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

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

PLAINTIFF ROY L. DENTON'S MOTION TO STRIKE

Comes now, the Plaintiff Roy L. Denton, *pro se*, pursuant to Rule 12(f) and Rule 56 of the Federal Rules of Civil Procedure and moves this honorable court for an order to strike portions of the DEFENDANT STEVE RIEVLEY'S MOTION FOR SUMMARY JUDGMENT (Court Doc. No. 42) ***and*** striking certain paragraphs of the affidavit of Steve Rievley submitted to this court in support of the defendant's aforesaid motion (Court Doc. No. 29-2); ***and*** to strike certain portions of the Defendant's *"Statement of Facts"* within the aforesaid motion as inadmissible hearsay; ***and*** to strike certain portions of the defendant's aforesaid motion *"Law and Argument"* within the aforesaid motion as ***plagiarism*** on the part of the defendant's attorney, Mr. Ronald D. Wells.

INTRODUCTION

Rule 56 (e) of the Federal Rules of Civil Procedure permits motions for summary judgment to be supported by competing declarations. The rule places three straightforward requirements upon declarations that are filed in support of a motion for summary judgment – the declaration must be based upon personal knowledge, it must set forth admissible evidence, and it must show affirmatively that the declarant is competent to testify. Defendant Steve Rievley's motion for summary judgment is supported by an affidavit filed by his litigation counsel, Mr.

Ronald D. Wells. Defendant Rievley's affidavit fails to satisfy all three requirements of Rule 56(e) and the Plaintiff moves that the offending paragraphs (¶¶ 7, 8, 10, 12, 13) of Defendant Steve Rievley's affidavit be stricken.

The defendant's attorney, Mr. Ronald D. Wells, has provided a "*Statement of Facts*" on behalf of the defendant that is incorporated within the defendant's Motion for Summary Judgment *Id.* which such a "*Statement of Facts*" is based profoundly upon the affidavit of the Defendant Steve Rievley. Therefore, the declarations made within the Defendant's "*Statement of Facts*" as found at pages 2-3 of the defendant's motion *Id.* as based profoundly on paragraphs (¶¶ 7, 8, 10, 12, 13) of defendant Steve Rievley's affidavit fails to satisfy all three requirements of Rule 56(e) and accordingly, the Plaintiff moves that the offending declarations found within the Defendant's "*Statement of Facts*" and as otherwise referenced or related to the affidavit of Steve Rievley as herein described be stricken.

The defendant's attorney, Mr. Ronald D. Wells, has provided a *"Law and Argument"* on behalf of the defendant that is incorporated within the defendant's Motion for Summary Judgment *Id.* which such *"Law and Argument"* is asserted by the plaintiff to constitute the use of another's words, works, thoughts, or ideas without giving proper attribution to the original author. It is asserted that the defendant's attorney, Mr. Ronald D. Wells, on behalf of the defendant prepared and incorporated within his motion for summary judgment *Id.* a "*Law and Argument*" that is not the original work product of the attorney, Mr. Ronald D. Wells, but is instead the words, works, thoughts, or ideas of the ***Honorable Harry S. Mattice, Jr.. United States District Judge***. Therefore, the Plaintiff moves that the offending declarations presented within the Defendant's *"Law and Argument" Id.* by the attorney, Mr. Ronald D. Wells, as found predominantly at pages 5-10 of the defendant's motion *Id.* and substantially at pages 11-13 be stricken.

