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 SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT FOR FALSE ARREST

Comes the Plaintiff, Roy L. Denton, *pro se*, (hereinafter "Mr. Denton") pursuant to Rule 56 of the *Federal Rules of Civil Procedure*, and hereby moves this honorable court for partial summary judgment against the Defendant Steve Rievley (hereinafter "Officer Rievley") upon the grounds that there is newly discovered evidence that establishes genuine issues as to the material facts that are in dispute concerning Mr. Denton's claim for "false arrest" and that the applicable law, when applied to those disputed facts, entitles Mr. Denton to a judgment as a matter of law.

In support hereof, Mr. Denton relies upon the pleadings in this matter; Exhibit 3, the written statement of Jessica Carbajal attached to Court Doc. No. 58; Exhibit A-4, the signed questionnaire statement of Jessica Carbajal dated July 2, 2009 attached to Court Doc. No. 58; Exhibit A, the undated, unattested handwritten statement of Brandon Denton attached to Court Doc. No. 61 and Exhibit A, the Affidavit of Roy L. Denton attached to this motion.

STATEMENT OF THE CASE

Plaintiff Roy L. Denton filed a *pro se* law suit against Steve Rievley, a police officer, alleging violations of 42 U.S.C. § 1983 and various state tort claims. Mr. Denton filed a motion for partial summary judgment, which the court denied. The court also denied Mr. Denton's motion for reconsideration, which he did not appeal. Officer Rievley then filed a motion for summary judgment, which the court granted in part and denied in part. Ruling on Officer Rievley's motion for summary judgment, based upon the evidence exclusive of the "newly discovered" evidence presented now, the court found that Officer Rievley had probable cause to arrest Mr. Denton, but that he was not entitled to summary judgment on Denton's warrantless arrest claim because, viewing the facts in the light most favorable to Denton, Rievley had arrested Denton inside his home without a warrant in violation of *Payton v. New York*, 445 U.S. 573 (1980). The court found that Officer Rievley was not entitled to qualified immunity as a matter of law because a reasonable officer would have known of clearly established law prohibiting warrantless in-home arrests. This court also found that Mr. Denton "maintained a claim" for unlawful entry and search of his home, but granted Rievley summary judgment as to Mr. Denton's excessive force and assault claims. Officer Rievley appealed the denial of his motion for summary judgment on the warrantless arrest and qualified immunity claims and the determination that Denton "maintained a claim" for the unlawful entry and search of his home. On November 13, 2009, the *United States Court of Appeals for the Sixth Circuit* **AFFIRMED** this courts decisions.

STATEMENT OF THE FACTS ~~and~~ STANDARD OF REVIEW

Mr. Denton incorporates and restates the standard of review and his statement of the ***old*** facts relevant to his claim of false arrest as filed with this court as Court Doc. No. 44; and the

additional ***new*** facts herein stated based on his discovery of newly disclosed evidence that was not disclosed to him during his opposition to Officer Rievley's summary judgment motion (*see Court Doc. No. 42*). Mr. Denton asserts that during that time frame, he merely knew of the existence of some sort of written statement of Jessica Carbajal, but Officer Rievley, by and through his counsel, continuously neglected to provide a copy of the statement in which they relied, but failed to disclose absent a command of this court to provide a copy of what it was that they relied upon yet withheld from the plaintiff. A subpoena lawfully issued and served upon Ronald D. Wells, attorney for Officer Rievley, commanding that he provide Mr. Denton, among other things, a copy of the Jessica Carbajal statement where Denton received a copy of the statement two days ***after*** the entry of this court's memorandum of opinion of Rievley's summary judgment motion.

Additionally, Mr. Denton never even knew of the existence of any sort of handwritten statement of Brandon Denton despite his requests for ALL documents and tangible material. In fact, this "newly discovered" evidence is not mentioned one single time in almost three years of litigation whereas disclosure was subsequently disclosed in opposition to Mr. Denton's recently denied Rule 60 motion to reconsider (see *Court Doc. No. 57*).

