

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 Reply Brief
City of Englewood and Officers,
Nina C. Remson Attorney at Law, LLC,
Comet Law Offices, LLC

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

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ENGLEWOOD DEFENDANTS

REPLY STATEMENT OF FACTS

I. THE VICTIMS WERE ATTACKED AT 7 ELEVEN AT 10PM AND DEFENDANTS DID NOT HAVE PROBABLE CAUSE TO ARREST TYRONE STEPHENS WHO WAS AT MCDONALDS AT 10PM

A. October 31, 2012 – Date of Incident at 7-eleven at 10pm

Appellees brief Page 24-25, POINT I, “reported time of the 7 Eleven incident, i.e. **10:00 pm** versus **10:12 pm**. Even assuming arguendo, the defendant, **Kinlaw**, did see Tyrone Stephens in front of the McDonalds at approximately **10:00 pm**, the victims indicated that the assault took place at approximately **10:12 pm**.”

1. McDonald testified **the victims stated** they were attacked on October 31, 2012 in the parking lot of 7 eleven **at 10pm**, and that Tyrone stated he was at McDonlads, **ECF Doc. 72-3, page 25-26, 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**.

2. McDonald and Singh stated the incident on October 31, 2012 in the parking lot of 7-eleven occurred **at 10pm**, **ECF Doc. 72-3, page 5, #1-8.**, and Defendant Singh, Incle Jr, and Cubillos **at 10pm**, **ECF Doc. 72-3, page 7, #15-16.**

3. Marc Stephens confirms Kinlaws statement: “**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.?, **ECF Doc. 77-6 page 55-56.** Marc Stephens testified that Kinlaw confirmed that he seen Tyrone **at 10:00pm**, **ECF Doc. 72-4, page 33, # 105-106.**

4. Tyrone states that on October 31, 2012 **at 10pm** he was at McDonald’s, and greeted defendant **Kinlaw and Ron**, **ECF Doc. 72-2, page 89.**

5. The Englewood police 911 dispatch timestamp confirms Tyrone’s sworn statement that defendant **Kinlaw and Ron** were in front of McDonalds located at W. Palisades Avenue and Nathaniel Place at **2200hrs=10pm**, **ECF Doc. 72-2, page 1.**

6. Defendants Marc McDonald and Desmond Singh confirmed that Tyrone was in front of McDonald’s **at 10pm** and defendant Nathaniel Kinlaw confirmed that he saw Tyrone in front of McDonalds **at 10pm**, **ECF Doc. 72-2, page 91. ECF Doc. 77-6 page 55-56.** McDonald: “Kinlaw said that he saw you...that was **at 10 oclock** he said that”.

Page 25, POINT I, “Accordingly, there is no way to prove that the time of both the sighting of the Appellant at McDonalds, and the occurrence of the 7 Eleven incident, were at the same, exact time”. FALSE

7. Naiquan Thomas stated at **10:00pm** he was present at 7-eleven **during the incident**, **ECF Doc. 72-3, page 8, #5-10**. Naiquan Thomas stated to defendant Cubillos, after he walked out of 7-eleven the fight was already started, and he walked up to **Derrick Gatti** and after about “**2 minutes**” they both left, **ECF Doc. 72-3, page 12, #1-4**. Naiquan stated to Defendant Singh, Incle Jr, and Cubillos the names of the individuals who were fighting, and stated that Tyrone was **not** at 7-eleven, **ECF Doc. 72-3, page 11**.
8. Victim Jeisson Duque stated **after the attack** an old lady said she called the cops, and the victims waited **10 minutes** for the police, but police never arrived so they left, **ECF Doc. 72-2, page 11, #12-21**. **10:00pm (time of attack) + 2 mins (Thomas &Gatti left) + 10 minutes (Duque waited for police) = 10:12pm**. This confirms the time of **10:12pm** of the **third** 911 phone call in which officer W. Regitz arrived at 7 eleven at **10:15pm**, **ECF Doc. 72-2, page 2**.

Page 9, “Marc initially offered Tyrone an alibi, claiming Tyrone could not have been at the 7-Eleven **at the time of the incident** because **he was home with Marc**”.

9. Defense witness Tyrone Roy testified that **at 10pm** he was with Tyrone Stephens at **McDonalds** and ate for **10-15 minutes**, **ECF Doc. 72-3, page 56**.
10. Judge Wilcox ruled Tyrone Roy testimony was credible and Tyrone Stephens would have been at **McDonalds** or **home** during the incident, **ECF Doc. 72-3, page 65-66**.
11. Defendant McDonald testified that Tyrone Stephens was at McDonald’s restaurant at **10:00pm**, and maliciously changed the time of incident to **10:15pm**. **ECF Doc. 72-3, page 49 #58**. Then to **10:22pm**, **ECF Doc. 72-3, page 62 #84-85**. This is why Marc Stephens stated Tyrone was home around 10:22pm. See **#8 above**, officer W. Regitz arrived at **7 eleven** at **10:15pm**., the victims already left. McDonald’s testimony is clearly **intentionally fabricated**.
12. Judge Martini was informed **twice** to correct the 10:12pm clear error of fact, **ECF Doc.85, 1-18; ECF Doc.89 1-3; ECF Doc.93**.

