

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

FILED

2010 SEP 17 P 3:24

U.S. DISTRICT COURT
EASTERN DIST. TENN.

BY _____ DEPT. CLERK

ROY L. DENTON,
Plaintiff

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Case No. 1:07-cv-211

Chief Judge Curtis L. Collier

v.

STEVE RIEVLEY,
in his individual capacity
Defendant

JURY DEMAND

PLAINTIFF ROY L. DENTON'S
MOTION FOR *JUDGMENT NON OBSTANTE VEREDICTO* (JNOV)
OR IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL

May it please the Court:

Comes now, the *plaintiff*, Roy L. Denton, pursuant to **Rule 50 and Rule 59** of the Federal Rules of Civil Procedure, and renews his Rule 50 Motion JNOV, and moves this court to GRANT his instant motion as a matter of law, or in the alternative to GRANT his alternative Motion for New trial.

In support thereof, Mr. Denton, *your plaintiff*, respectfully submit's the following:

As to Mr. Denton's Rule 50 motion — in ruling on a **Rule 50(b) motion**, "the judge is not to weigh the evidence or appraise the credibility of witnesses, **but must view the evidence in the light most favorable to the nonmoving party** and draw legitimate inferences in its favor." *Mays v. Pioneer Lumber Corp.*, 502 F.2d 106, 107 (4th Cir. 1974). Judgment as a matter of law is proper only if the evidence "**supports only one reasonable conclusion as to the verdict.**" *Bank of Montreal v. Signet Bank*, 193 F.3d 818, 831 (4th Cir. 1999). (*emphasis added*)

The plaintiff also moves for a new trial pursuant to *Fed. R. Civ. P. 59(a)*. In considering a motion for a new trial, the district court **must** set aside the verdict and grant a new trial if **"(1) the verdict is against the clear weight of the evidence, or (2) is based upon evidence which is false, or (3) will result in a miscarriage of justice, even though there may be substantial evidence which would prevent the direction of a verdict."** *Cline v. Wal-Mart Stores, Inc.*, 144 F.3d 294, 301 (4th Cir.1998) (quoting *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors, Inc.*, 99 F.3d 587, 594 (4th Cir.1996)). In making this determination, "the district court may weigh the evidence and consider the credibility of the witnesses." *Conner v. Schrader-Bridgeport Int'l, Inc.*, 227 F.3d 179, 200 (4th Cir. 2000). (*emphasis added*)

Judgment as a matter of law is appropriate **when reasonable minds could not differ as to the conclusions to be drawn from the evidence.** *Morelock v. NCR Corp.*, 586 F.2d 1096, 1104-5 (6th Cir.1978). If the court determines that the evidence points so strongly **in favor of the movant that reasonable minds could not reach a different conclusion**, a judgment as a matter of law motion should be granted. *Id.* (*emphasis added*)

All reasonable inferences must be drawn in favor of the non-movant **"without weighing the credibility of witnesses or considering the weight of the evidence...."** *Gootee v. Kulp Indus., Inc.*, 712 F.2d 1057, 1062 (6th Cir.1983). (*emphasis added*)

By giving all witnesses and all the evidence "equal weight", the plaintiff must prevail because a jury of reasonable minds could only find one conclusion from all the evidence, even treated equally, that the defendant did enter Mr. Denton's home. All evidence concludes that Steve Rievley was a police officer on September 9, 2006, that he came to the plaintiff's home, that he entered the plaintiff's home, that he did so without a warrant, did so without consent and did so without any exigent circumstances.

The plaintiff testified at trial that the defendant came to his home on September 9, 2006. The defendant Rievley, along with his police officer witnesses Jason Woody, Brian Malone and Gerald Brewer testified to coming to Denton's home. The plaintiff testified at trial that he did not give consent to search his home, enter his home or even consent to be on his property. As the plaintiff testified at trial, he told all officers "to get off his _____ property, they didn't have a warrant". Amazingly, defendant Rievley, along with his police officer witnesses Jason Woody, Brian Malone and Gerald Brewer testified to the exact same thing Denton testified to. Defendant Rievley and his witnesses testified that when they arrived at the plaintiff's home, they admit that they were told by Denton to "get off his property and they didn't have a warrant". All for the defendant, including himself freely admitted that they came to the plaintiff's home without a warrant and each admitted they were instructed to leave the property and each testified freely that Mr. Denton did not give any of them consent to enter his home. The plaintiff, the defendant and all his witnesses freely testified and admitted that there were no exigent circumstances. However, the defendant and his witnesses all testified that despite not having a warrant, consent or exigent circumstances, they entered the home anyway.