Mr. Denton reserves any rights he may have to amend this pleading to conform to any procedure or rule that he as a "***non-lawyer***" may have overlooked. For the sake of avoiding undue burden and redundancy on this matter placed upon this honorable court, it is Mr. Denton's intent and desire to not insert a rehashing and the restating of facts based upon purported evidence of "***then***" as to how the facts have almost completely changed due to the newly discovered evidence. Virtually every fact associated with Mr. Denton's claim of "false arrest" due to a lack of probable cause indicates other probabilities as well as now establishes many

genuine issues of disputed facts requiring his claim of false arrest to prevail and proceed to trial for a jury to decide the disputed facts as to the questions of "probable cause".

MEMORANDUM OF LAW AND ARGUMENT

- Officer Steve Rievley **DID NOT** have probable cause to arrest the Plaintiff on a charge of domestic assault and there are genuine disputed facts to support a claim of false arrest.

With respect to Plaintiff Roy L. Denton'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"***. *(emphasis added).* Therefore, Officer Rievley as a police officer and as a matter of established law, had a duty to properly investigate ***all facts and circumstances*** **before** concluding that he had probable cause

to arrest Mr. Denton for domestic assault.

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***. With the newly discovered evidence that has just now come to light, a simple reading of the newly discovered "**handwritten statement of Brandon Denton**" *(see Court Doc. No. 61-1)* can give rise to speculation as to "why" Officer Rievley withheld even the existence of this rather important piece of evidence from Mr. Denton. In the bare minimum, this newly discovered handwritten statement of Brandon Denton, intertwined with the "myriad" allegations given to Officer Rievley necessitated further investigation into all the facts and probabilities by Officer Rievley before he could even rationalized a probable cause determination to make any arrest of any person, specifically, Mr. Denton for ***domestic*** assault.

In a memorandum of this court, this court wrote:

- "Defendant arrested Plaintiff for domestic assault in violation of Tenn. Code Ann. § 39-13-111. The statute prohibits people from committing an assault against a person in that person's family or household. The relevant definition of assault is a person who "[i]ntentionally, knowingly or recklessly causes bodily injury to another." *Id.* § 39-13-101(a)(1). *(see Court Doc. 51, pg. 6)*

However, to further expound upon this honorable court's relevant definition of "assault" the statute additionally prohibits people from committing an assault against a person who "[i]ntentionally or knowingly causes another to ***reasonably fear*** imminent bodily injury" *Id.* §

39-13-101(a)(2). Therefore, Officer Rievley who had procured the written statement of Brandon Denton who he claims Brandon gave to him while they were at the jail, was completely incompetent in not investigating anything while at Mr. Denton's home without a warrant.

Evidently, just as much as Officer Rievley claimed that probable cause existed to arrest Mr. Denton, he for some reason neglected to investigate the step-moms participation in the alleged assault upon Brandon Denton. An assault where Brandon apparently alleged in his own handwritten statement to Officer Rievley that his "***step mom got in his face, cussed him and broke his eyeglasses***". Could the act of "getting in someone's face, cussing them and breaking their eyeglasses" be considered a "reasonable fear of bodily injury" as defined in § 39-13-101(a)(2)? After all, according to this newly discovered information it is very clear that "***multiple***" people were alleged to have done "***multiple***" things. In spite of this, Officer Rievley neglected to investigate or comply with the mandates in *Tenn. Code Annotated* 36-3-619.

Another overriding question remains as to "why" Officer Rievley didn't even speak to the "step mom" and make a probable cause determination? After all, in spite of Dustin being determined by Rievley to be the "***primary aggressor***", Officer Rievley arrested Roy Denton as well, based predominantly upon his seeing a broken pair of eyeglasses on the front porch. Eyeglasses that Mr. Rievley has stated numerous times to this court that Dustin Denton had broken with no mention as to Brandon's "***dad and step mom***" breaking them. Another paramount question remains as to "how" Officer Officer Rievley determined that Dustin broke the eyeglasses when according to his own testimony, he never investigated anything? The record shows that Rievley only asked Mr. Denton only one question and that Dustin wasn't asked anything. The record also shows that Rievley never investigated any witness accounts, any self defense accounts or any other accounts or probabilities that necessitated further inquiry.