B. November 2, 2012 – Victim and Witness Statements

13. Natalia Cortes stated she **could not** identify the attackers, **ECF Doc.72-2, pg 22-23**.
14. McDonald testified that Natalia **did not** identify attackers on **Nov. 2**, **ECF Doc.72-3, pg 121**.
15. **Nov. 13**, Cubillos and McDonald 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**”, see defendants, **SA186, ECF Doc. 42, pg 9**.

Appellees brief Page 8, “During the initial interviews, witness, Cortes, confirmed that she identified attackers from the photo book, which per the Investigation Report, were Justin Evans, Tyrone Stephens and Derrick Gaddy”. This statement is false.

16. McDonald testified after speaking with the victims and witness Natalia Cortes on **November 2, 2012**, the Englewood Investigators “All we really knew was at that particular point was—was Derric Gatti”, and they received a tip the following week on Monday, November 7, regarding Kirk and Justin, **ECF Document 72-3, page 19, paragraph #2**, and **ECF Document 72-3, page 113, paragraph 14-25**.
17. The police report states Natalia Cortes identified Tyrone as the suspect on **November 2, ECF Doc.72-3, pg 19, para 3**. See #13-15 above.
18. McDonald testified no victims or co-defendants identified Tyrone, only Justin Evans, ECF Doc. 72-3, pg 53, #7-12.

C. November 7, 2012 - Justin Evans Sworn Statement and Defamation of Tyrone

Appellees brief Page 14, “During this hearing, and while under oath, Evans did not state that he identified Tyrone because the police coerced him or pressured him to do so”.

19. McDonald testified that Justin Evans was **coerced** to implicate himself and Tyrone, **ECF Doc. 72-3, page 32-36, #24-32**.

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

McDonald: correct.

Appellees brief Page 26, POINT I, “The Appellant makes conclusory allegations, without factual basis in the record, to the effect that the Englewood Detective Defendants made “suggestions” to Mr. Evans to implicate Appellant”.

20. McDonald testified that he and defendant Singh were the “first to suggest the black ski-mask” to Justin Evans, **ECF Document 72-3, page 116**.
21. McDonald testified that him and defendant Singh were the “first to suggest a bike” to Justin Evans, **ECF Document 72-3, page 119**.
22. McDonald testified that he and defendant Singh “suggested the black ski-mask, bike, and the orange and red colored jacket” to Justin Evans, **ECF Document 72-3, page 120**.
23. Defendant McDonalds admits that he “suggested the names” to Justin Evans in regards to Tyrone Stephens being involved, **“I gave you all of them”**, **ECF Document 72-2, page 59**. Defendant Desmond Singh admits that he suggested and gave up Tyrone name when he states to Justin, **“You’re doing good but the more names we give you..”**, **ECF Document 72-2, page 70**.
24. 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”**, **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”, **ECF Document 72-3, page 85.**

D. November 8, 2012 - Tyrone Stephens arrested as ski-mask suspect

Appellees brief Page 9, “Tyrone also indicated that he was wearing clothing that was consistent with that which was identified by witnesses”. Page 26, POINT I, “The Appellants on appeal makes bold, unsubstantiated allegations of falsifying evidence without directing the Court to any proofs on this record”. Page 27, POINT I, “Stated simply, on this record there is no proof to support a determination that any evidence was fabricated by the Englewood Defendants”.

25. On November 8, 2012, Tyrone gave a sworn statement that he was wearing a Green army fatigue jacket and blue adidas track suit with three white stripes down the sleeves, **ECF Document 72-2, page 93.** Tyrone was arrested, as the suspect wearing a black sweater, ski-mask, and riding a bike. On November 12, 2012, A Complaint was filed by defendants against Tyrone Stephens for 3 counts of Aggravated Assault, 3 counts of Robbery, and 1 count of Disorderly Conduct, **ECF Document 72-3, page 13-17.**
26. Victim Jeisson stated he does not remember if the suspect had any signs on his jacket that would stand out, **ECF Document 77-6, page 58.**
27. Witness Natalie Cortes stated the individual who initially approached victim Jeisson Duque was wearing a black sweater and sweat pants, **ECF Document 72-2, page 18.** Defendant Desmond Singh asked Witness Natalie Cortes if she noticed logos or stripes on a jacket and she said, “No”, **ECF Document 72-2, page 22.**
28. Defendant McDonalds **testified** that Natalia and all victims stated the suspect was wearing a “black adidas sweat suit with three white stripes down the sleeves”, Ex. 16 (Page 14, paragraph 15-20), **ECF Document 72-3, page 27.**

