

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARC A. STEPHENS, TYRONE STEPHENS as individuals,

Petitioner,

v.

CITY OF ENGLEWOOD, ENGLEWOOD POLICE DEPARTMENT,
DET. MARC MCDONALD, DET. DESMOND SINGH, DET. CLAUDIA
CUBILLOS, DET. SANTIAGO INCLE JR., AND DET. NATHANIEL KINLAW,
Individually and in official capacity, NINA C. REMSON ATTORNEY AT LAW,
LLC, AND COMET LAW OFFICES, LLC

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPLICATION TO EXTEND TIME TO FILE

PETITION FOR A WRIT OF CERTIORARI

Marc and Tyrone Stephens
271 Rosemont Place
Englewood, NJ 07631
201-598-6268
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Petitioner, pro se

**REQUEST FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

Petitioners Marc and Tyrone Stephens are respectfully asking for an **60 day extension of time** to file their Petition for Writ Certiorari with the Supreme Court of the United States. According to **Rule 30(2)**, “An application to extend the time to file a petition for a writ of certiorari must be filed **at least 10 days** before the specified final filing date as computed under these Rules. The due date to file the Writ Certiorari is **January 24, 2018**. This Court would have jurisdiction over the judgment under 28 U.S.C. 5 1254(1).

On May 3, 2017, the Court of Appeals issued an opinion, see **EXHIBIT 7**.

On October 24, 2017, the Court of Appeals **denied** petitioners **Petition for Rehearing**, see **EXHIBIT 8**.

On November 16, 2017, Petitioner **Motion for New Trial** was **denied**, see **EXHIBIT 9**.

On December 1, 2017, the Court of Appeals issued a Mandate. Petitioner was advised by the court of appeals to submit a **Judicial Misconduct complaint**.

On January 5, 2018, Petitioner filed a Judicial Misconduct Complaint in a attempt to have the erroneous Order modified by the Court, **EXHIBIT 10**.

REASONS TO GRANT THE 60 DAY EXTENSION

1. Petitioner Tyrone Stephens is currently incarcerated, proceeding without counsel, and needs more time to file a Writ of Certiorari

Tyrone Stephens is currently incarcerated at the Bergen County Jail, **EXHIBIT 11**, and proceeding without counsel. The Supreme Court of the United States have held that some procedural rules must give way because of the unique circumstance of incarceration, see **Houston v. Lack, 487 U. S. 266 (1988)**. Because the case involves multiple parties, and the cost to print and submit a Petition is substantially high, petitioner Marc and Tyrone Stephens would like to submit one Petition for Writ of Certiorari. Both Marc and Tyrone Stephens are indigent, and has already received indigent status by the Third Circuit.

2. Petitioners are Pro Se, proceeding without Council, and need additional time to research Case Law on Splits between the lower courts.

Petitioner Marc and Tyrone Stephens are proceeding Pro Se, and they do not have immediate access to sophisticated legal systems to research case law on the Splits from lower courts to support their Petition for Writ of Certiorari. Because they are not lawyers, it is very difficult to move at a faster pace. “[N]avigating the appellate process without a lawyer’s assistance is a perilous endeavor for a layperson.” **Halbert v. Michigan, 545 U.S. 605, 621 (2005)**. Accordingly, this Court can and should excuse inadvertent failures to comply with the Court’s rules when they result from the difficulties inherent in

proceeding pro se. Cf. **Schacht v. United States, 398 U.S. 58, 64 (1970)** (“The procedural rules adopted by the Court for the orderly transaction of its business ... can be relaxed by the Court in the exercise of its discretion when the ends of justice so require.”). “Our rules of procedure are based on the assumption that litigation is normally conducted by lawyers”, **McNeil v. United States, 508 US 106 - Supreme Court 1993 at 113.**

3. No prejudice to defendants

Granting a **60 day extension** will not prejudice the defendants, “Prejudice involves impairment of defendant's ability to defend on the merits, rather than foregoing such a procedural or technical advantage.” **Boley v. Kaymark, 123 F.3d 756, 759 (3d Cir.1997).**

4. The Petitioners filed a Judicial Misconduct Complaint with the Executive Branch of the 3rd Circuit which will take 60 days to receive a decision, administrative remedies are not exhausted.

On January 17, 2018, the Office of the Executive Circuit acknowledge receipt of the Petitioner’s Complaint of Judicial Misconduct, **EXHIBIT 10.** The court advised that it will take up to **60 days** to receive a decision. If the Chief Judge of the Court of Appeals modify the order, Petitioners Marc and Tyrone Stephens will not need to submit a Petition for Writ of Certiorari with the Supreme Court of the United States. An extension should be granted because all Administrative remedies are not exhausted before filing a petition of writ of certiorari. **Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935).**

5. There are important constitutional questions that were determined adversely by the court of appeals.

The 3rd Circuit three judge panel “intentionally ignored all testimony”. As mentioned above, Petitioners filed a complaint of judicial misconduct and are seeking the following errors of facts and laws to be modified in the Opinion which are violating Petitioner’s right to due process and right to trial. Below is the argument raised in Petitioner’s Judicial Misconduct Complaint:

