, the affidavit strongly appears to prove just the opposite. According to the affidavit, Officer Rievley "*walked to the door*" *id.* at **¶15** and at **¶16** Officer Rievley merely states that he asked a single question of Constable Denton where the plaintiff is said by the defendant to have answered it. Clearly all evidence shows that Constable Denton walked to his door and **NEVER** stepped out crossing his threshold. Officer Rievley, attempts to cloud the facts by making an unsupported assertion that the plaintiff somehow walked out onto the front porch.

As the record shows, Constable Denton has consistently alleged from the very beginning within both his Original and Amended Complaints, that he was **INSIDE HIS HOME** (See Doc. No. 13 ¶22) when Officer Rievley came inside his home and arrested him. Constable Denton has testified under oath that he was in fact **three feet inside of his home** when the defendant forced his way across the defendant's threshold, into his home. (See Court Doc. 36 ¶12,¶13). Nowhere

in the record has Officer Rievley ever asserted that Constable Denton ever walked out onto the porch. Clearly, Officer Rievley now in the 11th hour is now trying to add, "*and the plaintiff stepped out onto the front door*". Once again, all the inconsistent and ***contradictory*** testimony provided under oath by Officer Rievley must be animated before a jury. The actions of Officer Rievley are completely more in line with someone who has either forgotten the truth or is committing a perjury upon this honorable court. Such actions should be admonished by any person who entrusts the job of "*sworn police officer*" upon the defendant. Therefore, this honorable court should use it's discretion and ***order*** the Federal Bureau of Investigation to intervene and/or investigate the alleged acts of the Defendant Steve Rievley, in part, due to so many ***contradictory*** sworn statements, each sworn to as true that drives straight to the heart of his credibility.

Furthermore, Officer Rievley goes even further, (Court Doc. 42, id. at page 12) "*it is evident that the plaintiff was standing on the front porch of his home when he was arrested*". This assertion is a DISPUTED fact and additionally, the only thing Officer Rievley has appeared evident in doing is creating ***contradictions*** upon ***contradictions***. The evidence is, and has always been there for Officer Rievley to deny, which he has not. He now attempts to deny, contort and conform so-called "facts" that are not supported in any way by any evidence other than his affidavit that contains virtually NO personal knowledge but perceived "Hearsay" that should not even be considered by this court. Officer Rievley simply fails to support any of his contention other than his mere conclusory assertions listed within his motion for summary judgment.

Officer Rievley somehow is ***now asserting*** that "*it is clear that the defendant did not enter the plaintiff's house until after the arrest*". Officer Rievley points to his affidavit *id.* at ¶17-19 to somehow try to establish this. The only thing clear is the clear DISPUTED fact he creates.

There is absolutely no evidence within Officer Rievley's affidavit to support what he is stating to be factual in the least. However, directing the court's attention to Court Doc. 29-2, ¶17-19 of Officer Rievley's sworn affidavit reveals just the opposite. Officer Rievley has testified in his affidavit that, "*I handcuffed his right arm" id. at ¶18* and he has consistently testified to the assertion that he *FIRST grabbed the plaintiff's right arm*" (See Court Doc. 21-3, Court Doc. No. 30, ¶13). By Officer Rievley's very own testimony and proof, it is clear that the evidence shows that the plaintiff came to the door **and never crossed the threshold**. Officer Rievley supports the plaintiff's evidence that he **never crossed the threshold of the door** as he testifies under oath that ***he came to the plaintiff's door***. All evidence supports that only one single question was asked at Constable Denton's front door.

Constable Denton, while standing inside his own home, never once crossing the threshold as the plaintiff will show at trial that he is extremely cautious of the Dayton Police Department and would **NEVER** step outside among them. Constable Denton's right hand was on the door knob because he had just opened it. After Officer Rievley uttered out a single question, he and a 6'5, 329 pound patrol officer who had been on the job only one month, grabbed the first thing they could grab as Constable Denton told them to "***get off his property***". (See Court Doc. No. 13 ¶23-24). Clearly, Constable Denton was backing away from police who came to his home with the intent of arresting him, not to investigate anything. As Constable Denton tried to back away and close his door, police barged in grabbing the first body part being Constable Denton's right arm. It is undisputed that the front door opened to the inside and from left to right (See plaintiff Picture Exhibit 1). Constable Denton, with his hand on the door knob and while attempting to shut his door, was grabbed by Officer Rievley. The defendant is clearly attempting to once again contort the facts and this honorable court should take notice to such attempt. Therefore, a genuine

DISPUTED fact is now evident and the most logical version is Constable Denton's.