E. Investigating officers police reports and complaints

29. Defendant Tracy Temple filed a report, which was reviewed by defendant Lieutenant Kevin Hayes on November 2, 2012, stating that the incident on October 31, 2012 occurred at 10:12 pm. In addition, the report states that victim Jeisson Duque mentioned that he could identify the ski-mask person who initially approached him, **ECF Doc. 72-2, page 7-8.** Jeisson said he could only see the skimask suspect eyes and mouth, **ECF Document 77-6, page 58.**
30. Defendant Kinlaw filed a police report stating Tyrone admitted he was involved with attacking the victims on October 31, 2012 at 10pm, **ECF Doc. 72-3, page 29 #18-19.** Defendant McDonald **testified** that Tyrone never recanted his statement that he was not involved with attacking the victims, **ECF Document 72-3, page 47, #55.**

31. Cubillos reviewed McDonald investigation report and complaints filed against Tyrone Stephens, ECF Doc. 72-3, page 13-19.
32. Defendant McDonalds **testified** that he is employed by the Englewood Police Department, and filed and signed the complaint against Tyrone Stephens, ECF Document 72-3, page 24, and filed multiple charges, ECF Document 72-3, page 42. McDonald **testified** that he reviewed the other Englewood defendants' investigation reports, ECF Document 72-3, page 39.
33. Defendant Chief Lawrence Suffern and Deputy Chief Thomas Loschiavo were notified about the incident that occurred at 10:00pm, and allowed fabricated reports to be submitted to the court, ECF Doc. 72-2, page 3-6.
34. **Appellees brief Page 7**, admit, Detectives Marc McDonald, Desmond Singh, Claudia Cubillos, Santiago Inle, Jr. and Nathaniel Kinlaw (collectively "the Englewood Detective Defendants") were involved with the entire investigation, "During the course of the investigation, the Englewood Detective Defendants interviewed more than a dozen people, including the victims, witnesses and suspects, some of which individuals were minors, with their parent/guardian present".

F. December 20, 2012 - Tyrone's Probable Cause Hearing

35. McDonald **testified** that on November 2, 2012, Natalia Cortes picked Tyrone Stephens from a mug shot book, ECF Doc. 72-3, page 113.
36. Marc Stephens asked if the Identification of Tyrone was from an Officer **showing a photo**. Defendant Singh said "**No**", ECF Doc. 71-2, pg 8, #69.

G. February 26, 2013 - Tyrone's Probable Cause Hearing

37. Tyrone's picture **was not** in the photo array because Tyrone was a **17 year old, Minor**. McDonald **testified** that the pictures in the photo array were **only of adults**:

Q. Okay. Do you recall Natalia being asked, "Is there anyone from" – Is there anyone familiar?" She states, "Not really. I'm not sure." Do –

McDonald: According to Detective Cabillos, Yes.

Q. Okay

McDonald: That's what she said

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. But again, those were different suspects at the time.

Q. Okay. Do you know, with certainty, whether or not Justin's picture was in that November 13th photo book with Detective Cabillos?

McDonald: No. **They were all adults**

Q. Okay.

McDonald: All the – **all the suspects were adults**.

Appellees brief Page 12, “Then after testifying to knowing Tyrone Stephens from high school, she testified to a conversation in the hallway, which occurred prior to her taking the stand”.

38. Judge Wilcox disregarded the initial testimony, and any conversation that took place in the hallway in which Comet suggested Tyrone’s name to Natalia, and requested for Comet to do the questioning over, see EXHIBIT 18, ECF Document 72-3, page 90-97, #5-22:

Prosecutor: I’m going to object to any conversation that you’ve had with this witness.

Jordan Comet: I understand.

The court: that makes you

Jordan Comet: I understand.

Prosecutor: you’re

The Court: a potential witness

Prosecutor: That makes you a fact witness and I would move to disqualify you if you refer to any conversation that weren’t witness by another person.

The Court: I’m going to disregard what counsel just said just now.

Appellees brief Page 14, “She also testified that while she remembered the police showing her the [ID] books she did “not really” remember what she said to the police that day in the hospital”. This statement is false. Natalia testified:

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.

39. Natalia Cortez testified she did not identify Tyrone, ECF Doc 72-3, pg 93-97.

40. Judge Martini was informed twice to correct the clear error of fact, ECF Doc.85, 1-18; ECF Doc.89 1-3; ECF Doc.93.

H. Superior Court and Grand Jury Decisions

Appellees brief Page 25, POINT I, “Third, and of greatest significance, is that a probable cause hearing was conducted on December 20, 2012 before Judge Wilcox and there was a grand jury indictment”.

41. On December 20, 2012, the Court found probable cause against Tyrone Stephens based on officer Marc McDonald testimony (1) that all victims and witnesses identified the ski-mask suspect as wearing a “black adidas sweat suit with three white stripes down the sleeves”,

ECF Document 72-3, page 64, (2) that according to defendant Kinlaw, Tyrone admitted guilt to assaulting the victims, ECF Document 72-3, page 65, (3) that defendant comet did not have enough physical evidence, ECF Document 72-3, page 66, and that (4) according to defendant McDonald witness Natalia Cortes stated Tyrone Stephens participated in the attack, ECF Document 72-3, page 68.

