

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

ROY L. DENTON)	
)	
Plaintiff)	Case No. 1:07-cv-211
)	
v.)	JURY DEMAND
)	
STEVE RIEVLEY)	Collier/Carter
)	
Defendant)	

**DEFENDANT STEVE RIEVLEY’S RESPONSE TO
PLAINTIFF ROY L. DENTON’S MOTION *IN LIMINE* AND OBJECTION
REGARDING JURY INSTRUCTIONS CONCERNING “QUALIFIED IMMUNITY”**

Comes the Defendant, Steve Rievley, in his individual capacity, (herein “Officer Rievley”) through counsel, and hereby files his Response to Plaintiff Roy L. Denton’s Motion *in Limine* and Objection Regarding Jury Instructions Concerning “Qualified Immunity.” For cause, Officer Rievley would show this Court as follows.

In the previous trial of this case in April, 2010, this Court allowed the jury to be instructed on the affirmative defense of qualified immunity. The Plaintiff objects to this Jury Instruction and has filed the instant Motion *in Limine*, stating that qualified immunity is a question of law and not question of fact to be determined by a jury.¹ While the Plaintiff is correct that Officer Rievley’s Motion for Summary Judgment on the issue of qualified immunity was denied both at the District Court level and the Appellate Court level, it does not necessarily follow that Officer Rievley is unable present this affirmative defense to a jury.

¹The Plaintiff does not cite one Sixth Circuit case to support his Motion.

In certain circumstances, the Court may submit the issue of liability in § 1983 cases to the jury. As the District Court in *Martin v. City of Eastlake*, 686 F. Supp. 620, 629-630 (N.D. Ohio 1988) opined, “in charging a jury on the qualified immunity defense, this Court sees no compelling reason to deviate from the normal instructions used in charging a jury on an affirmative defense. The Court should instruct the jury to first decide the issue of whether the defendant violated a plaintiff’s constitutional right. The jury should then be instructed that if it finds a constitutional violation it should then determine whether the defendant is entitled to the defense of qualified immunity.” *Id.* Additionally, in the recent Sixth Circuit case of *McKenna v. Edgell*, 08-2080, 2010 WL 3220018 (6th Cir. Aug. 17, 2010), the Sixth Circuit recognized that there are some circumstances where the jury, and not the court, is in a better position to determine if an officer is entitled to the affirmative defense of qualified immunity. *Id.* As the *McKenna* court stated, “qualified immunity is a question of law, but ‘where the legal question of qualified immunity turns upon which version of the facts one accepts, the jury, not the judge, must determine liability.’” *Id.* (citing *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 899 (6th Cir.2004)).

Because a court must review a Motion for Summary Judgment with all reasonable inferences drawn for the nonmoving party pursuant to *Federal Rule of Civil Procedure* 56, any disputed facts about the events of the night in question were drawn in favor of the Plaintiff when ruling on Officer Rievley’s Motion for Summary Judgment. This does not mean, however, those disputed facts cannot be presented to a jury for their determination. *See Martin*, 686 F. Supp. at 629; *McKenna*, 2010 WL 3220018; and *Champion*, 380 F.3d at 899. Thus, it is proper for this Court to instruct the jury on the affirmative defense of qualified immunity.

For this reason, Officer Rievley respectfully requests that the Court deny the Plaintiff’s Motion and that the jury be instructed on the affirmative defense of qualified immunity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2010, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

This the 18th day of August, 2010

Robinson, Smith & Wells

By: s/Elizabeth Roderick

cc: Mr. Roy Denton
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