

April 1, 2016

Judge William J. Martini
District of New Jersey
50 Walnut Street
Newark, NJ 07101

THIRD MOTION FOR RECONSIDERATION

Re: Stephens, et al vs City of Englewood, et al – Case# 2:14-cv-05362-WJM-MF

Dear Judge Martini,

We are in receipt of your opinion yesterday, dated **March 31, 2016**, denying our second motion for reconsideration. Again, we are respectfully asking that you please carefully review our references to your court opinions in order to correct a clear error of fact, correct a clear error of law and to prevent manifest injustice, pursuant to Rule 59(e). “Alternatively, if a litigant wishes to bring new or 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”, **D’Atria v. D’Atria, 242 N.J. Super. [392,] 401 (Ch. Div. 1990). Harsco Corp. v. Zlotnicki, 779 F. 2d 906 - Court of Appeals, 3rd Circuit 1985.**

You state in your opinion, ECF 98, **The Court is in receipt of multiple letters from Plaintiffs concerning this Court's January 13, 2016 Opinion & Order denying Plaintiffs' motion for reconsideration of the Court's November 3, 2015 Opinion & Order. To the extent those letters are intended to be additional motions for consideration, they are not permitted under the Local Rules and are therefore DENIED. See Mitchell v. Twp. of Pemberton, No. 09810, 2010 WL 2540466, at *7 n. 12 (D.N.J. June 17, 2010) (finding successive motions for reconsideration prohibited under the Local Rule); Caldwell v. Vineland Police Dep't, No. 084099, 2010 WL 703179, at *2 (D.N.J. Feb.23, 2010) (same). If Plaintiffs continue to file motions for reconsideration concerning either the November 3, 2015 Opinion & Order or the January 13, 2016 Opinion & Order, they will be subject to sanctions.**

Despite the threat of sanctions, we are allowed to submit a THIRD MOTION FOR RECONSIDERATION pursuant to **Rule 59(e)**. In addition, the **doctrine of substantial compliance** is used by courts to "avoid technical defeats of **valid claims**," *Zamel v. Port of New York Auth.*, 56 N.J. 1, 6, 264 A.2d 201 (1970) and requires: "(1) the lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim, and (5) a reasonable explanation why there was not a strict compliance with the statute." *Galik v. Clara Maass Med. Ctr.*, 167 N.J. 341, 353, 771 A.2d 1141 (2001) at 1149, **Palanque v. Lambert-Woolley, 774 A. 2d 501 at 506**. The plaintiffs' motion for reconsideration were all timely submitted, and clearly has merit due to the fact that the **incident occurred at 10pm at 7-eleven** and it was "**testified**" by the defendants that Tyrone was at **McDonalds at 10pm** and was seen by defendant Kinlaw, as proven below.

“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 Mitchell v. TOWNSHIP OF PEMBERTON, Dist. Court, D. New Jersey 2010, it **did not** state successive motions for reconsideration are prohibited under the Local Rule. The plaintiff Mitchell did not put forward any evidence nor did he state the accusations in his complaint. In addition, Mitchell’s motion was denied because the plaintiff was still able to file an appeal, “*Plaintiff has filed a motion requesting that he be permitted to file an untimely appeal of the Court’s November 23, 2009 Order denying his motion for reconsideration of the Court’s denial of his request for a restraining order against the Defendants*”.. “*Plaintiff **may still appeal** the Court’s denial of Plaintiff’s request for a restraining order following the final resolution of his case. Accordingly, he Court will deny as moot Plaintiff’s motion*”.

Marc and Tyrone Stephens provided clear evidence which was **overlooked by the court**. As long as we meet the criteria to file a motion for reconsideration under local rule, we can file unlimited motions until the court correct their errors. If the court opinions are in error of facts and law 20 times, we can submit 20 motions for reconsideration in order to prevent manifest injustice, **Rule 59(e)**.

