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LEONARD GREEN, Clerk

Appeal No. 11-5284

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROY L. DENTON,
Plaintiff - Appellant
v.
STEVE RIEVLEY, *in his individual capacity*
Defendant - Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

Doc. No. 1:07-CV-211

SIMPLIFIED *PRO SE* REPLY BRIEF OF THE APPELLANT ROY L. DENTON

Oral Argument Waived

Roy L. Denton, *pro se*
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SIMPLIFIED *PRO SE* REPLY BRIEF OF ROY L. DENTON

ARGUMENT

Initially, the *pro se* Plaintiff/Appellant Roy L. Denton, generally objects to the Defendant/Appellee Steve Rievley's (*hereinafter Officer Rievley*) Corrected Brief for several reasons. One, virtually every citation listed within his Table of Authorities is improperly cited and not in accordance with FRAP 28 regarding the table of authorities—cases (alphabetically arranged), statutes, and other authorities—***with references to the pages of the brief where they are cited***. I have been forced to rely upon search features just to find these authorities. In fact, virtually every cited authority is not on the referenced page and some not even on the page referenced at all. Another example, Officer Rievley lists Fed. R. Civ. P. 51 and references them to pages **5, 16, 25, 26**, yet a search of the entire brief, even a search of just the number "**51**" to be certain of no mistake, shows that Fed. R. Civ. P. 51 is actually only referenced once, on page **28**. Perhaps this is some sort of oversight that may be considered as "trivial" in the eyes and mind of a trained attorney at law. But to me, the pro se litigant it is rather perplexing in how three trained attorneys at law to somehow "call me out" for not properly citing laws or references within my brief, and then turn around and do the very same thing. (App. Corrected Brief, pg. *iv*, *v* and *vi*.)

Second, Officer Rievley often cites the record but fails to tell me, or much more importantly, this honorable court, where the support is located for his factual summary, or statements of fact. For example, Officer Rievley cites "the record" many times within his Brief. The word "***record***" is cited 5 times on page 14 alone with absolutely no support location whatsoever. As Officer Rievley very clearly states in his Corrected Brief, "Although pro se parties are generally given some leeway in the submission of appellate briefs, Rule 28 of the Sixth Circuit

Rules requires that "A brief must direct the court to those parts of the record to which the brief refers." [App. Corrected Brief Pg. 6]. Using the attorney's own reference to "Rule 28", it is now said that Officer Rievley has failed to properly cite to the appropriate record and his failure to do so has added to my difficulty in replying thereto. After all, it was Officer Rievley that pointed this out.

Furthermore, another point that needs to be noted regarding "Rule 28" *supra*, it is improper for Officer Rievley to request this court to "**strike**" anything from my Appellant Brief. I may be mistaken, but the only way to get a court to do something is to "**move**" for it, or "make a motion" for relief sought. As stated in his Corrected Brief, *id.*, "*Officer Rievley respectfully requests that those portions of Mr. Denton's brief that cite to the first trial, as well as those portions that do not contain any citation to the record, should be stricken.*". I am confused as to how to even address this. Officer Rievley apparently wants something stricken, yet he doesn't file a motion for it. Perhaps I am mistaken here, so therefore, to be earnest in pleading my case, I will briefly address why nothing should be stricken from my Brief as requested by Officer Rievley.

Officer Rievley has not made a motion and additionally, counsel for Officer Rievley has stipulated that there was no need to bear the expense for the complete transcript of the second trial concerning my direct and cross examination. Attorney Mr. Ronald D. Wells and myself stipulated to this because I was the only person to testify on direct for myself at both trials. I said pretty much the exact same things. Mr. Wells asked me pretty much the same questions upon cross examination by Mr. Wells which were answered in pretty much the same way. In any event, Mr. Wells and myself stipulated to this. Furthermore, the relevant issues on appeal have nothing to do with the long, drawn out testimony or domestic violence, bullies, gay people, truthfulness, feelings being hurt or even the warrantless arrest itself. I did not appeal any of that.

