UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case Number: 11-5284 (In)

Case Name: ROY L. DENTON v. STEVE RIEVLEY

Name: Roy L. Denton

Address: 120 6th Avenue

City: Dayton State: TN Zip Code: 37321

PRO SE APPELLANT'S BRIEF

Directions: Answer the following questions about the appeal to the best of your ability. Use additional sheets of paper, if necessary, not to exceed 30 pages. Please print or write legibly, or type your answers double-spaced. You need not limit your brief solely to this form, but you should be certain that the document you file contains answers to the questions below. The Court prefers short and direct statements.

Within the date specified in the briefing letter, you should return one signed original brief to:

United States Court of Appeals For The Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202-3988

1. Did the District Court incorrectly decide the facts? ☑ Yes ☐ No

   If so, what facts?

   Applied facts incorrectly as to "common authority"; protective sweeps, stipulated evidence (phone records), jury instructions, perjury, fourth amendment violations relative to warrantless entry of a home and warrantless search of a home without warrant, consent, exigent circumstances.

2. Do you think the District Court applied the wrong law? ☑ Yes ☐ No

   If so, what law do you want applied?

   The law that shows that a present non-consenting homeowner trumps any apparent "common authority" consent; apply the proper law in regards to police officer perjury; proper law regarding Rules of Evidence as to stipulated phone records, proper law regarding issues not raised at district court & raised at the first time on appeal, the law to be applied as required under Payton v New York, and other related case law concerning warrantless entry into a home and warrantless search of a home, absent a warrant, consent or exigent circumstances. Any other law that may be applicable.

3. Do you feel that there are any others reasons why the District Court's judgment was wrong?
☑ Yes ☐ No
If so, what are they?

The District Court judge was biased against the non-attorney plaintiff in favor of an attorney. The judge threatened the plaintiff, intimidated him in the presence of the jury. The judge made improper statements before the jury. The judge ruled adversely against the plaintiff on many objections. Judge held different "hearsay" standards to pro se plaintiff.

4. What specific issues do you wish to raise on appeal?

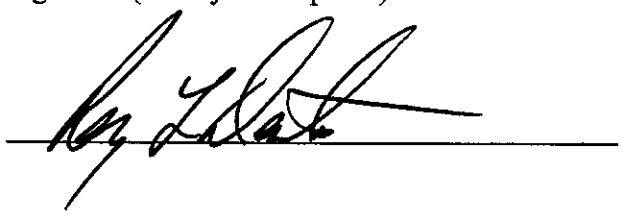
1. The District Court erred in holding that Exigent circumstances justified the Defendant's Warrantless Entry into the Plaintiff's Home.
2. The District Court erred in determining an issue for the first time, thereby causing the issue to be considered by the Court of Appeals for the first time
3. The District Court erred in giving the jury instructions concerning "common authority" without explaining to the jury the law of common authority.
4. Did the District Court err in intimidating a pro se Plaintiff to the point that the Plaintiff felt forced to cease his Direct Examination of the Rebuttal witness Brandon S. Denton?
5. Did the District Court err in denying the Plaintiff's Motion JNOV based upon the reasons given in it's memorandum?
6. Did the District Court err in denying Plaintiff's Motion for New Trial based upon the reasons given in it's memorandum?

5. What action do you want the Court of Appeals to take in this case?

Reverse the decision of the District Court; Order a New Trial; Remand Case back to District Court to determine evidence of Perjury; Remand case back to District Court to allow a Hearing or New Trial so evidence regarding "protective sweeps and cursory saftey checks" can be given and properly addressed and argued by the plaintiff and defendant.

I certify that a copy of this brief was sent to opposing counsel via U.S. Mail on the 3rd day of May, 2011.

Signature (Notary not required)



Appeal No. 11-5284

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROY L. DENTON,
Plaintiff - Appellant
v.
STEVE RIEVLEY, *in his individual capacity*
Defendant - Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

Doc. No. 1:07-CV-211

SIMPLIFIED *PRO SE* BRIEF OF THE APPELLANT ROY L. DENTON

Oral Argument Waived

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

SIMPLIFIED *PRO SE* APPELLANT BRIEF

The facts of this case have been incorrectly presented to the court, as well as to the jury. The District Court has allowed the facts to become bogged down with "Domestic Violence" issues that have absolutely nothing to do with the Plaintiff's Fourth Amendment claim of a warrantless entry into his home, by the defendant.

The facts of this case was that the Plaintiff Roy L. Denton (hereinafter Mr. Denton) filed a lawsuit against the Defendant Steve Rievley (hereinafter Officer Rievley) for violating his Fourth Amendment right for making a warrantless arrest inside Mr. Denton's home without a warrant, consent or exigent circumstances. Mr. Denton also alleged that the Defendant made an unlawful warrantless entry and search of his home without a warrant, consent or exigent circumstances (R. No. 13, Amended Complaint). The Defendant Steve Rievley is a police officer for the Dayton Police Department and has not disputed that he was acting under the color of law.

On April 12-13, 2010, this matter went to a jury trial which resulted in a hung jury and a mistrial was declared. A second trial was scheduled, where the District Court ordered that even though Mr. Denton had found new evidence that struck to the very core of the Defendant Officer Rievley's legal theory, nonetheless, the court below ordered that the second trial was to be governed by the first trials Final Pretrial Order and denied having a conference.

It seems that the statement of the facts has slowly "changed" from the onset of the filing of the Complaint to the first trial, even including the second trial. Therefore, I, Mr. Denton will attempt to discuss this in layman's words as a non-attorney, and present my issues on appeal from a "third person" point of view, however, in the course of doing so, I may inadvertently comment in the first person view for clarity.

STATEMENT OF THE CASE

On September 9, 2006, Mr. Denton's two son's were visiting him at his home. The oldest son Dustin, is a Staff Sgt. in the United States Army and was visiting home before deploying to Iraq for a second tour. Mr. Denton's youngest son Brandon, was a 22 year old man who was also visiting his father and brother at Mr. Denton's home. On this date, Mr. Denton's wife (Kimberly) took him to work at Taco Bell since he did not have a vehicle at that time.

At a time before midnight, Dustin called his brother Brandon at Taco Bell where he worked and asked Brandon if he needed a ride home. Brandon declined the offer and had a friend drive him to his father's instead. Brandon arrived at Mr. Denton's home "shortly after midnight". Upon arriving at Mr. Denton's home Brandon and Dustin got into one of those sibling scuffles on the front porch of Mr. Denton's home. Mr. Denton and Kim went outside on the porch and Mr. Denton intervened and separated the two brothers. Mr. Denton directed Dustin to go inside the house and directed Brandon to leave and not come back until Dustin had finished his visit which was after the weekend. At that point, Brandon left "mad" and Dustin went inside and the situation was dissolved. (R. 122, Tr. Jury Trial 4/12/10, pp 1-81).