42. On July 29, 2013, During a Grand Jury hearing, Det. McDonald **testified** that Natalia Cortes was able to identify Tyrone Stephens because the mask fell off of his face, ECF Doc. 72-4, page 3. On August 5, 2013, a grand jury brought back an indictment of only 1 count of Robbery and Riot, dropping five charges against Tyrone, which includes **2 counts of Robbery**, and **all 3 counts of Aggravated Assault**, ECF Document 72-4, page 4.
43. On February 18, 2014, Judge Conte signed the Dismissal Order, with prejudice, fully exonerating the Plaintiff Tyrone Stephens and releasing him from the Bergen County Jail, ECF Doc. 64-7, page 35.

ARGUMENT

I. DEFENDANTS FALSIFIED POLICE REPORTS, SWORN STATEMENTS, TESTIMONY, AND COERCED CO-DEFENDANT IN ORDER TO CREATE PROBABLE CAUSE AND ARE LIABLE FOR ALL COUNTS

No Probable Cause #1, it is undisputed that the **defendants themselves** stated on record, and in testimony, that the victims stated the incident took place on October 31, 2012 in the parking lot of 7-eleven **at 10pm**, and that Tyrone was seen by Kinlaw at McDonalds **at 10pm**, 7-eleven and McDonalds are almost a mile apart. The 911 timestamp shows Kinlaw and Ron in front of McDonalds, confirming Tyrone's sworn statement. The defendants did not have probable cause to arrest because they knew before their investigation that Tyrone was at McDonalds.

No Probable Cause #2, the defendants testified that on November 2, 2012, **after** speaking with the victims and Natalia Cortes, "**all they knew at that particular time was Derric Gatti**". Yet, the police report states Natalia Cortes identified Tyrone Stephens from a photo ID book on November 2, 2012. Ironically, McDonald testified that Natalia did not identify anyone on November 2 and 13, and the eyewitness worksheet, conducted by Cubillos, confirms "no photo id". Yet, McDonald testified in two probable cause hearings, and to a grand jury, that the victims and Natalia Cortes identified Tyrone by clothing, and as participating in the attack. Appellees brief Page 7, "The crux of that investigation is set forth in a Supplementary Investigation Report prepared by McDonald, which report was reviewed by appellee, Cubillos." Judge Wilcox found probable cause and the grand jury indicted Tyrone due to McDonald's false testimony.

No Probable Cause #3, McDonald and Singh suggested Tyrone's name and **coerced Justin Evans** to implicate himself and Tyrone, which McDonald confirmed in testimony. McDonald and Singh also told Justin and Pamela Evans that Tyrone was under criminal investigation, and is the person that implicated Justin. Justin testified he implicated Tyrone because "I thought he was one of the people that said I was involved or told them".

No Probable Cause #4, Kinlaw's police report, which was reviewed by Cubillos, is fabricated because the time of the incident was **10pm** and testimony proves it was impossible for Tyrone to be located both at 7 eleven and McDonalds. McDonald and Singh confirmed, and Marc

Stephens testified that Kinlaw stated he saw Tyrone at **McDonalds at 10pm**. The 911 dispatch confirms Kinlaw at **McDonalds at 10pm**. In addition, McDonald testified that Tyrone **never recanted** his statement that he was not involved. "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.**

From October 31, 2012 to November 12, 2012, there was **no probable cause** to detain, or arrest, Tyrone Stephens. If the defendants did not fabricate the victims and witness sworn statements, police reports, suggest Tyrone's name, and coerce Justin Evans, Tyrone would not have been compelled to appear in multiple court hearings, and spend 1 year and 35 days in jail. In addition, based on the "**totality of the circumstance**" of how the defendants created probable cause to arrest Tyrone, Natalia Cortes testimony is **irrelevant**. "It is settled law that "officers who conceal and misrepresent material facts to the district attorney are not insulated from a § 1983 claim for malicious prosecution simply because the prosecutor, grand jury, trial court, and appellate court all act independently to facilitate erroneous convictions." **Pierce, 359 F.3d at 1292; see also Ricciuti, 124 F.3d at 130; Jones v. City of Chicago, 856 F.2d 985, 994 (7th Cir.1988)**. If the officers influenced or participated in the decision to institute criminal proceedings, they can be liable for malicious prosecution. *Sykes v. Anderson, 625 F.3d 294, 308-09, 317 (6th Cir.2010)*". **Halsey v. Pfeiffer, 750 F. 3d 273 - Court of Appeals, 3rd Circuit 2014 at 297-298.**

The evidence shows before Natalia's testimony, which is in favor of Tyrone, because Natalia testified she **did not identify Tyrone**, the Englewood Officers fabricated reports and complaints, and allowed those fabricated reports to be submitted to the prosecutor and the court in violation of their **General Orders, ECF Doc. 72-2, page 3-6**. "A single decision made by the "final policy making authority," such as the governing body of an agency or one having the power to finally decide on its behalf, can constitute a "policy" under Section 1983, **Monell v. New York City Department of Social Services , 436 U.S. 658, 694-95 (1978)**. "The law in this Circuit was also clear that an officer who ignores a realistic opportunity to intervene on another officer's actions violates an individual's constitutional rights". **Smith v. Mensinger, 293 F.3d 641, 650-51 (3d Cir. 2002). (Facts #1-43, herein above).**

See appellants legal argument regarding all counts against Englewood Officers, **ECF Doc. 71, 1-18**, and against City of Englewood, **ECF Doc. 72, 1-21**.