The facts show that at that point in time Officer Rievley spent an extensive amount of time conducting a one sided investigation as to what Brandon had to say, but never even bothered to ask any person if Brandon Denton even resided there. The evidence as Rievley has presented for almost three years to this court now stands in direct conflict with the newly discovered handwritten statement of the alleged victim that Rievley himself disclosed. Such disparity now forces the issue of probable cause to be determined by a reasonable juror, thus the issues surrounding the alleged false arrest have merit where genuine disputed facts create other probabilities and not just a single probability.

Officer Rievley was also mandated by law to have investigated further especially since the newly discovered information reveals that Jessica Carbajal never corroborated anything since she denies she ever gave Officer Rievley a written statement ***prior*** to his arresting Mr. Denton without properly determining the existence of probable cause to arrest Denton. Had this newly discovered evidence been disclosed to the plaintiff during the defendant's summary judgment motion, this court clearly may have determined and found differently. Officer Rievley's actions were not reasonable and his hasty determination to arrest Denton without a warrant ignores established mandates for probable cause determinations that have been well settled by the courts for years. Such conduct as alleged in the plaintiff's claim establishes a bona fide claim for false arrest and as such, is a violation of Mr. Denton's constitutional rights as alleged in his Complaint and should not be dismissed.

Under the Fourth Amendment, any arrest requires probable cause. *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Gardenhire v. Schubert,* 205 F.3d 303, 315 (6th Cir. 2000). "In order for a wrongful arrest claim to succeed under § 1983, a plaintiff must prove that the police lacked probable cause. "*Parsons v. City of Pontiac*, 533 F.3d 492, 500 (6th Cir. 2008) (quoting *Fridley*

v. Horrighs, 291 F.3d 867, 872 (6th Cir. 2002)).

"The judicial determination of probable cause involves evaluating the historical facts leading up to the arrest, and whether those facts, viewed by an 'objectively reasonable police officer,' satisfy the legal standard of probable cause." *United States v. Moncivais*, 401 F.3d 751, 756 (6th Cir. 2005) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)) (internal citation and quotation marks omitted). The probable cause standard is a "no technical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Maryland v. Pringle*, 540 U. S. 366, 370 (2003) (internal quotation marks omitted) (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983)).

"A police officer has probable cause only when he discovers *reasonably reliable information* that the suspect has committed a crime." *Parsons*, 533 F.3d at 500 (emphasis in *Parsons*) (quoting *Gardenhire*, 205 F.3d at 318); *see also Fridley*, 291 F.3d at 827 (quoting *Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979)) ("A police officer determines the existence of probable cause by examining the facts and circumstances within his knowledge that are sufficient to inform 'a prudent person, or one of reasonable caution,' that the suspect 'has committed, is committing, or is about to commit an offense.'"). ***"[I]n obtaining such reliable information, an officer cannot look only at the evidence of guilt while ignoring all exculpatory evidence. Rather, the officer must consider the totality of the circumstances, recognizing both the inculpatory and exculpatory evidence, before determining if he has probable cause to make an arrest."*** *Parsons*, 533 F.3d at 500 (quoting *Gardenhire*, 205 F.3d at 318). *(emphasis added)*

The 6th Circuit Court stated in *Gardenhire* ***"that a bare allegation of criminal wrongdoing, although possibly justifying a brief investigatory detention, was insufficient by itself to establish probable cause that the suspect had committed a crime."*** *Id.* at 317. (*emphasis*

added). "Police officers may not 'make hasty, unsubstantiated arrests with impunity,' nor 'simply turn a blind eye toward potentially exculpatory evidence known to them in an effort to pin a crime on someone.'" *Id.* at 501 (quoting *Ahlers v. Schebil*, 188 F.3d 365, 371-72 (6th Cir. 1999)). In determining the existence of probable cause, the Court may "consider only the information possessed by the arresting officer at the time of the arrest." *Id.* at 501 (quoting *Harris v. Bornhorst*, 513 F.3d 503, 511 (6th Cir. 2008)). The existence, *vel non*, of probable cause is a jury question, "unless there is only one reasonable determination possible." *Id.* (quoting *Fridley*, 291 F.3d at 872). The facts in this case at bar is Officer Rievley totally disregarded any other probabilities surrounding Brandon's allegations and arrested Mr. Denton without probable cause.