At sometime around 2:00 a.m., Kim went to McDonalds to get food. When she left, Mr. Denton remained at home and was dressed ready for bed wearing only a pair of baggie silk shorts. A short time after Kim left, Mr. Denton noticed lights and noise of some kind at the front of his home and he went to the front door thinking his wife Kim had returned with food. When Mr. Denton opened his front door, he saw several police officers on his porch. One of them was the Defendant Steve Rievley. He asked me something along the lines of "what's the deal with Brandon". I indicated to him that there wasn't anything going on and that they had not been called, or words to similar effect. In any event, Defendant Steve Rievley said I was under arrest

for domestic assault. At that time, I rather boisterously directed every officer on my front porch to "get off my property, you don't have a warrant". At that time, the Defendant Rievley and Jason Woody crossed the threshold of my door as I was trying to close it. While inside my home, I was arrested and on my way to jail within 4 minutes at 2:17 a.m.. However, since that time there has been two trials in this matter where at the second trial, a jury apparently believed the four police officers over "me" and rendered a verdict that I wasn't arrested inside my home. Being a former law enforcement officer myself, I know enough that to appeal something such as "something four officers say over what one lay person says", is futile. Therefore, I chose not to appeal the warrantless arrest and just chalk that one up as a learning experience.

However, great exception is taken concerning the Defendant Officer Steve Rievley, or any other person, entering my home, searching my home or invading my right to privacy in any way, absent some lawful authority to do so. Therefore, I have appealed the warrantless entry into my home by a police officer defendant who did NOT have a warrant, did not have consent and did not have exigent circumstances.

According to the facts as presented by the Defendant Steve Rievley, (Officer Rievley) his version is somewhat different. At both trials, Officer Rievley introduced evidence that I had "strangled" Brandon. (R. No. 21-3, Def's. Aff. Of Comp.) However, at trial Officer Rievley stated that there was no markings on Brandon's neck consistent with "strangling" Brandon. In fact, Officer Rievley admitted that he only observed some redness on Brandon's neck and "There's red marks on the back of his neck, which would be consistent with someone breaking up a fight" (R. No. 142, TR. Jury Trial 8/24/10, p. 38, 24-25). Another interesting change of events is the injuries that Officer Rievley stated in his Affidavit of Complaint, *Id.*, and his Affidavit (R. No. 29-2) is that at trial, Officer Rievley introduced into evidence various pictures he had taken

of Brandon on the night in question. On cross-examination of his pictures he took, he basically explained away the reason the "redness" or any other "injury" wasn't showing up on the monitor for the jury by stating that either the flash from the camera or the courts monitor system was messed up. (R. No. 142, TR. Jury Trial 8/24/10, pp 35-40).

At the second jury trial, it is rather clear that the defenses' legal strategy was to start building a foundation of some sort that would convince the court and jury that he was in a "threatening" situation where guns and drunks were. Even as a non-lawyer, I knew that once I had challenged the "common authority" at the first trial that resulted in a hung jury, along with the new evidence that proved that the phone call Officer Rievley said he made to Brandon, but didn't make, I pretty much figured the defense strategy would be to go on some sort of new path. However, the defense never offered any new legal theory and continued to rely upon common authority to justify the warrantless entry and search of my home.

STATEMENT OF THE ISSUED

The District Court erred in holding that Exigent circumstances justified the Defendant's Warrantless Entry into the Plaintiff's Home.

"Generally, the Fourth Amendment requires the police to obtain a warrant before entering a home." *United States v. Spotted Elk*, 548 F.3d 641, 651 (8th Cir.2008), citing *Payton v. New York*, 445 U.S. 573, 590, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Without a warrant, the police may enter a home in response to exigent circumstances. *Id.* Exigent circumstances include threats to an individual's life, a suspect's imminent escape, the imminent destruction of evidence, or situations where "there is a compelling need for official action and there is no time to secure a warrant." *Radloff v. City of Oelwein*, 380 F.3d 344, 348 (8th Cir.2004).

The evidence also shows that the incident between Brandon and Dustin happened

"shortly after midnight" but the defendant testified that he wasn't dispatched to the Rhea County jail until 1:39 a.m. where he met with Brandon (R. 21-3, Def's Affidavit of Complaint). The evidence also shows that for a duration of 33 minutes Officer Rievley was down at the jail talking with Brandon, taking pictures of injuries that he said existed, but for some reason those pictures never shown any redness at all *Id.* According to the evidence as the defendant testified, what he always said throughout this entire case was that "Brandon was strangled by his father, Roy L. Denton" ended up being a red mark of the neck that amounted to not much more than a person tugging a shirt from the rear. *Id.* The evidence shows that at all times I demanded police to leave my property that they did not have a warrant. Although Officer Rievley testified that he came to my house to "investigate", within 4 minutes I was arrested, cuffed and already inside a patrol car on my way to jail. As a matter of law, just because I was removed from my property doesn't give police any consent to enter my home without a warrant or some sort of particular explanation of an exception to the bright line rule of *Payton v New York.* Moreover, the fact cannot be stressed enough that the defendant had his theory, a legal theory that included his reasoning to justify his warrantless entry into my home was based upon the defendant "reasonably believing" that Brandon Denton had a "common authority" over the home. However, even if such were the case, Brandon was not present at my home at that time, he remained at the jail. My consent supersedes and overrides any believed "common authority" consent and by removing me from the scene DOES NOT change the fact that not one single person at my home gave the defendant or any accompanying officer consent to do anything.

The evidence will show that the defendant entered my home and searched it. The evidence from every officer on the scene testified that at no time did they have a warrant, consent or exigent circumstances, but the defendant and two other officers entered my home anyway. (R.