ARGUMENT

Paragraphs of Steve Rievley's affidavit Should Be Stricken Because They Fail to Satisfy the Requirements of Rule 56(e)

A. Rule 56(e) Legal Standards

Rule 56(e) of the Federal Rules of Civil Procedure requires that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." "In reviewing motions for summary judgment, courts may not consider affidavits or declarations that do not comply with these requirements." ***El Deeb v. Univ. of Minnesota, 60 F.3d 423, 428 (8th Cir. 1995); School Dist. 1J v. AC and S, 5 F.3rd 1255, 1261 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1983); Mitchell v. Toledo Hosp., 964 F.2d 577, 585 (6th Cir. 1992); Friedel v. City of Madison, 832 F.2d 965, 970 (7th Cir. 1987); United States v. M.E. Dibble, 429 F.2d 598 (9th Cir. 1970).***

"All matters set forth in declarations must be based on personal knowledge and statements in a declaration are inadmissible unless the declaration itself affirmatively demonstrates that the declarant has personal knowledge of those facts." ***Love v. Commerce Bank of St. Louis, N.A., 37 F.3d 1295, 1296 (8th Cir. 1994); Gagne v. Northwestern Nat'l Ins. Co., 881 F.2d 309, 315-16 (6th Cir. 1989)*** (holding that statements in affidavits that are not based on personal knowledge and personal observation do not contain facts that are admissible evidence for summary judgment purposes); ***El Deeb, 60 F.3d at 428*** (affidavits "shall be made on personal knowledge" and must include facts "to show the affiant possesses that knowledge.") ***Dibble, 429 F.2d at 602.***

"To be admissible to support or oppose a motion for summary judgment, declarations must also set out specific facts – not mere conclusory allegations." ***Lujan v. National Wildlife Fed'n, 497 U.S. 871, 888 (1990)*** (holding that the object of Rule 56 is not to replace conclusory averments in a pleading with conclusory allegations in an affidavit***); Mitchell, 964 F.2d at 585*** (holding that "conclusory allegations and subjective beliefs ... are wholly insufficient evidence...."); ***O'Shea v. Detroit News, 887 F.2d 683 (6th Cir. 1989)*** (holding that conclusory allegations are not admissible evidence).

In addition, Rule 56(e) requires that declarations contain statements that would be otherwise "admissible in evidence," so declarations cannot contain hearsay. ***Hal Roach Studios v. Richard Frier & Co., 896 F.2d 1542, 1550 (9th Cir. 1984); Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); Mitchell, 964 F.2d at 585*** (holding that affidavit based on hearsay "is not proper Rule 56(e) affidavit because it was not made on personal knowledge and did not set forth 'facts' that would be admissible into evidence"); ***Hartsel v. Keys, 87 F.3d 795, 799 (6th Cir. 1996), cert. denied 519 U.S. 1055 (1997)***(hearsay evidence may not be considered on a motion for summary judgment). ***See also United States v. Leak, 123 F.3d 787, 796 & n.4 (4th Cir. 1997)*** (hearsay evidence in affidavits is not admissible to oppose motion for summary judgment); ***Evans v. Technologies Applications & Serv. Co., 80 F.3d 954, 962 (4th Cir. 1996); United States v. One Parcel of Real Estate, 963 F.2d 1496, 1501 (11th Cir. 1992); Visser v. Packer Eng'g Ass'n, 924 F.2d 655, 659 (7th Cir. 1991).***

"Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." ***Fed. R. Civ. P. 56(e).*** See also ***Union Ins. Soc'y of Canton, Ltd., v. William Gluckin & Co., Inc., 353 F.2d 946, 952 (2d Cir. 1965)***(holding "conclusory statements and statements not made on personal knowledge do not comply with the requirements of Fed. R. Civ. P. 56(e) and, therefore, may not be considered"). "A motion to strike is appropriate if documents submitted in support of a motion for summary judgment are not made on the basis of personal knowledge or contain inadmissible hearsay or conclusory statements." ***Pokorne v. Gary, 281 F. Supp. 2d 416, 418 (D. Conn. 2003); Spector v. Experian Info. Sys., No. 3:01-CV-1955, 2004 WL 1242978, at *4 (D. Conn. June 2, 2004).*** However, the entire affidavit need not be stricken, ***United States v. Alessi, 599 F.2d 513, 514-515 (2d Cir. 1979)***, even if a party moves to strike parts of an affidavit that do not comply with the requirements of Fed. R. Civ. P. 56(e). ***Jewell-Rung Agency, Inc. v. Haddad Org., Ltd., 87 F.3d 438, 439 (6th Cir. 1996).***

B. Paragraphs 7, 8, 10, 12, 13 of Steve Rievley's Affidavit Are Inadmissible And Should Be Stricken

Paragraphs 7, 8, 10, 12 and 13 of the Steve Rievley affidavit fails to meet one or more of the legal requirements of Rule 56(e) and should, therefore, be stricken.