Officer Rievley testifies in his very same affidavit that "*After a short discussion, Roy L. Denton turned away from me toward the door of his house*". Once again, Constable Denton respectfully brings to the court's attention that this simply is not the case. Officer Rievley may be "*asserting*" this, but once again, Officer Rievley has ***contradicted*** basically every other piece of sworn testimony on this record. All throughout this entire case record, Officer Rievley testifies that he only asked Constable Denton a single question. Now Officer Rievley is somehow expecting the court to believe that not only did Constable Denton open the door at after 2 o'clock in the morning, he stepped outside 99% naked on a brisk night. And then after being asked a "*single question*" the defendant "*after a short discussion*" (what discussion?) the plaintiff was arrested without probable cause or a warrant. Respectfully, this all within itself is a matter for a jury to decide and is a genuine DISPUTED fact (See Court Do. No 21-3, and Doc. 29-2).

LAW AND ARGUMENT

The Defendant Steve Rievley "bears the initial burden of coming forward with facts to suggest that he acted within the scope of his discretionary authority during the incident in question. Thereafter, the burden shifts to the plaintiff to establish that the defendant's conduct violated a right so clearly established that any official in his position would have clearly understood that he was under an affirmative duty to refrain from such conduct." *See* ***Rich v. City of Mayfield Heights , 955 F.2d 1092, 1095 (6th Cir. 1992).*** "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)***.

Officer Rievley clearly hasn't met this requirement. There is absolutely no evidence within the record, not even presented by the defendant to support his summary judgment motion

showing any facts whatsoever to suggest that he acted within the scope of his discretionary authority during the incident in question. The evidence shows that in fact, Officer Rievley failed to act within the scope of his authority due to his incompetence of not having an adequate knowledge of domestic violence issues. This assertion is a dispute and requires a trial by jury to determine at trial as a matter of law. The United States Court of Appeals for the 6th Circuit has held that:

> "summary judgment would not be appropriate if there is a factual dispute (*i.e.* , a genuine issue of material fact) involving an issue on which the question of immunity turns, such that it cannot be determined before trial whether the defendant did acts that violate clearly established rights. Summary judgment also should be denied if the undisputed facts show that the defendant's conduct did indeed violate clearly established rights. In either event, the case will then proceed to trial. . . ." ***Poe v. Haydon , 853 F.2d 418, 425-26 (6th Cir. 1988) (citations omitted).***

The Plaintiff has in fact alleged, and can prove, a factual basis necessary to establish his claim of § 1983 violation of his civil rights by the Defendant Steve Rievley.

Section 1983 states in pertinent part:

- "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...."

42 U.S.C. 1983. Section 1983 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).***

With respect to his claim under § 1983, plaintiff asserts that the Defendant Steve Rievley violated his Fourth Amendment right to be free from unreasonable searches and seizures as well as his Fourteenth Amendment right to equal protection of the laws. Plaintiff alleges that the actions of the Defendant Steve Rievley constituted false arrest, unlawful entry, excessive force,

and assault all of which are a violation of the plaintiff's Fourth and Fourteenth Amendments to the United States Constitution. (See Amended Complaint - Court Doc. 13). Therefore, the plaintiff clearly has the right of remedy for the deprivation of his constitutional rights as herein alleged as provided for under 42 U.S.C. § 1983.

- **Officer Steve Rievley <u>DID NOT</u> have probable cause to arrest the Plaintiff on a charge of domestic assault**

With respect to Plaintiff's § 1983 false arrest claim, the threshold question is whether a constitutional violation actually occurred. "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:

- "Probable 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)).***

"Probable cause determinations involve an examination of all facts and circumstances within an officer's knowledge at the time of an arrest." *See* ***Dietrich v. Burrows , 167 F.3d 1012 (6th Cir. 1999)***. "In general, the existence of probable cause in a 1983 action presents a jury question, unless there is only one reasonable determination possible." ***Pyles v. Raisor, 60 F.3d 1211, 1215 (6th Cir. 1995).*** The law has been clearly established since at least the Supreme Court's decision in ***Carroll v. United States, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925)***, that "probable cause determinations involve an examination of all facts and circumstances within an officer's knowledge at the time of an arrest".

Therefore, it is clear, and was clear on September 9, 2006, that Officer Rievley should

have investigated the particular case in which such gives rise to this instant case. In fact, it was his duty to properly investigate all information before concluding that he had probable cause. The courts have consistently ruled that ***the extent of an officer's duty to investigate*** is incorporated into the probable cause analysis. Study of many various cases show that courts generally have not imposed a stringent duty to investigate upon the police, rather, they frequently ***describe the duty to investigate as a duty to be reasonable***. The duty to investigate depends on the circumstances of the particular case. The duty to investigate is defined by the strength or weakness of probable cause evidence. The existence of a "strong basis" for probable cause will eliminate the need for further investigation. ***However, weak probable cause evidence necessitates further investigation***. Clearly, the defendant knew that on the basis of the allegations of a single person who was widely known to **NOT** be credible, in and of itself, required the defendant to investigate the allegations so as to determine the existence or lack of existence of probable cause.