No. 100, Tr. Jury Trial, 4/13/10, pp. 15-24; R. No. 166, Tr. Jury Trial 8/24/10, pp. 14-27)

Deputy Brewer stated he was standing outside on the front porch and that he saw a person walking down a hallway inside the house. Nothing else, just a person walking inside my home, so he entered my home first according to him. (R. No. 125, Tr. Jury Trial 4/13/10, pp. 29-30). However, Officer Rievley stated differently (R. 29-2, Aff. Of Steve Rievley, ¶19), where Reivley swore that he and Brewer "***went into the Denton house in search of Dustin Denton***"

The evidence shows that the defendant and Officer Malone entered my home and searched it and found Dustin in a bedroom in the back of my home, 56-feet from the front door. The defendant drew his pistol and pointed it at Dustin. Deputy Brewer denies drawing his weapon and officer Malone "couldn't remember" if he drew his or not (R. No. 123, Tr. Jury Trial. Pp. 2-5:1-5). In any event, this *pro se* plaintiff could find dozens of inconsistencies between all the affidavits and other pretrial discovery, requests for admissions, interrogatories and the sworn testimony of two separate jury trials, but all that does is further cloud the issues. Therefore, justice doesn't require that this Honorable Court of Appeals be burdened with a long, drawn out hashing of what one person said versus what someone else said. What matters is the Defendant Officer Steve Rievley unlawfully entered Mr. Denton's home without a warrant, consent or exigent circumstances.

The District Court *sua sponte* opined and held that the fact that a domestic violence suspect was inside my home was an exigent circumstance. The presence of a domestic violence suspect, however, does not alone justify Rievley's warrantless entry. See *Singer v. Court of Common Pleas, Bucks County*, 879 F.2d 1203, 1206-07 (3d Cir.1989) (noting that concerns of danger to police or others did not justify warrantless entry into the home of a domestic violence suspect as the victims were no longer present and were in no danger). Moreover, the defendant

nor any other police officer was ever at any time dispatched to my home. They were dispatched to the jail ***almost 90 minutes after*** an "alleged fight" where the defendant remained at the jail an ***additional 33 minutes*** with Brandon. During all this time, and since Brandon was at the jail, safe, without any serious injury, Officer Rievley could have easily gotten a warrant or assisted Brandon in obtaining a warrant. "Police officers may not, in their zeal to arrest an individual, ignore the Fourth Amendment's warrant requirement merely because it is inconvenient." *Johnson v. United States*, 333 U.S. 10, 15, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948). Never, at any time, has Officer Rievley ever asserted any facts indicating that "the suspect" or "Dustin" was a threat to anyone. See *United States v. Roark*, 36 F.3d 14, 17 (6th Cir.1994) ("unsubstantiated suspicions" do not support a finding of exigent circumstances).

The District Court *sua sponte* opined that the Officer Rievley warrantless entry into Mr. Denton's home was reasonable because defendant was conducting a protective sweep for safety purposes. A protective sweep is permitted when an officer enters a home on the reasonable belief that someone dangerous is inside the home. *Spotted Elk*, 548 F.3d at 651. On the facts here, Judge Collier's belief that a domestic violence suspect was inside the home does not itself justify a protective sweep. See *United States v. Tisdale*, 921 F.2d 1095, 1097 (10th Cir.1990) (the danger justifying a protective sweep comes from the possible presence of armed and dangerous persons in the vicinity). The District Court below improperly held that Rievley did demonstrate exigent circumstances to justify his warrantless entry into my home. Furthermore, there was never testimony from any witness that there was need or necessity for a protective sweep. Not one officer testified to a sweep of the home, but testified entering my home when they were standing outside, looking towards my home, after I had been taken to jail.

Upon ruling of the defendant's summary judgment motion, The District Court found no

exigent circumstances justifying the defendant police officers' warrantless entry and subsequent search of the Denton home then. R. No. 51, Memorandum, R. No. 65, USCA Appeal Remark). Furthermore, the District Court never found any "cursory safety checks" or "protective sweeps". None of this was ever argued or even mentioned by anyone. Only after the plaintiff argued in the District Court that there was no common authority from anyone because me, the home owner, was present and ordered police off my property that they didn't have a warrant, was any "safety issues" remotely justifying a "cursory safety check". Interestingly, even if this were the case, then once the Defendant "arrested" Dustin, then the "protective sweeps" and "cursory safety checks" cease. With that said, just what did the Defendant Police Officer Rievley rely upon to hang around, inside my home searching for personal property? The whole concept is nonsensical.

Absent exigent circumstances, police officers may not enter an individual's home or lodging to effect a warrantless arrest or search. *Payton v. New York*, 445 U.S. 573, 590, 100 S.Ct. 1371, 1382, 63 L.Ed.2d 639 (1980). As stated in *Payton*, 445 U.S. at 590, 100 S.Ct. at 1382:

- In terms that apply equally to seizures of property and to seizures of the person, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not be reasonably crossed without a warrant.

As explained by Justice Jackson in *Johnson v. United States*, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948), "Any assumption that evidence sufficient to support a magistrate's disinterested determination to issue a search warrant will justify the officers in making a search without a warrant would reduce the Amendment to a nullity and leave the people's home secure only in the discretion of police officers.... The right of officers to thrust themselves into a home is ... a grave concern, not only to the individual but to society which chooses to dwell in reasonable security and freedom from surveillance." The District Court below has drawn inferences that are not supported by the evidence. It is restated for clarity, that

the jury gave a verdict that I was arrested outside my home and without a warrant. The common authority theory of the defendant must fail as a matter of law because as the evidence shows, I was at home and ***never consented*** to anything but instead was hauled away, taken out of the equation while Officer Rievley entered my home without a warrant, consent or exigent circumstances and searched it. See also *Welsh v. Wisconsin*, --- U.S. ----, ---- n. 10, 104 S.Ct. 2091, 2097 n. 10, 80 L.Ed.2d 732 (1984) (fourth amendment prohibits the police from making a warrantless night entry of a person's home in order to arrest him for violation of a nonjailable traffic offense). This principle has been consistently applied in the sixth circuit. *United States v. Kinney*, 638 F.2d 941, 943 (6th Cir.), cert. denied 452 U.S. 918, 101 S.Ct. 3056, 69 L.Ed.2d 423 (1981); *United States v. Renfro*, 620 F.2d 569, 574 (6th Cir.), cert. denied, 449 U.S. 902, 101 S.Ct. 274, 66 L.Ed.2d 133 (1980); *United States v. Killebrew*, 560 F.2d 729, 733 (6th Cir.1977).