Paragraph 7

In paragraph 7 of his affidavit, Steve Rievley states:

7. I was then directed to and spoke with Brandon Denton. Brandon Denton lives approximately one-fourth of a mile from the jail. Brandon went to the jail from his home after being attacked by his father and brother.

This paragraph should be stricken for several reasons. Defendant Steve Rievley, is plainly testifying as to matters outside his personal knowledge and merely offering conclusory, self-serving statements that he is not competent to make. The affidavit does not affirmatively show that Steve Rievley is qualified to testify about "*where*" Brandon Denton lives, or did not live, or where Brandon Denton went from and from where he came, or even any aspects of any alleged "*attack*". The declaration in his affidavit provides no factual support for the claim that there was even any attack ***as told to him*** by another person who has failed to submit to this court any form of testimony in the least. Furthermore, Steve Rievley states no facts showing that he has personal knowledge of where Brandon Denton actually lived or where or how Brandon Denton arrived at the jail, nor even what time Brandon was to have even arrived at the jail. Moreover, Steve Rievley clearly cannot attest to any such assault or attack other than the utterances of what a person who walked in off the street and rambled off to him.

Lastly, had there even been any probable cause, or any other evidence indicating any assault or attack on Brandon Denton, or anyone else for that matter, then clearly the General Sessions Court of Rhea County, Tennessee would not have dismissed the charges due to Brandon Denton not appearing ***in addition to*** Steve Rievley not conducting an ***"on scene interview"*** which is clearly mandated by law pursuant to ***TCA 36-3-619***. Steve Rievley was not allowed to offer this same exact hearsay testimony at a criminal state court and he cannot rely upon such hearsay evidence now. Steve Rievley should have provided to this court an affidavit, deposition

or some other sworn testimony submitted by Brandon Denton so as to in the very least allowed the plaintiff the opportunity to cross examine and investigate such testimony. Therefore, Paragraph 7 is no more than a self-serving attempt to provide Steve Rievley legal arguments with otherwise nonexistent factual support and should be stricken because it fails to satisfy Rule 56(e) requirements.

Paragraph 8

Paragraph 8 of the Steve Rievley affidavit states:

8. Brandon Denton informed me that he worked at the local Taco Bell until midnight that evening. Sometime after midnight, his co-worker and friend, Jessica Carbajal, gave him a ride to his home.

Paragraph 8 is objectionable on several grounds, and should be stricken for many of the same reasons as paragraph 7, above. Steve Rievley purports to provide factual information regarding where Brandon Denton was employed, even IF Brandon Denton was employed, what time Brandon Denton worked, when he got off work nor does defendant Rievley provide a time frame that can be conclusive as to any relevant events of this instant case or any accusations Steve Rievley attempts to purport against the Plaintiff Roy L. Denton. Steve Rievley attempts to state something ***said to him by a third party*** (Jessica Carbajal) as a fact, when the only fact presented, is the fact that he is relying upon ***what someone else told him*** without offering any proof, evidence, testimony or otherwise to support his contention. Clearly, Steve Rievley should, as a police officer, have known that he can not rely upon statements made to him outside of a court of law, not sworn to, and attempt to present what ***he says that she says*** to this honorable court and deny the plaintiff the opportunity to cross examine and investigate such testimony. Therefore, Paragraph 8 is no more than a self-serving attempt to provide Steve Rievley legal arguments with otherwise nonexistent factual support.