It is totally clear that there was no other conclusion that could be drawn from a jury. When the plaintiff, defendant and every person who testified at trial stated under oath that Steve Rievley did arrive at Mr. Denton's home that he "entered" the home and as defendant freely admits, he searched the home for various belongings of personal property and took those items from the home. Once again, all testimony from each side clearly shows that defendant enter the home, searched the home, did not have a warrant to enter, did not have consent to enter and did not have exigent circumstances to enter, but they entered anyway. It was impossible to conclude otherwise.

The jury must have relied upon the jury instruction regarding “common authority” where somehow they felt Rievley had obtained some sort of “common authority” consent from Brandon Denton when Rievley called him while he was already inside the home searching it. However, even if such call was made, the Court in *Georgia v Randolph* renders any such common authority consent as trumped by the plaintiff, as he was home and was present and never consented to anything. Instead, police simply removed him from the scene, placed him in a police car and took him to jail, all in four minutes time.

A JNOV is appropriate only if the judge determines that no reasonable jury could have reached the given verdict. This is a classic textbook case for such motion.

The standard of review a district court must follow when evaluating a motion for judgment as a matter of law is well-settled. “The standard for granting JNOV requires a finding that ‘viewing the admissible evidence most favorable [sic] to the party opposing the motions, a reasonable trier of fact could draw only one conclusion.’” *Amer. & Foreign Ins. Co. v. Bolt*, 106 F.3d 155, 157 (6th Cir. 1997); *Hicks v. Frey*, 992 F.2d 1450, 1457 (6th Cir. 1993). JNOV is appropriate only where no reasonable juror could find for the nonmoving party. See *Manzer v. Diamond Shamrock Chem. Co.*, 29 F.3d 1078, 1081 (6th Cir. 1994). Thus, only if the court finds that the evidence so strongly favors a judgment for the movant may the court grant judgment as a matter of law. Judgment as a matter of law is proper only if the evidence “supports only one reasonable conclusion as to the verdict.” *Bank of Montreal v. Signet Bank*, 193 F.3d 818, 831 (4th Cir. 1999).

The prohibition of warrantless entries in the absence of consent or exigent circumstances was clearly enunciated by the United States Supreme Court in *Steagald v. United States*, 451 U.S. 204, 211 (1981), and *Payton v. New York*, 445 U.S. 573, 587 (1980).

In *Payton v. New York*, 445 U.S. 573, 576 (1980), the Supreme Court announced the rule that the Fourth Amendment prohibits "a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." The Court began with the premise that "(t)he 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" 445 U.S. at 573, quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972). As applied to a search for tangible items, the Court reasoned, this principle makes a warrantless entry of the home presumptively unreasonable. *Id.* at 586. The Court found that the same rule applies to a warrantless entry for the purpose of making an arrest. *Id.* at 588-599.

Exigency exists in a limited set of circumstances: "(1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent a suspect's escape, and (4) a risk of danger to the police or others." *Thacker v. Columbus*, 328 F.3d 244, 253 (6th Cir. 2003) (citing *United States v. Johnson*, 22 F.3d 674, 680 (6th Cir. 1994)). Here, the facts do not support the existence of any of the situations giving rise to exigency. In this entire litigation and at trial before the jury, "no exigency" was offered. In fact, the defendant, as well as each of his police officer witnesses, testified that in addition to them each and all not having a warrant, not having consent, they didn't have exigent circumstances either. *See transcript.*

Police officer and witness Brian Malone didn't even know what the word "**exigent**" meant. So any argument concerning exigency's scope is irrelevant. Simply put, the jury could not have considered to allow police to enter into a home without a warrant, consent of exigent circumstances. To do so is contrary to the supreme law of the land. Either that or a jury of 12 common lay persons just cast a unanimous verdict to "nullify" *Payton v. New York*, 445 U.S. 573, 576 (1980). Any reliance upon any phone call the defendant Rievley stated he made, he

never made. Mr. Rievley not only performed a contempt upon this court, but his false testimony given to the jury, relied upon by this court was false, he knew it was false and he knowingly obstructed justice in his giving such false statement under oath.

Payton is properly understood as safeguarding the privacy of a dwelling against a warrantless entry. This understanding of *Payton* is reinforced by the Court's repeated emphasis on the "overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic." 445 U.S. at 601. The Court explained that "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Id.* at 590.

Absolutely nothing in the juries reasoning, could suggest that an undisputed warrantless entry and search of the plaintiff's home, by a police officer, somehow is "okay". For the jury to remotely come up with the reasoning that the threshold of the door means nothing, and a police officer can simply step on into someone's home, search it, remove personal items, even arrest someone that is a guest in the home is, well, it just isn't even plausible rational thinking.