In Caldwell v. Vineland Police Dep’t, No. 084099, 2010 WL 703179, at *2 (D.N.J. Feb.23, 2010), the court denied Caldwell’s motions for reconsideration because (1) *the Plaintiff’s first motion contained **no reference to the Court’s prior Opinion**, nor any specific challenges to the Court’s prior findings.* (2) *Plaintiff’s **did not identify a basis for reconsideration** under Local Civil Rule 7.1(i).* (3) *Plaintiff has **failed to identify** an intervening change in controlling law, the presence of new, previously unavailable, evidence, nor the need to correct a clear error of law or to prevent manifest injustice.*

In our first and second motion for reconsiderations we clearly made reference to your court opinions, and we clearly identified a basis for reconsideration stating a need for you to **correct a clear error of fact, correct a clear error of law** and to **prevent manifest injustice**, pursuant to Rule 59(e); **see ECF 85, 89, 93, and 94** – you can’t miss it, nor did the **9,000 citizens** that read the articles titled “*Detective Marc McDonald of Englewood Police Department named in Federal Lawsuit for allegedly falsifying evidence and testimony*” and the article titled “*Judge William J. Martini accused of bias in favor of the City of Englewood in Civil Lawsuit for False Imprisonment*” which contains our admissible evidence at www.inglewoodnjnews.com.

Again, for a third time, in order to prevent manifest injustice we are asking the court to please correct the clear error of facts, and correct a clear error of law and **send this case to trial**. **We are not in disagreement**, the court is clearly overlooking our evidence. We are trying to show that the evidence is on court record, and for you to carefully review it, **see ECF 71-6, pages 1-2**.

I. Regarding City of Englewood:

You stated in both of your opinions and order: “**The record shows that Englewood police officers had probable cause to arrest Tyrone. Specifically, the officers 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**”.

(1) - the alleged photo identification by Natalia Cortes;

Natalia **did not** identify Tyrone:

A. On November 2, 2012, at the Englewood Hospital Defendant Desmond Singh asked Witness Natalie Cortes the following:

Desmond Singh: “If you saw the actors again, would you be able to identify them?”

Natalia Cortez: “I’m **not really sure** because it was really dark and most of them had hoods on and like that one in the bike had the **ski-mask** on”, see Ex. 6 (page 7 line 23) & (page 8 line 1-3), **ECF Document 72-2, page 22-23.**

Mr. Martini, Tyrone went to jail for 1 year and 35 days as the ski-mask person. How would anyone see through a ski-mask??

B. On November 2, 2012, Victim Kristian Perdomo identified co-defendant **Derrick Gatti** as being present at the incident on October 31, 2012 at 7-eleven at 10pm, **ECF Document 72-3, page 19, paragraph #2.** “Upon Kristian Perdomo viewing said book, he immediately identified Derrick Gaddy”.

The Supplementary Investigation Report states that after taking the statements from all of the victims and witnesses on November 2, 2012, defendant McDonald and Singh went to pick up **Derrick Gatti** for questioning, but Derrick Gatti’s grandmother took custody of him without providing a sworn statement, see Ex. 15 (page 2, paragraph 3-4), **ECF Document 72-3, page 19, paragraph #3-4.**

On March 1, 2013, during Justin Evans Probable Cause hearing defendant McDonald testified that on November 2, 2012, the Englewood Police Department only had Derrick Gatti, see EXHIBIT 19, page 13, paragraph 14-25, **ECF Document 72-3, page 13, paragraph 14-20.** This is proof Natalia **did not** identify Tyrone on November 2, 2012.

Grossman: after you attempted to interview Derrick Gatti, what happened next?

McDonald: I mean, well, that was pretty much it. All we really knew was at that particular point was—was **Derrick Gatti**”.

C. On February 26, 2013, State witness Natalie Cortez “testified” at Tyrone Stephens’s probable cause hearing that she **did not identify Tyrone Stephens** by name, picture, or as a possible suspect on November 2, 2012, see EXHIBIT 18, page 14-22. **ECF Document 72-3, page 93-97.**

Jordan Comet: But there are three parts to this. There’s an identification by knowing the person by name. There’s an identification of a picture. And then there’s the –I’m not sure, I really don’t know maybe possibly. Those are the three parts that were looking at here.

