UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1868

MARC A. STEPHENS, TYRONE STEPHENS as individuals,
Appellants

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
Appellees

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

Appellants Opening Brief

Marc A. Stephens and Tyrone Stephens
Plaintiffs-Appellants
Pro se

STATEMENT REGARDING ORAL ARGUMENT

Appellants are confident in regards to the straightforward issues presented in this appeal. However, should the Court believe oral argument is beneficial, Appellants stand ready to provide oral argument at the Court's request. Appellants incorporate this paragraph in Argument.

Nina C Remson Attorney at Law, LLC: Appellant Marc Stephens retained the services of defendant due to Appellant Tyrone Stephens receiving three complaints filed against him as a juvenile. For 6 months, Marc gave Remson strict instructions not to take any plea deals. Remson agreed in writing that she understood not to take any plea deals. Remson later breached the agreement and forced Tyrone to take plea deals without Marc's knowledge or consent. Remson admitted that she never investigated, or spoke with the witnesses, and provided ineffective assistance of counsel in violation of the 6th amendment.

Comet Law Offices, LLC: Appellant Marc Stephens obtained the services of defendant due to a complaint filed against Tyrone Stephens regarding the incident on October 31, 2012, at 10pm, in the parking lot of 7-eleven. Comet never obtained all discovery, and provided ineffective assistance of counsel in violation of the 6th amendment.

Englewood Defendants: Three victims were attacked in the parking lot of 7-eleven on October 31, 2012, at 10:00pm by a suspect wearing a black ski-mask, black jacket, and riding a bike, which was testified by the defendants. Appellant Marc Stephens testified that defendant Kinlaw, who was an investigating officer, walked inside the interrogation room, and stated that he saw Tyrone and others in front of McDonalds at 10:00pm. The defendants knew before their investigation that Tyrone was at McDonalds at 10:00pm and still filed 7 false charges against him. In addition, the defendants coerced co-defendant Justin Evans to provide a false confession, and falsified sworn statements, police reports, and testimony in multiple probable cause hearings, and to a grand jury, stating that all victims and witnesses identified the suspect as Tyrone Stephens. If the officers did not fabricate the victims and witness sworn statements, police reports, testimony, suggest names and lie to Justin Evans, Tyrone Stephens would not have spent 1 year and 35 days in jail. The 10pm timeline and false evidence controls this case. A case that is identical to the allegation of the appellants' complaint is: **Halsey v. Pfeiffer, 750 F. 3d 273 - Court of Appeals, 3rd Circuit 2014**. Ironically, the victim's name is also Tyrone.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUES

STATEMENT OF JURISDICTION

Pursuant to **Rule 4(a)(4)(A)(iv)**, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion to alter or amend the judgment under **Rule 59**.

A final judgment is "an ultimate disposition of an individual claim entered in the course of a multiple claims action." Sears, Roebuck & Co., 351 U.S. at 436, 76 S.Ct. at 900; see also Gerardi, 16 F.3d at 1368 ("Finality is defined by the requirements of 28 U.S.C. § 1291, which are generally described as `ending the litigation on the merits and leav[ing] nothing for the court to do but execute the judgment.'", **Waldorf v. Shuta, 142 F. 3d 601 - Court of Appeals, 3rd Circuit 1998 at 611**. The federal appellate courts have a historic policy **against piecemeal appeals**. **Waldorf v. Shuta, 142 F. 3d 601 - Court of Appeals, 3rd Circuit 1998 at 610**.

This Court has jurisdiction over the final decision of the district court pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Whether the District court abused its discretion and erred in dismissing the plaintiff's complaint with prejudice holding that the Englewood Police Department detectives had probable cause to arrest Tyrone Stephens regarding an incident which took place in the parking lot of 7-eleven at 10pm on October 31, 2012.

2. Whether the District court erred in denying plaintiff's right to amend the complaint to include 4 additional officers, and to add new parties and cause of actions by the plaintiffs.

3. Whether the District court abused its discretion and erred in dismissing the plaintiff's complaint with prejudice holding that it is well settled that police officers are absolutely immune from § 1983 suits for damages for giving perjured testimony and falsifying evidence.

4. Whether the District court abused its discretion and erred in dismissing the plaintiff's complaint with prejudice holding that the Englewood Detectives did not commit outrageous conduct.

5. Whether the District court abused its discretion and erred in dismissing the plaintiff's complaint with prejudice holding that there is no evidence supporting plaintiffs' false arrest, false imprisonment, malicious prosecution, negligence, intentional and negligent infliction of emotional distress, failure to supervise and train, defamation claims, and that the City of Englewood is not liable for damages under Monell claim.

6. Whether the District court abused its discretion and erred in dismissing the plaintiff's complaint with prejudice and granting Nina C. Remson Attorney at Law, LLC motion for summary judgment holding that the appellants failed to give notice of an affidavit of merit.