Moreover, "the burden is on the defendant police officer, acting under color of law, to demonstrate exigency." *Vale v. Louisiana*, 399 U.S. 30, 34, 90 S.Ct. 1969, 1971, 26 L.Ed.2d 409 (1970); *McDonald v. United States*, 335 U.S. 451, 456, 69 S.Ct. 191, 193, 93 L.Ed. 153 (1948); *United States v. Killebrew*, 560 F.2d at 733. Also, "a district court's factual finding on the existence of exigent circumstances will not be disturbed unless clearly erroneous." *United States v. Gargotto*, 510 F.2d 409, 411 (6th Cir.1974), cert. denied, 421 U.S. 987, 95 S.Ct. 1990, 44 L.Ed.2d 477 reh. denied, 423 U.S. 884, 96 S.Ct. 157, 46 L.Ed.2d 115 (1975); *United States v. Flickinger*, 573 F.2d 1349, 1356-57 (9th Cir.), cert. denied, 439 U.S. 836, 99 S.Ct. 119, 58 L.Ed.2d 132 (1978). Moreover, the critical time for determining whether exigency exists "is the moment of the warrantless entry by the officers" onto the premises of the defendant. *United States v. Killebrew*, 560 F.2d at 733. It is worth restating that Officer was with Brandon at the jail ***for a full 33 minutes***, not counting the approximate "***90 minutes***" from the time of the

alleged assault.

The record here reveals no exigency sufficient to justify the warrantless entry of the home, a search of the home and subsequent arrest of Mr. Denton's oldest son inside the home. None of the traditional exceptions justifying abandonment of the warrant procedure are present in this case. The defendant, nor any other officer, was not in hot pursuit of a fleeing suspect. See *United States v. Santana*, 427 U.S. 38, 42-43, 96 S.Ct. 2406, 2409, 49 L.Ed.2d 300 (1976); *Warden v. Hayden*, 387 U.S. 294, 298-99, 87 S.Ct. 1642, 1645-46, 18 L.Ed.2d 782 (1967)); *United States v. Williams*, 612 F.2d 735, 739 (3rd Cir.1979), cert. denied, 445 U.S. 934, 100 S.Ct. 1328, 63 L.Ed.2d 770 (1980) (warrantless entry upheld where officers first began surveillance having good cause to believe that they would need to wait only a few minutes before defendant exited from private residence). Officer Rievley specifically testified that he and other officers had sufficient time to assemble at the local jail where they "**assessed the situation**" and waited for 33 minutes before proceeding to the Denton home and arriving at the Denton home at 2:13 a.m. The "cursory safety search or "protective sweep" exception to a warrant requirement may not be invoked merely because police officers find it inconvenient to obtain a warrant before proceeding with an arrest. On the contrary, the "***cursory safety check***" exception is reserved for situations where "a serious and demonstrable potentiality for danger" exists. Here, the facts indicate that the defendant did not feel an "urgent need for immediate action." *United States v. Flickinger*, *supra*, 573 F.2d at 1355. Where, as here, "officers are not responding to an emergency, there must be compelling reasons to justify the absence of a search [or arrest] warrant." *McDonald v. United States*, 335 U.S. 451, 454, 69 S.Ct. 191, 193, 93 L.Ed. 153 (1948). Moreover, to satisfy the cursory safety check exception "the defendant must show that there was 'a serious and demonstrable potentiality for danger.' " *United States v. Kolodzèij*, *supra*, 706 F.2d

at 596, quoting *United States v. Smith*, 515 F.2d 1028, 1031 (5th Cir.1975) (per curiam), cert. denied, 424 U.S. 917, 96 S.Ct. 1119, 47 L.Ed.2d 322 (1976).

The record in this case reveals no such immediate threat or security risk to any of the officers involved here. Mr. Denton never had any prior contact with Officer Rievley. There was no substantiated evidence, in fact, there was never any evidence introduced that Mr. Denton was "***dangerous or that a grave offense or crime of violence had occurred or was even threatened.***" See *United States v. Killebrew*, 560 F.2d at 734. (emphasis added).

Mr. Denton posed no risk to anyone until the police officers converged onto the front porch of the Denton home and flooded it with high-powered flash lights. See *United States v. Hatcher*, 680 F.2d 438, 444 (6th Cir.1982) (government failed to show evidence indicating that defendant was a dangerous individual to justify warrantless "protective sweep" of defendant's home). Looking at the totality of the circumstances, and even drawing all inferences in favor of the defendant, the district court was incorrect in concluding that the facts did indicate a risk that rose to the level of an "exigent circumstance" to justify a warrantless entry and police intrusion into the Denton home. See *United States v. Killebrew*, *supra*, (where there were no facts indicating occupant was dangerous or about to escape, warrantless entry into suspect's motel room violated fourth amendment, even though police knew occupant possessed a gun); see also *United States v. Gamble*, 473 F.2d 1274, 1277 (7th Cir.1973). To justify this type of warrantless intrusion, police officers "must be able to point to specific and articulable facts which, taken together with other rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968). Police officials, however, are not free to create exigent circumstances to justify their warrantless intrusions. *United States v. Allard II*, 634 F.2d 1182, 1187 (9th Cir.1980); *United States v. Allard I*, 600 F.2d 1301, 1304 n.

2 (9th Cir.1979) ("If exigent circumstances were created, they resulted from the agent's own conduct."). "Police officers may not, in their zeal to arrest an individual, ignore the Fourth Amendment's warrant requirement merely because it is inconvenient." *Johnson v. United States*, 333 U.S. 10, 15, 68 S.Ct. 367, 369, 92 L.Ed. 436 (1948). "Absent exigent circumstances, the privacy of a home may not be invaded without a warrant." *Payton v. New York*, 445 U.S. at 590, 100 S.Ct. at 1382.

As stated herein, the arrest of Mr. Denton was a planned event. The Defendant and his witnesses do not dispute that they all were present at the jail the whole time discussing all this. None of the case law citations relied upon by the district court judge below support the inference that police officers may arouse and seize a citizen, peacefully residing in the privacy of his home, without exigent circumstances to support the intrusion. To protect this important right, "the framers of the amendment required that judicial approval be obtained before police be allowed to intrude into the privacy of the home, absent exigent circumstances." *McDonald v. United States*, 335 U.S. 451, 455-56, 69 S.Ct. 191, 193, 93 L.Ed. 153 (1948); *Johnson v. United States*, 333 U.S. at 13-14, 68 S.Ct. at 368-369. "Arbitrary governmental intrusions into the sanctity of the home are the prime evils the Fourth Amendment was designed to deter."