However, **in each trial Officer Rievley always testified that 1)He didn't have a warrant. 2) He never had an exigent circumstance. 3) He never had my consent. 4) He entered my home without a warrant. 5) He entered my home and searched it. 6) He searched it and removed various articles of property from inside my home.** (R. No. 100 Tr. Cross Exam of Steve Rievley, 04/13/2010; R. No. 142 Tr. Cross Exam of Steve Rievley, 8/24/2010). It is impossible for any jury to determine facts not even presented to them. Officer Rievley is somehow trying to paint a picture that the jury heard things of "exigent circumstances" and "common authority" which together a reasonable jury could find for Officer Rievley. Great try, but the problem is exigent circumstances were never even mentioned except when Officer Rievley and three police officer/witnesses testified in each trial each and all that "no exigent circumstances never existed"

IS THE APPELLANT'S BRIEF REALLY "HARD TO FOLLOW"?

The Simplified Appellant Brief covered not only just issues presented for appeal, numerous other errors, of facts and law and other reasons, un-responded to by Officer Rievley

As provided for by this honorable court, I filed a "***simplified brief***" in this appeal and I feel that I pretty much made clear my issues. I also feel I adequately and succinctly answered the questions that were designed for *simplicity* to assist a non lawyer person such as myself prosecute an effective appeal from a judgment of a lower court. It is hard pressed to understand Officer Rievley's reasoning that my Simplified Appellant Brief was somehow *"hard to follow"*.

In my answers to questions listed within the simplified appeal form; **1) Did the District Court incorrectly decide the facts?** I answered "**Yes**." and explained which facts I felt were decided incorrectly. **2) Do you think the District Court applied the wrong law?** I answered "**Yes**." and explained the laws I felt were erroneously applied. **3) Do you feel there are any**

other reasons why the District Court's judgment was wrong? Again, I answered "**Yes**." and went on to list my reasons, as simply as I could. I then went on to list the specific issues I wished to raise on appeal and listed six individual issues along with what action I wanted the Court of Appeals to take. All of this is embodied within the 4 briefed issues, yet Officer Rievley has not adequately responded to my issues raised on appeal. Nor has he addressed or otherwise argued all the other factors that I claim that show I did not get a fair trial. Officer Rievley addresses none of my core arguments as to these questions and issues raised by me. Had Judge Collier never mentioned "exigent circumstances" Officer Rievley never would have and could not even argue them here on appeal. As articulated within my Simplified Appellant Brief, exigent circumstances was never at any time an issue at any proceeding before or during the trial. Never once.

Having to overcome the above said general objections to Officer Rievley's Corrected Brief, it is an undue burden for this layman to reply to Officer Rievley's Brief because he has not adequately responded to, or defended his positions. I have made attempts to look at all this through the eyes of "*leaning toward the non-moving party*" and have made every attempt to be realistic. It merits restating that Officer Rievley consistently refers to facts that he cites that are "in the record" but numerous times fails to write down just where in the record all these things are. It is a matter of law that if Officer Rievley cannot specifically show in the record a fact he is asserting, then no such fact exists. By omission alone it seems Officer Rievley's argument, or lack thereof, in his Corrected Brief should fail.

Moreover, it strongly appears that most of everything Officer Rievley has briefed concerns the "***warrantless arrest***" of Roy L. Denton and not his unlawful "***warrantless entry***", which is here now on appeal. Officer Rievley's argument concerning "warrantless arrest" and the rehashing of what happened in the district court below were to be removed from his Corrected Brief, we

find that the issues raised, the facts and reasons presented, along with all assertions made by me, the appellant, regarding "**warrantless entry**" has just scantly addressed this in his Brief.

In continuation, in his *Corrected Brief at page 31-32*, Officer Rievley states, "Second, at the time of the entry into the residence, the record reflects that Mr. Denton had already been arrested and thus could not have refused consent to search the residence. As discussed supra, herein, as to any potential objection of Mr. Denton, the Supreme Court's language in *Randolph* is on point. Thus, although Mr. Denton might have wanted to refuse, since he was not present, his objection was invalid in the face of the consent of another with common authority."

