

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

MARC AND TYRONE STEPHENS,
Plaintiffs-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
Defendants-Appellees

CASE No. 16-1868
D. N.J No. 2:14-cv-05362-WJM-MF

**PLAINTIFFS' MOTION FOR
SUSPENSION OF RULES
PURSUANT TO FRAP RULE 2 AND
FRCP RULE 61 REGARDING
JUSTIN EVANS STATEMENT**

INTRODUCTION

The Panel issued an Order on Wednesday, May 3, 2017, affirming the District Court's Judgment. In order to prevent manifest injustice, Appellant respectfully request the Panel to suspend the rule pursuant to **Rule 2, and 61** in order to correct a clear errors of fact, law, and overlooking undisputed evidence on the record. The court is overlooking the fact and law that Defendants testified that they coerced Justin Evans to implicate Tyrone, and that Justin testified that he implicated Tyrone because of the officers telling him Tyrone gave up his name.

STATEMENT OF MATERIAL FACTS

1. **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. See *Wilson v. Russo*, 212 F.3d 781, 790 (3d Cir. 2000)".

2. **Panel Opinion States, Page 6**, "Further, notwithstanding their arguments to the contrary, no reasonable juror could conclude that the detectives coerced Evans's statement.

a. Defendant McDonalds testified that **none** of the victims or codefendants identified Tyrone as the suspect. **Comet**: Did any of the victims identify my client? **McDonald**: No. **Comet**: Did any of the codefendants, other than Justin Evans who was accused himself of wearing a mask, did any of them identify my client? **McDonald**: No. **EXHIBIT 1 - ECF Doc 72-3, page 53, para 67, #7-12.**

b. Defendant McDonalds admits that he “suggested Tyrone’s names” to Justin Evans in regards to Tyrone Stephens being involved and implicating Justin, **EXHIBIT 2 - ECF Doc 72-2, page 59.**

Justin Evans: “How they gonna put my name in this?”..”Tyrone was in High School”. **McDonald**: I gave you all of them.

c. Defendant Desmond Singh admits that he suggested Tyrone’s name when he states to Justin, **Singh**: “You’re doing good but the more names we give you”. **EXHIBIT 3 - ECF Doc 72-2, page 70.**

d. Justin Evans testified that he implicated Tyrone Stephens because the officer lied to him, **Justin Evans**: I thought he was one of the people that said I was involved or **told them**...and it was “out of revenge”. **EXHIBIT 4 - ECF Doc 72-4, page 8-9.**

e. This confirms Justin Evans statement in his letter to Tyrone when he mentioned that the officers said Tyrone was under investigation for the incident, and when McDonald and Singh stated Tyrone implicated Justin, Justin stated, “**I through it back on yall**”. “Only reason why **they are saying my name** is because they don’t fuck with me”. And McDonald said its obvious yall not my boys cuz, **they wouldnt have said my name** if they were”. Justin realized that the officers lied about Tyrone saying his name, “**I fell for it on some dumb shit**”. Justin states to Tyrone, “**I aint purposely do it**”, **EXHIBIT 5 - ECF Doc 72-3, page 85.**

f. McDonald testified that Justin Evans was **coerced** to implicate himself and Tyrone, **EXHIBIT 6 - ECF Doc. 72-3, page 32, #24-25.**

Comet: Did he say, “It’s me because the officers are pushing me...”

McDonald: correct.

“Due process is violated when police coerce a suspect into making a confession. Because it is so suspect, an involuntary confession is inadmissible for any purpose, including impeachment”. See **Mincey v. Arizona, 437 U.S. 385 (1978).**

ARGUMENT

I. A JURY IS NOT FORECLOSED FROM CONSIDERING WHETHER THERE WAS COERCION

The defendant **testified** that they coerced Justin to implicate himself, and Justin testified that he implicated Tyrone out of revenge because the officers lied stating Tyrone told on him. The panel is in error of fact and law when they stated, “No reasonable juror could conclude that the detectives coerced Evans’s statement”. This court states, “[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”, **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.** In addition, Justin’s statement is irrelevant because the investigating officers knew Tyrone was seen by Kinlaw at McDonalds at 10pm, and that the incident was at 7-eleven at 10pm.

II. THE PANEL FINDING OF PROBABLE CAUSE IS CLEARLY ERREONEOUS BECAUSE THERE ARE DISPUTED MATERIAL FACTS AND SUMMARY JUDGMENT MUST BE DENIED

McDonald testified that the officers coerced Justin to implicate himself and Tyrone. The evidence clearly show the defendants where the first to suggest Tyrone’s name to Justin. Justin testified that he implicated Tyrone out of revenge because the officers lied stating Tyrone told on him.

"[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.** “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).** 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).**

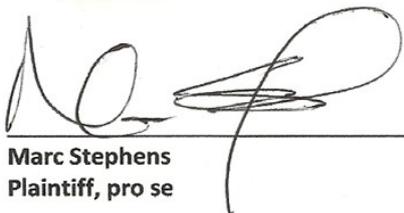
CONCLUSION

Appellant respectfully request the court correct the clear error of facts and law, and grant the motions to prevent manifest injustice.

Respectfully Submitted,



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se