The newly discovered handwritten statement changes everything. From the very beginning of this litigation, Officer Rievley's entire defense has been one built upon statements that he said Brandon made to him at the jail. Injuries he states he saw on Brandon at the jail. The asserted corroboration by a co-worker by the name of Jessica Carbajal who Officer Rievley claimed came down to the jail that night to give a written statement *(see Court Doc. 58-1 pg. 4 of 6)*. In light of this newly discovered evidence in the form of Brandon Denton's handwritten statement, along with Jessica Carbajal's questionnaire *(see Court Doc. 58-1 pg. 4 of 6)*, each document is asserted by Officer Rievley to had been written the same night ***prior*** to Mr. Denton's arrest. Based upon his assertion, he has stated to this court that he had corroboration from Jessica who he avers came down to the jail to give her written statement which he relied upon to determine probable cause when the facts as Jessica now states show that Jessica never came to the jail that night at all. It is obviously clear that this newly discovered of the handwritten statement *Id* and Jessica's signed questionnaire, *Id* that has been newly discovered, once again strengthens the point of law that a genuine issue of a disputed fact exists as to the question of

probable cause.

If one examines this newly found evidence of Brandon Denton's handwritten statement *Id*, it actually shows a statement consisting of what appears to be two separate proclamations within his handwritten statement. Upon the examination by a reasonable and objective mind the handwritten statement *Id.* reads:

- My brother called me at work asking do I have a ride home I said yes when I got home my brother [sic] started cussing me my dad and step mom was cussing me also they went back inside and that's when I ran from my house to the jail.

Examination of Brandon's above excerpted handwritten statement is directly on point as to everything evidenced in this record from the beginning. In sum, Dustin calls Taco Bell and inquires about whether Brandon needed a ride. Brandon got off work at midnight. Jessica Carbajal brings Brandon to his dad's house and drops him off shortly after midnight. Dusty became argumentative and then started hitting Brandon. His dad and step mom are "cussing" at him then went back inside. Brandon then ran to the jail. Based upon this excerpt there unmistakably is no possible existence of probable cause to arrest Mr. Denton for domestic assault. From these handwritten words Brandon only states his "***dad and step mom were cussing***" him. Any alleged profanity on private property is clearly not relevant to this matter and unquestionably does not establish probable cause for the unlawful arrest claimed in this matter.

Upon continued examination, the handwritten statement reads:

- **Dad also started pushing and hitting me my step mom cused [sic] me and got in my face they broke my glases [sic]. Dusty broke my glasses Dusty hit me in the head causing a red mark Dad put the places on my neck by stranling [sic] me.**

Noticeably, in reading this portion of the handwritten statement, then Brandon's step mom [Kimberly] could have just as easily been arrested for domestic assault as well because the handwritten statement says, "***they broke my glasses***". Amazingly, the very next words are "***Dusty***

broke my glasses". Even if the "step mom" was cussing Brandon, as he wrote in his handwritten statement, then perhaps Officer Rievley could have determined that the loud cussing words could be construed as a threat as defined by Tennessee statute 39-13-101(a)(2) *Id* and determining that he had probable cause to had arrested Mr. Denton's wife for ***domestic*** assault. In any event, at that point in time Officer Rievley ***was aware of several probabilities but ignored them*** and neglected to investigate all facts and probabilities known to him at that time. Clearly, a genuine issue of fact is established that based upon these other probabilities ignored by Mr. Rievley, probable cause did not exist to support the arrest of Mr. Denton for ***domestic*** assault.

