

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

MARC AND TYRONE STEPHENS,
Plaintiffs,
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

CASE NO. 16-1868
CASE NO. 2:14-cv-05362-WJM-MF

**COMPLAINT OF JUDICIAL MISCONDUCT
AND JUDICIAL DISABILITY AGAINST
FEDERAL JUDGE WILLIAM J MARTINI,
ANTHONY JOSEPH SCIRICA, LUIS FELIPE
RESTREPO, AND DENNIS MICHAEL
FISHER**

THE ISSUE

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).

MERITS-RELATED CONSIDERATION

If a complaint of an otherwise merits-related complaint includes supported allegations that the judge had an improper motive in acting, those allegations will be considered. 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).

STATEMENT OF THE FACTS

MANIFEST INJUSTICE AND COURT EGREGIOUS ERROR OF FACT #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.**”

(1) No identification by Natalia Cortes

A. Natalia's sworn statement on November 2, 2012: **McDonald**: "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", **ECF Doc 72-2, pg 22, #23 & pg 23, #2-3. EXHIBIT 1**

B. During Justin Evans probable cause hearing, McDonald testified after speaking with the victims and witness Natalia Cortes on November 2, 2012, the Englewood Investigators "**only had Derric Gatti**". "**On 11/02/12, ECF Doc 72-3, page 19, para #1. "After taking all of the statements from the victims and witnesses.** Detective Singh and I drove to the Winton White football stadium to pick up **Derric Gaddy** for questioning", **ECF Doc 72-3, page 19, paragraph #3, last sentence. Q**: After you attempted to interview Derric Gatti, what happened next? **McDonald**: I mean well, that was pretty much it. All we really knew at that particular point **was Derric Gatti. ECF Doc 72-3, page 113, #14-25. EXHIBIT 2**

C. McDonald **testified** during Justin Evans probable cause hearing that on, November 2, 2012, Natalia **did not** identify any attackers. **Q**. Okay. She also said, "I'm not sure I can identify the actors it was really dark". I think, then, that you said "**If you saw them again could you identify them?**" **McDonald (A)**. Right. **Yes. Q**. So then I think then you showed her the photo array, again? **McDonald (A)**. That was for -- **Q**. Oh, detective Cabillos. **McDonald (A)**. Yes **ECF Doc 72-3, page 121. EXHIBIT 3**

D. According to detective Cubullos, **Tyrone's (a juvenile)** picture was not in the photo array, and this photo array was the same used by McDonald on November 2, "On **11/13/12**, I met with Natalia Cortes at the Englewood Police Department to show her the same photo array that Det. McDonald had provided"...**During said photo array, Natalia was unable to pick anyone out.** McDonald advised me that the individual that was placed in the photo array was a possible suspect Victory Sarhano.."**No photo of any other juvenile suspect was used in this photo array**", **Doc: 003112688916, defendants SA177. EXHIBIT 4**

E. 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 5**

F. **Q**. So, looking through the photo array, at headquarters, on November 13th, the bottom line is **Natalia could not identify anyone in the photo book as being there that night, right?** **McDonald**: Right. **Doc. 003112688918, #4-21. EXHIBIT 6**

G. 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 7**

H. Jordan Comet (Q). And, at that point, was there ever a point where you said, I identify a specific person? Natalia Cortes (A). Well, I identified, like, one or two that kind of stood out, **but not him.** **Doc: 003112688921, para #10, #3-6. EXHIBIT 8**

I. 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,** **ECF Doc. 72-3, page 94, para #17, #1-3. EXHIBIT 9**

J. Prosecutor: Did you recognize any of the pictures that you pointed out as being Tyrone Stephens? Natalia Cortez: No. **ECF Doc 72-3, pg 95, para 19, #16-18. EXHIBIT 10**

MANIFEST INJUSTICE AND COURT EGREGIOUS ERROR OF FACT #2

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

A. Defendant McDonald's 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. ECF Doc 72-3, page 53, para 67, #7-12. EXHIBIT 11

B. 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**". ECF Doc 72-2, page 70. EXHIBIT 12

C. Justin Evans: "**How they gonna put my name in this?**".."**Tyrone** was in High School". **McDonald**: **I gave you all of them**. ECF Doc 72-2, pg 59. EXHIBIT 13

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". ECF Doc 72-4, page 8-9. EXHIBIT 14

E. **Comet**: Did he say, "It's me because the officers are pushing me..." **McDonald**: correct. ECF Doc. 72-3, page 32, #24-25. EXHIBIT 15

MANIFEST INJUSTICE AND COURT EGREGIOUS ERROR OF FACT #3

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

A. 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 16

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

1. 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.."
2. Marc Stephens: Were you there?
3. 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.
4. 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.?
5. Det. McDonald: up the street.
6. 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.
7. 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?
8. Det. McDonald: That was **at 10:00** he said, ECF Doc 72-2, page 91. para 9-14. EXHIBIT 17

- C. 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 18

CONCLUSION: The Judges ignored the testimony of the time the victims said the attack occurred, and **created their own facts** regarding Natalia's ID, **3rd cir. Opinion Page 2**, "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, identified three of the attackers as Tyrone, Justin Evans, and Derrick Gaddy". **3rd cir. Opinion Page 3**, "First, Cortes, while acknowledging that she had earlier identified Tyrone as a perpetrator, testified that she was not actually sure if he was involved". "[A] finding of fact is clearly erroneous if it is without factual support in the record, United States v. Artus, 591 F. 2d 526 - Court of Appeals, 9th Circuit 1979 at 528. **US v. Mageno, 762 F. 3d 933 - Court of Appeals, 9th Circuit 2014 at 943-944**."

