

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

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

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REPLY STATEMENT OF FACTS

A. THE VICTIMS WERE ATTACK AT 7 ELEVEN AT 10PM AND DEFENDANTS DID NOT HAVE PROBABLE CAUSE TO ARREST TYRONE STEPHENS WHO WAS AT MCDONALDS 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 [See SA 89 Englewood Police Investigation Report of Police Officer Temple, dated October 2, 2012]”. **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”. **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”.

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.
2. McDonald and Singh stated the incident on October 31, 2012 in the parking lot of 7-eleven occurred **at 10pm**, ECF Document 72-3, page 5, #1-8. Defendant Singh, Incle Jr, and Cubillos stated the incident on October 31, 2012 in the parking lot of 7-eleven occurred **at 10pm**, ECF Document 72-3, page 7, #15-16. It is safe to say all investigating officer knew the incident took place at 7 eleven at 10pm.
3. Tyrone states that on October 31, 2012 **at 10pm** he was at McDonald’s, and greeted defendant Kinlaw, ECF Document 72-2, page 89.
4. 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 Document 72-2, page 91. ECF document 77-6 page 55-56. “Kinlaw said that he saw you...that was **at 10 oclock** he said that”.
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 Document 72-2, page 1.
6. Marc Stephens testified that Kinlaw confirmed that he seen Tyrone **at 10:00pm**, ECF Document 72-4, page 33, # 105-106.

7. Naiquan Thomas stated at **10:00pm** he was present at 7-eleven during the incident, ECF Document 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 Document 72-3, page 12, #1-4**.
8. 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 Document 72-2, page 11, #12-21**. **10:00pm + 2 minutes + 10 minutes = 10:12pm**. This confirms the time of 10:12pm of the third 911 phone call in which office W. Regitz arrived at 7 eleven at 10:15pm, **ECF Document 72-2, page 2**.
9. Defense witness Tyrone Roy testified that **at 10pm** he was with Tyrone Stephens at McDonalds and ate for 10-15 minutes, ECF Document 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 Document 72-3, page 65-66.

NO PROBABLE CAUSE TO ARREST #1. At this point it is safe to say that it is impossible for Tyrone Stephens to be the suspect who attacked the victims at 7 eleven at 10pm. Natalia Cortes sworn statement and testimony, Justin Evans sworn statement, Kinlaw’s false police report, and McDonald’s false police reports and testimony are **all irrelevant**. Tyrone was at McDonalds at 10pm.

NOVEMBER 2, 2012 – VICTIM AND WITNESS STATEMENTS

11. On November 2, 2012, at 1:39pm, victim Jeisson Duque, ECF Doc. 72-2, page 9, Kristian Perdomo, ECF Doc. 72-2, page 15, Santiago Cortes, ECF Doc. 72-2, page 24, and Witness Natalie Cortes, gave sworn statements to Det. Marc McDonald and Det. Desmond Singh. Natalia stated she could not identify anyone.

Q: “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 Document 72-2, page 22-23**.

12. McDonald **testified** during Justin Evans probable cause hearing that on, November 2, 2012, Natalia **did not** identify any attackers, **ECF Document 72-3, page 121**:

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. Okay all right. So then I think then you showed her the photo array, again?

McDonald (A). That was for --

Q. Oh, detective Cabillos

McDonald (A). Yes

13. On November 13, 2012, Cubillos and McDonald conducted a photo array with Natalia:

Cubillos: Okay anybody look familiar

Natalia: Not really. But—

Cubillos: There was one?

Natalia: There was one that maybe, but I mean I’ve seen him around a couple times.

Cubillos: Was he there the night um—

Natalia: I’m not sure cause everybody had hoodies—

Cubillos: Uh huh

Natalia: Hats. The guy with the ski-mask

Cubillos: Um, so the one that you think was there. I mean—

Natalia: I mean he kinda looks like, like his

Cubillos: Uh huh

Natalia: But I’m not really sure of his face

Cubillos: You’re not sure of his face, so he doesn’t even look familiar? Okay. Um, that’s it. Time is 3:33pm.

14. 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 Document 42, page 9**.

15. McDonald **testified** that the pictures in the photo array were only of adults. Tyrone’s picture was not in the photo array:

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.

Natalia testified that on November 2, 2012 and November 13, 2012, she did not identify Tyrone as a suspect, **ECF Document 72-3, page 93-97**. See following:

Appellees brief Page 12, “**At the hearing, Ms. Cortes testified that she thought she was questioned by the police twice, but does not recall when that was**”. This statement is false. Please see final testimony below. Natalia recalled being questioned on November 2, 2012 and November 13, 2012, both times she did not identify anyone.

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.

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

Natalia Cortez: Yeah. Something like that.

Appellees brief Page 12, “**She then testified that when she was asked whether she could identify any actors from the 7-Eleven incident**”.