In reply to this, I add that I was present and ***not-consenting*** due to the fact that officer Rievley, and everyone else was bluntly and directly told "**get off my property, you don't have a warrant**". I also feel that in my Motion JNOV or in the Alternative a New Trial (*R. No. 153*) I expressed as clearly, as concisely, and as assertively as I could they had consent to do nothing. There is no other way in which I could have made that they did not have consent to search any clearer. Each officer there at my home knew I am a former law officer myself. I have also had the same police "Verbal Judo" class that they had. I too can speak in a directive controlled tone of authoritative voice. *(my wife calls it "hollering")*

Officer Rievley could have easily arrested me and then secured the entire area and ordered anyone from inside the home to "***come out in the name of the law***", or better yet, he could have attained a warrant of some kind, not just going inside my home with guns drawn, searching, finding and then pointing weapons at someone looking through an overnight bag. It only took Officer Jason Woody 1 minute to drive me to the jail where he dropped me off. Woody could have easily brought Brandon back to my house and let Brandon enter and get what "personal belongings" that Officer Rievley testified to gathering up for Brandon as he searched my home

without a warrant, without me present and even without the very person (Brandon) who Rievley somehow says he "reasonably believed" to had "common authority". To put it mildly, none of this makes any sense. Although every shred of proof and evidence of this entire case establishes that exigent circumstances did not exist, but for the sake of argument, even had exigent circumstances existed at that time well once my oldest son Dustin was arrested at gun point, then exigency ceased. Under what authority did Officer Rievley or any police officer have prowling through my home searching for small items such as name tags, a tablet, a hat. Sure Officer Rievley may "say" that he didn't search the house but under no lawful authority he had no right to search my home for anything. At the bare minimum he could have had Brandon brought to my home which is a mere 4 blocks away on Second Ave. as my home is on Sixth Ave..

In any event, Officer Rievley never had a warrant, exigent circumstances or consent. He has admitted to this in every piece of sworn testimony, everything. Even his police officers/witnesses testified to the same. However, the concept of "exigent circumstances" was born in the mind of the Honorable Chief Judge Curtis L. Collier, not of the evidence. If it can be shown that even the mere suggestion of an exigent circumstance ever existed I pray someone please point this out to this honorable court, and I would be so grateful to know this as well.

Officer Rievley's argument in that although I told them all to "***get off my property***" that somehow, in some way, does not matter and that I was not "specific". (R. 166, Direct Examination of Steve Rievley, p. 18, ll. 18-20). This honorable court should dismiss Officer Rievley's reasoning altogether concerning his path of logic. Nothing in his Brief exempts Officer Rievley from the law of *Payton*.

There is nothing "hard to follow" concerning the firm line drawn at the threshold of door of my home by the United States Supreme Court..

EXIGENT CIRCUMSTANCES

Officer Rievley states in his Corrected Brief; "***The record reflects that there were exigent circumstances during the occurrence in question, which in addition to the "common authority" doctrine, would have justified the warrantless entry of Officer Rievley into the home of Mr. Denton***. As pointed out by the District Court, warrantless entries are permitted under exigent circumstances wherein "there are real and immediate and serious consequences that would certainly occur were a police officer to postpone action to get a warrant." (R. 171, Memorandum, p. 11)(citing *Shamaeizadeh v. Cunigan,* 338 F.3d 535, 548 (6th Cir. 2003) (citing *Ewolski v. City of Brunswick*, 287 F. 3d 492, 501 (6th Cir. 2002). ***(emp. added)***

Now, to reply to that, I must first ask the question, "Where in the record does it show that there were "*real and immediate and serious consequences that would certainly occur were a police officer to postpone action to get a warrant*." Exigent circumstances was only first mentioned by the district court below, never at any time during any proceeding during the whole trial, most certainly never to the jury. Never the inkling of "exigent circumstances". Only months after trial did Judge Collier create an exigent circumstance from inferences never in evidence. This alone seems to be a fundamental flaw concerning a fair trial.

Drawing from Officer Rievley's Corrected Brief at page 31, he says, "it appears that Mr. Denton is asserting that the contested charge should have included language from the *Randolph* matter. However, such language does not accurately fit the facts of this matter for two reasons. The first is that Mr. Denton, although he initially told the officers, "You don't have a warrant. Get off my property," did not specifically refuse the officers consent to search his residence. (R. 166, Direct Examination of Steve Rievley, p. 18, ll. 18-20)."