MANIFEST INJUSTICE AND COURT EGREGIOUS 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**.

See Complainant argument in Dist Court opposition brief ECF 72, pg. 1-21; Motion for reconsideration brief ECF 85, pg 13-18; Opening Brief on Appeal Doc. 003112401759 pg. 12-23, and Reply Brief on Appeal Doc. 003112517474, pg 1-12.

MANIFEST INJUSTICE AND COURT EGREGIOUS 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**.

JUDGE WILLIAM J. MARTINI JUDICIAL MISCONDUCT AND DISABILITIES

If a complaint includes supported allegations that a judge made personally derogatory remarks irrelevant to the issues, or treated litigants and attorneys with extreme hostility while on the bench, those allegations will be considered. **Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364.**

Court records show that Judge Martini has a very long history of intentionally sabotaging cases, and has deliberately violated other litigant's personal liberties and/or has wantonly refused to provide due process and equal protection to all litigants before the court, or has behaved in a manner inconsistent with that which is needed for full, fair, impartial hearings.

In 2004, and most recently in 2012, the U.S. Court of Appeals removed Judge Martini from three cases for “usurping the jury’s role”, “unwillingness to conduct a fair trial”, and for “Bias toward the Defendant”. See United States v. Douglas Kennedy, 11-1145 (3rd Cir. 2012), and United States v. Bergrin, 682 F.3d 261 (3d Cir. 2012). The court wrote that "(w)hen a judge openly questions the integrity of the government’s evidence collection practices, undermines the professionalism of the prosecutor, and accuses the Government of prosecuting in bad faith — all without evidence of governmental misconduct — a reasonable observer could very well find neutrality wanting in the proceedings." United States v. Douglas Kennedy, 11-1145 (3rd Cir. 2012).

In an article titled, “For 2 Titans of U.S. Court in Newark, Bad Blood”, The New York Times covered the inappropriate conduct of Judge Martini. In another article titled, “U.S. Court of Appeals removes federal judge from two cases, including Paul Bergrin's trial”, NJ.com goes into detail about the actions of Judge Martini, who is said to be, by some prosecutors and others, unfairly 'defense-friendly' in general.

ARGUMENT

A. THE JUDGES ABUSE OF DISCRETION AND ERRORS VIOLATED COMPLAINTANTS “RIGHT TO DUE PROCESS” AND “RIGHT TO TRIAL BY JURY” WHICH ARE “FUNDAMENTAL RIGHTS”

As shown above, the Judges took on the role of the Jury, and denied Appellants right to due process and right to trial by jury. The Fifth Amendment of the Constitution of the United States reads, “No person shall be deprived of life, liberty, or property, without due process of law”. “At its core, the right to due process reflects a fundamental value in our American constitutional system”, **Boddie v. Connecticut, 401 US 371 - Supreme Court 1971 at 374**. The seventh Amendment to the Constitution of the United States reads, “In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved”. “[Error] involving the denial of basic fundamental rights

may constitute judicial misconduct”. **In re Dileo, 83 A. 3d 11 - NJ: Supreme Court 2014 at 15-26. 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.** “Judicial conduct [is] improper ... whenever a judge appears biased, even if she actually is not biased.” See **In re Antar (SEC v. Antar), 71 F.3d 97, 101 (3d Cir.1995).** **Abulashvili v. Attorney General of US, 663 F. 3d 197 - Court of Appeals, 3rd Circuit 2011 at 208.**

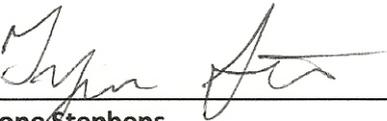
B. THE JUDGES ARE IN VIOLATION OF CANON 1-3

Pursuant to **Canon 1:** “[A] Judge Should Uphold the Integrity and Independence of the Judiciary. Although judges should be independent, they must comply with the law and should comply with the Code of Conduct for United States Judges. Pursuant to **Canon 2A.** “An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. **Canon 3:** “A Judge Should Perform the Duties of the Office Fairly”. Pursuant to the Supreme Court of the United States, "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law." **Marshall v. Jerrico, Inc., 446 US 238 - Supreme Court 1980 at 242.** "federal courts have a constitutional obligation to safeguard personal liberties and to uphold federal law." **Stone v. Powell, 428 US 465 - Supreme Court 1976 at 526.**

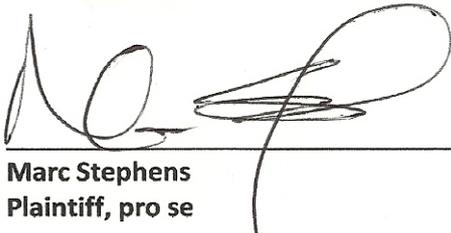
RULE 6(D) CERTIFICATION

In accordance with Rule 6(d) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the factual statements in the Complaint are true and correct, as verified in the Declarations, made under penalty of perjury, attached hereto as Exhibits 1-18.

Respectfully Submitted,



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se