Officer Rievley testifies that he is "*extensively trained*" in Domestic Abuse situations. This is a DISPUTED fact. To elaborate, Officer Rievley is a ***high school drop out***. He may be a police officer of a small town department, but it is a fact that he dropped out of high school in 1995. Then in 2002 he was "*certified*" through a community college program. Without diminishing his basic training and ability, Officer Rievley simply is not extensively trained in domestic issues as he claims. Constable Denton can, and will, show this at trial. Therefore, the defendant's assertion that he is extensively trained is a DISPUTED fact, placed in issue, and should be presented to a jury to determine the extent of any extensive training. The plaintiff can, and will, prove this beyond a preponderance.

Officer Rievley was under-trained in the Domestic laws of the state of Tennessee as codified in **T.C.A. 39-3-319** to the point that he was considered "***incompetent***" by definition as

to his actions and inability to understand and enforce the very laws he was charged to enforce. Officer Rievley's own testimony in that he is "*extensively trained*" in Domestic Violence law completely ***contradicts*** his actions as alleged within this instant case. In light of such claimed "*extensive training*" on the part of the defendant, it can be strongly asserted that Officer Rievley or any reasonable official, would have known or should have known, precisely how to respond, how to conduct an adequate investigation to determine probable cause as required by law, as well as perform an adequate on scene interview as required by **T.C.A. 39-3-319**. Moreover, a reasonable official given the same, or similar circumstances ***could agree*** that the acts of the defendant were ***contradictory*** to the Domestic Violence laws of the state of Tennessee.

Officer Rievley is misinterpreting state law, as well as he does not have a proper understanding of **T.C.A. 36-3-619** insofar that if a law enforcement officer who has probable cause to believe that a person has committed a crime of domestic abuse, the preferred response is arrest. Officer Rievley is partially correct. It is a DISPUTED fact that the preferred response as to someone other than the "**PRIMARY AGGRESSOR**" is arrested. In fact, the statutes state just the opposite. Officer Rievley fails to recognize that **T.C.A. 39-3-619(b)** is very clear. "***...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***".

To please the court, respectfully, Officer Steve Rieveley's actions totally ***contradict*** his claims of having "*extensive training*". Not only has discovery of his Dayton City personnel file, as well as his P.O.S.T. commission record *(02-677)* not reflect any certification whatsoever to support his contention of such extensive training, it is clear that he only enforces the domestic laws as he understands them, being the "*way they've always done it in small town Dayton*".

Therefore, the entire claim as to the defendant's "*extensive training*" is a DISPUTED fact and as such disputed fact, should be animated before a jury at trial to determine.

Officer Rievley, by his own admission, spent approximately 33 minutes with Brandon Denton while at the jail. *id.* During this 33 minutes he claims that he talked with Brandon, claims to have observed some injuries, took pictures of them and basically gathered information only from one source, Brandon Denton. Officer Rievley then states that he obtained a "*statement*" from a one Ms. Carbajal, yet Officer Rievley fails to submit any such statement to this court. Moreover, the defendant has never disclosed such statement to the plaintiff as required by the Federal Rules of Civil Procedure. Therefore, his assertion of his taking Ms. Carbajal's statement is completely unsupported and that, along with Officer Rievley's numerous ***contradictions*** that impeach one sworn statement right after the other, all should not be well taken by this honorable court. Constable Denton asserts that Officer Rievley lacks the credibility to be believed in all aspects. Moreover, the credibility, or lack thereof, of each of the conflicting and ***contradicting*** statements of the defendant giving testimony under oath is a disputed fact issue of credibility which must be decided by a jury.

Once Officer Rievley got in his patrol car and drove to Constable Denton's home, he knew that Brandon was safe at the jail. He knew that the time line established based upon his obtaining only information from one source, a source who was on the run from the Chattanooga Police Department evading a felony arrest warrant (See Court Doc. No. 36-2). Officer Rievley knew that Brandon Denton had been living a vagabond styled lifestyle. Officer Rievley also knew that Brandon is a gay homosexual adult. Officer Rievley also knew that Brandon was widely known in his small town to not be trustworthy. In spite of this, Officer Rievley chose to rely upon the information of a known thief unlawfully evading a felony arrest warrant..