7. Whether the affidavit of merit is facially unconstitutional

8. Whether Nina C. Remson Attorney at Law, LLC breached the agreement not to take plea deals, and provided legal malpractice and ineffective assistance of counsel in violation of the 6th amendment to the US Constitution and State law.

9. Whether the District court erred in dismissing plaintiffs' complaint and motion for default judgment without prejudice regarding Comet Law Offices, LLC.

10. Whether Comet Law Offices, LLC provided legal malpractice and ineffective assistance of counsel in violation of the 6th amendment to the US Constitution and State Law.

STATEMENT OF THE CASE

This matter is about breach of contract, legal malpractice, and the false arrest and malicious prosecution of Tyrone Stephens, minor.

A. Statement of the Facts and Proceedings below

On August 26, 2014, Appellants filed a civil complaint in US District Court for the District of New Jersey against Defendants City of Englewood, Englewood Police Department, Det. Marc McDonald, Det. Desmond Singh, Det. Claudia Cubillos, Det. Santiago Incle Jr., Det. Nathaniel Kinlaw, Nina C. Remson at Law, LLC, and Comet Law Offices, LLC, **ECF no. 6.**

On September 1, 2015, Appellants filed a motion in opposition to the defendant's motion for summary judgment, **ECF no. 71, 72.**

On November 3, 2015, by Opinion and Order, Federal District Court Judge William J. Martini, dismissed the plaintiffs' complaint, and granted defendants motion for summary judgment, **ECF no. 82, 83**.

On November 17, 2015, plaintiffs filed a timely first motion for reconsideration, **ECF no. 85, 89.**

On January 13, 2016, by Opinion and Order, Federal District Court Judge William J. Martini, dismissed the plaintiffs' first motion for reconsideration, **ECF no. 91, 92**.

On January 14, 2016, plaintiffs filed a timely second motion for reconsideration, **ECF no. 93.**

On March 31, 2016, by Opinion and Order, Federal District Court Judge William J. Martini, dismissed the plaintiffs' second motion for reconsideration, **ECF no. 98**.

On April 6, 2016, The District Court dismissed the plaintiffs Motion for Default Judgment with an Opinion and Order regarding defendant Comet Law Offices, LLC, **ECF no. 99, 100**. Judge Martini's final judgment regarding Comet stated he dismissed the appellants' motion for default judgment because there was probable cause found in his previous judgment regarding the City of Englewood, Englewood Police Department. On the same day, Appellant filed a Third Motion for Reconsideration, **ECF no. 101,** and Notice of Appeal, **ECF no. 103**.

SUMMARY OF THE ARGUMENT

This Court should reverse the district court findings that (1) the defendants had probable cause to arrest Tyrone, (2) that appellants did not give notice to Remson regarding the affidavit of merit, and (3) the district court dismissing Appellants motion for default judgment against Comet. This Court should send this case to trial, because appellants evidence "presents a sufficient disagreement" over factual issues, and summary judgment must be denied. The **Englewood Defendants** testified that the incident occurred on October 31, 2012, at 10pm, in the parking lot of 7-eleven in Englewood, New Jersey. The defendants knew before their investigation that Tyrone was seen by Detective Kinlaw at McDonalds, at 10pm, and they still maliciously filed multiple criminal charges against him. **Remson** "agreed in writing" not to take plea deals, and later disregarded the agreement and forced Appellants to take a plea deal. **Comet** never answered the complaint. Both Remson and Comet were clearly ineffective as counsel.

STANDARD OF REVIEW

The appellate court reviews de novo a grant of summary judgment. The panel should review the appeal under the de novo standard because the district court opinion was "clearly erroneous" **Concrete Pipe and Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 623 (1993)** because a "mistake has been committed." **Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855 (1982)**. Appellant put forth "substantial evidence" **Richardson v. Perales, 402 U.S. 389, 401 (1971)** that the court abused its discretion by denying appellant's complaint, and motions for reconsideration, See **Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000)**. Pursuant to **Max's Seafood Café ex rel Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999)**, "to the extent that the denial of reconsideration is predicated on an **issue of law**, such an issue is reviewed **de novo**". According to the Supreme Court, a "finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." **United States v. United States Gypsum Co. , 333 U.S. 364, 395 (1948)**. In other words, for a decision to be clearly erroneous, it must be more than just possibly or probably wrong. Instead, it must "strike us as wrong with the force of a five-week-old, unrefrigerated dead fish." **Parts & Elec. Motors, Inc. v. Sterling Elec., Inc. , 866 F.2d 228, 233 (7th Cir. 1988), cert. denied , 493 U.S. 847 (1989)**.

Pro se litigant's pleadings are not to be held to the same high standards of perfection as lawyers, **Haines v. Kerner 404 U.S. 519 (1972) at 521. Cruz v. Beto, 405 U.S. 319,322 (1972)**. **Dluhos v. Strasberg, 321 F.3d 365, 369 (3d Cir. 2003)** (a court "must liberally construe [pro se] pleadings, and … apply the applicable law, irrespective of whether the pro se litigant has mentioned it by name.") (citations omitted).