NINA C REMSON ATTORNEY AT LAW

ARGUMENT

A. REMSON BREACHED THE WRITTEN AGREEMENT NOT TO TAKE PLEA DEALS AND PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIX AMENDMENT RIGHT TO COUNSEL (LEGAL MALPRACTICE)

This case is straight forward. Plaintiff Marc Stephens gave strict instructions to Remson not to take plea deals. Remson agreed in writing not to take plea deals. Remson never spoke to witnesses. The Judge allowed Marc to look for new counsel for the trial set for October 25. Remson later threatened and coerced Tyrone, a minor, to take plea deals without Marc's knowledge or consent. There is a "reasonable probability" that, but for counsel's unprofessional

errors, the result would have been different, **Strickland v. Washington, 466 U.S. 668 (1984)**. See Plaintiffs legal argument, **ECF Doc. 77, page 11-21**.

REPLY STATEMENT OF THE CASE

1. Remson brief, pg. 9, **“On June 17, 2012, Remson was retained to represent Tyrone on that charge as well, and his mother, Viola Stephens, paid an additional fee to Remson”**.

This statement is false. In an attempt to complicate matters, and dilute the first elements of a cause of action for legal malpractice which is “(1) the existence of an attorney-client relationship creating a duty of care by the defendant attorney”. The defendant is trying to dupe the court into believing Viola was involved with the case, and paid legal fees. All of Remson’s defense statements are **bold face lies**, which is proven below.

Viola never paid a fee on, June 17, 2012, to have Remson represent Tyrone. Viola testified she paid Remson \$500 to bail Tyrone out of jail, ECF Doc. 66-18, pg. 12. Viola testified after giving \$500 in July 2012 she never spoke to Remson again, until she met her for the first time in the courthouse on September 17, 2012, ECF Doc. 66-18, pg. 13. Viola testified Nina lied to her, and that Nina told her if she paid the \$500 Tyrone cases would be dropped..and he would come home, ECF Doc. 66-18, pg. 19. Remson **admits** Marc paid the legal fees, “As the court knows, it is the juvenile who is my client, not the individual who pays for such legal services. Nonetheless, I can not attain the cooperation of Tyrone without the cooperation of **his brother**”, ECF Doc. 66-10, page 4, para 15. Defendant stated to Marc, “I know you don’t want to pay any more attorney fees, but I am going to help Tyrone nonetheless”, ECF Doc. 40-9, pg. 15.

2. Remson brief, pg. 10, **“Tyrone’s older brother, Marc, and their mother, Viola Stephens, consulted with Remson regarding Tyrone’s cases and overall decision making process concerning his defense”**

This statement is false. Viola testified she was not involved at all with the case, ECF Doc. 66-18, pg. 15. Viola testified Tyrone’s cases were handled by Marc, ECF Doc. 66-18, pg. 12, she never discussed Tyrone’s defense with Nina ECF Doc. 66-18, pg. 16. Viola testified she never discussed Tyrone’s defense with Marc, ECF Doc. 66-18, pg. 16. Viola testified she was not involved with any conversation with Nina and Marc regarding Tyrone, ECF Doc. 66-18, pg. 17. Viola testified Marc Stephens handles her personal, business, and medical situations, ECF Doc. 66-18, pg. 29, #116, which is proven as true in Marc’s fee waiver in his firearm case#: 2:14-cv-06688-WJM-MF, a letter dated September 3, 2014, “Marc Attorney-in-fact for Viola Stephens”, ECF Doc. 28-5, pg. 1.

3. Remson brief, pg. 10, **“In or around August 2012...Marc and Remson held contradictory reviews regarding crucial aspects of Tyrone’s defense”**.

This statement is false, On August 10, 2012, because Marc Stephens refused to take a plea deal, Remson mentioned the following in an email, “As we have discussed several times, if you want to have trials in all of these cases, you may certainly do so. However, as I also advised, additional retainers are required if you wish to pursue two or possibly three trials”... “Bottom

line is if you do not want the plea bargain, that is fine...I don't blame you or Tyrone. He is fully entitled to a trial. But, I need to be compensated for my time”, ECF Doc. 40-9, pg. 9.

Remson states to Marc, “You have some excellent ideas that I think I can expand on”.. “I will make an application for release from detention then as well based upon the weaknesses in these cases and your being available for supervision (the Judge will want to know how you intend to keep an eye on him now so he doesn’t have any more incidents..you should be prepared to address that”...it would be helpful if you continue working on the shoplifting/robbery part of it, particularly if you could isolate the video/photo clips that you sent me and detail what each represents, that would be great. This will help the court follow our intent argument”, ECF Doc. 40-9, pg. 15.

