

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 TO RECUSE
JUDGE WILLIAM J. MARTINI**

MOTION TO RECUSE

Now comes the Plaintiffs Marc and Tyrone Stephens, and moves to recuse JUDGE WILLIAM J. MARTINI from the above entitled matter under 28 U.S.C. § 455, and **Marshall v. Jerrico, Inc., 446 US 238 - Supreme Court 1980 at 242**, "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." The above is applicable to this court by application of Article VI of the United States Constitution and **Stone v. Powell, 428 US 465 - Supreme Court 1976 at 526**, "federal courts have a constitutional obligation to safeguard personal liberties and to uphold federal law."

The above mentioned Judge has in the past 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 two 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)**. U.S. Court of Appeals removed Judge Martini from the case involving heroin and gun-possession defendant Douglas Kennedy — a three-judge panel used strong language regarding Martini's conduct. 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)**.

Judge Martini is clearly exhibiting a bias in favor of the defendants in this case by intentionally overlooking plaintiffs' evidence submitted on record, weighing the evidence, and forcing plaintiffs to Appeal. 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).**

The United States Constitution guarantees an unbiased Judge who will always provide litigants with full protection of All Rights. Therefore, Plaintiffs respectfully demands said judge recuse himself in light of the evidence detailing prior unethical and/or illegal conduct or conduct which gives Plaintiffs good reason to believe the above Judge cannot hear the above case in a fair and impartial manner.

Judge William J. Martini dismissed appellant's complaint with prejudice against the City of Englewood and 5 Defendant Officers holding that "*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*", **see Opinion ECF no. 82, page 7**, and that the defendants' officers have absolute immunity, and are allowed to lie and provide false evidence to a grand jury, **see Opinion ECF no. 82, page 8**. Plaintiffs argued that "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.**

I. The officers had no probable cause because testimony proved the incident occurred in the parking lot of 7-eleven at 10pm and testimony proved Tyrone Stephens was located almost a mile away at McDonalds at 10pm, and all defendant officers knew this before their investigation.

On October 31, 2012, at 10pm, in the parking lot of 7-eleven in Englewood, NJ, three victims were attacked and brutally beaten by a suspect wearing a black jacket, ski-mask, and riding a bike.

On November 2, 2012, the Englewood police department interviewed the three victims and witness Natalia Cortes. 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.

Tyrone testified that he greeted "officer Kinlaw and Ron" in front of McDonalds at 10pm. The Englewood Police Department's 911 dispatch timestamp shows "officer Kinlaw and Ron" in front of McDonalds at 10pm, see EXHIBIT 1(a), **ECF Document 72-2, page 1**.

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.

On November 8, 2012, the defendants arrested Tyrone Stephens as the suspect who attacked the three victims at 7-eleven at 10pm.

On November 14, 2012, Defendants McDonald and Singh stated the incident on October 31, 2012 in the parking lot of 7-eleven occurred at **10pm**, see EXHIBIT 12 (page 5, paragraph 1-8), **ECF Document 72-3, page 5, #1-8**.

On November 16, 2012, Defendant Singh, Incle Jr, and Cabillos stated that the incident on October 31, 2012 took place at **10:00pm**, see EXHIBIT 13 (page 5, paragraph 15-16), **ECF Document 72-3, page 7, #15-16**.

During two probable cause hearings, and to a grand jury, defendant Det. Marc McDonalds gave false testimony that on November 2, 2012, all of the victims and witness Natalia Cortes identified Tyrone Stephens as participating in the attack on October 31, 2012 at 10pm, Ex. 16 (Page 14, paragraph 15-20), **ECF Document 72-3, page 27.**

Prosecutor: Can you tell me who she identified?

Det. McDonald: She identified Justin Evans, Tyrone Stephens, and Derek Gaddy.

The Court (Judge Wilcox): Who identified?

Det. McDonald: Natalia Cortez.

Prosecutor: Did she say that these individuals had participated in the attack?

Det. McDonald: Yes

(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.**

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 Derric Gatti, what happened next?

McDonald: I mean, well, that was pretty much it. All we really knew was at that particular point was—was Derric 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;

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.**

The defendants testified that **none** of the victims or co-defendants identified Tyrone Stephens as the suspect during their investigation, except Justin Evans, **ECF Document 72-3, page 53, #7-12.** The officers implicated Tyrone. In addition, 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.**

Defendant Marc McDonalds admits that he "suggested the names" to Justin Evans in regards to Tyrone Stephens being involved, "I gave you all of them", Ex. 9 (Page 45 line 23). **ECF Document 72-2, page 59.**

Defendant Desmond Singh admits that he suggested and gave up Tyrone Stephens name when he states to Justin, “You’re doing good but the more names we give you..”, Ex. 9 (Page 56 line 4-5), **ECF Document 72-2, page 70.**

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

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. Defendant Kinlaw filed a fabricated police report stating that Tyrone admitted he was involved with the incident. Kinlaw willfully filed this fabricated report due to the other officer’s maliciously implicating Tyrone in the criminal investigation when **none** of the victims or codefendants ever mentioned Tyrone’s name. The officers knew **before their investigation** that Tyrone was not the suspect who attacked the victims at 7-eleven at 10pm. The **fabricated statement** is irrelevant.

ARGUMENT

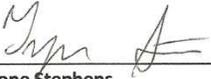
DISQUALIFICATION IS REQUIRED BECAUSE JUDGE MARTINI’S IMPARTIALITY MIGHT REASONABLY BE QUESTIONED

The defendant officers clearly framed Tyrone Stephens in which he spent 1year and 35 days in Jail for a crime he did not commit. Judge William J. Martini intentionally sabotaged the plaintiffs’ case by deliberately overlooking the evidence submitted on record.

This Court authority to direct the reassignment of a case on remand is based on 28 U.S.C. § 455(a) and 28 U.S.C. § 2106. Under § 455(a), a judge should no longer preside over a case when “a reasonable person, with knowledge of all the facts, would conclude that the judge’s impartiality might reasonably be questioned.” **United States v. Wecht, 484 F.3d 194, 213 (3d Cir. 2007).** Section 455(a) requires a judge to “disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). “The goal of section

455(a) is to avoid even the appearance of partiality,” **Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 860 (1988)** (quotation marks omitted), and thus “what matters is not the reality of bias or prejudice but its appearance,” **Liteky v. United States, 510 U.S. 540, 548 (1994)**. In other words, so long as a judge’s impartiality might reasonably be questioned, recusal is required “even though no actual partiality exists ... because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible.” **Liljeberg, 486 U.S. at 860.**

Dated: April 22, 2016



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se