Besides lacking a factual basis for paragraph 8 of his declaration, Steve Rievley's statement on its face is vague and misleading. It is not clear from the declaration what Steve Rievley means by the language *"sometime after midnight."* His statement does not cite facts to

describe "*when*," Brandon Denton arrived "*home*", or even "*where*" home was. Steve Rievley's reliance upon this statement made by Jessica Carbajal is totally unsupported by any evidence, statements or testimony and is actually in direct conflict and contradiction to his other testimony within this instant record that he "*arrived at the jail at 1:39 a.m.*", which is factually 99 minutes from "*midnight*". Steve Rievley plainly does not have, and does not specifically allege that he has, personal knowledge of these matters. Indeed, Steve Rievley's statement, like paragraph 7, is self-serving, conclusory, and contains unsubstantiated hearsay lacking any reference to the factual record. Paragraph 8 should be stricken because it fails to satisfy Rule 56(e) requirements.

Paragraph 10

Paragraph 10 of Steve Rievley's affidavit provides:

10. Sometime after he arrived home, Brandon Denton's father, Roy Denton, and brother, Dustin Denton, began hitting him. Brandon Denton stated that his father and brother were intoxicated at the time of the attack.

Paragraph 10 should be stricken because it contains statements that are conclusory, not based upon Steve Rievley's personal knowledge, and that are incorrect and misleading. Steve Rievley has absolutely no idea as to what happened, or what did not happen at the home of the Plaintiff Roy L. Denton. Steve Rievley is asserting this declaration as a fact when he simply ***was not present*** at any time at the home of Roy L. Denton. He is asserting something as a fact, but he has no personal knowledge of it. Certainly, Steve Rievley may want to try to convince this honorable court that he has some sort of right to rely upon the "*excited utterance*" theories of law, however, such purported reliance must fail as well. This declaration that Steve Rievley is attesting to as a fact is not found within his very on investigative form as an "*excited utterance*". Again, Steve Rievley is attempting to convey a fact to this court that is conclusory, unsupported and is even in direct contradiction with his previous sworn testimonies presented to this honorable court. Steve Rievley's statement is hearsay, especially because he was not present during anything he testifies to happened at the home of Roy L. Denton because simply put, he wasn't even there. This paragraph is inadmissible because Steve Rievley lacks personal

knowledge and has not specified facts sufficient to show that he has actual knowledge of relevant facts. Moreover, the defendant Steve Rievley has submitted this affidavit in support of his Motion for Summary Judgment where it is clear within this record that several ***contradictory*** sworn statements are inconsistent with his affidavit. As a matter of law, if an affidavit of a movant for summary judgment is inconsistent with the movant's former sworn testimony, ***summary judgment may not be granted*** in the movant's favor. Steve Rievley should have provided to this court an affidavit, deposition or some other sworn testimony submitted by Brandon Denton so as to, in the very least, allow the plaintiff the opportunity to cross examine and investigate such testimony. Therefore, Paragraph 10 is no more than a self-serving attempt to provide Steve Rievley legal arguments with otherwise nonexistent factual support and should be stricken because it fails to satisfy Rule 56(e) requirements.

Paragraph 12

Paragraph 12 of the Steve Rievley affidavit states:

12. Brandon informed me that both his father and brother remained at their home at 120 6th Avenue, Dayton, Tennessee. Brandon also told me that he wanted to retrieve some of his belongings from his home but was afraid to do so by himself after the attack.

For the same reasons that paragraphs discussed above are inadmissible, paragraph 12 should also be stricken. In his affidavit, Steve Rievley does not specify what he retrieved from the home of Roy L. Denton. Rievley has testified in his affidavit *Id.* at ¶19 that he "*collected Brandon Denton's personal belongings*". He even asserts as fact that Brandon "***told***" him that he wanted his belongings. However, Mr. Rievley fails to state what belongings he got, where he got them, how he managed to decide what was supposedly Brandon Denton's property or someone else's. Moreover, defendant Rievley consistently fails to identify such personal belongings, or for that matter, disclose to the plaintiff exactly what he has done with such personal belongings. Steve Rievley once again states something as fact, but he wasn't present to know anything for fact. He continues to rely upon what he was "***informed***" or "***told***" by some other person. Ironically, Steve Rievley states for fact that "*Brandon informed me that both his father and*