ARGUMENT

The nature of the judges William J Martini of the District Court, Scirica, Restrepo, and Fisher of the United States Court of Appeals for the Third Circuit, factual and legal errors, as shown below, are malicious, conducted in bad faith, bias, abuse of authority, intentional disregard of the law, and egregious. “[W]e need not reject the possibility of an exceptional case developing where the nature and extent of the legal errors are so egregious that an inference of judicial misconduct might arise”. **In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).** “[Error] involving the denial of basic fundamental rights may constitute judicial misconduct”. **In re Dileo, 83 A. 3d 11 -**

NJ: Supreme Court 2014 at 20. In re Quirk, 705 So.2d 172, 178 (La.1997). (“A single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct.” (citing Jeffrey M. Shaman, *Judicial Ethics*, 2 *Geo. J. Legal Ethics* 1, 9 (1988))). **See Alvino, supra, 100 N.J. at 97 n. 2, 494 A.2d 1014.** It is emphatically the province and duty of the judicial department to say what the law is. **Marbury v. Madison, 5 US 137 - Supreme Court 1803 at 177.**

The Judges for the District Court **granted** and the 3rd Circuit **affirmed** the defendants motion for summary judgment despite the record showing **clear disputed facts**. The judges refuse to **correct their errors and send this case to trial**. “[I]n order to prevail, a party seeking summary judgment must demonstrate that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Fed. R. Civ. P. 56(a)*. “If the evidence “presents a sufficient disagreement” over a factual issue, summary judgment must be denied”. **See Chiari v. City of League City, 920 F.2d 311, 314–15 (5th Cir. 1991)**. “[i]f ... there is any evidence in the record from **any source** from which a reasonable inference in the [nonmoving party's] favor may be drawn, the moving party simply **cannot obtain a summary judgment....**” **Aman v. Cort Furniture Rental Corp., 85 F. 3d 1074 - Court of Appeals, 3rd Circuit 1996 at 1081.**

MANIFEST INJUSTICE AND COURT ERROR OF FACT #1-3

The Panel Opinion states, Page 5, “**The facts here, viewed most favorably to the Stephenses, do not create a genuine dispute as to whether probable cause existed when Tyrone was arrested. The defendants had three compelling pieces of evidence implicating Tyrone in the attack: (1) the identification by Natalia Cortes; (2) the statement made by Justin Evans that Tyrone had participated in the attack; and (3) inconsistencies in testimony regarding Tyrone’s alibi. This evidence was more than sufficient to establish probable cause. EXHIBITS 1-6 ATTACHED BELOW.**”

(1) No identification by Natalia Cortes

A. Photo array eyewitness identification worksheet for Natalia states the following: “**Did the witness identify any photo as depicting the perpetrator?**” The answer checked is “**No**”, SA186, #20 also same ECF Doc. 42, page 9. #20. **EXHIBIT 1.**

B. **Jordan Comet (Q).** Did you witness Mr. Stephens fighting that night? **Natalia Cortes (A).** **I didn’t quite see anybody’s faces who were actually fighting.** SA234, Doc 003112432109, Page: 80, para #9, #7-10. **EXHIBIT 2.**

(2) The statement made by Justin Evans that Tyrone had participated in the attack was produced by coercion.

A. Comet: Did he say, "It's me because the officers are pushing me..." McDonald: correct. ECF Doc. 72-3, page 32, #24-25. **EXHIBIT 3.**

In addition, all investigating officers knew **before** speaking with the victims, Natalia, and Justin that the victims were attacked at **7-eleven at 10pm**, and that Tyrone was at **McDonalds at 10pm**, almost 1 mile away.

1. Tyrone Stephens: No I was not there at all! I was not there! I didn't see any fight, anything! **Kinlaw seen me at McDonald's.** I pulled up at McDonalds.
2. Marc Stephens: **Kinlaw said he saw him on the Ave, at, look like 10 o'clock.** Where was this altercation at? The 7-Eleven on the ave.?
3. Det. McDonald: up the street.
4. Tyrone Stephens: That's it right there! **I was in front of McDonalds.** I just hopped out of a car. I walked in McDonalds and said what's up Kinlaw.
5. Tyrone Stephens: **If Kinlaw just said that he seen me, you just said it on here, you heard Kinlaw say that he seen me.** He seen me at McDonalds, and he was talking to a little kid Willie. I think he was with Ron, right there at McDonalds. If you say that's the time, than how could I be at two places at once?
6. Det. McDonald: That was **at 10:00** he said, **ECF Doc 72-2, page 91. para 9-14. EXHIBIT 4**

B. Prosecutor: First of all what was the time that the victims said the attack occurred?

1. McDonald: **On or about 10pm.**
2. Prosecutor: And what day did they say the attack occurred?
3. McDonald: October 31, Halloween.
4. Prosecutor: Where did Tyrone say that he was at that time?
5. McDonald: He stated he was initially **at McDonald's.** **Doc: 003112688943. EXHIBIT 5**

(3) No inconsistencies in testimony regarding Tyrone's alibi.