If that was the intent of the jury, then the jury just successfully invalidated *Payton v. New York*, 445 U.S. 573, 576 (1980), instantly removing that safeguarding of the privacy of a dwelling against a warrantless entry that we all used to enjoy. The jury in their verdict has also tossed aside every other case law encrusted beneath a mountain of case laws and doctrines that draw the firm line in the sand, or more appropriately, ***the firm line of a dwelling at the entrance, at the door, at the threshold.***

COMMON AUTHORITY

Third Party Consent - Apparent Authority:

"Consent is valid even if it turns out that the person consenting to the search did not

actually have joint access or control over the property, as long as the police reasonably believed that the person had authority to consent.” *Illinois v. Rodriguez*, 497 U.S. 177 (1990).

However, if the police knew or should have known that the person lacked the authority to grant consent for the search, any evidence found will be suppressed. In other words, police officers are allowed to make mistakes of fact concerning who has common authority, but cannot make mistakes of law. *Compare State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (consent search not valid when detective mistakenly believed that storage locker-landlord could give consent to enter) *with State v. Thompson*, 578 N.W.2d 734,740-41 (Minn. 1998) (consent search valid because it was reasonable for officers to believe that a person answering the door at 6 a.m. lived at the residence and could consent to a search.)

The law surrounding third party consent searches under the Fourth Amendment had been primarily governed by two U.S. Supreme Court cases.

The first is *United States v. Matlock*, 415 U.S. 164 (1974) which came in the wake of the Court’s reaffirmation of the principle that a search of property without a warrant or probable cause is valid under the Fourth Amendment if proper consent is voluntarily given. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973) (holding that when the State attempts to justify a search on the basis of consent, the Fourth Amendment requires that it “demonstrate that the consent was in fact voluntarily given”).

In *Matlock*, the Court faced the issue of whether a third party’s voluntary consent to a police search of the defendant’s house was “legally sufficient” to render the seized evidence admissible at the defendant’s criminal trial. *United States v. Matlock*, 415 U.S. 164, 166 (1974). There, police officers had arrested defendant Matlock in the front yard of his residence *Id.* and restrained him in a police squad car some distance away from the home *Id.* where he lived with

Mrs. Graff and her son. *Id.* Although the officers knew the defendant lived in the house, they did not ask him to consent to a search, and the defendant never refused to give consent prior to the search. *Id.* Instead, some of the officers approached the house and asked Mrs. Graff for her permission to search the house. *Id.* She voluntarily consented to a search of the home, including the bedroom she claimed to jointly occupy with the defendant. *Id.*

Clearly, in this instant case, the plaintiff Roy L. Denton was at his home. He testified that he ordered the defendant Steve Rievley, as well as every other police officer to “*get off my property, you don’t have a warrant*”. In *Matlock*, he *was arrested* in the front yard of *his residence* and police *restrained him in a police car* some distance away. In this instant case of *Denton v Rievley*, Denton *was arrested at his residence* and he *was restrained in a police car* some distance away. In fact, about a quarter mile away at the Rhea County jail. Moreover, the defendant and all his witnesses even testified to the exact same thing the plaintiff testified to.

Further, in *Matlock*, the police knew that Matlock lived at the residence but never asked him for consent to search the home, instead, police asked the lady he lived with at the residence, Mrs. Graff for “her” permission to search the home, including the bedroom “she” claimed she and Matlock shared.

As clearly set forth, in *Matlock*, he was arrested and taken away, **BUT**, he was never asked any question as to consenting to a search. The police simply arrested him and asked his “lady friend” for “her” permission to search, and they did.

In this case, Mr. Denton made it perfectly clear that he was not consenting to anything, no search, no entry not even consenting them [police] to even being there on his property without a warrant. Moreover, the defendant and all his witnesses even testified to the exact same thing the plaintiff testified to.

At the first and second trial, the defendant Steve Rievley testified under oath that he had “called Brandon on his cell phone” and talked with Brandon. That testimony turned out to be a false statement made under oath. [*See attach cell phone records of Steve Rievley B and C; see also attached Exhibit D, City recorder certification as to Rievley’s city issued phone; see also the Exhibit E, the Affidavit of Elizabeth Dickson Roderick where counsel states under oath that the phone records belong to Steve Rievley*]

Steve Rievley never called Brandon Denton as he swore to under oath and testified that he did. In fact, Steve Rievley never called anyone while he was at Mr. Denton’s home. At this instant, the plaintiff has already filed a Motion for Contempt against Steve Rievley for giving false statements under oath and obstructing justice.