Once Officer Rievley left the jail, he brought the entire third shift city police department with him, as well as one county sheriff's deputy. Regardless what Officer Rievley states or asserts, his actions prove and show otherwise. Officer Rievley had already made the determination in his mind to **not** come to the home of Roy L. Denton to investigate, or to perform the mandatory "*on scene interview*", he came with back-up with the express intention to arrest Constable Denton. This assertion is easily proven by the actions of Officer Rievley along with the way he did not comply with Tennessee Domestic Violence law. All evidence supports Constable Denton's contentions and therefore such stands as a DISPUTED fact which must be settled at a trial by jury as justice so requires.

To prove the plaintiff's assertion, the plaintiff will use the very sworn statements of the defendant up to the point where he filed his *attorney prepared* affidavit in opposition to the previously file plaintiff's motion for partial summary judgment (See Court Doc. No. 20). Officer Rievley clearly testifies that after he arrived at Constable Denton's residence, he walked up to the plaintiff's door. *id.* The defendant testifies that the plaintiff came to the door. *id.* The defendant testifies that he asked the plaintiff a single question. The defendant testifies that the plaintiff did not answer him, but on the other hand, in a ***contradictory*** statement under oath, the Defendant Officer Rievley testifies that the Plaintiff Constable Denton **DID** answer him, where he then asserts an unsupported assertion that he *smelled alcohol* on the plaintiff. Then as Officer Rievley was standing on the porch and Constable Denton approximately ***three feet inside his door***, Officer Rievley places Constable Denton under arrest., forcing himself into his private home.

Officer Rievley testifies that he looks down and sees a broken pair of eyeglasses and ***at that point in time*** he made the decision to arrest the plaintiff. Instead of taking a moment to ask one of the other three officers congregated on Constable Denton's small porch to see if perhaps

one of them had stepped on the eyeglasses, or any other fact finding investigation to determine probable cause, he at that point decides to arrest the plaintiff. (See Court Doc. No. 29-2 ¶16).

Ironically, and in dispute and total ***contradiction*** of the Officer Rievley's sworn testimony of his facts, Constable Denton respectfully brings attention to Court Doc. No 21-3 at line **12**, "***He also stated that Dustin broke his eyeglasses during the assault***". Officer Rievley testified to a fact to this court under oath, that he has "*extensive training*", when in fact, he hasn't complied in the least with any of the Domestic Violence laws he testifies to be "*extensively trained*" in.

Furthermore, absolutely no reference at all was made about the Plaintiff, Roy L. Denton in any investigative form completed by Officer Rievley. The only thing ever said, or claimed by Officer Rievley to have been said regarding anything about Constable Denton was the single sentence of, "*Roy, grabbed him around the neck, strangling him*". Amazingly, that one ***mere statement*** made by a person on the run from the law evading a felony theft warrant, known to be completely not credible, was used to determine that Constable Denton was going to jail and that ***one mere question*** asked by Officer Rievley made certain of it.

Most certainly any official with a reasonable mind and of reasonable competence and ability, and confronted with the similar situation the Defendant Steve Rievley faced, could **AGREE** that the conduct of Officer Rievley was in fact a violation of state law, excessive, and performed without exigent circumstances.

There is no basis to support any contention that Officer Rievley is somehow entitled to qualified immunity for his unlawful actions. ["Exigent circumstances, something of a term of art, denotes the existence of" 'real immediate and serious consequences' "that would certainly occur were a police officer to" 'postpone[ ] action to get a warrant.' "] ***Welsh v. Wisconsin, 466 U.S. 740, 751, 104 S.Ct. 2091, 2098, 80 L.Ed.2d 732 (1984) (quoting McDonald v. United States,***

335 U.S. 451, 459-60, 69 S.Ct. 191, 195, 93 L.Ed. 153 (1948).

Even **IF** everything said by Brandon Denton was true, even as a single sole source, but for the sake of argument, even **IF** everything were true, such situation clearly did not give Officer Rievley probable cause or lawful authority to arrest the plaintiff as the situation simply did not warrant the act. Clearly, Officer Rievley was not responding to a call, he was merely called to the jail to essentially "*take a report*". Officer Rievley could have easily advised and even assisted Brandon Denton in obtaining an arrest warrant. Officer Rievley was not justified in his actions and a reasonable, competent mind would have, or should have known better and it would be a shock to the conscience to think otherwise. Whether intentionally or not, the defendant "*messed up*". All assertions as contended thus far are representative of DISPUTED facts which each on their own, as well as collectively, stand in dispute and must be presented to a jury at trial.