ARGUMENT

I. THE DISTRICT COURT ERRED BY DISMISSING APPELLANTS COMPLAINT WITH PREJUDICE AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND SHOULD BE REVERSED.

1. Comet Law Offices, LLC

The court erroneously dismissed the Plaintiffs' complaint and motion for default judgment based on the following: "**The district court has dismissed all claims over which it has original jurisdiction",… "while the second claim is labeled "Ineffective Assistance of Counsel," it too arises under state law given that there is no such thing as a §1983 ineffective assistance of counsel claim against a private attorney", see ECF no. 99, page 2.**

Appellants, Marc and Tyrone Stephens, addressed the District Court erroneous opinion in its entirety, and incorporate herein, see **ECF no 67, page 1-20**.

2. Nina C. Remson Attorney at Law, LLC:

The court erroneously granted the defendant Nina C. Remson's motion for summary judgment based on the following: **"Remson is entitled to summary judgment because Plaintiffs failed to comply with New Jersey's affidavit of merit statute, N.J.S.A. 2A:53A-27" see Order ECF no. 82, page 5.**

The plaintiffs provided Remson with 8 notices and Remson, and her attorney, ignored the request from plaintiffs, **ECF no. 84, page 1-6**.

Remson provided ineffective assistance of counsel because she, (1) ADMITTED that she did not speak to witnesses, see EX. 1 to Marc's Decl., **ECF no. 40-8, page 2, #48;** (2) defendant

UNDERSTOOD not to take a plea deal under any circumstance, **see NCR-2, ECF no. 40-9, page 2;** (3) fully ACKNOWLEDGED in various emails plaintiff Marc Stephens adamantly stating not to take plea deals, **see NCR-15, ECF no. 40-9, page 10;** (4) ACKNOWLEDGED the weaknesses of the cases, and AGREED that plaintiff Marc Stephens legal theory of the case was correct, **see NCR-28, ECF no. 40-9, page 15;** (5) ADMITTED the state **could not prove** theft or robbery regarding the shoplifting charge, **NCR-32, ECF no. 40-9, page 16;** (6) AGREED that a wade hearing was required due to the Englewood Police Department improper photo array conducted on plaintiff, **see NCR-33, ECF no. 40-9, page 17;** (7) ADMITTED her representation was not in the best interest of plaintiff Tyrone Stephens, REMOVED herself as counsel, **see NCR-39, ECF no. 40-9, page 20**, and then (8) FORCED the plaintiff to plead guilty to three charges, see EX. 3 to Marc's Decl, **ECF no. 40-8, page 5-6.**

Appellants, Marc and Tyrone Stephens, addressed the District Court erroneous opinion in its entirety, and incorporate herein, see **ECF no 84, page 1-16**, **ECF no. 90, page 1-3**, and **ECF 94, page 1-3**. See also **ECF no 77, page 1-21,**

3. All Englewood Defendants:

The court erroneously granted the Defendant City of Englewood, Englewood Police Department, and Defendant Officers motion for summary judgment based on the following:

a. The District Court incorrectly stated, **"On October 31 at or around 10:12 pm, three individuals, Kristian Perdomo, Santiago Cortes, and Jeisson Duque were assaulted outside a 7-Eleven", see Order ECF no. 82, page 2.** The time of the incident was 10:00pm, not 10:12pm, **ECF Document 85.**

b. The District Court stated, **"In order to prevail on his false arrest claim, Tyrone must show that the Englewood Detectives arrested him without probable cause", see Order ECF no. 82, page 7.**

Defendants testified that the victims stated the incident took place on October 31, 2012, in the parking lot of 7-eleven, at 10:00pm, and the Defendants themselves stated on record that the incident took place at 10pm, see **ECF Document 85, page 1-3, paragraphs #1-3.** Defendants stated Kinlaw saw Tyrone at McDonalds during the time of the incident, **ECF no 85, page 4, paragraph #5.** From October 31, 2012 – November 7, 2012, the defendants testified they **had no leads.** Defendants testified that none of the victims or co-defendants stated Tyrone was the suspect, except co-defendant Justin Evans, see Exhibit 16 (page 67, paragraph 7-12),

ECF Document 72-3, page 53, #7-12. The Defendants testified that on November 7, 2012, during interrogation, they suggested the names, clothing, and the entire event to Justin Evans, **ECF no 85, page 13, paragraph #14**. Justin Evans testified that the only reason he stated Tyrone was involved is because the defendants stated Tyrone told on him, so he implicated Tyrone out of revenge, **ECF no 85, page 13, paragraph #15**. The defendants fabricated sworn statements, testimony, and police reports stating that all victims identified Tyrone as the suspect that assaulted the victims who was wearing the ski-mask, black jacket, and riding the bike, **ECF no 85, page 8, paragraph #9.** Witness Natalia did not select Tyrone from a photo array, **ECF no 85, page 11-13, paragraph #13**, and also **ECF Document 42, page 9** – NO PHOTO ID. The defendant officer cooked up their own evidence to arrest Tyrone, see plaintiffs brief, **ECF Document 71, page 1-18, and ECF Document 72, page 1-21.**