Moreover, even IF Rievley had called some third party person, at some third party location, the provisions of *Matlock* clearly do not apply in this instant case. ***Mr. Denton was at his home and he refused and rejected any sort of consent for police to enter and search his home without a warrant.*** In fact, Rievley and every other police-witness that testified for him testified to that same thing. How can police admitting to not having a warrant, admitting not having consent and admitting not having exigent circumstances, all in violation of *Payton*, somehow be “the conclusion drawn be the exact opposite” with a jury? Absent “jury nullification”, it isn’t possible. Had the jury instruction that the plaintiff aggressively objected to simply been granted, then the warrantless search and entry would be essentially null at this point, given even a partial prevailing, is prevailing. The plaintiff, with proof from the defense provide only one clear conclusion, that defendant Rievley entered Mr. Denton’s home without a warrant, consent or exigent circumstances. Any instruction to the jury concerning some sort of claimed “common authority” from one person to search another persons home may be fine under different

set of facts. However, in this case and these facts that are undisputedly clear, common authority should have been more properly explained to the jury.

In any event, Rievley relying upon third party common authority by testifying under oath that he called Brandon and obtained his common authority consent goes directly against the grain of *Matlock*, as well as any other law remotely associated with the Fourth Amendment, consent, refusal of consent and “common authority claims”. Again, no such call was ever made.

The Court further observed, in what is widely considered to be the central holding of *Matlock*, that “***the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared.***” *Matlock*, 415 U.S. at 170. (*emphasis added*)

As the record shows, and factually, every police officer that testified not in one trial, but two trials, each testified under oath that “they did not have my consent to enter the plaintiff’s home”. Bottom line is — defendant cannot rely upon *Matlock* and to do so is an error.

The second is *Illinois v. Rodriguez*, 497 U.S. 177 (1990) which addressed an issue expressly reserved in *Matlock*, See *Matlock*, 415 U.S. at 177 n.14, namely, “whether a third party must have actual authority to validly consent to a warrantless search, or whether apparent authority is sufficient.” *Rodriguez*, 497 U.S. at 179.

In answering this question, the Court handed down another foundational opinion in the area of third party consent jurisprudence. In *Rodriguez*, Gail Fischer told police officers that she had been assaulted by her boyfriend, defendant Rodriguez, earlier that day in an apartment. *Id.* Fischer agreed to lead police to the apartment and unlock the door with her key so that the officers could arrest defendant. *Id.* Fischer repeatedly referred to the apartment as “our” apartment and indicated that she had personal belongings there. *Id.* When the police officers and

Fischer arrived at the apartment, Fischer unlocked the door with her key and gave the officers her consent to enter. *Id.* at 180.

Without having to analyze all the specifics in *Rodriguez*, it is much more efficient to the ends of justice to focus on what “*does not apply*” to this instant case of *Denton v Rievley*.

The Court in *Rodriguez* established the principle that if law enforcement officers reasonably believe that a third party has common authority over the premises, and hence the authority to consent to a search, the third party’s consent is valid despite the fact that he or she may not possess the *actual* authority to consent. This is known as the doctrine of “apparent authority.”

Again, *Rodriguez* has no bearing of precedent setting in this instant case. In this case, the third party who allegedly told the defendant Steve Rievley that he lived at the plaintiff’s residence. The defendant may claim that he “reasonably believed” that Brandon could give a “consent to search” the home of the plaintiff. However, none of this has anything to do with the facts of Mr. Denton standing inside his home demanding officers to get off his property and that they did not have a warrant.

At the point the defendant was ordered off the plaintiff’s property, by the plaintiff, any so-called “common authority” consent that defendant Steve Rievley, was null and void. Simply put, Mr. Denton was at home and was objecting to police entering and searching his home and to arrest Denton within four minutes to hurriedly “get him away”, then police re-enter Mr. Denton’s home and then give false testimony thinking that the falsity would be lost at the first trial, the defendant has gotten caught.

The first trial resulted in a hung jury which thus prompted [Me] Mr. Denton to use every diligent bone within him [me] to obtain Steve Rievley’s phone records and expose the lie under

oath. See *Sprint phone records attached as Exhibit B; Verizon phone records attached as Exhibit C and the official statement of the City Recorder for the City of Dayton, Tennessee, Ex. D.*

Prior to *Georgia v. Randolph*, 547 U.S. 103 (2006), the Supreme Court had established a trend of gradually restricting individual privacy rights under the Fourth Amendment, while at the same time expanding the scope of lawful police searches. As herein stated, the Supreme Court had previously decided two cases involving consent to search by real or apparent co-occupants, *United States v. Matlock*, 415 U.S. 164 (1974), and *Illinois v. Rodriguez*, 497 U.S. 177 (1990), and in both cases had ruled that consent by the co-occupants eliminated subsequent Fourth Amendment objections to the admission of seized evidence ***by an occupant who was not immediately present and therefore did not object at the time of the search. Both cases were clearly distinguishable from Randolph because the defendants did not refuse to consent to the search.***

In *Matlock*, where the co-occupant consented, *Matlock* was arrested in the yard of the house that was subsequently searched, and was detained in a police car some place near the house. *Matlock* did not refuse consent, but he was not asked. In *Rodriguez*, where the person who consented was not in fact a co-occupant but the ***police reasonably believed*** her claim that she was, the defendant was asleep inside the apartment that was searched. The Court held that “a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident.” *Randolph*, 126 S. Ct. at 1526.