Judge Gary Wilcox: "I heard the brief testimony of Tyrone Roy. I found Tyrone to be **credible** as a witness. And clearly the reason Tyrone Roy was called is to establish time line, indicating that, again, he and another friend, Anthony Mancini, picked up Tyrone at his house at approximately 9:40, 9:45. At approximately **10pm they went to McDonalds.** They ate food there for about **ten or 15 minutes.** And then Anthony drove Tyrone Stephens home. So, I think the Juveniles argument here is that, again, the time line, and again, the act was alleged to have occurred at 10:13pm-- that Tyrone at that time, would have been **at McDonald's**". **Doc: 003112688950. EXHIBIT 6.**

MANIFEST INJUSTICE AND COURT ERROR OF LAW #1

The District Court stated, see Order page 8, “even if Tyrone did offer such evidence, “[i]t is well settled that police officers are absolutely immune from § 1983 suits for damages for giving allegedly perjured testimony...” Blacknall v. Citarella, 168 Fed.Appx. 489, 492 (3d Cir. 2006) (citing Briscoe v. LaHue, 460 U.S. 325 (1983)).

Marc Stephens’ Response: “A police officer who fabricates evidence against a criminal defendant to obtain his conviction violates the defendant's constitutional right to due process of law”. Halsey v. Pfeiffer, 750 F. 3d 273 - Court of Appeals, 3rd Circuit 2014 at 279.

MANIFEST INJUSTICE AND COURT ERROR OF LAW #2

3rd Circuit Opinion, Page 6, “Further, notwithstanding their arguments to the contrary, no reasonable juror could conclude that the detectives coerced Evans’s statement.

Marc Stephens’ Response: “[T]he question of whether a criminal defendant was coerced is a matter well within “lay competence” and thus a jury is not foreclosed from considering whether there was coercion even if there is “unequivocal, uncontradicted and unimpeached testimony of an expert” addressing the issue. Quintana-Ruiz v. Hyundai Motor Corp., 303 F.3d 62, 76-77 (1st Cir. 2002). Halsey v. Pfeiffer, Court of Appeals, 3rd Circuit 2014. “[I]t is clear enough from our recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter”, Anderson v. Liberty Lobby, Inc., 477 US 242 - Supreme Court 1986 at 249. Celotex Corp. v. Catrett, 477 US 317 - Supreme Court 1986.

CONCLUSION

As indicated above, there is a clear abuse of discretion and judicial misconduct. Petitioners respectfully ask the court to grant an extension.

Respectfully Submitted,



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se

EXHIBIT 1

17. Photos were presented (choose one): sequentially simultaneously

If sequential presentation, did you explain:

- a. that the witness would be given one photo at a time? Y N
- b. that he/she can take as much time as he/she wants to make a decision about each photo? Y N
- c. that when the witness is finished looking at a photo, you would take it back before giving the witness the next photo? Y N

18. Officers must avoid providing "feedback," that is, signaling to the witness in any way (whether during or after the identification procedure) that the witness correctly identified the suspect. Did you or anyone else present say or do anything during or after the procedure that would have suggested to the witness that he/she correctly identified the suspect? Y N
(If yes, detail any actions/gestures/dialogue) _____



19. Did the witness look at all of the photos? Y N

20. Did the witness identify any photo as depicting the perpetrator? Y N

21. If yes to #20, did you ask the witness during the procedure to make a statement concerning his/her level of confidence that the photo he/she selected depicts the perpetrator? Y N
You must document the exact words and gestures used by the witness to describe his/her level of confidence:

22. Did you repeat back to the witness the language quoted in the answer to #21 and confirm that is what he/she said about his/her level of confidence? Y N

23. Was there any other dialogue between anyone in attendance during the identification procedure not described in detail in the answers to ## 18 and 21? Y N (If yes, provide a verbatim/detailed summary of the dialogue)

24. Did you instruct the witness not to discuss the identification procedure or its results with other witnesses and not to obtain information from other witnesses/sources? Y N

25. Did you preserve the photo array, mug books or digital photos used? Y N

26. Was this worksheet completed during/immediately following the identification procedure? Y N (if not, explain)

[Signature]
Signature

Claudia Cubillos
Print Name

Date: 11/13/12 Time: 7:00pm

EXHIBIT 2

Case: 16-1868 Document: 003112688920 Page: 1 Date Filed: 08/01/2017

Case: 16-1868 Document: 003112432109 Page: 80 Date Filed: 10/11/2016

STATE OF NEW JERSEY IN THE INTEREST OF T.S. -- February 26, 2013

SHEET 5

Cortes - Direct

8

1 A Yeah.
2 Q And just now in the hallway, when you first
3 saw him --
4 A Uh-huh.
5 Q -- what -- what was -- what was your
6 reaction? What did you just say?
7 A I said I'm not -- I'm not really so sure that he
8 wasn't there -- that he was there.
9 Q So, you're --
10 A Like, I've seen him, but I was, like, I'm not
11 really so sure that he was there.
12 Q Was he one of the pictures that the officers
13 showed you?
14 A Yeah.
15 Q And were you --
16 A I think.
17 Q Did -- I'm sorry?
18 A I think so. I think he was in one of the
19 pictures.
20 Q Okay. And was he one of the pictures that
21 you pointed out saying it's possible he was there?
22 THE COURT: You have to say yes or no.
23 THE WITNESS: Yes.
24 BY MR. COMET:
25 Q Are you saying yes or no?