c. **The District Court stated, "Viewing the evidence in a light most favorable to the non-movants, the Court concludes that the Englewood Detectives had probable cause to arrest Tyrone. The Englewood Detectives had four main pieces of evidence implicating Tyrone in the October 31 Incident: (1) the alleged photo identification by Natalia Cortes; (2) the statements made by Justin Evans; (3) inconsistencies in testimony regarding Tyrone's alibi; and (4) the statement Tyrone allegedly made to Jaquan Graham while in a holding cell", see Order ECF no. 82, page 7.**

(1) Natalia Cortes never identified Tyrone Stephens as proven in **ECF no 85, page 11-13, paragraph #13**, and also **ECF Document 42, page 9** – NO PHOTO ID, (2) the officers suggested Tyrone's name to Justin Evans, see **ECF no 85, page 13, paragraph #14-15**, (3) there was never any inconsistency in Tyrone's Statement that on October 31, 2012 he was in front of McDonalds at 10pm, **ECF no 85, page 10, paragraph #10**, and that **officer Kinlaw** stated to McDonald, Singh, and plaintiff Marc Stephens that he saw Tyrone at 10pm, **ECF no 85, page 4-7, paragraph #5-6**; (4) which proves Kinlaw's report about Tyrone's alleged statement is clearly fabricated in an attempt to save McDonald and Singh from suggesting Tyrone's name to Justin Evans, and fabricating their police reports that the victims and witness Natalia Cortes identified Tyrone by face and clothing description, and stated he participated in the attack at 10pm, **ECF no 85, page 7-10, paragraph #8-9**. Defendant Marc McDonald testified that Tyrone Stephens was adamant, and never recanted his statement, that he was **not involved** with attacking the victims, **ECF no 85, page 7, paragraph #7.**

d. **The District Court stated, "Under Third Circuit precedent, the indictment provides an independent basis for concluding that the Englewood Detectives had probable cause to arrest Tyrone. See, e.g., Trabal v. Wells Fargo Armored Serv. Corp., 269 F.3d 243, 251 (3d Cir. 2001) (grand jury indictment "establishes probable cause by definition"), see Order ECF no. 82, page 8.**

The officers filed **7 criminal charges** against Tyrone, 3 robbery, 3 assault, 1 riot. The grand jury only indicted Tyrone for 1 riot and 1 assault. All 3 robbery and 2 assaults charges were dismissed. McDonald lied to the grand jury and stated Natalia Cortes identified Tyrone, and that the ski-mask fell off Tyrone's face, **ECF no 85, page 7, paragraph #7**. Natalia Cortes never identified Tyrone Stephens as proven in **ECF no 85, page 11-13, paragraph #13**, and also **ECF Document 42, page 9** – NO PHOTO ID.

The United States Supreme Court has made it "clear that procedural regularity notwithstanding, the Due Process Clause is violated by the knowing use of perjured testimony or the deliberate suppression of evidence favorable to the accused." (Albright v. Oliver (1994) 510 U.S. 266, 299 [127 L.Ed.2d 114, 114 S.Ct. 807] (dis. opn. of Stevens, J.).) "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**.

e. **The District Court stated, "Tyrone also brings a claim for "false evidence" under Section 1983. This claim arises out of Plaintiffs' allegation that Detective Kinlaw lied in his police report by falsely claiming that Tyrone made incriminating comments to Jaquan Graham while in a holding cell. This claim fails for two primary reasons. First, aside from his own self-serving claim that he never made incriminating statements to Graham, Tyrone has not offered a shred of evidence undermining the credibility of the Kinlaw Report", see Order ECF no. 82, page 7.**

Defendant Marc McDonald testified that Tyrone Stephens never recanted his statement that he was not involved with attacking the victims, **ECF no 85, page 7, paragraph #7.** As expressed herein, the incident took place at **10pm** and the evidence shows that Tyrone was in front of McDonalds and greeted defendant Kinlaw, which McDonald, Singh, Marc Stephens, and Kinlaw confirm on record, **see ECF no 85, page 4, paragraphs #5-6**. Kinlaw willfully filed a fabricated police report joining in the conspiracy to file false charges against Tyrone Stephens.

f. **The District Court stated, "Second, 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)), see Order ECF no. 82, page 8.**