"Get off my property". The only defense to a trespass is to leave the property, pronto.

Debating the issues doesn't change the fact of, "***get off my property***". There is no justification or defense for any kind of consent when told specifically, "get off my property".

As here in this instant case, Officer Rievley should have never remained at my property once I was arrested. As for me being dressed for bed, almost 2:30 in the morning who merely opened my own front door and the result of doing so was my being abruptly arrested within 4 minutes, as bad as that sounds is one matter. But the warrantless entry and search of my home, without a warrant, without exigent circumstance and without consent is a whole different matter. Officer Rievley's Corrected Brief appears to be a rehashing of what happened in the district court below, not an answer or response to legitimate issues raised by me in this appeal.

INTIMIDATED, OR NOT ~~~ A MATTER OF INTERPRETATION

Had I been able to question Brandon Denton during rebuttal without the intimidating fear of a federal judge fixing to fine, jail me or both, I could have followed my flow of questions that would have reduced Officer Rievley's testimony to a nullity, not to mention proving his perjury. I knew everything Rievley was going to testify to as I had the whole transcript of the first trial. I had him locked in his testimony. Officer Rievley's two attorneys knew that as well. I knew full well that he would be saying "Brandon told me" and "Brandon said" so Brandon was of paramount importance to rebut much of the testimony of Officer Rievley.

Judge Collier knew, Magistrate Carter knew, everyone knew that Officer Steve Rievley testified in a federal court that he called Brandon Denton, when for fact he did not call at all, at any time. The proof is in his cell phone records along with many other contradictions would have been exposed in Brandon's rebuttal testimony. A mere reading of the transcript shows how everything went ballistic once the phone call came up by me. Most certainly I felt intimidated by Judge Collier. Just because Judge Collier had treated me fairly on many occasions, there are times

I didn't feel that way at all. Most certainly during my rebuttal argument of Brandon Denton I could have and would have shown everyone the truth.

In short, Officer Rievley appears to rely upon *McMillan v. Castro*, 405 F.3d 405, 409 (6th Cir. 2005). In that particular case the plaintiff pointed to "several pages" in the trial transcript "where the district court extensively questioned her regarding the facts of her claims, and specific instances where the district court appeared less-than-cordial." *McMillan*, 405 F.3d at 409.

However, as here in this instant case, *McMillan* does not apply. There are no similarities. I ***was not on the witness stand*** being subject to "onerous interrogatories" by Judge Collier. He wasn't being "rude" or "mean" to me. Unlike the plaintiff in *McMillan*, I was not a witness on the stand. I was representing myself in a court of law where I was held to the same standards as an attorney. In fact, the magistrate Judge Carter gave me a copy of the "**Guidelines for Professional Courtesy and Conduct for the Practice of Law in Hamilton County, Tennessee"** and ordered me to follow them. (R. No. 26, Judge Carter Order, pg. 2). From that point on I walked the path cautiously and tried hard to act "like an attorney" where clearly, I wasn't an attorney.

Therefore, as a *pro se* litigant acting as my own attorney, held to the same standard as an attorney, the presiding district judge could have afforded me the same standard of duty that the district court imposed upon me, and treated me as he treated an attorney. If I was expected to be held to a standard to a trained attorney then at a bare minimum the judge should not make me look like or feel like that old saying "he that represents himself has a fool for a client". However, I am not the person who went from one attorney provided to him to having three attorneys assigned. I haven't been sanctioned or anything and even prevailed once in this very honorable court. (R. No. 65 - 6th Cir. USCA Opinion). The court could have treated me as such and could have easily ordered a side bar if he felt the need to give me or an attorney guidance. Judge Collier

could have easily recessed for a couple minutes to say what he felt needed said. He didn't need to do it openly in front of a jury.

Regardless of how Officer Rievley's attorneys may try to conjecture how "I felt". As expressly cited by Officer Rievley in his Corrected Brief at page 36, "...McMillan asserted that the district court "move[d] into the role of an advocate rather than the Judge." The district court responded that "[s]he wouldn't answer my question," told counsel that "[i]t's a matter of interpretation, isn't it?" and overruled McMillan's motion.". *McMillan*, 405 F.3d at 409.