Cortes - Direct

9

1 A Yes.
2 Q So, you're saying you did point out and say
3 my --
4 A I said he might have been there, but I'm not sure.
5 Q Okay. And --
6 A That's what I said.
7 Q -- did you witness Mr. Stephens fighting that
8 night?
9 A I didn't quite see anybody's faces who were
10 actually fighting. Like --
11 Q Okay.
12 A -- the only people that I saw were just standing,
13 like -- just there.
14 Q Okay. And do you specifically recall whether
15 my client was specifically there at 10:13 p.m. that
16 night?
17 A No.
18 Q And when the officers asked you -- they --
19 was there -- was there a point on November 2nd or
20 November 13th that they videotap-- not video --
21 audiotaped your conversation with them?
22 A Yeah.
23 Q Do you recall that?
24 A I remember they -- they recorded it.
25 Q The recorder. And when the recorder was in

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SA 234

EXHIBIT 3

STATE OF NEW JERSEY IN THE INTEREST OF T.S. -- December 20, 2012

SHEET 13

McDonald - Cross 24

1 much of that hour and 20 minutes did Justin Evans say
2 that he was not there?
3 A Pretty much the entire beginning of it.
4 Q No. If I told you that -- if I told you that
5 the tape said for the first 50 minutes, 5-0, of the
6 hour and 20 minutes that he denied his involvement at
7 all in this incident, would that be accurate?
8 A It could be.
9 Q Okay. And at the point where -- in the
10 middle -- during that 50 minutes, not during the rest
11 of the time, but during that 50 minutes, there came a
12 point where -- after you and another detective in the
13 room were talking to him, isn't it true that he said, I
14 did it, it's me, I'm involved?
15 A Yes, he did.
16 Q And at that point, his mother turned to him
17 and said, what are you talking about? You said the
18 whole time you weren't there. And he then turned to
19 you and said, well, you want me to say I'm there, you
20 tell me that I -- I -- that clearly I'm there, so I'm
21 te-- I'm telling you what you want to hear. Is that
22 true?
23 A That is true.
24 Q That is true. And then he goes back and
25 says, but I really wasn't there. Is that true?

McDonald - Cross 25

1 A No. I don't recall that. He -- he stated that he
2 was there and he stated whoever else was there, present
3 with him.
4 Q Okay. So, having listened to the tape
5 myself, I'm going to ask you again. During the hour
6 and 20 minute interview -- an hour and 20 minute
7 discussion with Mr. Justin Evans, at approximately 45
8 to 50 minutes, he turns and he says -- after saying I'm
9 not there the whole time, he says, I was there, I did
10 it, it was me. Not mentioning anyone else initially,
11 just saying it was me. Is that correct?
12 A Correct.
13 Q Then after his mother turns to him and says,
14 how could that be, you've been saying no the whole
15 time, he then explains why he said it was him. Did he
16 do that?
17 A Yes, he did.
18 Q Did he say, it's me because the officers are
19 pushing me, everyone is pushing me, and -- we're
20 talking about a juvenile here, right? Is Mr. Justin
21 Evans a juvenile?
22 A Correct.
23 Q How old is he?
24 A He's 17.
25 Q 17 years old and he's in the room for an hour



EXHIBIT 4

1 A I wasn't there. I don't know how--

2 Q Now-- now-- now-- now if-- if-- if-- if you was there, then you was there.

3 A I wasn't there.

4 Q If you was there and didn't take part, that's-- you was there and you didn't take

5 part. There was a lot of people there that was there and didn't take part. There

6 was a lot of people there and did not take part--

7 A I was not there at all. I wasn't there at all.

8 Q Okay. Alright.

9 A If-- if-- if Kinlaw just said that he seen me. You just said on-- on here that you

10 just-- you heard Kinlaw say that he seen me. He seen me at McDonald's with--

11 he was talking to a little kid, Willy. And he was with a-- I think he was with Ron.

12 He was right there at McDonald's. If you say that's the time, then how could I be

13 at two places at once?