Police officers are not absolutely immune from§ 1983 suits for damages for giving allegedly perjured testimony. In 1986, the United States Supreme Court stated, "Qualified immunity **does not** protect police officers who are "plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L. Ed.2d 271, 278 (1986). **See Plaintiffs Brief, ECF no. 72, page 5**. The common law has never granted police officers an absolute and unqualified immunity, Pierson v. Ray, 386 US 547 - Supreme Court 1967, at 555. The United States Supreme Court has made it "clear that procedural regularity notwithstanding, the Due Process Clause is violated by the knowing use of perjured testimony or the deliberate suppression of evidence favorable to the accused." (Albright v. Oliver (1994) 510 U.S. 266, 299 [127 L.Ed.2d 114, 114 S.Ct. 807] (dis. opn. of Stevens, J.).) "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.**

g. **However, the Supreme Court has held that "[p]loys to mislead a suspect or lull him into a false sense of security" do not raise constitutional concerns so long as they do not rise to the level of coercion. Illinois v. Perkins, 496 U.S. 292, 297 (1990). Because there is nothing on the record indicating that the Englewood Detectives coerced Evans into identifying Tyrone, Evans' identification was sufficient to establish probable cause for Tyrone's arrest., see Order ECF no. 82, footnote page 8.**

The court misquoted Cf. Oregon v Mathiason. It correctly reads, "Ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of **compulsion** or coercion to speak are **not within Miranda's concerns**". Cf. Oregon v. Mathiason, 429 U. S. 492, 495-496 (1977) (per curiam); Moran v. Burbine, 475 U. S. 412 (1986) (where police fail to inform suspect of attorney's efforts to reach him, neither Miranda nor the Fifth Amendment requires suppression of pre-arraignment confession after voluntary waiver). Miranda was not meant to protect suspects from boasting about their criminal activities in front of persons whom they believe to be their cellmates.

"No confession or admission of an accused is admissible in evidence unless made freely and voluntarily and not under the influence of promises or threats". Rogers v. Richmond, 365 U.S. 534 (1961) at 542.

> Det. McDonald states to Justin, "we are going to bring more people in that's in investigation, these people are going to say what they said, and **if your names comes up again** after this point when you got an opportunity to talk **you are going to be royally screwed** when this goes to court, **I can promise you that**". Because if these people are saying this, and when we bring in this next group and they say what they said and they still put you in it, **it's going to be nothing anybody can do**, **ECF Document 71-2, page 5 #48**.

Justin was a 17 year old kid on medication. A lawyer would easily prove Naquian Thomas was the ski-mask individual wearing a sweatsuit that ran North on Tenafly Road and Liberty, see **ECF no 85, page 3, paragraph #4**.

("[T]he law permits the police to pressure and cajole, conceal material facts, and actively mislead — **all up to limits**. . . ."). By the same token, the circumstance that the police have advised "a suspect of his rights does not automatically mean that any subsequent confession is voluntary." Livers v. Schenck, 700 F.3d 340, 353 (8th Cir. 2012) (internal quotation marks omitted). **Halsey v. Pfeiffer, Court of Appeals, 3rd Circuit 2014**. Justin Evans, 17 years old, states he said he was involved ("**I did it**") just to get the whole thing over with, Ex. 9 (Page21 line 18-19); (Page 21 line 21-23), **ECF no 72-2, page 54-55**.

A coercion inquiry requires a court to "consider the specific tactics utilized by the police in eliciting the admissions, the details of the interrogation, and the characteristics of the accused." Miller, 796 F.2d at 604 (quoting Rachlin v. United States, 723 F.2d 1373, 1377 (8th Cir. 1983)) (internal quotation marks omitted). Specifically, in making that inquiry, **we have looked at**: the youth of the accused; his lack of education or his low intelligence; the lack of any advice to the accused of his constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep. Id. (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 226, 93 S.Ct. 2041 (1973)). This list of factors, however, is not exhaustive, and we also have stated that a court

should consider the suspect's familiarity with the criminal justice system when determining whether he was coerced into confessing. Jacobs, 431 F.3d at 108. **Halsey v. Pfeiffer, Court of Appeals, 3rd Circuit 2014**. ("[A]s interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the `voluntariness' calculus."). Justin Evans states he don't know what to say, and can't even bring up names, Ex. 9 (Page21 line 16-18), **ECF no 72-2, page 54-55**. Justin Evans states "I can give them a list full of names of people that don't like me". I guarantee at least one of them was there", **ECF Document 71-2, page 5 #47.**

Due process is violated when police coerce a suspect into making a confession. Coercion may include: (i) physical force; (ii) depriving the suspect of food, sleep, or the ability to communicate with the outside world; or (iii) psychological ploys such as threats or promises. Because it is so suspect, an involuntary confession is inadmissible for any purpose, including impeachment. See **Mincey v. Arizona, 437 U.S. 385 (1978)**.

People v. Thomas, 22 NY 3d 629 - NY: Court of Appeals 2014. How much can police lie to suspects? N.Y. rulings suggest there's a limit. In this case, "Defendant was told 67 times that what had been done to his son was an accident, 14 times that he would not be arrested, and 8 times that he would be going home. These representations were, moreover, undeniably instrumental in the extraction of defendant's most damaging admissions. Taken in combination with the threat to arrest his wife and the deception about the child, reinforce our conclusion that, as a matter of law, defendant's statements were involuntary". Id 645-646. The various misrepresentations and false assurances used to elicit and shape defendant's admissions manifestly raised a substantial risk of false incrimination. Id 646. Defendant initially agreed to take responsibility for his son's injuries to save his wife from arrest. His subsequent confession provided no independent confirmation that he had in fact caused the child's fatal injuries.