As if this warrantless arrest of Constable Denton inside his home was not enough, Officer Rievley along with Deputy Brewer entered Constable Denton's home without a warrant, consent or exigent circumstances and searched his home looking for Sgt. Dustin Denton who was eventually found in the rear bedroom approximately 56-60 feet from the front door. (See Court Doc. No. 29-2 ¶19). Not only did Officer Rievley arrest a person known to him to **NOT** be the primary aggressor, he goes inside a man's home searches it and arrests his guest. This entire fact that the defendant unlawfully entered the plaintiff's home, searching it without authority to do so can essentially be construed as rising to the standard of criminal, as well as a civil liability on the part of Officer Rievley. This undisputed fact of the defendant entering the plaintiff's home, searching it without warrant, consent or exigent circumstances, it certainly appears very clear that the sole intent of Officer Rievley was to arrest the plaintiff, snatch up a war hero soldier and be gone before Mrs. Denton even got back from McDonalds. Shockingly, within 14 minutes Officer

Rievley managed all of this. But just to add to this record, as well as perhaps addressing an undisputed, or disputed fact, had Sgt. Dustin Denton actually been a wanted felon hiding from the law, the Defendant entered the Plaintiff's home and searched it all WITHOUT a warrant, consent or exigent circumstances. As this honorable court is precluded from weighing any evidence as to this instant Rule 56 motion of the defendant, all these assertions must be articulated to, and determined by, a jury at trial.

As if these lawless actions were not enough, as Officer Rievley was escorting Sgt. Denton out of Constable Denton's home, Officer Rievley gathered up Brandon Denton's personal belongings. Officer Rievley testifies under oath to this. (See Court Doc. No. 29-2 ¶19). How did Officer Rievley know exactly "*what*" personal belongings belonged to who? The shocker to this is that Brandon Denton didn't even have any personal belongings at Constable Denton's home other than stuff stored for years up in the attic. Another "*shock*" to the conscience is that the personal belongings Officer Rievley testifies that he "collected", he apparently kept them as well. The plaintiff will show not only by preponderance, but by a more stringent standard, *beyond a shadow of a doubt*, that Officer Rievley, while acting under color of law, searching a private home without a warrant, or any lawful authority to have even one foot inside the plaintiff's home, stole or otherwise disposed of such belongings he testifies he collected. For any reasonable mind to accept that any person whether or not be they in a police uniform, excuses, justifies or legalizes the unlawfulness Officer Rievley has displayed. Therefore, his very ***self incriminating*** testimony is placed in issue and should be presented to a jury to decide just what exactly did he do with whatever it was he gathered up. (See Court Doc. No. 36 ¶19). Additionally, the court should use it's discretion and order a full scale investigation upon Steve Rievley and every officer at the plaintiff's home the night the illegal search and seizure happened.

There is no question that the right at issue was clearly established: "it is beyond dispute that a reasonable officer would be aware that an arrest requires probable cause, as that principle is contained within the text of the Fourth Amendment." ***U.S. Const. amend. IV; Lyons, 417 F.3d at 573*** ("It has long been true that the Fourth Amendment requires probable cause for an arrest."); **Gardenhire, 205 F.3d at 314-15; Pray, 49 F.3d at 1158.**

Officer Rievley's position concerning a false arrest claim such as this one of this instant case required more than the bare minimum requirement relative to probable cause, it required, a warrant. If Officer Rievley continues to hold the position that he never went inside Constable Denton's home to arrest him without a warrant, then how can he be believed in his reasoning for going deep inside a home searching for Sgt. Denton *almost 90 minutes after the fact* of any allegation of assault? Does the fact that Constable Denton had a screen storm door on his front door change the situations concerning what Officer Rievley is now trying to convey? (see attached photo - Exhibit 1).

Officer Rievley in his instant Rule 56 motion freely admits and "***does not dispute that the right at issue is clearly established***" (See Court Doc. No. 42 page 8). By Officer Rievley's own admission, the rights at issue as presented by Constable Denton are acknowledged and undisputed by Officer Rievley as "*established*". Therefore, this is an undisputed fact. It is abundantly clear that the contours of the right to **not** be arrested without a warrant inside the home absent consent or exigent circumstances is more than sufficiently clear that a reasonable official would understand that what he is doing violates the right to not be subject to an unlawful search and seizure.

Therefore, it is also clearly evident that other officers of reasonable competence, even including the Plaintiff himself, a former seasoned law enforcement officer, Constable *emeritus,*

Roy L. Denton, and facing the same situations could **agree** that based upon all facts on this issue, both disputed and undisputed, reveal that Officer Rievley could have easily recognized that there was no probable cause, no arrest warrant, no search warrant, no exigency justifying his not obtaining any such warrant, or assisting the alleged victim in obtaining an arrest warrant. Clearly, had Officer Rievley had investigated **ALL** available information as mandated upon him to do pursuant to existing law, in order to comply with the bare minimum requirements to establish probable cause, he would have found that there was never a probable cause to arrest the plaintiff without a warrant. Moreover, even IF this court finds that there was probable cause, then there are numerous disputed facts peppered all within this pleading requiring that summary judgment as sought by the defendant must fail. Ironically, however, it appears that with all the clear, disputed facts, presented herein may give rise to the denial to the plaintiff's pending motion before this honorable court as well. The evidence supports that summary judgment simply is not appropriate at this stage for either party and therefore, coupled with all the ***contradictions*** of sworn testimony, with all the disputed facts as asserted and shown with citations to support each and every contention of Constable Denton, it is clear as a matter of law that this case should proceed to a trial by a jury so as to not create a manifest injustice.