Jordan Comet: First question is, did you pick out anyone from a picture, looking at them and saying, oh, I know that person, his name is whatever, either on 11/2 or 11/13 2012?

Natalia Cortez: No. I didn't know anybody's name. I just saw by face.

Jordan Comet: When you looked at their faces, did you say I saw that face at 7-eleven on October 31, 2012?

Natalia Cortez: No.

Jordan Comet: And finally, third, did there come a point where you wavered and said, I'm not sure, this person might have been there, I really don't know?

Natalia Cortez: Yeah.

Jordan Comet: And how many faces did you say that about?

Natalia Cortez: I think one or two.

Jordan Comet: And the crucial question is, do you know whether one of those faces that you said might have been there was my client?

Natalia Cortez: No....I'm saying, no, it wasn't him.

Prosecutor: You said that you were interviewed at the hospital correct?

Natalia Cortez: Yes.

Prosecutor: And you think that the date, November 2, 2012 sounds correct?

Natalia Cortez: Yeah. Something like that.

Prosecutor: And you said that you were showed a photo identification book? A collection of pictures?

Natalia Cortez: Yes

Prosecutor: Did you point to any of the pictures when asked if they were there?

Natalia Cortez: I pointed, like, one or two pictures.

Prosecutor: Did you say how sure you were at that point?

Natalia Cortez: All my answers were pretty much, I'm not so sure. It might have been, but I'm not really sure since it was really dark. And like I said, everybody had either hoodies or like, some type of hat on.

Prosecutor: Did you know Tyrone Stephens before you looked at the photo book on November 2?

Natalia Cortez: I remember him by face because we went to high school together. I mean, like, we really didn't talk or, like, anything. But I remember seeing him in high school. And that he played sports and everything.

Prosecutor: Did you recognize any of the pictures that you pointed out as being Tyrone Stephens?

Natalia Cortez: No.

Prosecutor: Do you remember the identification in the hospital.

Natalia Cortez: I remember they showed me.

Prosecutor: Do you remember what you said that day very well?

Natalia Cortez: I remember them showing me the books and what I said. It was—**Not Really**.

Prosecutor: I don't have any further questions.

(2) - the statements made by Justin Evans;

Justin Evans' statement is **irrelevant** the officers knew **before their investigation** that Tyrone was not the suspect who attacked the victims at **7-eleven at 10pm**.

A. Justin Evans testified that he implicated Tyrone Stephens because, "I thought he was one of the people that said I was involved or told them"...and it was "out of revenge", see EXHIBIT 23 (page 9, paragraph 1-25) (page 10, paragraph 1-14), **ECF Document 72-4, page 8-9**.

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". 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", see EXHIBIT 17 (page 4, #8 & #10), **ECF Document 72-3, page 85**.

B. On November 2, 2012, the victims stated the incident occurred October 31, 2012, at **10pm**, which was testified by defendant McDonald, see Exhibit 16 (page 16, paragraph 19-25) and that Tyrone stated he was at McDonalds at 10pm, (page 16, paragraph 1-3), **ECF Document 72-3, page 28**.

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

McDonald: On or about 10pm.

Prosecutor: And what day did they say the attack occurred?

McDonald: October 31, Halloween.

Prosecutor: Where did Tyrone say that he was at that time?

McDonald: He stated he was initially at McDonald's.

C. Det. McDonald stating that Kinlaw saw Tyrone at McDonalds at 10pm, **ECF document 77-6 page 55-56**.

Tyrone Stephens: Kinlaw said he seen me! Kinlaw just said he seen me!

Det. McDonald: "Kinlaw said he saw you and other people...when **Kinlaw** saw you on the Ave at this particular time you weren't at home.."

