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

FILED
2010 AUG 13 P 2: 11
U.S. DISTRICT COURT
EASTERN DIST. TENN.
BY DEPT. CLERK

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

PLAINTIFF ROY L. DENTON'S **MOTION** ***IN LIMINE*** FOR JUDICIAL CONSIDERATION CLARIFYING THE DIFFERENCE BETWEEN
"GIVING CONSENT AND OBJECTING TO A SEARCH"

Comes now, the Plaintiff Roy L. Denton, *pro se*, and moves this court for a judicial consideration to determine and clarify the difference between a home owner "***giving consent***" to a warrantless search of his home and the home owner "***objecting to a search***" of his home without a warrant or exigent circumstances. In support of this motion plaintiff respectfully submits the following:

Because persons agreeing to a consent search are essentially waiving their Fourth Amendment rights, the burden is on the government to prove that their consent was "***free and voluntary***." A *consent*, to be lawful, must be "*freely and voluntarily*" given. (***Bumper v. North Carolina*** (1969) 391 U.S. 543, 548 [20 L.Ed.2nd 797, 802].) *(emphasis added)*

Historically, courts have held that a "***failure to object is not the same as consent***.". See *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973); *State v. George*, 557 N.W.2d 575, 579

(Minn. 1994). However, in this court, the Honorable Judge Collier held a different position on the subject of "giving consent" and "objecting to a search". In denying the plaintiff's objection at the first jury trial concerning a "common authority" jury instruction, Chief Judge Collier stated "***there is a difference between giving consent and objecting to a search. They're not the same***."

Judicial clarification should be made in regard to an apparent contrast of "*consenting to a search and objecting to a search*", or "*not consenting to a search and objecting to a search*". Clearly, the arrangement of these few simple words can easily present an undue burden upon a jury of average lay persons. From the United States Supreme Court on down the line, courts have held that a "***failure***" to object ***is not the same*** as "***consent***". To somehow attempt to explain the critical differences in these issues of law, or legal fact, or conclusions presented in contrast by this honorable court to a jury would be mind-boggling, at best. Clarification is therefore needed.

As the evidence in this case clearly points out, which will be shown at trial, the plaintiff "***did object***" to the warrantless search of his home and in fact, even "***objected***" to the police being present on his property without a warrant, all of which evidence is preserved within the record.

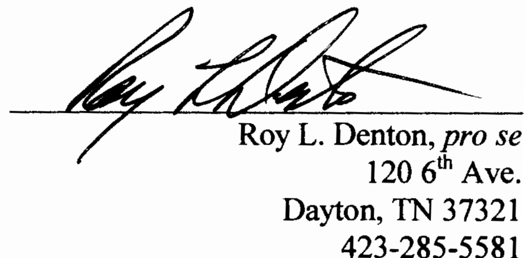
Because persons agreeing to a consent search are essentially waiving their Fourth Amendment rights, the burden is on the government to prove that their consent was free and voluntary. In *Schneckloth v. Bustamonte*, the United States Supreme Court determined that voluntariness is determined by reviewing the "totality of circumstances" surrounding the consent search." 412 U.S. at 223. Compliance with the strictures of the Fourth Amendment in most cases can only be accomplished by obtaining search warrants before entering and searching. *United States v. Ventresca*, 380 U.S. 102, 106, 85 S.Ct. 741, 744, 13 L.Ed.2d 684 (1965). Although warrantless searches are not absolutely precluded, the exceptions to the requirement for a warrant must be "jealously and carefully drawn." *Jones v. United States*, 357 U.S. 493, 499, 78 S.Ct.

1253, 1257, 2 L.Ed.2d 1514 (1958).

The Supreme Court has made clear in ***Georgia v. Randolph*** *(See Court Doc. No 85-1)* that in determining whether third party consent is sufficient to justify a warrantless search under the Fourth Amendment. It simply can not be objectively reasonable under any societal understanding for the defendant under color of law to enter the plaintiff's home based on the consent of person believed to be a co-occupant when the police officer defendant knows that another co-occupant, namely the plaintiff Mr. Denton, has expressly refused to give consent. The physical presence of the objecting plaintiff has no substantial bearing on the interests that the social expectations is meant to protect, and the hasty arrest of the plaintiff and police briskly hauling him away to jail not only volatile of those social expectations historically engrained within firmly established law.

Therefore, for all the herein stated reasons, this court should clarify which legal judicial proposition is correct to avoid a manifest injustice, to clarify this court's opinion that "*giving consent and objecting to a search. They're not the same*." as opposed to the various other courts cited with a special emphasis upon *Georgia v. Randolph.*

Respectfully submitted this 13th day of AUGUST, 2010.



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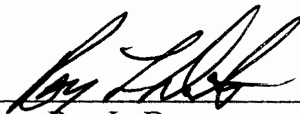
CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 13th day of August, 2010.



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