14 Q That was at 10:00 he said. This happened at 10:12.

15 A Uh-huh.

16 QUESTIONING BY DET. SINGH:

17 Q Let me just jump in here real quick. I just want to-- Marc, let me just answer your

18 question. You had said that, uh, the police had dropped off your nephew--

19 MARC STEPHENS: Yeah.

20 Q There was two incidences-- at least two hour difference in between.

21 MARC STEPHENS: Okay.

22 Q Uh, between the two, so I just wanted to clear that up.

23 MARC STEPHENS: Okay, yeah, and right, he explained that.

EXHIBIT 5

STATE OF NEW JERSEY IN THE INTEREST OF T.S. -- December 20, 2012

SHEET 9

McDonald - Direct 16

1 McIntosh (phonetic), Brooklyn, who was also Jaquan
2 Graham (phonetic). He also said Victory Sagoon
3 (phonetic). And I believe that was it. And then he --
4 he named some other people who were in the vicinity.
5 Q What did he say about the juvenile Tyrone
6 Stephens role in the attack?
7 A He specifically said Tyrone Stephens orchestrated
8 the attack and it was his plan.
9 Q Did you take a statement from Tyrone Stephens
10 at some point after that?
11 A Yes.
12 Q What did Tyrone say in his statement?
13 A Tyrone stated several times that he was not
14 present. He was elsewhere.
15 Q Did Tyrone say what he was wearing that
16 evening?
17 A He stated he had on a black colored Adidas suit
18 with white stripes.
19 Q Where did Tyrone say that he was at the ti--
20 time of the alleged attack? First of all, what was the
21 time that the victims said the attack occurred?
22 A On or about ten -- 10 p.m.
23 Q And what day did they say the attack
24 occurred?
25 A October 31st, Halloween.

McDonald - Direct 17

1 Q Where did Tyrone say that he was at at that
2 time?
3 A He stated that he was initially at McDonald's and
4 then he went with two other friends who were taking him
5 to Fort Lee.
6 Q On November 9th, were you aware that Tyrone
7 Stephens was transferred -- transported to this
8 courthouse, the Bergen County Courthouse in Hackensack?
9 A Yes.
10 Q Were you informed of any --
11 MR. COMET: Objection.
12 THE COURT: What's the objection?
13 MR. COMET: Hearsay, Judge.
14 THE COURT: Hearsay is admissible in Probable
15 Cause Hearings.
16 MR. COMET: Judge, the hearsay is coming from
17 another officer. It's not coming from a defendant or a
18 co-defendant or anyone else.
19 THE COURT: It's --
20 MR. COMET: It's coming from an officer.
21 THE COURT: Hearsay is admissible in Probable
22 Cause Hearings.
23 MR. COMET: Okay.
24 THE COURT: Overruled.
25 BY MR. MILLER:

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EXHIBIT 6

STATE OF NEW JERSEY IN THE INTEREST OF T.S. -- December 20, 2012

SHEET 46

Court Decision 90

1 recall where they went afterwards?
2 MR. MILLER: He said they got to the car
3 together and he did not recall where they went next.
4 THE COURT: Okay.
5 MR. COMET: Correct.
6 THE COURT: All right. All right. I want to
7 be fac-- I want to be accurate. So, that's what the
8 videotape says?
9 MR. COMET: Audiotape. Yes.
10 THE COURT: Audiotape. Okay. All right.
11 All right.
12 And, finally, Detective McDonald testified
13 that he also learned through his investigation that at
14 a court appearance -- and, again, this was admittedly
15 hearsay -- but Tyrone was overheard telling one of his
16 co-defendants that they were caught because of that rat
17 Derek.
18 And now on cross-examination -- again, Mr.
19 Comet was very thorough -- very thorough in his -- in
20 establishing the inconsistencies in Justin's statement.
21 He also was thorough as far as establishing the lack of
22 corroboration in regards to Justin's statement. He
23 also established a potential motive for Justin
24 fabricating his statement, his admitted dislike of his
25 client, Tyrone.

Court Decision 91

1 With regard to Natalia's testimony -- again,
2 I was not clear frankly in what was recorded and what
3 was not recorded. But at the end of Mr. Comet's cross,
4 it was clear to me, at least, that the -- any ID that
5 may or may not have occurred of the juvenile Tyrone by
6 Ms. Cortes was not recorded. So, that to me is the
7 only thing that was clear.
8 But, again, he did an excellent job in
9 pointing out the inconsistencies in some of Justin's
10 statements, as well as, again, the lack of -- of other
11 witnesses identifying his client as the perpetrator.
12 I also heard the test-- brief testimony of
13 Tyrone Roy. I found Tyrone to be credible as a
14 witness. And clearly the -- the reason Tyrone Roy was
15 called is to establish time line, indicating that,
16 again, he and another friend, Anthony Man-- Mancini,
17 picked up Tyrone at his house at approximately 9:40,
18 9:45. At approximately 10 p.m. they went to
19 McDonald's. They ate food there for about ten or 15
20 minutes. And then Anthony drove Tyrone Stephens home,
21 which would have taken about another ten or 15 minutes.
22 So, I think the juvenile's argument here is
23 that, again, the time line -- and, again, the act was
24 alleged to have occurred at 10:13 p.m. -- that Tyrone,
25 at that time, would have either been at McDonald's or



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Exhibit 7 - Opinion May 3, 2017

Case: 16-1868 Document: 003112611998 Page: 1 Date Filed: 05/03/2017

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1868

MARC A. STEPHENS;
TYRONE K. STEPHENS,
Appellants

v.