Thus, the Court affirmed the Supreme Court of Georgia’s decision to suppress the evidence, finding that Scott Randolph’s express refusal to consent to a warrantless search was dispositive as to him and trumped the consent of Janet, his co-occupant. See *id.* at 1528

(explaining that the case called for a “straightforward application of the rule that a physically present inhabitant’s express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant”).

The evidence in this record is very clear. The plaintiff Roy L. Denton *was present*, at home when police defendant came to his home, without a warrant. The plaintiff Roy Denton, the defendant Steve Rievley, and all his police officer witnesses being Jason Woody, Brian Malone and Gerald “Taco” Brewer, testified not once, but twice in two separate trials in this case. Not a single one of them, including the defendant, had obtained any consent from the plaintiff Mr. Denton. In fact, every police witness including the defendant Rievley swore under oath that Mr. Denton told them all to get off his property they didn’t have a warrant. They swore to never having “consent”.

Regardless of whatever “common authority” defendant Rievley may claim, even resorting to creating a “fictional” telephone call to Brandon Denton when he knew at the time he testified to making such phone call was false, the plaintiff was present, at his own home, and his refusal of giving his consent trumps any other person claiming to possess a common authority, period. Moreover, a person that is making such claim who even isn’t physically present at the plaintiff’s home, but instead was down at the Rhea County jail.

In any event, the Court in *Randolph* clearly held that — “*a physically present co-occupant’s stated refusal to permit entry renders warrantless entry and search unreasonable and invalid as to him*”. (*emphasis added*)

Therefore, the search conducted inside the plaintiff’s home was clearly unconstitutional as Denton was present and vehemently objected to any consent at all. The defendant’s reliance upon someone he “reasonably believed” had common authority does not hold water in this

instant case as Mr. Denton was present and did expressly object and never gave consent to police to allow them to enter his home and search it. And for police to hurriedly simply remove Mr. Denton from his home within a mere four minutes restricting him as to what all was happening or being done in his absence by police force appears to border more on a criminal civil rights offense than just a civil proceeding.

For the reasons herein stated, based upon the supreme law of the land as herein stated, the defendant Rievley simply cannot rely upon a third party common authority, located at a third party location, who was never at the scene, to somehow give Rievley some sort of *authority* to enter and search a person's home without a warrant, consent or exigent circumstances.

JURY INSTRUCTIONS

The jury, as instructed as to common authority by the court, was done so over objection of the plaintiff. Objection was made based upon Steve Rievley's false testimony. Mr. Rievley testified that he used his cellular phone to call and talk with Brandon Denton, who was located about a quarter mile away at the Rhea County jail. Rievley claimed that he used his cell phone to call the jail and that they gave the phone to Brandon and he spoke directly with Brandon. That was perjury. *See attached.*

Therefore, as police officer Rievley spoke with Brandon, according to him, his conversation with Brandon bestowed upon Officer Rievley some sort of self-claimed "common authority" to "search Roy L. Denton's home. As Rievley stated himself, Brandon guided him while on the telephone with him, instructing Rievley "where to look" and "what to take". Problem with all of this is, it is all FALSE. Steve Rievley never called Brandon at the jail or at any other time. *See attached phone record exhibits*

Steve Rievley's "false testimony" was relied upon by Chief Judge Collier, who as judge,

has the last say in this matter, allowed the jury instructions go forward based upon that “deception”, and how the instructions read. This is the fault of Steve Rievley and his lie.

In fact, the jury instructions of the second trial of this matter was the exact same jury instructions that was given to the jury at the first trial, which resulted in a “hung jury”. And so was basically the testimony of every witness there.

Had the defendant Steve Rievley been truthful and told the court that he never called Brandon and that he was just “in Mr. Denton’s home searching around, taking an assortment of personal items from the home, arresting Dustin Denton, yet being so kind to un-cuff Dustin Denton, *a Staff Sgt. In the United States Army, who served two combat tours in Iraq, who was awarded the Bronze Star*, yet Steve Rievley felt “at ease” enough to un-cuff this “military trained NCO of the United States Armed Forces” so as to allow him to put his contact lens in his eyes. The jury instructions were propounded upon a lie and therefore such instruction as given, under the “express” objection of the plaintiff Roy L. Denton rises to the level of the plaintiff being deprived of a fair trial.