In this newly discovered handwritten statement, Brandon states that his dad, Mr. Denton "***started pushing and hitting me my step mom cussed me and got in my face they broke my glasses***" *Id.* Clearly, it is evidenced that "multiple" people were alleged to have been involved in some sort of incident. Accordingly, under Tennessee Domestic Violence statutes Mr. Rievley was required to investigate insofar as to determine who the primary aggressor was. In this case, Rievley somehow determined that Dustin was the primary aggressor while at the jail and without considering any other probabilities. Was Brandon stealing hub caps? Was he trespassing and refused to leave Mr. Denton's property? Was he in an uncontrollable rage and someone else acted in self defense? Was Roy Denton even his father? After all, Officer Rievley never asked and as he states, he doesn't know Roy L. Denton or what he looked like. These are but a few simple probabilities that Rievley could have inquired about, but he neglected to do so. Not only did Officer Rievley neglect to investigate adequately to determine probable cause, the facts grow more clearer that considering the bringing of the entire third shift police department and one deputy sheriff along with the haste of arresting Mr. Denton and did it all within 4 minutes of his arrival should be a question for the jury to address the reasonableness of his actions.

Moreover, a fact that Mr. Rievley states himself as the "***deciding factor***" in his decision to arrest Mr. Denton was "**Brandon's broken glasses**" that he states he saw on the front porch. *Id.* Restated, at all times within this entire record and every piece of testimony and representation to this court is stated over and over unequivocally that Brandon's brother ***Dustin broke Brandon's glasses***. However, in Brandon's very own written words he states that THEY broke his glasses. In his statement, **THEY = his dad and step mom**. How is it that Brandon stated to Mr. Rievley that **THEY broke his glasses** yet Mr. Rievley simply disregarded it. Why is that? To further cloud the issues, Brandon in his very next set of words states, "**Dusty broke my glasses**".

For the record, Mr. Denton made several attempts to get a copy of the written statement of Jessica Carbajal from attorney Ronald Wells but once again, Mr. Wells refused to return telephone calls or effectively communicate with Mr. Denton. In order to get a copy of the statement, Mr. Denton was forced to have a subpoena issued and served upon Mr. Wells for among other requests, the statement Rievley claimed to had been written by Jessica Carbajal "that night at the jail" prior to the arrest of Mr. Denton *(see Court Doc. No. 53).*

On July 2, 2009, Mr. Denton, after weeks of diligently trying to locate Jessica Carbajal, he finally found out where she could be located. Mr. Denton along with a process server (*his wife, Kim*) and served Jessica with a lawfully issued subpoena which was in the form of a "***questionnaire***". Jessica opted to talk with Mr. Denton at that point in time and freely answered the questionnaire and signed in front of Mr. Denton and his wife (*see Court Doc. 58-1, Ex. 4*).

This "***new information questionnaire***" *Id* completely contradicts Mr. Rievley's sworn submissions to this court that Jessica "**arrived at the jail to make a statement**" (*see Court Doc. 58-1, Ex. 5*). This newly discovered information disputes what Mr. Rievley has stated that Jessica

said and did that night. It further disputes Rievley's alleged reliance upon what "**he says**" Jessica did when Jessica herself says she didn't do it. This contradiction creates a genuine disputed fact that Carbajal and should be an issue for a jury to decide. Furthermore, this newly discovered information was not known to Mr. Denton at the summary judgment phase. Certainly, Denton knew of some sort of "written statement" that Officer Rievley said she had came down to the jail that night and gave him, but several attempts to get a copy of it to see what such statement even said required a subpoena just to get it. At which time, this honorable court had already rendered it's decision on the defendant's summary judgment motion and then two days later on November 14, 2008 Mr. Wells finally complied with the subpoena. (*See Court Doc No. 53*)

The core question before this honorable court is whether the Defendant Steve Rievley had probable cause to arrest Mr. Denton for domestic assault. As a matter of law, this determination must be made based on the totality of the information that was known to Officer Rievley at the time of the arrest. Based upon the information that was known to Rievley at the time, the information he has included and disclosed in this case at bar in addition to the newly discovered information gives a strong presumption that a reasonable juror could indeed find that Rievley lacked probable cause to arrest Denton and the plaintiff's claim for False Arrest should not be dismissed but continue to trial.