In *Payton v. New York*, police officers, with probable cause to arrest, knocked on the door of Obie Riddick's apartment. After Riddick's three-year-old son opened the door, ***the police could see Riddick sitting in bed***. The police then entered the residence and arrested Riddick. *Payton*, 445 U.S. at 578, 100 S.Ct. at 1376. In finding this arrest invalid, the Supreme Court held that, "absent exigent circumstances, warrantless intrusions into a suspect's home are unconstitutional." As all these cases make clear, "[T]he Fourth Amendment has drawn a firm line at the entrance to the house." *Taylor v. Mich. Dep't of Natural Res.*, 502 F.3d 452, 456 (6th Cir. 2007)(emphasis in

the original). As recently confirmed by the Court, the privacy of the home "deserve[s] the most scrupulous protection from governmental invasion." *Oliver v. United States*, --- U.S. ----, ----, 104 S.Ct. 1735, 1741, 80 L.Ed.2d 214 (1984); See also *United States v. Karo*, --- U.S. ----, ----, 104 S.Ct. 3296, 3302, 82 L.Ed.2d 530 (1984); *Welsh v. Wisconsin*, *supra*. "The warrant requirement of the Fourth Amendment is not a ritual which can be ignored because it may be inconvenient."

"The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police.... [T]he Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home." *McDonald v. United States*, 335 U.S. 451, 456, 69 S.Ct. 191, 193, 93 L.Ed. 153 (1948)." The district court below cannot be true to that constitutional requirement and excuse the defendant's absence of a search warrant without a showing by such defendant police officer who seeks exemption from the constitutional mandate that the exigencies of the situation made that course imperative. The facts simply do not support such proposition that an exigent circumstance existed, or was ever present. It is fundamentally unfair to the plaintiff, even while drawing all possible inferences in favor of the defendant, that some sort of exigent circumstance existed, just never existed before the jury, but after the jury trial. As herein stated, the defendant or his attorneys of record have never introduced any position or showing seeking an exception or exemption from the warrant requirement based upon a "cursory safety check".

The Supreme Court has repeatedly "underscored the essential purpose of the Fourth Amendment to shield the citizen from unwarranted intrusions into his privacy." *Jones v. United States*, 357 U.S. 493, 498, 78 S.Ct. 1253, 1256, 2 L.Ed.2d 1514 (1958). And the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."

United States v. United States District Court, 407 U.S. 297, 313, 92 S.Ct. 2125, 2134, 32 L.Ed.2d 752 (1972). The defendant police officer here violated this constitutional principle.

The District Court erred in determining an issue for the first time, thereby causing the issue to be considered by the Court of Appeals for the first time

In general, it is the function of the district court below to determine the facts on issues raised before it and to apply the law to those facts, and it is the function of the district court to decide whether the jury was provided with the correct instructions of the facts, testimony and legal theory of both the plaintiff and the defendant.

Ordinarily, an appellate court does not give consideration to issues not raised in the District Court below. The procedural scheme of the court of appeals contemplates that parties shall come to issue in the trial forum vested with authority to determine questions of fact. This is essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial tribunal is alone competent to decide. It is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence. Moreover, these basic reasons support this general principle applicable to trial courts that parties should have an opportunity to offer evidence on the general issues involved before the district court entrusted with the responsibility of fact finding. This general principle has caused this court of appeals, as well as the supreme court, to say on a number of occasions that the reviewing court should pass by, without decision, questions which were not urged before the district court below.

This Honorable Court has held that, "as an appellate court, we do not ordinarily consider issues that are not raised in the district court." *Smoot v. United Transp. Union*, 246 F.3d 633, 648 n. 7 (6th Cir.2001) (citing *Hormel v. Helvering*, 312 U.S. 552, 556, 61 S.Ct. 719, 85 L.Ed.

1037 (1941)). "'The purpose behind the waiver rule is to force the parties to marshal all of the relevant facts and issues before the district court, the tribunal authorized to make findings of fact.'" *Id.* (quoting *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 176 F.3d 315, 325 (6th Cir.1999)). "Logically, this principle is applied to bar both the government and a defendant from raising Fourth Amendment arguments for the first time on appeal." *United States v. Abdi*, 463 F.3d 547, 564 (6th Cir.2006) (Cole, J., dissenting). See *United States v. Alvarez-Sanchez*, 511 U.S. 350, 360 n. 5, 114 S.Ct. 1599, 128 L.Ed.2d 319 (1994) ("Finding no exceptional circumstances that would warrant reviewing a claim that was waived below, we adhere to our general practice and decline to address respondent's Fourth Amendment argument."); □*Steagald*, 451 U.S. at 208-09, 101 S.Ct. 1642 (1981) (government argued in district court that exigent circumstances and consent justified warrantless search of residence, but additional issue on appeal that petitioner had no expectation of privacy in residence was waived); *Giordenello v. United States*, 357 U.S. 480, 488, 78 S.Ct. 1245, 2 L.Ed.2d 1503 (1958) ("We do not think that these belated contentions are open to the Government in this Court and accordingly we have no occasion to consider their soundness.").

This entire case record which is now on appeal, shows the doctrine or legal theory of a "*cursory safety check*", of Mr. Denton's home was never presented before the district court below, or the jury. The District Court has somehow determined a "protective sweep" or "cursory safety check" applies to this case is patently erroneous. The District Court should not determine an issue, or draw an inference, when there never was an issue in which to draw any sort of inference from. In the District Court's bringing up this issue for the very first time, is now an issue that this *pro se* non-lawyer litigant must now address. Moreover, the Appellee will somehow have to craft a Brief defending the District Court's conclusion that "exigent

circumstances" existed in spite of each of the four police officer witnesses, including Defendant, testifying to not ever having exigent circumstances at any time (R. 123, Tr. Jury Trial, 4/13/10, pp. 23-24); (R. 124, Tr. Jury Trial, 4/13/10, pg. 7); (R.100, Tr. Jury Trial, 4/13/10, pg. 93)

Specifically, any inference concerning any sort of "*protective sweep*" or "*cursory safety checks*" in addition to no claim whatsoever concerning "*exigent circumstances*" was never raised before the district court judge, as well ***as the jury that was never instructed*** to consider any such notion of such doctrines applicable to police using "protective sweeps", "cursory safety checks" and "exigent circumstances and as such the defendant has effectively waived any theory that was never made part of this record for appeal, never presented to the district court below any facts, nor never even mentioned to the jury for instruction. It isn't fair to the Appellant for him to not be able to present evidence to rebut and refute the District Court's conclusions. This within itself constitutes a fatal error.

There may always be ***exceptional cases*** or particular circumstances which will prompt an appellate court, where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the district court below. *See Blair v. Oesterlein Machine Co.,* 275 U. S. 220, 275 U. S. 225. Furthermore, in this case, it would strongly appear that for the appellate court to consider questions of law, errors and so forth, to consider questions pertaining to conclusion drawn only by the district court judge in this case, whereby such conclusions and inferences are drawn out of thin air and not from any evidence of any kind would be an injustice to the appellant Mr. Denton.

Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously

been specifically urged would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice. The United States Supreme Court held in *Helvering v. Wood,* 309 U. S. 309 U. S. 349 that "Though petitioner in his petition for certiorari relied on Â§ 22 (a), ***respondent in opposition thereto took the position that that point was not available to petitioner here as it was not raised below***. In view of these facts, especially the express waiver below, we do not think that petitioner should be allowed to add here for the first time another string to his bow." *(emphasis added)*

In *Helvering*, *supra*, the supreme court relied upon the fact that the government, when the case was before the Circuit Court of Appeals, had made an express waiver of any reliance upon 22(a). In *Helvering v. Tex-Penn Oil Co.,* 300 U. S. 481, 300 U. S. 498, the Supreme Court declined to consider a newly presented question, but pointed out that it had not been raised …, in his appearances … or the Circuit Court of Appeals, 312 U. S. 558. And, in *General Utilities & Operating Co. v. Helvering,* 296 U. S. 200, 296 U. S. 206-207, in that case, the Supreme Court made the statement that the Circuit Court of Appeals should not have considered a contention not presented to or ruled upon by the Board of Tax Appeals, that statement was buttressed by adding that the Circuit Court of Appeals had "***made an inference of fact directly in conflict with the stipulation of the parties and the findings, for which we think the record affords no support whatever***. To remand the cause for further findings would be futile. The Board could not properly find anything which would assist the Commissioner's cause." *(emphasis added).*

Therefore, it is clear that *General Utilities & Operating Co., supra,* is direct on point and tantamount to this instant case. Direct on point with this instant case, as compared to the "Board of Tax Appeals" in the case of *General Utilities & Operating Co., supra,* ***the district court below made an inference of fact directly in conflict with the stipulation of the parties and the***

findings for which the record affords no support whatever. Accordingly, for this court to remand the case back to the district court for further findings would be futile as the district court below could not properly find anything which would assist the district court's cause.

These decisions and others like them, recognize the desirability and existence of a general practice under which appellate courts confine themselves to the issues raised below. The issues of "*protective sweeps*", "*cursory safety checks*" and "*exigent circumstances*" were never raised in the district court below. Not only were these issues waived by the Defendant-Appellee Officer Rievley in the second trial of this case, which now is under appeal, these issues were waived at the first trial of this case, which resulted in a hung jury, Officer Rievley waived in this Court of Appeals when Officer Rievley filed his Interlocutory Appeal. Nothing since the filing of the Plaintiff-Appellant Roy L. Denton's Complaint has any of these issues ever been raised.

Therefore, the District Court was in error consider anything that was not submitted into evidence or heard by the jury. The plaintiff-appellant Mr. Denton has the right to rebut, dispute and address these facts before the jury. Moreover, Defendant Steve Rievley can offer proof to the jury of such reasoning, somehow in line with the District Court.

The District Court erred in giving the jury instructions concerning "common authority" without explaining to the jury the law of common authority?

The District Court has the ability to grant a new trial when the judge believes, but does not know for certain, that the jury based its verdict on something other than a rational review of the evidence. The right to a second jury trial in such cases is sanctioned by the United States Constitution, the Federal Rules of Civil Procedure, and centuries of common-law practice. It applies in both civil and criminal cases when there is legally sufficient evidence to support the jury's verdict, but that evidence nevertheless "weighs so heavily against the verdict that it would

be unjust to enter judgment." *United States v. Arrington*, 757 F.2d 1484, 1485 (4th Cir. 1985).

"Generally, jury instructions are reviewed as a whole to determine whether they fairly and adequately submit the issues and applicable law to the jury." *United States v. Williams*, 952 F.2d 1504, 1512 (6th Cir. 1991). "The district court's choice of jury instructions is reviewed according to an abuse of discretion standard." *United States v. Beaty*, 245 F.3d 617, 621-22 (6th Cir. 2001), citing *United States v. Prince*, 214 F.3d 740, 761 (6th Cir. 2000). If the parties request particular language, "it is not error to fail to use the language requested by the parties if the instruction as given is accurate and sufficient." *Williams*, 952 F.2d at 1512, quoting *United States v. Horton*, 847 F.2d 313, 322 (6th Cir. 1988).

When a District Court refuses to give a requested instruction, "it is reversible only if that instruction is (1) a correct statement of the law, (2) not substantially covered by the charge actually delivered to the jury, and (3) concerns a point so important in the trial that the failure to give it substantially impairs the defendant's defense." *Williams*, 952 F.2d at 1512, citing *United States v. Parrish*, 736 F.2d 152, 156 (5th Cir. 1984). See also *United States v. Sassak*, 881 F.2d 276, 279 (6th Cir. 1989), citing *Parrish*, 736 F.2d at 156.

As in this instant case, the District Court neglected to give a requested instruction given to the court by the Plaintiff. (R. No. 86). As the record shows, there were two trials in this case. The first trial resulted in a "hung jury". The second trial was essentially the exact same witnesses, testimony and jury instructions as the first trial. However, the District Court failed to consider the Plaintiff's proposed jury instructions at that first trial and over objections of the Plaintiff, gave instructions that were the exact same for the second trial (R. No. 176). However, during the time leading up to the second trial, the Plaintiff discovered new evidence that the Defendant did not make any cellular phone call to Brandon while he was at the jail, as testified by the Defendant

while under oath at the first trial (R. No. 100 at 22 & 23, R. No. 166 at 26). Moreover, it was the clear contention and legal theory of the Defendant in each trial that the Defendant relied upon a "common authority" in which the Defendant claimed he had received from Brandon while Defendant was inside the Plaintiff's home searching it gathering up various articles of personal property. The proposed jury instruction submitted by the Plaintiff to the District Court at the first trial may have been a rather vague instruction (R. No 86, proposed jury instruction #2) but it nonetheless presented to the court below the Plaintiff's legal reasoning concerning common authority and how *Georgia v Randolph* was controlling. The Defendant did submit to the District Court his written and filed Objection to the Defendant's relying upon the doctrine of "common authority" (Court Doc. No 85). Furthermore, at the first trial, during the jury charge conference, the Chief District Judge went to great lengths to defend his reasoning that the Defendant's reliance upon "common authority" (R. No. 100, Tr., Jury Trial pp. 123-126).