On August 13, 2012, Defendant stated to plaintiff Marc Stephens, “Marc, I need to know how you intend to proceed and if you still want me to represent Tyrone”, ECF Doc. 40-9, pg. 13. On August 14, 2012, Remson stated “Do you still want me to represent Tyrone?, ECF Doc. 40-9, pg. 14. Defendant stated to Marc, “I know you don’t want to pay any more attorney fees, but I am going to help Tyrone nonetheless”, ECF Doc. 40-9, pg. 15. Remson did not provide viola with any documents. On September 6, 2012, Nina states she served a copy of her motion to be relieved as counsel on Tyrone, Marc Stephens, and the prosecutor, ECF Doc. 66-11, pg. 5.

4. Remson brief, pg. 11, “**Tyrone and viola agreed to accept the plea offer**”

Tyrone did not want to take a plea deal and was advised by Marc not to speak with Remson because he was looking for new counsel, see ECF Doc. 40-6, pg. 1, #2-3. Remson wanted the Judge to reconsider her motion to be relieved as counsel because “Marc will not allow a plea deal and wants new counsel”, ECF Doc. 66-11, pg. 10-12. Defendant admitted in her motion filed September 6, 2012, that Marc and Tyrone Stephens would not return her phone calls, “I had no communication with Mr. Stephens or Tyrone since sending the file”, **EXHIBIT 5 TO PAKRUL DECL, ECF Doc. 66-10, page 3-4, para 13,** that Tyrone would not listen to her advice to take a plea deal, “Tyrone will not accept my advice, but rather will rely on his brother’s guidance”, **Id 14.** “I cannot attain the cooperation of Tyrone without the cooperation of his brother” **Id 15.** Remson was fully aware that Marc Stephens controlled all decisions regarding the case, and that Viola was not involved at all. Remson then uses scare tactics on Viola.

In Remson’s September 17, 2012 letter, see ECF Doc. 40-9, pg. 11-12, addressed to Viola Stephens, Remson states, “I would note that we had agreed that Tyrone would call me this past **Friday (September 14, 2012)** and I received no such call”. This is evident that Tyrone was not willing to take a plea deal. It was not until defendant threatened Tyrone that if he didn’t show up to the **Monday, September 17, 2012** hearing and take the plea deal, “*the State has advised that it intends to subpoena the co-defendant to testify against you at trial*”, and Tyrone would go to jail for 4 years. Co-defendant Malik Buchanan admitted to stealing the cellphone and already served 6 months of probation. Malik testified Remson and the prosecutor never contacted him, and he was not/did not implicate Tyrone, see ECF Doc. 77-6, pg. 2. Defendant Remson admits that she never spoke to the witnesses, ECF Doc. 40-8, pg. 2, #48. Tyrone testified that he did not steal the cellphone, ECF Doc. 77-6, pg. 18-19, see questions 9-28.

Tyrone testified he showed up to the September 17, 2012 hearing because he didn't want to go to jail and he was scared, ECF Doc. 66-17, pg. 31, #116.

While Marc was out interviewing attorneys, Remson used deception, coercion, and legal prowess to force a minor to enter a guilty plea. Marc Stephens testified that the defendant Nina Remson September 17, 2012 letter is dated the same day of the September 17, 2012 plea hearing, which means Nina called and threatened Viola and Tyrone to get to the court immediately, or Tyrone will go to jail, see SUMF #89, ECF Doc. 77-2, page 8. Tyrone testified that Remson coerced him to take a plea deal, ECF Doc. 77-6, pg. 20, #65-209. "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.**

REPLY AFFIDAVIT OF MERIT

5. Remson brief, pg. 12, "**Prior to filing suit in district court, Marc Stephens had sent several emails to Remson...Those communications did not advise Remson that Plaintiffs were requesting documents in connection with an Affidavit of Merit**".

This statement is false. On November 11, 2013, 9 months before filing the civil complaint, the Plaintiff requested for discovery "*This information is needed to present to the judge*", ECF Doc. 40-8, pg. 10. On February 28, 2014, 6 months before filing the civil complaint, plaintiff forwarded a Notice of Intent to Sue which addressed the Affidavit of Merit, ECF Doc. 40-8, pg. 20.

REPLY POINT I

6. Remson brief, pg. 17, "**Opening brief deficient, fails to sets forth the issues raised on appeal and presented an argument in support of the issues**".

Plaintiff set forth the issues raised on appeal and presented an argument in support of the issues which reads, "[T]he 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, pg. 5. The plaintiffs provided Remson with 8 notices and Remson, and her attorney, ignored the request from plaintiffs, ECF no. 84, pg. 1-6".

"Where the plaintiff is proceeding pro se, "however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." **Erickson v. Pardus, 551 U.S. 89, 93-94 (2007)**. Plaintiffs substantially complied and did not prejudice the defendant. "Prejudice involves impairment of defendant's ability to defend on the merits, rather than foregoing such a procedural or technical advantage." **Boley v. Kaymark, 123 F.3d 756, 759 (3d Cir.1997)**.

7. Remson brief, pg. 20, **Plaintiff did not provide an Appropriate Sworn Statement in Lieu of Affidavit Pursuant to Section N.J.S.A. 2A:53A-28.**

The plaintiff filed two sworn statements with Judge Falk detailing why the affidavit should be waived, ECF Doc. 25 pg 45-46, and ECF 33, 33-1, 34, 34-3.

