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

FILED
2008 JUN 30 P 1:54
U.S. DISTRICT COURT
E.D. TN

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

PLAINTIFF'S REPLY TO THE DEFENDANT STEVE RIEVLEY'S RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Comes now, the plaintiff Roy L. Denton, *pro se*, to reply to the Defendant Steve Rievley's Response to Plaintiff's Motion for Partial Summary Judgment and respectfully submits the follow:

The plaintiff will first address the defendant's misunderstanding of the last paragraph under the heading of "**Introduction**" found within the plaintiff's memorandum in support of his Motion for Partial Summary Judgment found at Document 29. The paragraph reads as follows:

> **Furthermore, the plaintiff will not be discussing any disputed facts or events not relevant to this motion, but concede and concur with the articulation of the affidavit of complaint sworn to by the defendant. (see attached Ex. B)**

Respectfully, the defendant has mistakenly interpreted this as a full unequivocal conceding and concurring on the part of the plaintiff's memorandum as to ALL the facts within the defendants affidavit (Id. At Document 21). Such is

not the case and therefore, the *pro se* plaintiff Roy L. Denton sincerely apologizes to Mr. Wells and to this court for his lack of grammatical knowledge. The plaintiff's original intent was to concede and concur only with the articulation of Defendant Rievley's affidavit, *supra*, and in no event to be construed as any form of waiver of any 5th Amendment rights that the plaintiff may have. The conceding and concurring was meant only as to the undisputed facts ***and not*** any other disputed facts or events not relevant to the plaintiff's motion. The plaintiff's sole reasoning was to "*weed out*" all undisputed facts and deal with any disputed facts at a later date. Once again, I do apologize to the defendant, his attorney and this most honorable court.

Respectfully, the defendant is mistaken to use any events of the night of September 9, 2006, be they denied or concurred, because any alleged criminal offense is not the subject matter. Even if any allegations set forth within the affidavit were completely conceded to and concurred with, the affidavit or any other criminal offenses alleged, even those that rise to felonies, required that the defendant first obtain a warrant. Therefore, the entire section of the defendant's Response as to the section entitled **II. STATEMENT OF FACTS** should not be well taken by the court.

Even if ALL events sworn to by the defendant were true, such events are not in federal question to this honorable court and in any event, the plaintiff strongly avers there was no exigent circumstances and in fact, much time had passed by allowing for the defendant or any alleged victim to simply go obtain an arrest warrant. Any inferences made by the defendant in his Response that do not include exigent circumstances claims should not be well taken by the court.

The defendant submits a two (2) part Law and Argument giving his reasons why the plaintiff's Motion for Partial Summary Judgment should not prevail. The defendant offers argument to the court that *1) He made an arrest of the plaintiff pursuant to Tennessee state law,* specifically citing **Tennessee Code Annotated 36-3-619** and *2) he is entitled to qualified immunity.* (Id - Document 29 pg. 6)

In regard to the defendants claim that he made an arrest of the plaintiff under authority of T.C.A. 36-3-619 is without merit and should not be well taken by this honorable court. The issue as to Tennessee state law, or any state law for that matter, the United States Supreme Court in the case of ***Payton v. New York*** (1980) has already settled this issue and held that permitting the warrantless and non-consensual entrance into a home with force to make a felony arrest was unconstitutional. (Id at Document 21, pg. 4-5)

The defendant's argument that he was acting pursuant to T.C.A. 36-3-619 contradicts the supreme court regarding this entire matter and should not be well taken. The supreme court in ***Payton***, *supra*, has already considered the constitutionality of state law authorizing police officers to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest and has settled this issue where the court ruled:

Held:
The Fourth Amendment, made applicable to the States by the Fourteenth Amendment, prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest. Pp. 583-603.

In light of this, any assertions that the defendant was somehow acting

under state law is without merit.

Additionally, in all due respect, any assertions made by the defendant that the plaintiff must somehow contact the Tennessee Attorney General for his opinion on what the supreme court has already ruled on and made such ruling applicable to the states pursuant the Fourteenth Amendment is also without merit and should not be well taken by this honorable court.

The issue of a warrantless arrest has been extensively well settled. Courts consistently rule in favor of a need for a warrant before an arrest can be valid. This holds true even in cases where a defendant actually gave a consent to search his home.

The plaintiff refers to and cites ***United States v Bradley,*** 922 F.2d 1290 (6th Cir. 1991), "Although the District Court concluded that the defendant voluntarily consented to the search of his house, the District Court incorrectly concluded that the arrest of a person in his home without a warrant, absent exigent circumstances and regardless of the existence of probable cause, is permitted under the law of Tennessee".

Under ***Payton v. New York***, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), a person may not be arrested at home without a warrant, regardless of the existence of probable cause, absent exigent circumstances; moreover, in the present case, the validity of a warrantless arrest is determined by reference to State law. See ***Johnson v. United States***, 333 U.S. 10, 15, n. 5, 68 S.Ct. 367, 370 n. 5, 92 L.Ed. 436 (1948). The Tennessee Supreme Court has reaffirmed the rule that "[a] search or seizure without a warrant is presumptively unreasonable and invalid.... The right to search or seize without a warrant is the exception, and

it exists only under exceptional circumstances.... It has been said that the test is the apparent need for summary seizure and that when the securing of a warrant is reasonably practicable, it must be used." ***Fuqua v. Armour***, 543 S.W.2d 64, 66 (Tenn.1976). In condemning the seizure of an automobile from a defendant's premises in ***Fuqua***, the Tennessee Supreme Court stated unequivocally that:

"[w]e cannot countenance a seizure without a warrant of an automobile from the owner's premises when the officers had a period ... following its alleged [illegal] use ... within which to obtain a warrant. Just as a presentment was obtained for [the defendant's] arrest, so could a warrant authorizing the seizure of his automobile have been obtained in the period ... intervening between ... the offense and the arrest and seizure." Id., at 68.