Marc Stephens: Were you there?!

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.

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.?

Det. McDonald: up the street.

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.

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?

Det. McDonald: That was at **10 O'clock** he said that.

(3) - inconsistencies in testimony regarding Tyrone's alibi;

The incident occurred at '10pm'. The officers knew 'before' their investigation that Tyrone was not the suspect who attacked the victims at 7-eleven at 10pm, **see #2 herein**. According to Judge Wilcox ruling, there were **never inconsistencies** in Tyrone's alibi:

A. Judge Gary Wilcox ruled that Defense Witness Tyrone Roy was **credible**, see Exhibit 16 (page 91, paragraph 12-14), and that based on the **timeline** Tyrone Stephens should have been at **McDonalds**, or **home**, during the time of the incident at 7-eleven, see Exhibit 16 (page 91, paragraph 14-25) (page 92, paragraph 1), **ECF Document 72-3, page 65-66**.

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 or home".

(4) - the statement Tyrone allegedly made to Jaquan Graham while in a holding cell"

A. The officers knew **before their investigation** that Tyrone was not the suspect who attacked the victims at 7-eleven at 10pm, **see #2 herein**. The **fabricated statement** is irrelevant.

I. Regarding Nina C Remson:

You state, "**With respect to the Remson Defendants, Plaintiffs have failed to demonstrate why they should be exempted from New Jersey's affidavit of merit requirement, which requires a plaintiff to show "that the complaint is meritorious by obtaining an affidavit from an appropriate licensed expert attesting to the 'reasonable probability' of professional negligence."** Ferreira v. Rancocas Orthopedic Assocs., 178 N.J. 144, 149-50 (2003) (citing N.J.S.A. 2A:53A-27). Specifically, **the record shows that Plaintiffs failed to inform the Remson Defendants that they required**

information for the specific purpose of filling out an affidavit of merit. Scaffidi v. Horvitz, 343 N.J. Super 552, 554 (N.J. Super. Ct. App. Div. 2001). Moreover, and notwithstanding their bald assertions to the contrary, Plaintiffs have not put forth any evidence refuting the fact that they already possessed sufficient information to comply with New Jersey’s affidavit of merit requirement”, Order ECF 91, page 2.

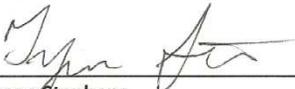
The record clearly shows that Plaintiffs did not fail to inform the Remson Defendant that they required information for the specific purpose of filling out an affidavit of merit. Plaintiffs’ eight notices and request are filed on record, see ECF 94. The record clearly shows common knowledge applies to this case. The Affidavit of Merit Statute, 2A:53A-28(3) reads, “*An affidavit shall not be required pursuant to section 2 of this act if the plaintiff provides a sworn statement in lieu of the affidavit setting forth that: the defendant has failed to provide plaintiff with medical records or other records or information having a substantial bearing on preparation of the affidavit*”. On February 16, 2015, plaintiff forwarded a sworn statement “Waiver for Affidavit of Merit” to Judge Mark Falk., and again on February 19, 2015, titled “Affidavit of Merit not required”, see ECF Document 30-11, raising the argument that defendant is intentionally withholding discovery and that the Common Knowledge Exception applies.

CONCLUSION

For the reasons set forth above, it does not matter if Justin Evans or Natalia Cortes actually or incorrectly identified Tyrone as the suspect. Tyrone’s timeline is irrefutable and backed by solid evidence that he was at McDonalds at 10pm, which is the time the incident occurred at 7-eleven, half a mile away. In addition, the officers testified that they had no leads after interviewing the victims and the witness Natalia Cortes on November 2, 2012, clearly revealing that they fabricated all evidence against Tyrone Stephens. The court ruled defense witness Tyrone Roy’s 10pm at McDonald’s timeline was credible. If the officers did not fabricate the evidence and testimony Tyrone would not have spent 1 year and 35 days in jail.

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

Respectfully submitted,



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se