Therefore, over Plaintiff's Objections, at the onset of the first trial the District Court was completely clear that common authority was the Defendant's legal theory and instructed the jury as such. Never then, or at any time thereafter, was there any mentioning of "protective sweeps" or "cursory safety checks" by the Defendant, his counsel or the District Court. Understandably, the jury was hopelessly deadlocked. Additionally, at page (R. No. 125, Tr. Jury Trial, 4/13-10, lines 17- 25) the district judge aggressively supported the Defendant's "common authority" theory that is clearly contradictory of the supreme court's holding in Georgia v Randolph that held that where two people are present and one gives consent, the other present party can refuse consent.

17 THE COURT: Were you present when the search was
18 conducted?
19 MR. DENTON: No, I was gone.

20 THE COURT: Did you object to the search?
21 MR. DENTON: Yes, I did. The evidence is clear that
22 I-- They all testified that I did not give them consent.
23 THE COURT: Well, there is a difference between
24 giving consent and objecting to a search. They're not the same
25 thing at all.

At the first trial, the district judge reasoned that since the Plaintiff was not present, and in spite of Plaintiff telling every officer to "get off my property, you don't have a warrant", in spite of every officer that testified each stating under oath that they never had consent from me, in fact I had directed them to get off my property, the district judge somehow found a logic in that "***there is a difference between giving consent and objecting to a search. They're not the same at all***". In fact, the District Court was moved by the Plaintiff to clarify such finding (R. No. 133 at 4). The District Court "reserved" ruling on Plaintiff's motion and at the second trial, even to the present, the court below has yet to clarify such difference between "***giving consent and objecting to a search***".

The Plaintiff was peacefully at his home. Plaintiff was dressed for bed, waiting on his wife to bring him a McDonalds Combo. Plaintiff's attention was directed toward his front door where he went to open it and undisputedly, thought it to be his wife returning home. Plaintiff opened his door in his "silk drawers" and saw police on his front porch with bright flashlights. Plaintiff was arrested and within 4 minutes was on his way to jail, simply put.

At all times, even both trials of this case, the Plaintiff, the Defendant and his three prepped for trial police officer witnesses (R. No. 123 Tr. at 10; R. No. 124 at 8; R. No. 125 at 18) each testified they had met with and discussed this case with the Defendant's attorney, Ronald D. Wells. Additionally, each police officer witness, including the Defendant testified that Plaintiff never gave them a consent "of any kind". Each police officer witness testified that the Plaintiff

rather assertively directed them all to "get off my property, you don't have a warrant". It is clear that the Defendant did not have consent to enter the Plaintiff's home, nor did he have a warrant or exigent circumstances. Plaintiff claims that the District Court judge, in neglecting to consider an inquiry into a possible perjury in his court where such perjury destroys, or could potentially destroy, the Defendant's legal theory and reliance upon a common authority that Defendant had claimed he had, by making a phone call to Brandon was a call that he simply did not make. This perjurious testimony alone and of itself has prejudiced the Plaintiff and creates a manifest injustice by rewarding a police officer lying under oath with apparent impunity. The district judge was in error to present the jury with a common authority instruction in support of the Defendant's legal theory but neglecting to instruct the jury as to the law as to how common authority is even obtained, or revoked.

The District Court in denying the Plaintiff's Motion for a Pretrial Conference for the upcoming second trial of this case (R. No., Order, 133 at 1) the District Court ruled that "***the Final Pretrial Order entered on April 16, 2010 will govern the retrial of this case***". *Id.* Therefore, the Final Pretrial Order of the first trial governed the second trial. Had the District Court taken notice and concern that a Defendant police officer had been aggressively accused of giving false testimony as to his claimed cellular call he testified to making to Brandon, while Brandon was at a completely different location (the county jail), the Plaintiff would have had the opportunity to allow the Defendant retract, or in the least explain to a Chief Federal Judge why he testified that he called Brandon when the overwhelming evidence of his phone records show such call never happened. Clearly, the district judge should be concerned when a police officer witness gives sworn testimony that he did something when evidence presented to the judge well before court shows it never happened. The Defendant and his counsel knew that the proof was in

the Defendant's phone records which by the way, took an order from the court below to force the Defendant and his attorney to produce those records (R. No. 99, Order on Def. Motion to Quash).

Based upon this *pro se* litigants research, that in current federal practice, "jury verdicts may be overturned on the weight of the evidence even when there is legally sufficient evidence to support the jury's verdict." *Kearns v. Keystone Shipping Co.*, 863 F.2d 177 (1st Cir. 1988). In addition to choosing the form of the verdict, the trial judge also chooses the instructions to be given to the jury. The power to instruct the jury is especially influential in federal court, because federal judges in both civil and criminal cases have the power to comment on the weight of the evidence. The Supreme Court has held that this power derives from the judge's role in overseeing the trial: "***In a trial by jury in a federal court, the judge is not a mere moderator, but is the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law.***" *Quercia v. United States*, 289 U.S. 466, 469 (1933) (*emphasis added*). As a result, the Court held that the judge may "assist the jury in arriving at a just conclusion by explaining and commenting upon the evidence, by drawing their attention to the parts of it which he thinks important" and may even "express his opinion upon the facts, provided he makes it clear to the jury that all matters of fact are submitted to their determination." *Id.*

The second ground by which a verdict can be set aside—***evidentiary weight***—is less drastic. When there is legally sufficient evidence to support the verdict, the trial judge can nevertheless set it aside and order a new trial if the judge concludes that "the verdict is so clearly against the weight of the evidence as to amount to a manifest miscarriage of justice." *12 JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE* § 59.13[2][f][iii][B] (2003).

The District Court was in error to not properly consider the Plaintiff's proposed jury

instructions presented to the District Court at the first trial *Id.* and consider them for the second trial since everything from the first trial Final Pretrial Order governed. The District Court ruled that the Final Pretrial Order of the first trial was to govern the second trial. *Id.* Moreover, there never was a scintilla of any rationalization or mentioning of any sort of "protective sweep or cursory safety checks". Had this been argued at the court below, and had this been made part of the Defendant's legal theory then perhaps some sort of different jury instruction would have lead a reasonable jury to determine in favor of the Plaintiff on that separate instruction alone.

Therefore, as a matter of law and to avoid manifest injustice, the Plaintiff Roy L. Denton should be granted a New Trial.

Did the District Court err in intimidating a *pro se* Plaintiff to the point that the Plaintiff felt forced to cease his Direct Examination of the Rebuttal witness Brandon S. Denton?

