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

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

PLAINTIFF ROY L. DENTON'S MOTION *IN LIMINE*
AND
OBJECTION REGARDING JURY INSTRUCTIONS CONCERNING
"QUALIFIED IMMUNITY"

Comes now, the Plaintiff Roy L. Denton, *pro se*, and respectfully moves the court to preclude the Defendant Steve from submitting to the jury any proposed instruction regarding a claim for qualified immunity and hereby supports this Motion *In Limine* with the following:

Qualified immunity is "almost always" a question of law. *Keylon v. City of Albuquerque*, 535 F.3d 1210, 1217 (10th Cir. 2008). "**Many of our sister circuits have held that qualified immunity is never a question for the jury.**" *Maestas v. Lujan*, 351 F.3d 1001, 1007 (10th Cir. 2003). *(emphasis added)*

Additionally, see *Curley v. Klem*, 499 F.3d 199, 211 (3d Cir. 2007) ("Whether an officer made a reasonable mistake of law and is thus entitled to qualified immunity is a question of law that is properly answered by the court, not a jury. When a district court submits that question of

law to a jury, it commits reversible error.") (citation omitted); *Willingham v. Crooke*, 412 F.3d 553, 560 (4th Cir. 2005) (holding that the court should submit any questions of material fact to the jury, but reserve for itself the legal question of qualified immunity); *Riccardo v. Rausch*, 375 F.3d 521, 528 (7th Cir. 2005) ("Immunity . . . is a matter of law for the court, to be decided without deference to the jury's resolution -- and preferably before the case goes to the jury."); *Littrell v. Franklin*, 388 F.3d 578, 584 (8th Cir. 2004) ("The issue of qualified immunity is a question of law for the court, rather than the jury, to decide . . . ."); *Suboh v. Dist. Atty's Office of Suffolk Dist.*, 298 F.3d 81, 90 (1st Cir. 2002) (same as *Willingham*); *Johnson v. Breeden*, 280 F.3d 1308, 1318 (11th Cir. 2002) (same).

First, an "essential characteristic" of the federal court system is that it "assigns the decisions of disputed questions of fact to the jury." *Byrd v. Blue Ridge Coop.*, 356 U.S. 525, 537 (1958). Legal questions are reserved to the courts.

Second, in deciding whether a right is clearly established, an essential part of the qualified immunity inquiry, a court must assess whether the right was clearly established against a backdrop of the objective legal reasonableness of the actor's conduct. Keylon, 535 F.3d at 1218. Letting the jury determine whether the Defendant Steve Rievley's actions were reasonable in light of the clearly established law has the potential of asking the jury to resolve a legal question. Again, as a matter of law, legal questions are reserved to the courts.

Third, allowing the jury to decide qualified immunity almost always generates an issue on appeal as to whether the circumstances were exceptional enough to warrant such a procedure.

As the record so reflects, a trial of this matter was had on April 12 - 13, 2010. Before trial, Defendant Steve Rievley moved for summary judgment based in part upon a claim of qualified immunity. Qualified immunity is an affirmative defense which protects public officials

acting within the scope of their discretionary authority and under clearly established law from insubstantial lawsuits. *Butz v. Economou,* 438 U.S. 478, 507-08, 98 S.Ct. 2894, 2911-12, 57 L.Ed.2d 895 (1978); *Ansley v. Heinrich,* 925 F.2d 1339, 1344 (11th Cir. 1991). It is immunity from suit which is effectively lost if a case is erroneously permitted to go to trial. *Mitchell v. Forsyth,* 472 U.S. 511, 526, 105 S.Ct. 2806, 2815, 86 L.Ed.2d 411 (1985). Therefore, where there are no disputed facts requiring a full trial, the court should make the immunity determination at the pretrial stage. *See Ansley,* 925 F.2d at 1347.