"Every scenario of trauma induced head injury equal to explaining the infant's symptoms was **suggested** to defendant by his interrogators. Indeed, there is not a single inculpatory fact in defendant's confession that was not suggested to him". Just as the Englewood police suggested the entire scenario to Justin Evans, **ECF no 85, page 13, paragraph #14**. Justin stated he was not involved over 50 times and recanted immediately after he said "I did it". See SUMF #33-63, **ECF document 71-2, page 5-7, paragraph 33-63**. Justin's will was overborne when the

officers stated that no one will be able to help him. In Spano v. New York, 360 U.S. 315 (1959) it Held: "On the record in this case, petitioner's will was overborne by official pressure, fatigue and sympathy falsely aroused, his confession was not voluntary, and its admission in evidence violated the Due Process Clause of the Fourteenth Amendment".

We are also mindful of the expert report of Psychology Professor Saul M. Kassin regarding the nature of Halsey's interrogation and his confession.35 Cf. Strickland v. Francis, 738 F.2d 1542, 1555 (11th Cir. 1984). Dr. Kassin explained Halsey's vulnerabilities as a suspect: his mental limitations, his history of mental health issues and substance abuse, and his suggestibility (as reported by a test Halsey took). These are all characteristics that Kassin explained have been shown to contribute to false confessions. Kassin also analyzed the interrogation itself and concluded that its length (much longer than average) and the tactics used (overwhelming Halsey with supposedly incriminating evidence) also increased the chances that Halsey would agree to sign a false confession to end the confrontation—all suggesting that his will was overborne. **Halsey v. Pfeiffer, Court of Appeals, 3rd Circuit 2014**. Justin Evans, who was a minor at the time, told the officers, "Honestly, I can't even bring no names up. I said "I did it" just to get the whole thing over with". **ECF document 72-2, page 54-55**. Justin Evans was adamant for **50 minutes** until he gave into the officer's pressure and said "I did it". Justin was immediately adamant again that he was not involved until the officers made promises, threatened him, and lied to him stating his enemy Tyrone told on him, **ECF document 72-2, page 35-84**.

It is important to recognize that, unlike issues requiring a technical understanding, the 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**.

h. **The District Court stated, "Moreover, Tyrone has produced no evidence refuting the fact that the Englewood Detectives received inconsistent statements regarding Tyrone's whereabouts during the relevant time period. Therefore, the Englewood Detectives did not commit outrageous conduct, and they are entitled to summary judgment on Tyrone's IIED**

claim", see Order ECF no. 82, page 9.

As expressed in **ECF no 85**, and all evidence submitted on record, the defendant officers knew that the incident occurred at **10pm** and they also confirmed that Kinlaw saw Tyrone in front of McDonalds at **10pm**, which is 5-6 minutes away from where the incident took place. The 911 timestamp confirms Tyrone's statement of his whereabouts during the relevant time period. In addition, Defendant Marc McDonald **admits** Justin Evans sworn statement was inconsistent, see Ex. 16 (page 29, paragraph 17-25); (page 30, paragraph 1-2), **ECF Document 72-3, page 34-35 #29-30.** According to Judge Wilcox, defense witness Tyrone Roy's 10pm timeline "at McDonalds with Tyrone Stephens" on October 31, 2012, was credible, **ECF no 85, page 10, paragraph # 10**.

i. **"There is no evidence supporting Tyrone's negligence and defamation claims", see Order ECF no. 82, page 9-10.**

As expressed herein, and all evidence submitted on record, the defendant officers were negligent and acted maliciously when they told co-defendant Justin Evans that Tyrone Stephens was **under investigation** and implicated him, which caused Justin to falsely state that Tyrone was involved with the incident. Tyrone Stephens was **never** under investigation prior to Justin Evans false statement, or identified as the suspect by any victims or witnesses, **ECF Document 42, page 9** – NO PHOTO ID. Please see plaintiffs brief, Point I, **ECF Document 71, page 6.**

In fact, the defendants knew before their investigation that Tyrone was seen by defendant Kinlaw during the time of the incident, **ECF no 85, page 4-7, paragraph #5-6**. In addition, the victims and witnesses sworn statements of the suspect's clothing was inconsistent with Justin Evans description of Tyrone's clothing, **ECF no 85, page 7-10, paragraph #8-9**. See plaintiffs brief, Point II, **ECF Document 71, page 14.**

j. **"As explained in the foregoing section, the Englewood Detectives are entitled to summary judgment on all claims against them. For the reasons stated below, the same goes for the City of Englewood and the Englewood Police Department. It is well settled that "[w]ithout a constitutional violation by the individual officers, there can be no § 1983 or Monell … liability." Phillips ex rel. Estate of Phillips v. Northwest Regional Communications, 391 Fed. Appx. 160, 168 n. 7 (3d Cir. 2010) (citing Sanders v. City of Minneapolis, 474 F.3d 523, 527 (8th Cir. 2007))."., see Order ECF no. 82, page 10.**

In 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) (quotation omitted)**.