CITY OF ENGLEWOOD; ENGLEWOOD POLICE DEPARTMENT;
DET. MARC MCDONALD; DET. DESMOND SINGH;
DET. CLAUDIA CUBILLOS; DET. SANTIAGO INCLE, JR.;
NATHANIEL KINLAW, individually and in official capacity;
NINA C. REMSON, Attorney at Law, LLC; COMET LAW OFFICES LLC

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. No. 2-14-cv-05362)
District Judge: Honorable William J. Martini

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 2, 2017

Before: RESTREPO, SCIRICA and FISHER, Circuit Judges

(Opinion filed: May 3, 2017)

OPINION*

*This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not
constitute binding precedent.

PER CURIAM

Marc and Tyrone Stephens appeal from three orders of the United States District Court for the District of New Jersey granting summary judgment to the defendants and denying reconsideration. Finding no error, we will affirm.

This appeal arises out of several criminal actions instituted against Tyrone Stephens, a minor. In March 2012, Tyrone was charged with theft-related offenses. Marc Stephens, Tyrone's adult brother, retained and paid attorney Nina Remson to defend Tyrone. In June 2012, Tyrone was charged with aggravated assault, and Remson took on that representation as well. Ultimately, Tyrone pleaded guilty. In this action, the Stephenses allege that Remson committed malpractice in the course of this representation. Among other things, they contend that Remson convinced Tyrone to plead guilty despite receiving specific instructions from Marc to refuse all plea offers.

Tyrone was then arrested in November 2012 in connection with an assault committed by several individuals outside a 7-Eleven store a little after 10:00 pm on October 31, 2012. Natalia Cortes, who was a witness to the attack and the cousin of one of the victims, identified three of the attackers as Tyrone, Justin Evans, and Derrick Gaddy. Detectives from the Englewood Police Department interviewed Evans, who, after initially denying that he was involved, confessed to the crime and also stated that Tyrone had been the ringleader. The detectives then obtained a statement (with Marc present) from Tyrone, who denied his involvement. Marc offered Tyrone an alibi that they had been at home together, and Tyrone adopted it. However, Tyrone later admitted

to being in the vicinity of the 7-Eleven — specifically, at a McDonald’s down the street — with two different alibi witnesses. Tyrone was taken into custody and the investigation continued.

The next day, detectives arrested Jahquan Graham and placed him in the holding cells in the Bergen County Juvenile Court near Tyrone. According to Detective Kinlaw, he overheard a conversation between Graham and Tyrone. When Graham asked why he was being held, according to Kinlaw, Tyrone stated, “I know why we are here, that fucking rat Derek told. He was brought to the police department and released, he’s the only one who wasn’t arrested.” D.C. dkt. #65-5 at 20.

Tyrone was charged with multiple crimes, including robbery, aggravated assault, and riot. In December 2012, a trial judge found probable cause on all seven counts of the criminal complaint, and then reiterated that finding after a second hearing in February 2013. However, at this point, the prosecutor’s case against Tyrone began to unravel. First, Cortes, while acknowledging that she had earlier identified Tyrone as a perpetrator, testified that she was not actually sure if he was involved. Second, Evans pleaded guilty and then recanted his previous statement implicating Tyrone. As a result, the prosecutor dismissed the indictment with prejudice against Tyrone and he was released from jail.

The Stephenses filed the complaint at issue here in August 2014. In addition to bringing claims against Remson for her representation, they have raised various claims under 42 U.S.C. § 1983 and state law against the Englewood detectives, the police department, and the City of Englewood. The defendants moved for summary judgment,

and on November 3, 2015, the District Court granted the motions in full. The Stephenses filed several motions under Fed. R. Civ. P. 59(e), each of which the District Court denied. They then filed a timely notice of appeal.

We have jurisdiction under 28 U.S.C. § 1291. “We review an order granting summary judgment de novo, applying the same standard used by the District Court.” Nicini v. Morra, 212 F.3d 798, 805 (3d Cir. 2000).¹

The District Court concluded that Remson was entitled to summary judgment because the Stephenses failed to comply with New Jersey’s affidavit-of-merit statute. This statute requires that, in cases like this one involving allegations of professional malpractice, the plaintiff provide an affidavit from an appropriately licensed person attesting that there is a “reasonable probability that the care, skill or knowledge exercised or exhibited . . . fell outside acceptable professional or occupational standards.” N.J. Stat. Ann. § 2A:53A-27; see also Snyder v. Pascack Valley Hosp., 303 F.3d 271, 273 (3d Cir. 2002) (rule “is enforceable in the district courts when New Jersey law applies”).

While the Stephenses argue at length that Remson provided deficient representation, they do not meaningfully challenge the District Court’s conclusion that their failure to provide an affidavit of merit was fatal to their claims. See N.J. Stat. Ann.

¹ We will address only arguments that the Stephenses raised in their opening brief. See United States v. Jackson, 849 F.3d 540, 555 n.13 (3d Cir. 2017). While the Stephenses purport to incorporate by reference the arguments that they asserted in virtually every filing that they made in the District Court, “[t]his is insufficient to preserve an argument for appellate review.” Spitz v. Proven Winners N. Am., LLC, 759 F.3d 724, 731 (7th Cir. 2014).