REPLY POINT II

8. Remson brief, pg. 26, **Plaintiffs Failed To Meet The Requirements For Reconsideration.**

The district court erred by denying the first and second motions for reconsideration. 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. Quinteros 176 F.3d 669, 678 (3d Cir. 1999) at 678.

First Reconsideration errors of facts, law, and overlooking evidence

Errors of facts and overlooking evidence: District court stated "**plaintiffs failed to comply with Affidavit of Merit**". Plaintiff repeatedly requested for emails and documents months before filing the complaint, and gave notice of the requirement of the affidavit of merit. In addition, the plaintiff filed two sworn statements with Judge Falk detailing why the affidavit should be waived, ECF Doc. 25 pg 45-46, and ECF 33, 33-1, 34, 34-3. Marc substantially complied with N.J.S.A. 2A:53A-27, and pursuant to N.J.S.A. 2A:53A-28 the Affidavit is not required.

Errors of facts and law and overlooking evidence: District court stated "**common knowledge does not apply**".

Remson "agreed in writing", see Complaint, ECF Doc. 6, paragraph 16, and stated she understood not to take plea deals regarding Tyrone Stephens, "I understand your position that you will not consider a plea deal under any circumstances", ECF Doc. 40-9, pg. 2. Remson agreed all three cases were weak. In the aggravated assault case, the victims Juan Cruz stated Tyrone did not approach him. Tyrone testified he acted in Self-defense when the so-called victim approached him and threw the first punch, see Brief, section D, ECF Doc. 77, pg 3-4. The Cellphone theft case, Buchanan testified he stole the cellphone and was not implicating Tyrone. In the shoplifting case, Tyrone had "6 items" and approached the "10 items" or less register which was open, never passed the registers, never exited the store, and had money to pay for the items, see Brief, section B, ECF Doc. 77, pg 2-3. Remson did not and would not contact the witnesses to all three charges filed against Tyrone, ECF Doc. 40-9, pg. 7-8. Remson admitted she never spoke to any witnesses. "The duty to investigate is part of a defendant's right to reasonably competent counsel. 'The principle is so fundamental that the failure to conduct a reasonable pretrial investigation may in itself amount to ineffective assistance of counsel.'" Harris v. Blodgett, 853 F.Supp. 1239, 1255 (1994) (quoting United States v. Tucker, 716 F.2d 576, 583 n.16 (9th Cir. 1983); Jermyn v. Horn, 266 F.3d 257, 312 (3d Cir. 2001); **Berryman v. Morton, 100 F.3d 1089,**

1101 (3d Cir. 1996). Rule 5:22-2, permit a juvenile to present evidence and cross-examination of any witnesses at the probable cause hearing. *State of New Jersey v. J.M.* 182 N.J. 402, 866 A.2d 178.

For 6 months, Marc was adamant not to take any plea deals, see Brief, section F, ECF Doc. 77, pg 5-8. On September 6, 2012, Judge Wilcox allowed Marc to look for new counsel. On September 17, 2012, 11 days later, Remson forced Tyrone to take a plea deal without guardian Marc's consent, and before the October 25, 2012 trial date, ECF Doc. 40-8, pg. 6. This is equivalent to pulling out the wrong tooth. *Steinke v. Bell*, 32 N.J.Super. 67, 70, 107 A.2d 825 (App.Div.1954) (holding that expert evidence not required in malpractice case where dentist extracted wrong tooth). **"Do Not Take out The Tooth"**, is the same as **"Do Not Take Plea Deals"**. A client may recover the actual damages sustained by an attorney's malpractice, *Olfe v. Gordon*, 93 Wis.2d 173, 286 N.W.2d 573, 578 (1980) (failure to abide by client's specific instructions).

Errors of facts: District court stated **"brother who paid a portion of the retainer fee and claimed to be Tyrone's guardian"...."thicket of complicated legal issues surrounding Remson's relationship with her client"**.

The record clearly shows Marc is the only person to retain Remson and testimony show Marc is the only guardian. On August 13, 2012, Remson stated, "Marc, I need to know how you intend to proceed and if you still want me to represent Tyrone", ECF Doc. 40-9, pg. 13. On August 14, 2012, Remson stated "Do you still want me to represent Tyrone?", ECF Doc. 40-9, pg. 14. Remson stated to Marc Stephens, "I know you don't want to pay any more attorney fees, but I am going to help Tyrone nonetheless", ECF Doc. 40-9, pg. 15. Viola testified Marc Stephens was Guardian of Tyrone during the cellphone, shoplifting, and assault charges, ECF Doc. 66-18, pg. 29. Tyrone testified Viola has been his guardian up until he was 12 and Marc took over as guardian, ECF Doc. 66-7, pg. 23. Tyrone testified Marc was his guardian during the representation by Nina, ECF Doc. 66-7, pg. 30. Plaintiff Marc Stephens, for 6 months, appeared in all court hearings, and is addressed in practically all documents and correspondences in the court records, **"Parent/Guardian: Brother"**, ECF Doc. 40-9, pg. 3, 4, 22, 23, 25, 26.