The jury in the present case was appropriately presented with the facts, but it was expected to resolve those facts and arrive at a resolution without the benefit of proper legal instructions. The legal instructions pertaining to the warrantless entry and search were based primarily upon the court “believing” the defendant, a person cloaked in the public trust of that of a sworn police officer, and never figured that this police officer would lie to them [the jury] in a federal court.

But now, no matter how it is shown, the defendant Steve Rievley gave a false statement while under oath in a federal court of law. Based in part, the court relied upon the defendant’s testimony to be credible, after all, Rievley is a sworn officer of the “law”. But, matter not what

the jury saw, or did not see, it is now shown by evidence, affidavit and sworn testimony that Steve Rievley, in his Bearing of False Witness against the plaintiff Roy L. Denton, in a court of law, has deprived Mr. Denton of a fair trial as secured to him by the United States Constitution. A jury cannot be expected to adequately complete its assignment in the absence of sufficient instructions regarding the law to be applied to the facts. But no matter how it is sliced, the fact the phone call was never made shows Rievley gave a false statement in some last ditch effort to explain his being inside another man's home without a warrant, consent or exigent circumstances. Even IF defendant Rievley called anyone, even the Governor, the present non-consenting plaintiff trumps any such "common authority" and cannot be relied upon. But again, the evidence clearly shows no call as Rievley testified to making was never made.

THEREFORE, for the reasons set forth herein, the plaintiff Roy L. Denton moves this court to overturn the jury's verdict as a matter of law and to declare that based upon the evidence presented not only by the plaintiff, but defendant and his witnesses alike, that every act alleged against him to had happened on the date of September 9, 2006, actually happened in the way that they each testified under oath, where the defendant, as well as each of his witnesses testified that not one had a warrant, not one had consent and not one had exigent circumstances. Only one clear conclusion can be made from the undisputed facts — Steve Rievley entered the plaintiff's home and did so without a warrant, consent or exigent circumstances. As a matter of law, the verdict of the jury insofar as to the warrantless entry and search of the plaintiff's home should be overturned as a matter of law.

In the alternative, given the graven, erroneous jury instruction pertaining to "common authority", which was instructed to the jury based upon Steve Rievley's testimony, which has since been shown to be false, then the jury instruction as to such common authority would not

had been tendered to the jury and the plaintiff would have automatically prevailed on his "Warrantless Search and Warrantless Entry" claim either way. However, had any such call been made from inside denton's home by Rievley or anyone else, when the plaintiff was present and not consenting to anything, then his not giving consent trumps any other person, even if the person was there with Mr. Denton giving consent or someone on the phone giving consent. Either way, the law in all case involving common authority mandate that the warrantless entry into the home was not done so and to rely upon the doctrine of common authority is in error.

Respectfully submitted this 17th day of September, 2010.

BY: _____



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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 17th day of September, 2010.

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

1 digging through a duffel bag of concern to you as a police
2 officer?

3 A Absolutely.

4 Q Why so?

5 A He could be getting a weapon.

6 Q Once he did take his hands out of the duffel bag,
7 what happened next; what did you do, or what did Deputy Brewer
8 do?

9 A I handcuffed him.

10 Q All right. Was that still back there in that back
11 room?

12 A Yes.

13 Q Okay. And once he was in custody, tell the jury
14 what happened next.

15 X A We walked back up to the front of the house. That's
16 when Deputy Brewer asked if everything was okay. I don't know
17 if he had another call or what his -- what he had to do, but
18 he left. I stayed in the house with Dustin because Brandon
19 had stated that he had some personal items in the house that
20 he needed. I kept Dustin with me because I didn't want to be
21 alone in their house; I didn't want Mr. Denton to say that I
22 had free rein to do whatever in his house. I called the jail
23 from my cell phone, they gave Brandon Denton the phone, and I
24 asked him specifically what he needed and where it was.

25 Q Okay. Based on what he told you, what did you do?

1 A I took the-- Of course I had my cell phone with me.
2 I walked to where he told me to go. And he stated that he had
3 a Taco Bell hat, Taco Bell name tag, and I'm thinking he might
4 have had a Taco Bell apron, but I'm not sure about that. And
5 he had a spiral notebook that he kept as a diary. And he
6 described those items and told me exactly what they were and
7 told me which room they were in. And I went to that room—I
8 had Dustin with me—I retrieved those items, we walked out the
9 door, me and Dustin, and I locked the door behind me.

10 Q Did you go into any other rooms of the house other
11 than the back room where Dustin was and other -- the room
12 where you went to retrieve the items that belonged to Brandon?