§ 2A:53A-29 (the failure to provide the affidavit “shall be deemed a failure to state a cause of action”). They do suggest that their failure was caused by Remson’s delay in responding to their discovery requests, but the undisputed evidence reveals that Remson provided her entire case file to Marc well before they filed this complaint. The Stephenses have failed to provide any evidence (or even argument) that the discovery materials had “a substantial bearing on preparation of the affidavit” such that they would be excused from filing the affidavit. N.J. Stat. Ann. § 2A:53A-28; see generally Balthazar v. Atl. City Med. Ctr., 816 A.2d 1059, 1066-67 (N.J. Super. Ct. App. Div. 2003). Accordingly, we will affirm the District Court’s grant of judgment to Remson.

Meanwhile, the Stephenses assert false-arrest, false-imprisonment, and malicious-prosecution claims against the Englewood defendants. “A finding of probable cause is . . . a complete defense” to each of these claims. Goodwin v. Conway, 836 F.3d 321, 327 (3d Cir. 2016). Probable cause “exists when the facts and circumstances within the arresting officer’s knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested.” Orsatti v. N.J. State Police, 71 F.3d 480, 483 (3d Cir. 1995). While probable cause requires more than mere suspicion, it does not require the type of evidence needed to support a conviction. See Reedy v. Evanson, 615 F.3d 197, 211 (3d Cir. 2010).

The facts here, viewed most favorably to the Stephenses, do not create a genuine dispute as to whether probable cause existed when Tyrone was arrested. The defendants had three compelling pieces of evidence implicating Tyrone in the attack: (1) the

identification by Natalia Cortes; (2) the statement made by Justin Evans that Tyrone had participated in the attack; and (3) inconsistencies in testimony regarding Tyrone's alibi. This evidence was more than sufficient to establish probable cause. See Wilson v. Russo, 212 F.3d 781, 790 (3d Cir. 2000).

While the Stephenses contend that the evidence shows that Tyrone was actually half a mile away at a McDonald's at the time that the assault occurred, the equivocal evidence that they present does not dispel the probable cause described above. See id. at 792-93; Goodwin, 836 F.3d at 328. Further, notwithstanding their arguments to the contrary, no reasonable juror could conclude that the detectives coerced Evans's statement. The transcript of the interrogation reveals that Evans's mother was present the entire time (Evans was then nearly 18 years old), he was read his Miranda rights, the interrogation lasted for just over an hour, and the detectives did not use any particularly harsh tactics. See generally United States v. Jacobs, 431 F.3d 99, 108-09 (3d Cir. 2005); Hall v. Thomas, 611 F.3d 1259, 1285-89 (11th Cir. 2010). Accordingly, we discern no error in the District Court's disposition of the Stephenses' constitutional claims against the detectives.² And, since they have failed to establish an underlying constitutional

² The Stephenses contend that Detective Kinlaw invented the statement that he said he overheard Tyrone make while he was in a holding cell. However, they presented no evidence to support this contention. See generally Blair v. Scott Specialty Gases, 283 F.3d 595, 608 (3d Cir. 2002). While this statement is not relevant to the false-arrest analysis because it post-dated Tyrone's arrest, see Wright v. City of Phila., 409 F.3d 595, 602 (3d Cir. 2005), it does provide still more support for the defendants' decision to charge Tyrone with various offenses.

violation, their claims against the police department and Englewood also necessarily fail. See Kneipp v. Tedder, 95 F.3d 1199, 1212 n.26 (3d Cir. 1996).

The Stephenses' state-law claims fare no better. To make out a claim of intentional infliction of emotional distress, they must show that the defendants engaged in "intentional and outrageous conduct" that was "so severe that no reasonable person could be expected to endure it." Tarr v. Ciasulli, 853 A.2d 921, 924 (N.J. 2004) (citations, alteration omitted). We have already ruled that a reasonable juror would conclude that the officers had probable cause to arrest and charge Tyrone. Consequently, the Stephenses cannot show that the defendants' conduct in arresting and holding Tyrone was outrageous. See, e.g., Harris v. U.S. Dep't of Veterans Affairs, 776 F.3d 907, 917 (D.C. Cir. 2015). The Stephenses also assert that the detectives committed negligence and defamation by telling Justin Evans that Tyrone was under investigation and had implicated Evans in the incident, but the record simply does not support that allegation.

Finally, we agree with the District Court that any amendment to the complaint would have been futile. See generally Grayson v. Mayview State Hosp., 293 F.3d 103, 114 (3d Cir. 2002). And, in light of these rulings, the District Court did not err in denying the Stephenses' Rule 59(e) motions. See generally Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008); Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

Accordingly, we will affirm the District Court's judgment. We also deny the Stephenses' motion for the recusal of the District Judge, see Securacomm Consulting,

Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000) (“We have repeatedly stated that a party’s displeasure with legal rulings does not form an adequate basis for recusal.”), and their motion for clarification.

EXHIBIT 8 - Order Denying Petition for Rehearing

Case: 16-1868 Document: 003112761026 Page: 1 Date Filed: 10/24/2017

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

—
No. 16-1868
—

MARC A. STEPHENS;
TYRONE K. STEPHENS,
Appellants

v.

