

**UNITED STATES DISTRICT COURT
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’S RESPONSE TO ROY L. DENTON’S OBJECTIONS TO
STEVE RIEVLEY’S PROPOSED JURY INSTRUCTIONS**

COMES the Defendant Steve Rievley, by and through counsel, and hereby files his Response to the Plaintiff’s Objections to the Defendant’s Proposed Jury Instructions:

The Plaintiff objects to the Defendant’s Proposed Jury Instructions # 1 and # 7 which specifically address warrantless arrest and qualified good faith immunity on the mistaken grounds that because the Defendant did not prevail on these issues at the summary judgment stage, the Defendant is, therefore, precluded from submitting proposed jury instructions on these issues. Defendant Rievley respectfully submits that the Plaintiff does not understand the summary judgment process. When deciding on a motion for summary judgment, the Court must determine “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-52; *see also Lapeer County, Mich. v. Montgomery County, Ohio*, 108 F.3d 74, 78 (6th Cir. 1997). Thus, the denial of the Defendant’s Motion for Summary Judgment on the issue

of warrantless arrest does not mean that the Plaintiff has prevailed on this issue. Rather, it indicates that there were enough disputed material facts to present the issue to the jury, hence the need for proposed jury instructions on this issue. The same is true on the issue of qualified immunity.

The Plaintiff is correct that the Defendant mistakenly failed to cite to the proper authority for the proposed jury instruction on qualified immunity. This was an oversight. The correct citation is: *Myers v. Potter*, 422 F.3d 347, 352 (6th Cir.2005); *Pray v. City of Sandusky*, 49 F.3d 1154, 1158 (6th Cir.1995); and *Megenity v. Stenger*, 27 F.3d 1120, 1124 (6th Cir.1994).

The Plaintiff also objects to the Defendant's Proposed Jury Instructions #3, #4, and #5 on the basis that a suit brought pursuant to § 1983 "contains no state-of-mind requirement." For this, he cites to *Parratt v. Taylor*, 451 U.S. 527 (1981). *Parratt*, however, has been overruled by *Daniels v. Williams*, 474 U.S. 327, 328, 106 S.Ct. 662, 663 (1986) (stating that "the Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property"). The Plaintiff has brought his § 1983 pursuant to the Fourth, Fifth and Fourteenth Amendment, claiming that he was deprived of his liberty and his property. Thus, in order to succeed in his § 1983 claims and prove constitutional violations of the Fourteenth Amendment, the Plaintiff must show that the Defendant acted intentionally or recklessly.

Furthermore, the Plaintiff has alleged that he is entitled to punitive damages due to the Defendant's intentional conduct. Punitive damage awards are limited "to cases involving only the most egregious of wrongs." *See First Nat'l Bank v. Brooks Farms*, 821 S.W.2d 925, 927 (Tenn.1991). Moreover, punitive damages can only be awarded when there is a finding, by clear

and convincing evidence, that the defendant acted either intentionally, fraudulently, maliciously, or recklessly. *Culbreath v. First Tenn. Bank Nat. Ass'n*, 44 S.W.3d 518, 527 (Tenn.2001); *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn.1992). Thus, jury instructions on these issues are appropriate.

The Plaintiff also objects to the Defendant's Proposed Jury Instruction #8. The Defendant respectfully submits this jury instruction is consistent with case law and with what the Defendant has presented throughout the course of this litigation. Specifically, Brandon Denton came to the local jail, stating that he had just be assaulted by his brother and his father at his home located at 120 6th Avenue. The Defendant investigated Brandon Denton's claim by calling Ms. Carbajal who drove Brandon Denton to his home at 120 6th Avenue after work that night. The Defendant further investigated the claim by going 120 6th Avenue, finding Brandon Denton's broken eyeglasses on the front porch, and speaking with Brandon's father. Additionally, Brandon Denton expressly requested that the Defendant retrieve personal items, including parts of Brandon's work uniform, belonging to Brandon Denton from 120 6th Avenue which the Defendant was able to locate. Based on all of these circumstances, the Defendant had no reason to believe on September 9, 2006 that Brandon Denton did not have common authority over the premises of 120 6th Avenue. Accordingly, such a proposed jury instruction is appropriate.

ROBINSON, SMITH & WELLS
Suite 700, Republic Centre
633 Chestnut Street
Chattanooga, TN 37450
Telephone: (423) 756-5051
Facsimile: (423) 266-0474

By: _____ s /Ronald D. Wells

Ronald D. Wells, BPR# 011185
Attorney for Defendant, Steve Rievley

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of April, 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 9th day of April, 2010

Robinson, Smith & Wells

By: s/Ronald D. Wells

cc: Roy L. Denton *-via hand delivery*
120 6th Avenue
Dayton, TN 37321

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