Continuing, the Court emphasized that "[t]he fact that probable cause exists for seizure is not enough; there must also exist exigent circumstances" to justify a summary seizure. Likewise, the Tennessee Court of Criminal Appeals has held that "[i]t is settled law that police officers may not enter a suspect's house to arrest based upon probable cause unless they have a valid warrant or there are exigent circumstances excusing the necessity of obtaining a warrant...."***State v. Burtis***, 664 S.W.2d 305, 308 (Tenn.Cr.App.1983) (citation omitted). ***In virtually every Tennessee case that has permitted a warrantless arrest on occupied, private property (not just within a house itself), exigent circumstances have existed to justify the warrantless intrusion regardless of the existence of probable cause***. *(Emp. Added)*

Little Tennessee authority has been found, however, that permits a person to be arrested in his own home on the basis of an indictment without the issuance of process authorizing the arrest, despite the existence of probable cause, absent exigent circumstances. Although ***Howard v. State***, 599 S.W.2d 280

(Tenn.Cr.App.1980), does state that T.C.A. Sec. 40-803(3) [now codified at T.C.A. Sec. 40-7-103] permits a warrantless arrest in a person's home, even in the absence of exigent circumstances, id., at 282 (relying on ***Garner v. State***, 4 Tenn.Cr.App. 189, 469 S.W.2d 542 (1971)), the ***Howard*** court ***found that exigent circumstances did exist in that case***; moreover, ***Howard*** and ***Garner*** are in direct conflict with controlling authority of the State Supreme Court. See, e.g., ***Fuqua v. Armour***, *supra. (Emp. Added)*

In this instant case, the defendant could have easily obtained a warrant to arrest the plaintiff and he did not do so. No exigent circumstances appear that would excuse the warrant requirement for making an arrest at home. In fact, when the defendant arrived at the plaintiff's house, the plaintiff in the process of going to bed, was clearly unaware that he had been accused of any wrongdoing whatsoever, demonstrating that he was not planning to flee. The defendant could easily have obtained a warrant since the defendant claims that his partial investigative interview with Brandon Denton established the existence of probable cause. The procedure followed by the defendant in this case was fatally defective. The defendant has failed to comply with the requirements of the Constitution of Tennessee and consequently, the arrest of the plaintiff was in fact illegal under Tennessee law.

Furthermore, the Sixth Circuit has recognized that "[a]bsent exigent circumstances, police officers may not enter an individual's home or lodging to effect a warrantless arrest or search." ***United States v. Morgan***, 743 F.2d 1158, 1161 (6th Cir.1984), cert. denied, 471 U.S. 1061, 105 S.Ct. 2126, 85 L.Ed.2d 490 (1985). Even when the officers have probable cause to make an arrest but no

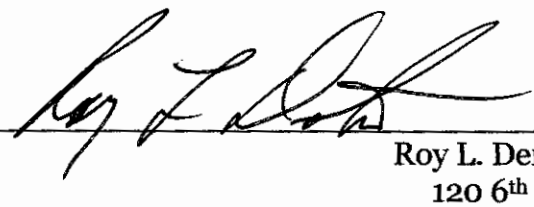
exigent circumstances exist, " '[w]here, as here, officers are not responding to an emergency, there must be compelling reasons to justify the absence of a search [or arrest] warrant,' " id., at 1162, and "[p]olice officers may not, in their zeal to arrest an individual, ignore the fourth amendment's warrant requirement merely because it is inconvenient...." Id., at 1163-1164. The securing of a warrant is not a mere formality or technicality. Id., at 1168. See also ***McDonald v. United States***, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153 (1948). As Justice Marshall stated in his dissent in ***United States v. Santana***, 427 U.S. 38, 48, 96 S.Ct. 2406, 2412, 49 L.Ed.2d 300 (1976), "the power to arrest is an awesome one and is subject to abuse." See also ***Coolidge v. New Hampshire***, 403 U.S. 443, 477-478, 91 S.Ct. 2022, 2043-2044, 29 L.Ed.2d 564 (1971) (an arrest is more serious and radical than a search).

Therefore, there appears to be no reason for the plaintiff to inquire the Tennessee Attorney General for an opinion on well settled law concerning the constitutionality, or lack thereof, of warrantless arrests inside the home absent exigent circumstances.

In reply to the defendants usage of case citations to support his legal theory, the plaintiff respectfully avers that the Fourth Amendment as well as the old familiar adage of "a man's home is his castle" as well as the very fundamental teachings from childhood on up, we all have been taught that we are to be safe inside our own homes. Even the King himself realized this under the old common laws. The defendant states that he has been "extensively trained" and if that be the case, and in light of everything discussed and placed in issue within the plaintiff's Motion for Partial Summary Judgment, the defendant Officer Rievley

must have been, or in the minimal, should have reasonably been aware of the requirement to obtain a warrant before invading the home of the plaintiff without exigent circumstances to validate such abuse of power.

Respectfully submitted, this 27th day of June, 2008

BY and FOR 

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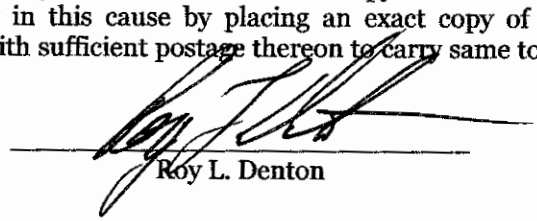
CERTIFICATE OF SERVICE

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 5th day of June, 2008.



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