CITY OF ENGLEWOOD;
ENGLEWOOD POLICE DEPARTMENT;
DET. MARC MCDONALD;
DET. DESMOND SINGH;
DET. CLAUDIA CUBILLOS;
DET. SANTIAGO INCLE, JR.;
NATHANIEL KINLAW, Individually and in official capacity;
NINA C. REMSON, Attorney at Law, LLC;
COMET LAW OFFICES LLC

—
(D.C. No. 2-14-cv-05362)
—

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES,
JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE,
SHWARTZ, KRAUSE, RESTREPO, SCIRICA and FISHER¹, *Circuit Judges*.

—
SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC
—

The petition for rehearing filed by appellants, Mark A. Stephens and Tyrone K. Stephens in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in

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¹ Judges Scirica and Fisher's vote is limited to panel rehearing only.

regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT:

s/ D. Michael Fisher
Circuit Judge

Dated: October 24, 2017

CJG/cc: Marc A. Stephens
Tyrone K. Stephens
Adam Kenny, Esq.
Marc D. Mory, Esq.
Matthew P. O'Malley, Esq.

EXHIBIT 9 - Mandate Issued December 1, 2017

Case: 16-1868 Document: 003112792023 Page: 1 Date Filed: 12/01/2017

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1868

MARC A. STEPHENS; TYRONE K. STEPHENS,
Appellants

v.

CITY OF ENGLEWOOD; ENGLEWOOD POLICE DEPARTMENT;
DET. MARC MCDONALD; DET. DESMOND SINGH;
DET. CLAUDIA CUBILLOS; DET. SANTIAGO INCLE, JR.;
NATHANIEL KINLAW, individually and in official capacity;
NINA C. REMSON, Attorney at Law, LLC; COMET LAW OFFICES LLC

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. No. 2-14-cv-05362)
District Judge: Honorable William J. Martini

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 2, 2017

Before: RESTREPO, SCIRICA and FISHER, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted pursuant to Third Circuit LAR 34.1(a) on May 2, 2017. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered November 3, 2015, be and the same is hereby affirmed. Costs taxed against the appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Marcia M. Waldron
Clerk

Dated: May 3, 2017



Certified as a true copy and issued in lieu
of a formal mandate on December 1, 2017

Teste: *Marcia M. Waldron*
Clerk, U.S. Court of Appeals for the Third Circuit

EXHIBIT 10

**OFFICE OF THE CIRCUIT EXECUTIVE
United States Third Circuit**

Margaret A. Wiegand
Circuit Executive

601 Market Street
22409 United States Courthouse
Philadelphia, Pennsylvania 19106-1790

Tel: (215) 597-0718
Fax: (215) 597-8656

January 17, 2018

Marc and Tyrone Stephens
271 Rosemont Place
Englewood, NJ 07631

In Re: Complaint of Judicial Misconduct or Disability
J.C. Nos. 03-18-90004 through 03-18-90007

Dear Marc and Tyrone:

This will acknowledge receipt of your Complaint of Judicial Misconduct or Disability pursuant to 28 U.S.C. § 351, *et seq.*, against United States District and Circuit Judges. The complaint has been docketed as above. Your complaint will be processed in accordance with Rule 8(b), Rules for Judicial-Conduct and Judicial-Disability Proceedings. You will be advised when a decision is entered on the complaint.

Please be advised that although your complaint names City of Englewood defendants and Nina C. Remson, your complaint has only been accepted for filing with regard to the United States District Judges named in your complaint. See Rule 8(d), Rules for Judicial-Conduct and Judicial-Disability Proceedings.

Very truly yours,
MARGARET A. WIEGAND
Circuit Executive

JTD/beb

By: /s/ Jeanne T. Donnelly
Jeanne T. Donnelly
Assistant Circuit Executive for Legal Affairs

EXHIBIT 11

Name: TYRONE KENNY STEPHENS

Sex:	M
DOB:	03/28/1995
Height:	5' 10"
Weight:	190
Race:	BLACK
Hair Color:	BROWN
Hair Length:	SHORT
Eye Color:	BROWN
Complexion:	DARK SKINNED

Inmate Information

Marital Status:	SINGLE	State ID:	394073E
FBI:	697510ED9	INS:	
Citizen:	United States of America	COB:	United States of America

Incarceration Information

Current Location:	MAIN	County:	SUPERIOR COURTS (all)
Current Housing Section:	SOUTH	Current Housing Block:	S3
Current Housing Cell:	58	Current Housing Bed:	Lower
Commitment Date:	11/29/2017	Release Date:	

Alias Information

TIZZY
TYRONE STEPHENS
11STEPHENS

Detainer Information

Comp No	W-2016-003881-1608	Comp Date	08/24/2016	Issued By	ALL OUT OF COUNTY MUNICIPAL COURTS
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Bond Information

Case #:	S20160001010204	Amount:	\$1,000.01	Status:	Dismissed	Posted By:	JGE RANDAZZO - BOGOTA	Post C
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