This court denied the defendant's summary judgment motion ruling that he was not entitled to qualified immunity. *See Court Doc. No. 51.* The defendant disagreed with this court and filed an interlocutory appeal with the United States Court of Appeals for the Sixth Circuit. The USCA **AFFIRMED** the decision of this court ruling that Rievley ***was not entitled to qualified immunity***. *See Appeal Remark — Court Doc. No. 65*

At the close of the trial in this matter, this court allowed for a jury instruction to be presented to the jury concerning whether or not Defendant Steve Rievley was entitled to qualified immunity. In spite of this issue being addressed in a pretrial conference where this *pro se* plaintiff advised this court that it he felt it was not proper for such instruction be presented to a jury, absent the most narrow of circumstances, this court in any event, allowed the jury question to be presented to the jury which in effect placed a "***question of law***" before a jury, whereas the jury could have decided on such "question of law" thereby making the prior decision of this court, as well as the court of appeals obsolete and insignificant. Therefore, in light of all existing law that has been engrained in virtually every circuit, the Plaintiff Mr. Denton correctly argues, *with respect*, that this District Court improperly allowed the issue of qualified immunity to go to the jury.

Moreover, in *Ansley v. Heinrich,* 925 F.2d 1339 (11th Cir. 1991), the court examined the disagreement among the circuits as to whether qualified immunity should become a part of the jury instruction once the affirmative defense has been denied on a motion for summary judgment. The court held that a **"jury should seldom, if ever, be instructed on qualified immunity; the availability of a qualified immunity defense is a question of law for the court to determine."** *Id.* at 1341. (*emphasis added*) See also *Bailey v. Board of County Com'rs of Alachua County,* 956 F.2d 1112, 1126 n. 17 (11th Cir. 1992). Although the district court preferably makes this determination before trial, qualified immunity is a legal determination that must be made by the court and may be made either before trial, during trial, or after trial. *See Adams v. St. Lucie County Sheriff's Dept.,* 962 F.2d 1563, 1567 & n. 2 (11th Cir. 1992). The law is clear that the defense of qualified immunity should be decided by the court, and should not be submitted for decision by the jury in this instant case.

In this case, however, the jury was essentially instructed that qualified immunity is immunity from damages, when actually it would be an affirmative defense to the trial itself and not a defense to liability issues raised during trial which is direct on point with *Ansley,* 925 F.2d at 1348. This court charged if "*you find Defendant reasonably believed he had authority to conduct a search and seizure inside the Plaintiff's home, even if he was mistaken, then you cannot find Defendant is liable for entering Plaintiff's home and conducting a search and seizure*." The jury was also instructed to determine if defendant violated clearly established law. This court further instructed the jury that *"[i]f you Plaintiff has met his burden of proof on claims under Section 1983, then you must determine whether Defendant is entitled to qualified immunity. You must consider whether Defendant's conduct was objectively reasonable in light of the legal rules clearly established at the time of the incident in issue. If Defendant's conduct was*

objectively reasonable, then Defendant is not liable".

The plaintiff, although a non-lawyer, yet held by this court to "*the same strict standards as a lawyer*" could have easily been prejudiced or in the minimum, given a *non-represented* litigant the "appearance of impropriety" resulting in a perplexed feeling of a manifest injustice.

However, such hypothetical is not at issue. What is at issue is that this court, as well as the United States Court of Appeals, has determined that the Defendant Steve Rievley was not entitled to qualified immunity, and the merits of the case should have been submitted to the jury without reference to the qualified immunity issue. *See Ansley,* 925 F.2d at 1348. *See also Adams,* 962 F.2d at 1567. *Cf. Greason v. Kemp,* 891 F.2d 829, 840 (11th Cir. 1990).

Therefore, for the foregoing objections, reasons and authorities herein stated, the plaintiff moves this court to enter an order precluding the Defendant Steve Rievley to introduce, or otherwise attempt to introduce any reference to "qualified immunity" to a jury in the upcoming scheduled new trial in this matter.

Respectfully submitted this 13th day of August, 2010.

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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 13th day of August, 2010.

Roy L. Denton

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