Undoubtedly, the newly discovered information that the defendant neglected to timely disclose to the plaintiff and this court during the summary judgment and discovery phases of this matter, a compilation of these newly discovered facts disclosed by Rievley in the form of a handwritten statement of Brandon Denton in addition to the complete rebuttal of Rievley's statement in that Jessica Carbajal came to the jail that night and gave him a statement prior to Mr. Denton's arrest, whereas Jessica herself says she did not come to the jail that night to give

any written statement casts considerable doubt on the probable cause associated with the arrest.

As Mr. Rievley has stated to this court in his Answer, *Id.* That when he left the jail to drive to Mr. Denton's home he only had a "reasonable suspicion" that Denton committed the crime of domestic assault. The information that Officer Rievley knew at the point upon leaving the jail prior to his determination to arrest Mr. Denton is the following: (1) information from Brandon Denton that (a) Dustin was upset with Brandon, (b) Dustin threatened, cussed and hit Brandon ***and broke Brandon's eyeglasses***, (c) Brandon's father [Mr. Denton] hit, cussed, got in Brandon's face in a threatening manner, strangled ***and broke Brandon's eyeglasses***, and (d) Brandon's step-mom [Kimberly Denton] got in Brandon's face in a threatening manner, cussed Brandon ***and broke Bandon's eyeglasses***, and (2) Mr. Rievley had never been to the Denton residence before the date of arrest and that (a) he never had any prior dealings with Mr. Denton, (b) never personally knew Mr. Denton, (c) never casually knew Mr. Denton and (d) didn't know what Mr. Denton looked like. Officer Rievley had made no effort to investigate any of the information he had knowledge of once he arrived at Mr. Denton's home other than his asking Mr. Denton one single question before placing Denton under arrest and it will be shown to a reasonable juror even that single question is sworn to in two separate sworn affidavits yet both questions are completely different and contradictory.

Furthermore, the statutory language found at *Tenn. Code Annotated* 36-3-619 requires a police officer to conduct themselves in a specific manner. Officer Rievley, a police officer, by virtue of his own admissions, submissions and statements within this entire record reveal that he was not in compliance with *Tenn. Code Annotated* 36-3-619. (See Court Doc. No. 44-1, Exhibit 3, page 4 of 5 Michie's Legal Resources TCA 39-3-619). Accordingly, Mr. Rievley was required to conform his conduct with the state statute that is listed as one of the narrowly excepted

warrantless arrest exceptions set forth in *Tenn. Code Annotated* 40-7-103(a)(7) which states that:

- **(a) An officer may, without a warrant, arrest a person: (7) *Pursuant to § 36-3-619.***

Defendant Steve Rievley is a police officer who attended the Law Enforcement Training Academy at Cleveland State Community College where he graduated in 2002. (*See attached Exhibit A - Transcript Credit*). As part of his training, Mr. Rievley was trained for Domestic Violence Response methods applicable to standard Police Patrol Procedures for the "instruction in the methods of patrol response to domestic violence". The plaintiff, searching for guidance brings to this courts attention his assertion that Mr. Rievley was trained and was aware of the Tennessee Model Policy on Domestic Violence as part of his training which states in pertinent part:

> "The Tennessee Model Policy on Domestic Violence provides law enforcement administrators with the most current, complete and accurate information on the laws and procedures related to domestic violence calls for service." *See source and entire Model Policy at*: http://www.tcadsv.org/benchbook/2007%20benchbook/8LawEnfPolicy.pdf

Officer Rievley has presented to this court that he has been "extensively trained" in domestic violence law. Even without such alleged "extensive" training, he undoubtedly possessed knowledge of *Tenn. Code Annotated* 36-3-619 and without dispute, was trained and instructed on the policy, guidelines and mandates applicable to such said state statute pursuant to his training and knowledge of the Tennessee Model Policy on Domestic Violence, *supra*, due to his training police training at Cleveland State Community College. However, in this case at bar, Officer Rievley never "responded" directly to any domestic violence call. All Rievley did was answer a call of where a person walked into a jail and made various allegations. Absent any investigation, Officer Rievley could not possibly determined that a domestic assault had even occurred. This is once again substantiated by Officer Rievley himself where in his Answer he

stated that when he left the jail to drive to Mr. Denton's home, he "**only had a reasonable suspicion**". *Id.*