It is beyond the imagination for Officer Rievley to ransack a home, take personal belongings as if they belonged to Brandon Denton and then turn around and fail to even give them to him. Under any definition of law, a color of law authority **DOES NOT** give any person the right to enter another man's home ***without*** probable cause, warrant, consent or exigent circumstances, and to haul a person off to jail, steal his possessions from his home and have the entire task completed in less that 14 minutes and then have the gall to somehow abuse the doctrine of qualified immunity to absolve him of his abuse of power.

"A government official enjoys qualified immunity if his or her conduct does not violate clearly established federal "statutory or constitutional rights of which a reasonable person would have known." ***Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982).*** The defendant in this instant case not only violated clearly established law, the defendant even admits and concedes to this fact. "The proper inquiry is not whether the claimed right existed in the abstract, but whether a reasonable official would have known that the challenged conduct violated that right." ***Anderson v. Creighton, 483 U.S. 635, 640, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987).***

Restated, Officer Rievley claims to have been "*extensively trained*" in Tennessee Domestic Law situations. However, this is simply not a true statement and as such, stands in strong dispute. Not only is Officer Rievley not "*extensively trained*" as he testifies, he is actually either under-trained or does not possess the mental faculties to understand the laws he is entrusted to enforce. Clearly, the Defendant Steve Rievley knew or should have known that his actions were unlawful. Had he possessed the "*extensive training*" he testifies to have possessed in 2006 he would have known, or at least, should have known, that his actions were clearly not in accordance with law. The defendant also consistently states that the "*preferred response is arrest*". In fact, just the opposite is true. Officer Rievley simply was not acting in accordance to Tennessee Code Annotated 36-3-619. (See attached Exhibit 3).

As supported by the evidence, the Plaintiff Roy L. Denton simply was not, nor never even accused of being a primary aggressor. In fact, Sgt. Dustin Denton was determined to be the primary aggressor by Officer Rievley himself. However, Officer Rievley arrived at such a conclusion and wrongfully established something besides probable cause in his mind. Any reasonable person in the same situation would have known that in the least a person would have

to investigate at least more than a single question as to the plaintiff. Officer Rievley should have simply obtained a warrant so as to comply with the Fourth Amendment. "It is true that there have been some exceptions to the warrant requirement." ***Chimel v. California, (1969); Terry v. Ohio, 392 U.S. 1 (1968); McDonald v. United States, 335 U.S. 451 (1948); Carroll v. United States, 267 U.S. 132 (1925).*** "But those exceptions are few in number and carefully delineated", ***Katz***, *supra*, ***at 357***; "[i]n general, they serve the legitimate needs of law enforcement officers to protect their own well-being and preserve evidence from destruction. Even while carving out those exceptions, ***the Court has reaffirmed the principle that the "police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure," Terry v. Ohio, supra, at 20; Chimel v. California, supra, at 762***. (*emphasis added by plaintiff*). As the Court said in ***Camara v. Municipal Court, 387 U.S. 523, 534-535 (1967):***

- "In cases in which the Fourth Amendment requires that a warrant to search be obtained, `probable cause' is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness. . . . In determining whether a particular inspection is reasonable - and thus in determining whether there is probable cause to issue a warrant for that inspection - the need for the inspection must be weighed in terms of these reasonable goals of code enforcement."

Officer Rievley relies upon the doctrine of qualified immunity for his alleged violation of the plaintiff's Fourth Amendment right. Therefore, the question, then, is whether the belief of the Officer Rievley that he had probable cause to arrest Plaintiff Roy L. Denton was objectively reasonable. "The Court cannot weigh the evidence, judge the credibility of witnesses, *or determine the truth of any matter in dispute*." **Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986).** "The question of whether an official is protected by qualified immunity does not turn on the subjective good faith of the official; rather, it turns on the 'objective legal reasonableness' of his actions, assessed in light of the legal rules that were 'clearly established' at

the time the actions were taken." ***O'Brien v. City of Grand Rapids, 23 F.3d 990, 999 (6th Cir.1994).*** "The relevant inquiry here is whether the facts are such that an objectively reasonable officer confronted with the same circumstances could reasonably believe that exigent circumstances existed so as to justify the warrantless entry into Plaintiff's house." ***Dickerson v. McClellan, 101 F.3d 1151, 1158 (6th Cir.1998).***

"Under this test, an official will be immune "if officers of reasonable competence could disagree" on whether the conduct violated the plaintiff's rights." ***Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L.Ed.2d 271 (1986).***

In light of all the foregoing, and for all the reasons stated within and due to the vast array of contradictions, disputes and other arguments, the Plaintiff respectfully moves the court to deny the defendant's motion for summary judgment as a matter of law and as the ends of justice so requires.