brother remained at their home..." but even this fails to mention how he arrived at such a conclusion that Brandon Denton lived at 120 6th Ave., Dayton, TN, and more importantly, defendant Rievley doesn't even know "***who***" the father of Brandon Denton actually is. Steve Rievley refers to the plaintiff as "*Brandon's father*" but amazingly, in Steve Rievley's very first sworn affidavit of complaint (Court Doc. No. 21-3) he testifies that upon asking the plaintiff Roy L. Denton "*what happened with his son* ***He would not answer me***". "In sum, Steve Rievley's statement is so vague that it has no meaning and he fails to allege facts sufficient to support his allegations. In paragraph 12, Steve Rievley addresses issues that appear to be outside his personal knowledge and his declaration does not affirmatively set forth the basis for his statements, as required by Rule 56(e), and is thus deficient and should be stricken.

Paragraph 13

Paragraph 13 of the Steve Rievley affidavit states:

13. I called and spoke to Brandon Denton's co-worker, Jessica Carbajal. Ms. Carbajal verified the [sic] Brandon Denton did not have any injuries or abrasions when she dropped him off at home, sometime after midnight.

Just like his earlier paragraphs, Steve Rievley's statement here is unsubstantiated by any factual support and should be stricken because he has not alleged facts specific enough to show that he has personal knowledge about the allegations in the paragraph, and the paragraph is inconsistent with information provided to the plaintiff in previous testimony. Steve Rievley makes the declaration that he "***called and spoke***" with a person by the name of Jessica Carbajal where "***he-says-she-says***" Brandon Denton didn't have any injuries. However, the declaration in this paragraph is inconsistent to the testimony given by Steve Rievley in a Request for Admissions under oath where he testified that Ms. Carbajal "***arrived at the jail to make a statement***". (Court Doc. No. 30 ¶ 7). As a matter of law, if an affidavit of a movant for summary judgment is inconsistent with the movant's former sworn testimony, ***summary judgment may not be granted*** in the movant's favor. Defendant Rievley states for fact something ***he was told by a third party*** person over a telephone. Moreover, his previous inconsistent testimony declares

that Ms. Carbajal gave him a "***statement at the jail***". Defendant Rievley has failed to offer any statement, or any other evidence to support his contention. The defendant Steve Rievley's failure to provide even minimal facts from the record to support his statements renders the allegations inadmissible pursuant to Rule 56(e).

C. PLAGIARISM

Respectfully, the Plaintiff Roy L. Denton only seeks to give notice to the court of what appears to be a suspected plagiarism. However, if the court in it's wisdom finds that a member of the bar has plagiarized a sitting federal judge, then it is moved by the plaintiff to strike the relevant parts of the herein described ***"Law and Argument"***, presented to the court by Mr. Ronald D. Wells.

CONCLUSION

Paragraphs 7, 8, 10, 12 and 13 of the Affidavit of Steve Rievley (Court Doc. No. 29-2) do not constitute evidence that is properly admissible under Rule 56(e) of the Federal Rules of Civil Procedure, because Steve Rievley lacks personal knowledge, fails to put forth facts that would be admissible, or does not provide facts affirmatively showing that he is competent to testify about matters discussed in the various paragraphs. Paragraphs 7, 8, 10, 12 and 13 are intended to introduce documents that defendant Rievley seeks to admit into evidence; however, those paragraphs also fail to satisfy the requirements of Rule 56(e) of the Federal Rules of Civil Procedure. The Plaintiff Roy L. Denton respectfully requests that the court strike objectionable paragraphs of the affidavit of Steve Rievley submitted in support of defendant's motion for summary judgment.

Respectfully submitted, this 17th day of September, 2008.

BY: _____

Roy L. Denton
2457 Airport Thruway PMB 106
Columbus, GA 31904
706-221-2918

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 Sept, 2008.

Roy L. Denton

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