Errors of facts: District court stated **"Plaintiffs also argue that the affidavit of merit statute is "facially unconstitutional" because it imposes excessive cost on litigants defendants"**.

This statement is false. Plaintiffs raised the argument that the Affidavit of Merit requirement is facially unconstitutional because (1) it violates and creates a monetary barrier to access the court system which violates due process and equal protection rights afforded by the 5th and 14th Amendment of the U.S. Constitution, (2) it violates Article I, paragraph 1 and 9, of the NJ Constitution, and (3) it violates Article IV- Section VII, paragraph 8 and 9(8) of the NJ Constitution, see Plaintiffs Brief, section F, ECF Doc. 40, pg. 18-22.

Second Reconsideration errors of facts, law, and overlooking evidence

Errors of facts: District court stated “**Plaintiffs have not put forth any evidence**”. The court overlooked plaintiffs’ eight notices for Remson’s emails on record, ECF Doc. 94, pg. 1-3.

COMET LAW OFFICES

ARGUMENT

A. THE COURT NEED NOT DETERMINE THE MERITORIOUS DEFENSE, OR WHETHER THE DEFAULT WAS A RESULT OF WILLFUL MISCONDUCT

Plaintiffs filed their complaint against **Defendant, COMET LAW OFFICES, LLC** in District Court on August 26, 2014. The summons and complaint were duly served on September 26, 2014, ECF Document 4, 5, & 10, page 3; No answer or other defense has been filed by the Defendant. Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, a default against defendant was entered on August 5, 2015, see ECF Document 63. Since Defendant did not file any responsive pleading, nor shown cause why a default judgment should not be granted, the Court need not determine the meritorious defense, or whether the default was a result of willful misconduct, **Carpenters Health & Welfare Fund v. Naglak Design, Civil No. 94-2829, 1995 WL 20848 *2 (E.D.Pa. Jan. 18, 1995)**; **Teamsters Health and Welfare Fund of Philadelphia and Vicinity v. Dimedio Lime Company, Civil No. 06-4519, 2007 WL 4276559 *2 (D.N.J. Nov. 30, 2007)**.

B. COMET PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIX AMENDMENT RIGHT TO COUNSEL (LEGAL MALPRACTICE)

Probable cause was found against Tyrone Stephens because Jordan Comet was negligent in preparing for the case, did not obtain all discovery, did not conduct a pre-trial investigation, did not interview the witnesses, did not submit Justin Evan’s self-incriminating letter as evidence, did not cross examine Justin Evans, failed to understand the case, did not mention that the victim Jeisson Duque stated the ski-mask person hit him once and ran away, and did not object when the prosecutor and Judge Wilcox mentioned that the victims and witnesses identified Tyrone Stephens clothing, See statement of facts, ECF Doc. 67, pg 5-11; and plaintiffs legal argument, ECF Doc. 67, pg 12-17. In Fact, on December 20, 2012, the Court found probable cause against Tyrone Stephens because defendant Comet “**did not have enough physical evidence**”, ECF Document 72-3, page 66.

“The Sixth Amendment requires investigation and preparation, not only to exonerate, but also to secure and protect the rights of the accused. Such constitutional rights are granted to the innocent and guilty alike, and failure to investigate and file appropriate motions is ineffectiveness”. **Kimmelman v. Morrison, 477 U.S. 365, 91 L.Ed.2d 305, 106 S.Ct. 2574 (1986)**.(attorney's failure to interview witnesses or search records in preparation for penalty phase

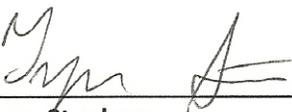
of capital murder trial constituted ineffective assistance of counsel); See also **Sears v. Upton, 130 S. Ct. 3259 (2010)**.

The district court erred by dismissing the complaint against Comet because (1) the claim against Comet **does not** raise a novel or complex issue of State law; (2) the claim **does not** substantially predominates the claim or claims over which the district court had original jurisdiction; (3) there were no other compelling reasons for declining jurisdiction; (4) the district court **should not** have dismissed all claims over which it had original jurisdiction, which includes claims against defendant City of Englewood and Officers, and Nina C. Remson Attorney at Law, LLC, incorrectly finding that the defendants had probable cause to arrest Tyrone, and Marc Stephens did not submit an notice of affidavit of merit, **ECF Doc. 99, pg 1-2.**

IN CONCLUSION, Defendant Comet Law Offices LLC, Jordan Comet, esq, and Nina C. Remson Attorney at Law, LLC had a duty to use such skill, prudence, and diligence as a member of the legal profession commonly possess and exercise, in providing legal services to Plaintiff. Plaintiff Marc and Tyrone Stephens were damaged as express in their Declarations, briefs, exhibits, and the Complaint. There was no probable cause to arrest Tyrone Stephens and all summary judgments should be reversed, and the case sent to trial.

Plaintiffs hereby swear under penalty of perjury that the facts set forth herein are true.

Dated: January 20, 2017



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se