Furthermore, Officer Rievley arrested Mr. Denton for domestic assault in violation of *Tenn. Code Annotated* 39-13-111. Officer Rievley was never at any time dispatched to the Denton residence nor did he even respond to a domestic violence call. All Officer Rievley did was be summoned to the jail to speak with Brandon who happened to walk in off the street alleging an assault. Conclusively, under the same set of facts as Rievley presents and his neglect in inquiring or investigating other possible probabilities at that point in time, a complete lack of determining a self-defense determination, verification that Brandon even lived where he said he did, etc., then essentially all Officer Rievley responded to was nothing more than a complaint from a person alleging a misdemeanor assault that was "**not committed in his presence**".

Mr. Rievley's complete non-compliance with *Tenn. Code Annotated* 36-3-619, together with his complete neglect to follow the established policy and mandates as set forth in the Tennessee Model Policy on Domestic Violence, show that Mr. Rievley was not even acting under the authority of *Tenn. Code Annotated* 36-3-619 and therefore in a secondary aspect, the warrantless arrest was an unlawful false arrest in violation of the constitution. Rievley, as a police officer did not, nor does not have the authority to go to people's homes and arrest them for a misdemeanor assaults not committed in his presence. The exceptions as outlined in *Tenn. Code Annotated* 40-7-103(a) allow warrantless arrests for offenses not committed in an officers presence only under certain narrow exceptions. As stated herein, *Tenn. Code Annotated* 36-3-619 is an exception. However, Officer Rievley was negligent in following domestic violence law. Simply put, Brandon could have walked into the jail that night and accused anyone as being his father and the result would have been exactly the same. Officer Rievley would have drove to

whatever address Brandon gave him and within 4 minutes already placed an person under arrest without nothing more than asking one question to the person. Then as time goes by even that one scant question conflicts in two separate sworn affidavits.

As in this case at bar, Officer Rievley never so much as determined if Brandon even resided at 120 6th Ave., Dayton, TN which as the record clearly shows, Brandon hadn't lived there for years. Even to carry the scenario farther, without any investigation, inquiries or determining any other probabilities, Officer Rievley could, in his own mind, use the domestic violence law as a pretext to arrest without a warrant a 95 year old father where the 68 year old son walked into a jail and accused his father of "strangling" him. In spite of the son being 68 years old, moved away from his 95 year old father's home 50 years ago at the age of 18, the elderly 95 year old father by virtue of merely being "blood related" or "simply lived in the home 50 years ago" could be arrested and charged with domestic assault. Undoubtedly, not a jury in the nation would find such conduct reasonable on the part of the arresting officer especially in light of a total disregard to investigate or determine any other probabilities.

Undeniably, Mr. Rievley had a "reasonable suspicion" at best and he went to Mr. Denton's home to investigate. *Id.* But upon arrival, in spite of the assorted allegations he said that Brandon told him, including allegations in a handwritten statement that he had knowledge of at that point in time, Officer Rievley dropped the ball and the more he tries to recover it now, the more he fumbles it further from his reach. Officer Rievley knew based upon Brandon's own handwritten statement that "multiple" people were alleged to be involved in some sort of activity. In spite of all this, Officer Rievley jumps in his car without a warrant and drives to Mr. Denton's home for the purposes of arresting the political rival of his chief. If such were not the case, then under what rationale does he explain the failure to investigate and inquire into the many other

probabilities? Circumstantially, the events of that night leading up to an alleged False Arrest appear motivated by more than a police officer performing a public duty within the guidelines of the authority entrusted to him, not the authority in which he assumes upon himself. The contradictory statements, the non disclosure of evidence, the complete lack of investigating other probabilities along with a strong presumption of an abuse of police power should mandate that a jury determine the reasonableness of Officer Rievley's actions.