II. THE DISTRICT COURT ERRED BY DENYING PLAINTIFFS FIRST AND SECOND MOTIONS FOR RECONSIDERATION

Appellants submitted their second motion for reconsideration in order to address, **for the first time**, the District Court following statement, **"Plaintiff's argument appears to be that reconsideration is needed to correct a clear error of law"**. **Opinion, ECF no. 91, page 2**. The plaintiffs Marc and Tyrone Stephens clearly pointed out in their reconsideration brief **(ECF document 85)** that the court needs to reconsider their decision in order to (1) correct a clear error of law, (2) to correct a clear error of fact, and (3) to prevent manifest injustice. The plaintiffs listed **with specificity** in their first motion for reconsideration **8 Clear errors of fact**, and **1 clear error of law** which are listed in Bold, **see ECF no. 89**. Judge Martini deliberately sabotaged the case by intentionally overlooking the plaintiffs' evidence.

"There is no indication that the court meant to limit the usual rule that the district court is free to reconsider its decisions based on any reasonable ground", **cf. Rosen v. Rucker, 905 F.2d 702, 707 n. 5 (3d Cir.1990)** (second motion which is first request for reconsideration of issue arising only after court's original order treated as a Rule 59(e) motion for purposes of Fed.R.App.P. 4(a)(4) when it is first opportunity to reconsider issue (in that case, delay damages)). **Bane v. Netlink, Inc., 925 F. 2d 637 - Court of Appeals, 3rd Circuit 1991, footnote 1**.

In **Turner v. Evers, 726 F. 2d 112 - Court of Appeals, 3rd Circuit 1984 at 114**, "We recognize, of course, **the imperfection of the "apple metaphor"**: it is often **difficult** to decide which judicial act constitutes the apple". In addition, "If a litigant wishes to bring additional information to the Court's attention the Court should, in the interest of justice (and in the exercise of sound discretion), consider the evidence" 1) the Court has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the Court either did not consider, or

failed to appreciate the significance of probative, competent evidence. **Cummings v. Bahr, 295 N.J.Super. 374, 384, 685 A.2d 60 (App.Div.1996) D'Atria v. D'Atria, 242 N.J. Super. [392,] 401 (Ch. Div. 1990).** It is necessary to correct a clear error of law or prevent manifest injustice.'" **Bermingham v. Sony Corp. of Am., 820 F. Supp. 834, 856 (D.N.J. 1993), Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985).** "A judgment may be altered or amended if the party seeking reconsideration shows **at least one** of the following grounds: (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." **Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc., 602 F.3d 237, 251 (3d Cir. 2010); Max's Seafood Café by Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1995) (citing North River Ins. Co. v. CIGNA Reinsurance Co., 52 F.3d 1194, 1218 (3d Cir. 1995))**. "Manifest injustice pertains to situations where **a court** overlooks some dispositive factual or legal matter that was presented to it". **See In re Rose, No. 06-1818, 2007 WL 2533894, at *3 (D.N.J. Aug. 30, 2007).** In order to correct a clear error of fact, error of law, and to prevent manifest injustice, plaintiffs simply pointed out the specific information in their first and second motion for reconsideration that the Court stated they "failed to show". A Rule 59(e) motion "is appropriate where the court has misapprehended the facts, a party's position, or the controlling law **(citing Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991)**. "Reconsideration is the appropriate means of bringing to the court's attention manifest errors of fact or law. See **Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) at 909**, **Max's Seafood Cafe V. Quinteros176 F.3d 669, 678 (3d Cir. 1999) at 678**.

The District Court also stated in response to the first motion for reconsideration, "**In the face of these facts, Plaintiffs now appear to conjure new theories in support of their claims, e.g., that the Englewood Defendants falsified sworn statements so that they could bring charges against Tyrone. Even assuming that Plaintiffs raised such allegations in their opposition to summary judgment, they are nonetheless unsupported by anything in the record**", see Order **ECF no. 91, pages 3**.

The district court is clearly in error of the facts. The plaintiffs **civil complaint** was filed stating that the officers fabricated the police reports, sworn statements, and testimony of which plaintiffs provided the evidence on record three times. **(ECF document 85). Counts 3, 4, 5 are for FALSE EVIDENCE, see ECF document 6**. This is clear evidence that the district court was not reading, and overlooked, the plaintiffs' complaint, motions, and evidence.

III. THE DISTRICT COURT ERRED BY DENYING PLAINTIFF'S RIGHT TO AMEND THE COMPLAINT

Plaintiffs Marc and Tyrone Stephens filed two "Notice of Tort Claims" with The City of Englewood, and the State of New Jersey 6 months before filing their complaint.