13 A No, I did not.

14 Q Did you take any other items from the house other
15 than the items that you've described for the jurors?

16 A No, I did not.

17 Q As far as the timing of these events, can you look
18 at the reports and records that you have in front of you there
19 and tell the jury, first of all, what time you received the
20 call to go to the jail?

21 A 1:39 a.m.

22 Q And is there any information on there that indicates
23 to you what time you arrived at the jail?

24 A I believe it was 1:40. Yes, sir, 1:40 a.m.

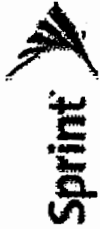
25 Q And is there any records there that indicate to you

Account Number
324630122

Account Name
MANDY EMERY

Billing Period
08/21/06-09/20/06

Invoice Date
September 24, 2008



Page
A2 of 4

Cellular Services Call Detail

No.	Date	Time	Call To	Number	Footnote (See Pg. 2) Min:Sec	Usage	1 Long Dial Other	Total Charges
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DETAILS for 423-595-0011, STEVE RIEVLEY continued

SUBSCRIBER ACTIVITY DETAIL

Cellular Services Call Detail

No.	Date	Time	Call To	Number	Footnote (See Pg. 2) Min:Sec	Usage	1 Long Dial Other	Total Charges
97	09/09	12:07A	Incoming	423-619-5780	0P /PU	1:00	0.00	0.00
98	09/09	12:09A	CHATTNOOGA, TN	423-619-5780	0P /PU	1:00	0.00	0.00
99	09/09	12:20A	CHATTNOOGA, TN	423-718-7071	0P /PU	5:00	0.00	0.00
100	09/09	12:28A	DAYTON, TN	423-775-7837	0P /PU	3:00	0.00	0.00
101	09/09	12:31A	CHATTNOOGA, TN	423-618-0181	0P /PU	4:00	0.00	0.00
102	09/09	01:25A	DAYTON, TN	423-775-2442	0P /PU	2:00	0.00	0.00
103	09/09	01:37A	CHATTNOOGA, TN	423-718-7071	0P /PU	3:00	0.00	0.00
104	09/09	01:54A	CHATTNOOGA, TN	423-605-8490	0P /PU	4:00	0.00	0.00
105	09/09	02:11A	DAYTON, TN	423-775-2442	0P /PU	1:00	0.00	0.00

NOTE: RIEVLEY'S ARRIVAL TIME
AT DAYTON'S HOME WAS
2:13 AM. NO CALLS WERE
MADE AFTER HE ARRIVED
AT DAYTON'S HOME -
by [signature]
9-15-10

Continued...

~~EXHIBIT~~ EX 5

Bill date September 20, 2006
 Account number
 Invoice number

Charges for 423-847-7348

Chris Sneed

Monthly Charges

Current calling plan
 09/21/06 - 10/20/06 \$80.00

Total monthly charges \$80.00

Your Service Profile

Current calling plan: America's Choice II Fam Sh Pri 1400 Any Unl N&W/IN Call \$80 S4512 0705
 Monthly charge \$80.00
 Monthly allowance minutes 1400 general
 Additional per minute charge \$.40 peak, \$.40 off-peak

Promotional details:
 Current: >Beginning on 07/31/06: Unlimited night and weekend home airtime minutes per month

Enhanced services:
 3-Way Calling, Busy Transfer, Call Forwarding, No Answer Transfer, Call Waiting, Call Delivery, Basic Voice Mail, TXT MSG W Per MSG Charges, Caller ID, Message Waiting Ind, Declined Insurance, Streamline Billing, PIX-FLIX Pay Per MSG, Natl Enhanced Svc Access, Natl IN Calling-unlim, New Every Two Multi Tier

Current feature(s):
 Natl IN Calling-unlim
 Monthly allowance unlimited general

Usage Summary 423-847-7348

Chris Sneed

In Your Home Area	Allowance	Peak		Off Peak		Total
		Included	Billable	Included	Billable	
Current Usage						
Promotional Minutes		0	0	23	0	Included
Monthly Minutes	1400 General	10	0	0	0	Included
IN-Calling (08/21-09/20)	Unlimited	50	0	184	0	Included
Usage Totals		60	0	207	0	
Total Current Airtime Usage			60		207	267
Current Usage Charges			\$0.00		\$0.00	\$0.00
Total usage charges in your home area						\$0.00

Your Data Products and Services	Messages	Total
Current Usage		
TXT Messaging - Received	1	\$0.10
Total Current TXT Messaging Usage	1	\$0.10
Total current data products and service usage charges		\$0.10

Total usage charges \$0.10

RIEVLEY

Bill date September 20, 2006
Account number
invoice number

Usage detail continued ...