Officer Rievley knew based upon his training that arrest was the preferred response ONLY as to the "primary aggressor". Mr. Rievley, based upon only the information that Brandon gave him knew only at that time just one persons set of facts, being Brandon's account. Even based solely upon Brandon's account of the allegations, Officer Rievley possessed information that "***multiple***" people were alleged to had been involved. Based upon the newly discovered evidence of Brandon's handwritten statement and not the old evidence that Rievley has given to this court over the span of this litigation, it is without a dispute that Brandon, his brother, his father and his step mom was involved in some sort of activity as indicated in the handwritten statement of Brandon Denton. Additionally, all of this new evidence along with evidence that could perhaps had been found out by Mr. Denton being the affidavit of Brandon Denton himself would appear to require a jury to determine the questions of credibility as to Brandon, Jessica and Officer Rievley.

The only reasonable conclusion that can be inferred from the evidence, both old and newly discovered, even when viewed in the light most favorable to Mr. Rievley, is not susceptible to only one reasonable determination—that Mr. Rievley had probable cause to arrest Mr. Denton. Mr. Rievley certainly had information that was sufficient to support his questioning of Mr. Denton as a potential suspect based upon his "reasonable suspicion". But as this federal

circuit has made clear, probable cause for an arrest requires "reasonably reliable information that the suspect has committed a crime." *Gardenhire*, 205 F.3d at 318. Notably, the information Officer Rievley had at that point in time should have been investigated and conducted reasonably by a police officer to make a determination of probable cause absent only one clear probability. In this case, the only critical conclusion is that in this case at bar there was not, as the many disputed facts support, only one clear probability but many probabilities. A genuine disputed fact, actually, an array of genuine disputed facts, cloud this entire arrest of Mr. Denton that is alleged to have been a "false arrest" and a jury should determine whether probable cause existed, or not.

A reasonable jury could reasonably find that the information known to Mr. Rievley when he arrested Mr. Denton falls short of this probable-cause standard. As a matter of law, the plaintiff's claim of false arrest should not be dismissed. Furthermore, there is no dispute that Mr. Denton was arrested without a warrant at the time the police took him into custody at his home and that an arrest without probable cause is unconstitutional. See *Radvansky*, 395 F.3d at 310 ("It is beyond doubt that in 2001 the law was clearly established that, absent probable cause to believe that an offense had been committed, was being committed, or was about to be committed, officers may not arrest an individual.") (internal quotation marks omitted). The law was therefore clearly established that arrests without probable cause violated the constitution at the time of Mr. Denton's arrest in 2006.

Officer Rievley must bear the burden of showing that his arrest of Mr. Denton was objectively reasonable.

But with this honorable court viewing the evidence in the light most favorable to Officer Rievley, a jury could find that his actions were not objectively reasonable. All evidence clearly shows that Officer Rievley ignored exculpatory evidence in arresting a suspect as in *Gardenhire*,

205 F.3d at 318 (explaining that in obtaining the reasonably reliable information to satisfy probable cause, "an officer cannot look only at the evidence of guilt while ignoring all exculpatory evidence"), but that a genuine issue of material fact exists as to whether he possessed sufficient inculpatory evidence to reasonably believe that Mr. Denton had committed any crime.

THEREFORE, for the reasons herein stated, the Plaintiff Roy L. Denton prays that this honorable court grant this motion for partial summary judgment reversing it's decision dismissing his claim of False Arrest as alleged in his Complaint and allow plaintiff to maintain his claim of False Arrest to proceed to a trial so as to allow a jury to determine the various disputed facts and issues presented by in part, together with the new legal argument of the plaintiff based partly upon the newly discovered evidence that was not known to the plaintiff until on or about September 3, 2009, which shows the court that there was more than only one reasonable determination possible and that other probabilities were possible but not investigated.

Respectfully submitted, this 7th day of December, 2009.

BY: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 7th day of December, 2009.

Roy L. Denton

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