Respectfully submitted, this 17th day of September, 2008.

BY: _____

Constable Roy L. Denton, *emeritus*
2457 Airport Thruway PMB 106
Columbus, GA 31904
706-221-2918

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 17th day of Sept., 2008.

_____
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

This is to certify that this photograph is a true picture of the Plaintiff Roy L. Denton standing at the front door of his home located at 120 6th Ave., Dayton, TN. Notice is given as to the location of the door knob, how the door opens to the inside and how there is a screen storm door affixed to the door. This picture was taken on or about 1st of September, 2006.

EX. 1

Dayton Police Dept. Family Violence Investigation Form

Officer Ptl Steve Rievley Date of Complaint 9/9/06 Complaint # 06-08297B
Dispatch Time 0139 (Comp at Jail) Arrival Time 0140 (Jail) 0213 (Home) Zone N
Location of Incident 120 6th Ave 10- 86 TCA Offense Code 39-13-111 ORI # 0720100
If children present during incident, list full name and ages:

Victim Information: Male ☒ Female ☐
Name Denton, Brandon Scott
DOB: 10/31/85 Resident ☒ Non Resident ☐
Race: White ☒ Black ☐ Indian ☐ Asian ☐
Address 120 6th Ave Dayton, TN 37321
Phone 423- Alternate #
Employer Taco Bell Dayton, TN
Employer Phone

Suspect Information: Male ☒ Female ☐
Name Denton, Dustin Bill
DOB: 4/24/82 Resident ☒ Non Resident ☐
Race: White ☒ Black ☐ Indian ☐ Asian ☐
Address 120 6th Ave Dayton, TN 37321
Phone 423-570-9653
Employer U.S. Army
Employer Phone

Source of Police Referral
91 1 Call From Residence ☐ 91 1 Call From Elsewhere ☐ Other Source ☒ Callers Name Denton, Brandon Scott

Relationship Between Suspect & Victim

						Code
SE Spouse	P A Parent	SB Sibling	CH Child	GP Grandparent	GC Grandchild	
H. In-Law	S P Step Parent	SC Stepchild	SS Step Sibling	XS Ex-spouse	BG B Boyfriend/Gril friend	SB

Length of Relationship: Years 20 Months 11

Victim Demeanor

☐ Angry		☐ Intoxicated	
☐ Crying		☐ Complaining of Pain	
☐ Hysterical		☒ Red Marks	
☒ Afraid		☐ Minor Cuts	
☒ Nervous		☐ Bruises	
☐ Calm		☒ Abrasions	
☐ Threatening			

Suspect Demeanor

☒ Angry		☒ Intoxicated	
☐ Crying		☐ Complaining of Pain	
☐ Hysterical		☐ Red Marks	
☐ Afraid		☐ Minor Cuts	
☐ Nervous		☐ Bruises	
☐ Calm		☐ Abrasions	
☐ Threatening			

Medical Treatment
☒ None ☐ Will Seek Own Doctor EMT ☐ Hospital ☐ Refused Medical Aid

Victim Pregnant
☐ Yes ☒ No ☐ Over 6 Months

Medical Release
Victim Signature:

Information From Victim
Excited utterances or quotes from victim: Stated that when he came home from work that his brother, Dustin, started hitting him. He stated that Dustin was drunk and upset because he would not let him talk to a female friend of his. Brandon stated that while Dustin was hitting him their father, Roy, grabbed him around the neck, strangling him. Brandon did have marks consistent with his statement.