This entire case stems from an event that occurred on September 9, 2006. From that date, the Defendant Steve Rievley has consistently changed his version of the events. On 5/12/08, Defendant Rievley swore in an interrogatory response that "***Deputy Brewer went in the house with me to locate Dustin Denton***" (R. 21-2, Def. Rievley Interrogatory Responses, pg. 5). On 5/12/08 Officer Rievley made absolutely no mention to the narrative he swore to on September 11, 2006, just 2 days after the events of September 9, 2006, that he smelled alcohol or had any mentioning of any weapons at all, specifically a gun (R. 21-3, Def. Affidavit of Complaint).

On 6/20/08, the Defendant Rievley swore to an Affidavit. In that affidavit he states that "he walked to the door" and at Para. 16, Rievley stated that when he saw a pair of broken glasses on the front porch it was at "that point" Officer Rievley said he decided to arrest me. In this same affidavit at Para. 16, Officer Rievley states that, "***Gerald Brewer, a Rhea County police officer and I went into the Denton house in search of Dustin Denton***". Clearly, at that early point in

time of this instant lawsuit, Officer Rievley swears under oath that he and Brewer both went into Mr. Denton's home in search of Dustin. This certainly is a far stretch from how his story evolved from him and brewer arresting me then going into my home to search for Dustin up to some "mysterious person" creeping down a hallway making them attempt to create some exigent circumstance that even for the purposes of trial still could not achieve. Also, this is where his story starts to change under the watchful eye of his attorney to set the foundation for "me stepping onto my front porch in the middle of the night to meet and greet a porch full of police in my silk drawers". Certainly, it is the duty of an attorney to diligently defend his client but at what point does that canon cross the line of contemptuous behavior as an officer of the court? (R. 29-2, Affidavit of Steve Rievley).

On 6/20/08, the Defendant Rievley answered Requests for Admissions under oath. Specifically, at page 2 of the Admissions, Rievley states that, "it would be shown that Ms. Carbajal arrived at the jail to make said statement" (R. 30, Req. for Admissions, pg 2). However, at the first jury trial, Defendant Rievley, again under oath, testified that he in fact couldn't show anything regarding Jessica Carbajal (R. No. 100, Tr. Jury Trial, pp. 41-47). As the records reflects, the District Court made several rulings on several different kinds of motions and the court below relied upon what Rievley "swore" to as true each time. The problem is, every time Officer Rievley swore to something under oath his story changed (R. No. 51, Memorandum).

Again, virtually all of this goes back to what the Defendant Rievley has said that "Brandon Denton" had told him. The record is clear in one major respect in that Officer Rievley did testify under oath at two jury trials that he called Brandon while he was in my house searching for various personal belongings while talking to Brandon by phone who was at the jail a quarter mile away. Specifically, at the first jury trial Officer Rievley testified while under oath,

"***I called the jail from my cell phone, they gave Brandon Denton the phone, and I asked him specifically what he needed and where it was***." (R. No. 100, Tr. Jury Trial, 4/13/10, pg. 22).

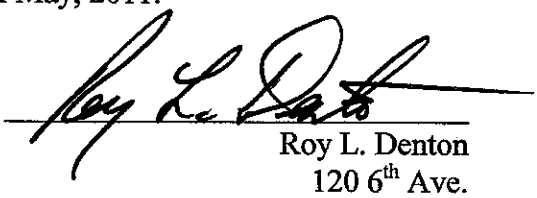
Once again, while Officer Rievley was under oath, he testified at the second jury trial that, "***I called the jail to speak to Brandon because he stated that he had some personal items in the house that he needed***" (R. No. 166, Tr. Jury Trial, 8/24/10 pg 26). However, once the Plaintiff Mr. Denton called Brandon Denton to the witness stand as a rebuttal witness, Brandon testified under oath that Officer Rievley did not call him while he was at the jail. As Mr. Denton was questioning Brandon about this "phone call" Officer Rievley testified that he made, Mr. Wells, the attorney for Officer Rievley objected, "***Objection to the form of the question. I don't believe that Officer Rievley testified that he called Brandon Denton***." Now here we have an attorney at law, who is an officer of the court, that knew full well that his client had in fact testified about making that phone call to Brandon. The district judge did not give me as a pro se litigant very much latitude in this rebuttal witness and as I felt like I was on target to set the foundation to impeach the testimony of Steve Rievley the judge gives Mr. Denton a rather stern warning. It was fundamentally unfair for the district judge to threaten me with "consequences" just because I was on a course that was going to prove the police officer defendant had lied under oath, which is perjury.

In any event, this *pro se* plaintiff felt very intimidated and prejudiced before the jury after being threatened by a chief district court judge and had I continued questioning my rebuttal witness, I was in fear of being fined, jailed or both. It is not fair to make me feel like I can be jailed for trying to seek the truth and find it and show it to the judge and the jury. It is also not fair that the judge is given direct knowledge, his magistrate given direct knowledge, *Id.*, that the Defendant had committed perjury in his court that appears to be fine with the district judge. It is a

principals of law that govern "common authority" establish that I was present and did not give consent, where Rievley merely claimed a "common authority" consent from a person a quarter mile away, who wasn't even there, and who did not speak to Rievley on the phone as Rievley had testified twice he did, where Brandon testified he did not call him at all, where the phone records stipulated to, therefore as such, not having to prove their authenticity since stipulated to, where such stipulated phone records clearly show that no call was made by Rievley to anyone at anytime during the time frame he was in my home, searching it, is all fundamentally unfair and is within itself a manifest injustice that this Honorable Court of Appeals can remedy.

Therefore, a reversal of the District Courts ordering denying the Plaintiff's Motion JNOV is fair and justified as shown with all there herein stated law and argument of the plaintiff-appellant. In a minimum, it is also justified and fair for this Honorable Court of Appeals to Remand this case back to the trial court where evidence can be given to show, or for the first time, to allow the Defendant Steve Rievley introduce evidence that any such protective sweep, never claimed by him, but determined only by the District Court Judge, so as to allow me, the plaitiff to introduce my evidence to the contrary. Furthermore, a Remand should order the District Court below to have an evidentiary hearing to establish if Steve Rievley lied under oath about the phone call he said he made, but didn't. One would think that a sitting Chief District Court Judge would aggressively safegaurd and never allow even a shadow of disrepute fall upon his court. It is imperative that society can remain to have it's faith in our federal district courts.

Respectfully submitted this 3rd day of May, 2011.



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CERTIFICATION

I certify that this Brief, in the simplified form, is less that 14,000 and is 28 pages long.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon Defendant Steve Rievley, by placing an exact copy in the hands of his attorney, on this 3RD day of MAY, 2011

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