In Your Home Area

Date													
50	09/03												
51	09/05												
52	09/05												
53	09/07												
54	09/07												
55	09/08												
56	09/08												
57	09/08												
58	09/09	01:42A	O	1	Dayton	TN	(423)847-7362	Incoming	CL	MN	Included	.00	.00
59	09/09	01:54A	O	1	Dayton	TN	(423)847-7351	Chattnooga	TN	MN	Included	.00	.00
60	09/09	03:45A											
61	09/09												
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100	09/18												



City of Dayton

P. O. BOX 226, DAYTON, TENNESSEE 37321
423/775-1817 FAX 423/775-8404



September 7, 2010

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

RE: Request for Records

Dear Mr. Denton:

I am writing this letter in response to your request for records, specifically for City of Dayton policies on cellular phones, received by me on September 2, 2010.

After researching the policies, the City of Dayton does not have a policy specifically regarding the use of cellular phones. If you need any other policies regarding other City equipment please let me know.

In regards to the cellular phone records that I have previously provided; to the best of my knowledge 423-847-7348 does belong to Officer Steve Rievley and has since the police were issued cellular phones in July 2006.

Sincerely,

Thomas W. Solomon
City Recorder

TWS/brm

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

ROY L. DENTON

Plaintiff

v.

STEVE RIEVLEY

Defendant

Case No. 1:07-cv-211

JURY DEMAND

Collier/Carter

AFFIDAVIT OF B. ELIZABETH DICKSON RODERICK

COMES the Affiant, B. Elizabeth Roderick, after being duly sworn, and states the following as true and correct to the best of his knowledge, information and belief:

- (1) I am over age eighteen (18) and am competent to make this Affidavit.
- (2) I am a licensed attorney in the State of Tennessee, Board of Professional Responsibility Number 022762, and I am counsel of record for the Defendant in this case.
- (3) In effort to comply with the Order, I contacted Sprint Nextel Corporate Security Department ("Sprint"), the provider for Officer Rievley's personal telephone, on June 15, 2010 to determine the procedure for serving a subpoena upon the company in the most efficient way given the compressed timeline.
- (4) I spoke with Ms. Callie Keep of Sprint and was informed I could file the subpoena by facsimile, along with the Court's Ord. Additionally, Ms. Keep informed me that I could expect that the information requested might not be provided for three (3) to four (4) weeks given the high

Page 1 of 3

1:07-cv-00211 Document 103-1 Filed 06/25/10 Page 1 of 3

u
PLAINTIFF EXHIBIT B

volume of subpoenas Sprint receives each month.

(5) I served the Subpoena upon Sprint by facsimile on June 15, 2010, receiving confirmation of the service by Sprint that same day. I then filed Notice of Subpoena Returned Executed as to Sprint Nextel with the Court on June 17, 2010.

(6) When I received the requested records from Sprint, I sent the same, unredacted, to the Plaintiff on June 24, 2010 in compliance with this Court's June 14, 2010 Order.

(7) On June 17, 2010, I also contacted Verizon Wireless's Litigation Department ("Verizon"), the provider for Officer Rievley's city-issued cellular telephone, to determine the procedure for serving a subpoena upon the company in the most efficient way given the compressed timeline.

(8) I was informed by Verizon that Officer Rievley is not the owner or customer of Verizon of Officer Rievley's city-issued cellular telephone with Verizon.

(9) Like Sprint, Verizon confirmed that I could serve the subpoena via facsimile but that I could not expect to receive the requested records for up to six (6) to eight (8) weeks even with the Court's Order.

(10) I proceeded to serve the subpoena upon Verizon, along with Court's Order, and to file a Notice of Subpoena Returned Executed as to Verizon Wireless on June 17, 2010.

(11) To date, I have not received the requested records from Verizon Wireless and do not expect to receive on or before June 25, 2010.

(12) On June 24, 2010, I notified the Plaintiff that I had not received the information requested from Verizon Wireless for the reasons set forth herein.

Page 2 of 3

Case 1:07-cv-00211 Document 103-1 Filed 06/25/10 Page 2 of 3

FURTHER affiant saith not.

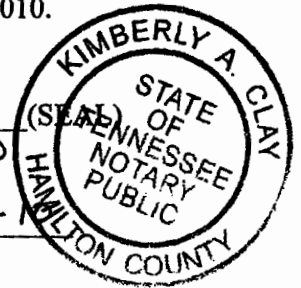
B. Elizabeth Dickson Roderick
B. ELIZABETH DICKSON RODERICK

STATE OF TENNESSEE)
)
COUNTY OF HAMILTON)

Subscribed and sworn to before me this 25th day of June, 2010.

Kimberly A. Clay
NOTARY PUBLIC

My Commission Expires: 11-7-



06252010/DAYTONDENTON/AFFEXTTIME.WPD