In Officer Rievley's Brief, he states, "In fact, while Mr. Denton was cross examining Officer Rievley, the Defendant, the Court stated the following:

> When Mr. Denton first brought this case, we had a long discussion about the problems that pro se plaintiffs have in bringing their own cases. ***He was advised to get an attorney***. And he's done a remarkable job on his own, ***but I think it's pretty apparent to him now that there are some things that he is at a disadvantage, and one of the things is rules of evidence and asking questions. But that was his choice***. (R. 142, Cross Examination of Steve Rievley, p. 25, ll. 13-20)." *(emp. added)*

The judge said this in open court in front of the jury. The judge said I had done a "remarkable job on his own". To that I give thanks. But the rest of Judge Collier's statement to me, while I was trying to act "as an attorney" as expected, directed and even ordered to do, *id*., made me sound like a "person that was advised to get a lawyer" that essentially didn't know what he was doing. He may have been correct in suggesting I get an attorney, however, he was incorrect in his timing in which to convey that in front of a jury. I feel that this event alone has prejudiced me to the point that a fair trial was not at all possible. Officer Rievley's argument as to *McMillan* as support is no where related to the facts of this case and should not be well taken.

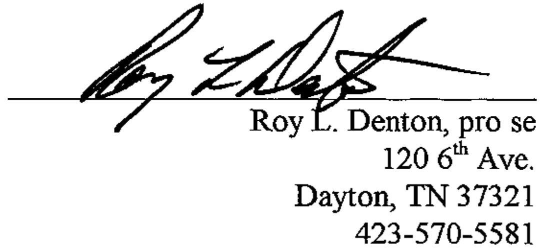
In conclusion, perhaps a third trial may be viewed by Officer Rievley as some sort of anathema, but to me it is a matter as justice so requires. I gladly welcome a New Trial and am

confident that my third time will prove to be the charm.

I thank this most honorable court in considering my appeal, my issues, facts, questions and reasons for this appeal. I also apologize for perhaps a "ramble" here and there but this entire ordeal has actually proved to be one of those fights that need fighting, regardless of money, power or influence. By virtue of the first trial resulting in a hopelessly deadlocked jury gives me faith that I can maintain my path of truth and at the end of that path see the light of my labor, the light of justice.

I pray this honorable court grant me all that I ask within this appeal.

Respectfully submitted this 27th day or June, 2011.



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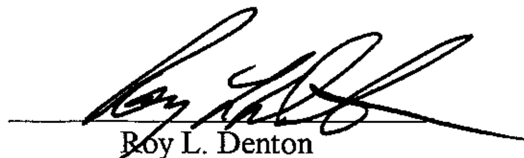
CERTIFICATE OF SERVICE

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 27th day of June, 2011.



Roy L. Denton

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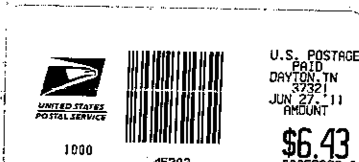

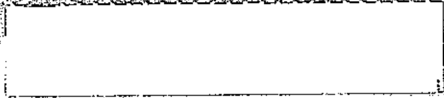

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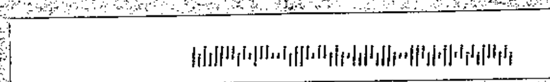

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June 27, 2011

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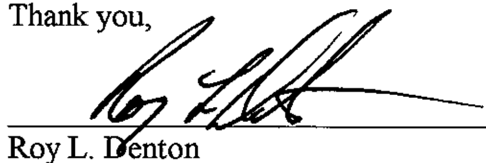
Re: Appellant's Reply Brief

Roy L. Denton v Steve Rievley Case No. 1:07-cv-211
USCA Case No. 11-5284

Dear Mrs. Niesen,

Please file the enclosed *pro se* Simplified Reply Brief in Reply to the "Corrected Appellee Brief" as filed on June 14, 2011.

Thank you,



Roy L. Denton