Marc Stephens properly served all defendants, which included the City of Englewood and Englewood Police Department and All Officers, with a summons and complaint, **ECF no. 5, 10 pages 1-8**. Tyrone's summons is **ECF no. 7**.

Judge Mark Falk issued a Scheduling Order stating all MOTION TO AMEND and to "ADD NEW PARTIES" must be in by February 21, 2015, **ECF no. 23, #3**.

On February 16, 2015, Plaintiff Marc Stephens filed a Motion to Amend the complaint and to add new parties, **ECF no. 34-1, pages 1-3**. See Plaintiffs Reply, **ECF no. 42, & 53 page 1-18**. See also **ECF no. 42, page 4, #3**, which details Marc Stephens's argument about his claims against the City of Englewood and the Officers.

On March 19, 2015, Marc Stephens forwarded a letter to the District Court requesting for their Motion to Amend the Complaint to be Granted, **ECF no. 34**.

On March 30, 2015, Judge Falk issued an Order that the Motion to Amend the Complaint was returnable on April 20, 2015, **ECF no. 35-1**.

On April, 23, 2015, Plaintiff Marc Stephens, testified that he has claims against all defendants during his deposition with lawyer Adam Kenny from Weiner Lesniak LP, representing the City of Englewood and Englewood Police Department, who is making the argument that Marc Stephens has no claims against the City of Englewood and defendant officers. See Plaintiff Marc Stephens Declaration, **ECF no. 42-4**. In fact, the Defendant City of Englewood and Officers forwarded interrogatories to Marc Stephens regarding his claims, and also requested for Marc Stephens to sign a waiver regarding the Englewood Police Department **ECF no. 42, page 10. – EXHIBIT 2**. Adam Kenny knows Marc Stephens has claims. They are attempting to reduce their liabilities.

Judge Martini never gave an Opinion or Order to the plaintiffs MOTION TO AMEND THE COMPLAINT and to ADD NEW PARTIES which was timely filed. Martini later dismissed the case with prejudice.

"A motion for leave to amend is to be liberally granted, and without consideration of the ultimate merits of the amendment". **Notte v. Merchants Mut. Ins. Co., 185 N.J. 490, 500-01 (2006)**. "We must accept as true all factual allegations in the amended complaint and all reasonable inferences that can be drawn from them. The amended complaint must be construed in the light most favorable to the plaintiff", **Banks v. Wolk, 918 F.2d 418, 423 (3d Cir.1990)**. Under Federal Rule of Civil Procedure 15(c) a pleading relates back to the date of the original pleading when "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading." **Bensel v. Allied Pilots Ass'n, 387 F.3d 298, 310 (3d Cir. 2004)**. If a proposed amendment is not clearly futile, the court should grant leave to amend, **Scott v. New Jersey State Police, Dist. Court, D. New Jersey 2014**".

IV. THERE ARE DISPUTED MATERIAL FACTS REGARDING ALL DEFENDANTS

In 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) (quotation omitted)**.

V. THE COURT IS NOT ALLOWED TO WEIGH THE EVIDENCE

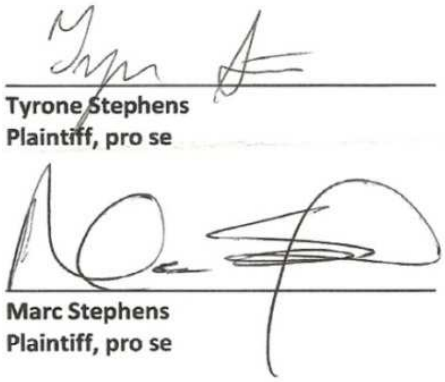
The court is not allowed to weigh the evidence. That is the responsibility of the Jury. "The court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." **Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000)**.

CONCLUSION

Plaintiffs respectfully request that this Court grant Plaintiffs' motion for reconsideration, grant plaintiffs' motion to amend the complaint adding the parties, deny Defendants' motion for summary judgment, and set the case for trial.

Respectfully Submitted,

September 8, 2016



Tyrone Stephens
Plaintiff, pro se

Marc Stephens
Plaintiff, pro se

CERTIFICATE OF SERVICE

Plaintiffs-Appellants, pro se, hereby certify that on September 8, 2016, Plaintiffs filed (1) Opening Brief, opinion and orders, and District Court docket to the United States Court of Appeals for the Third Circuit using the CM/ECF system, which will then send a notification to the defendants, and their counsel:

Marc Mory, Esq. (via e-mail) mmory@dvorakandassociates.com
Adam Kenny, Esq. (via e-mail) akenny@weinerlesniak.com
Marc Pakrul, Esq. (via e-mail) MPakrul@tompkinsmcguire.com

MARC ANTHONY STEPHENS
Plaintiff-Appellant, pro se

By: s / Marc Anthony Stephens
Marc Anthony Stephens

TYRONE STEPHENS
Plaintiff-Appellant, pro se

By: s / Tyrone Stephens
Tyrone Stephens