Evidence Information
Evidence Collected From: ☐ Crime Scene ☐ Hospital ☐ Other
Photos Taken: ☒ Yes ☐ No
Taken By: Ptl Steve Rievley
Weapon Used ☐ Yes ☒ No
Type of Weapon
Serial Number
Self Defense Request ☐ Yes ☒ No
Signature

Victim Advised to Contact DV Investigator For Follow Up Photos and Shelter Related Info: ☐ Yes ☒ No

Prior History of Domestic Violence
☒ Yes ☐ No If *Yes, were Police Called Out* ☐ Yes ☒ No
Number of Prior Incidents:

EX. 2

Dayton Police Dept. Family Violence Lethality Assessment Form

Lethality Assessment

Has the suspect used a weapon against you in the past? ☐ Yes ☒ No

If Yes, what weapon? _____

Has the suspect ever been arrested for assaulting you or another household or family member? ☐ Yes ☒ No

When? _____ Where? _____ Active Order of Protection ☐ Yes ☒ No

Have you ever been treated by a doctor or hospitalized for injuries inflicted by this suspect? ☐ Yes ☒ No

Has the suspect been following, threatening or stalking you? ☐ Yes ☒ No

Victim Assistance

Explained to victim and assailant that the arrest decision was made by the officer, not by the victim ☒ Yes ☐ No

Explained the bonding process to the victim & assailant of a minimum of 12 hours or arraignment ☒ Yes ☐ No

Explained to victim that a condition of the bond is the assailant will not be allowed to contact victim, if contact occurs after bonding, victim should notify the Police Department ☒ Yes ☐ No

Victim was offered transportation to a safe place ☒ Yes ☐ No

Aggressor was asked to leave the premises ☐ Yes ☒ No

Was aggressor arrested ☒ Yes ☐ No

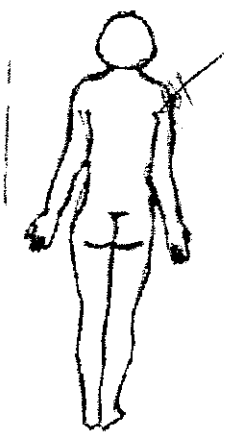
Strangulation Symptoms

☐ Neck Pain ☐ Sore Throat ☒ Scratch Marks ☐ Tiny Red Spots ☐ Red Linear Marks or Bruising

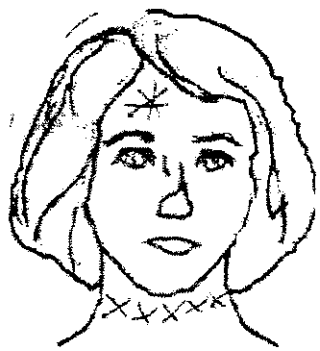
☐ Rope or Cord Burns ☐ Raspy Voice ☐ Difficult Swallowing ☐ Lightheaded ☐ Nausea or Vomiting

Body Diagram

Front



Back



Face

Describe Injury

Large abrasion on forehead, strangulation marks on neck, abrasions on both arms.

Officers Description of the Scene

What did you see (broken furniture, other property damage, signs of a struggle, blood, other physical evidence.)

I found the victim's eye glasses on the front porch, broken.

Possible Witness to the Assault

Name _____ Relationship to parties involved _____

Address Phone Number

36-3-619. Officer response — Primary aggressor — Factors — Reports — Notice to victim of legal rights. —

(a) If 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 felony, or was committed within or without the presence of the officer, the preferred response of the officer is arrest.

(b) 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.

(c) To determine who is the primary aggressor, the officer shall consider:

(1) The history of domestic abuse between the parties;

(2) The relative severity of the injuries inflicted on each person;

(3) Evidence from the persons involved in the domestic abuse;

(4) The likelihood of future injury to each person;

(5) Whether one (1) of the persons acted in self-defense; and

(6) Evidence from witnesses of the domestic abuse.

(d) A law enforcement officer shall not:

(1) Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel; or

(2) Base the decision of whether to arrest on:

(A) The consent or request of the victim; or

(B) The officer's perception of the willingness of the victim or of a witness to the domestic abuse to testify or participate in a judicial proceeding.

(e) When a law enforcement officer investigates an allegation that domestic abuse occurred, the officer shall make a complete report and file the report with the officer's supervisor in a manner that will permit data on domestic abuse cases to be compiled. If a law enforcement officer decides not to make an arrest or decides to arrest two (2) or more parties, the officer shall include in the report the grounds for not arresting anyone or for arresting two (2) or more parties.

(f) Every month, the officer's supervisor shall forward the compiled data on domestic abuse cases to the administrative director of the courts.

Plaintiff's Ex. 3

(g) When a law enforcement officer responds to a domestic abuse call, the officer shall:

(1) Offer to transport the victim to a place of safety, such as a shelter or similar location or the residence of a friend or relative, unless it is impracticable for the officer to transport the victim, in which case the officer shall offer to arrange for transportation as soon as practicable;

(2) Advise the victim of a shelter or other service in the community; and

(3) Give the victim notice of the legal rights available by giving the victim a copy of the following statement:

Click to view form.

(4) Offer to transport the victim to the location where arrest warrants are issued in that city or county and assist the victim in obtaining an arrest warrant against the alleged abuser.

[Acts 1995, ch. 507, § 5; 1996, ch. 684, §§ 3, 4.]