Full testimony. Witness Natalia Cortes. Natalia initially testified that she did not identify anyone as the attacker. Tyrone's lawyer defendant Comet actually suggested Tyrone's name to Natalia as the ski-mask suspect because she then stated Tyrone was the suspect based on the hallway conversation. The Judge and prosecutor were **outraged** at defendant Comet for conversing and suggesting to Natalia in the hallway that Tyrone was the possible ski-mask person. The prosecutor objected to the hallway conversation between Comet and Natalia, and threatened to disqualify Comet and Natalia's testimony. Judge Wilcox disregarded the initial testimony, and any conversation that took place in the hallway, and requested for Comet to do the questioning over. This is how the testimony transpired; see **EXHIBIT 18, ECF Document 72-3, page 90-97, #5-22:**

Jordan Comet (Q). I need to know at any time, to any detective or police officer, anywhere whether you were in the hospital, whether you

were at home, in the police department, at any time when asked whether you could identify any of the actors any of the people who they are claiming did--

Natalia Cortes (A). uh huh

Jordan Comet (Q). --some fighting or some bad things on by 7-eleven that night, at any time, were you able to identify and point out any of those individuals?

Natalia Cortes (A). I said I pointed out some, but I said I wasn't really sure. I said they might have been there, but since it was really dark and most of the people had hoodies on. **That's all I said.**

Jordan Comet (Q). Okay. So you're saying a little more now than you said before so, I'm asking you—I'm going to ask you—I'm going to clarify. You said you pointed out some individuals. What do you mean by that?

Natalia Cortes (A). That might have looked like they might have been there like, from, like, my memories. **But not really anyone that stood out, like, oh, I saw him right there – standing right there.**

As mentioned, Natalia initially did not identify Tyrone. These are her exact words from the November 2, 2012 sworn statement. Defendant McDonald also testified that Natalia did not identify anyone at any time.

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”.

Natalia only identified when Comet suggested Tyrone to Natalia in the hallway as the suspect. see EXHIBIT 18, ECF Document 72-3, page 91, #7:

Jordan Comet (Q). Okay. And did there ever come a point where you – first of all, have you ever seen my client before?

Natalia Cortes (A). Yeah. We went to high school.

Jordan Comet (Q). You went to high school together. Okay. So, do you know who my client is?

Natalia Cortes (A). Yeah.

Jordan Comet (Q). And just now in the hallway, when you first saw him

Natalia Cortes (A). Uh-huh.

Jordan Comet (Q). – what – what was – what was your reaction?

Jordan Comet (Q). What did you just say?

Natalia Cortes (A). I said I'm not – I'm not really so sure that he wasn't there – that he was there.

Jordan Comet (Q). So, you're –

Natalia Cortes (A). Like, I've seen him, but I was, like, I'm not really so sure that he was there.

Jordan Comet (Q). Was he one of the pictures that the officers showed you?

Natalia Cortes (A). Yeah.

Jordan Comet (Q). And were you –

Natalia Cortes (A). I think.

Jordan Comet (Q). Did - I'm sorry?

Natalia Cortes (A). I think so. I think he was in one of the pictures.

Jordan Comet (Q). Okay. And was he one of the pictures that you pointed out saying it's possible he was there?

THE COURT: You have to say yes or no.

Natalia Cortes (A). Yes.

Jordan Comet (Q). Are you saying yes or no?

Natalia Cortes (A). Yes.

Jordan Comet (Q). So, you're saying you did point out and say my –

Natalia Cortes (A). I said he might have been there, but I'm not sure.

Again, the hallway conversation between Natalia and Comet was removed from the hearing because Comet suggested Tyrone to Natalia as the suspect.

Jordan Comet (Q). Okay. And –

Natalia Cortes (A). That's what I said.

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. Like –

Jordan Comet (Q). Okay

Natalia Cortes (A). The only people that I saw were just standing like— just there.

Jordan Comet (Q). Okay. And do you specifically recall whether my client was specifically there at 10:13pm that night?

Natalia Cortes (A). No.

Jordan Comet (Q). And when the officers asked you – they—was there—was there a point on November 2nd or November 13th that they videotape – not video—audiotaped your conversation with them?

Natalia Cortes (A). Yeah.

Jordan Comet (Q). Do you recall that?

Natalia Cortes (A). I remember they – they recorded it.

Jordan Comet (Q). The recorder. And when the recorder was in front of you, did they show you pictures?

Natalia Cortes (A). Yes.

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.

The prosecutor and Court steps in and objects to Comet stating that he spoke to Natalia via phone and in the hallway.

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 later testified that he was not one of the people she identified as one of the faces that might have been at the 7-Eleven incident".

The initial questioning was removed from the record. 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.

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.

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 “only had 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**.

NO PROBABLE CAUSE TO ARREST #2. It is safe to say that if the Englewood defendants only had Derric Gatti they **did not** have Tyrone Stephens as a suspect on November 2, 2012.

17. McDonald testified that he interviewed Kirk McIntosh on Monday, November 7, 2012, **ECF Doc. 72-3, page 114, paragraph 1-16**, and that he interviewed Justin Evans after Kirk McIntosh, **ECF Document 72-3, page 115, paragraph 6-11**.

18. McDonald Testified No Victims or Codefendants identified Tyrone, except Justin Evans, **ECF Document 72-3, page 53, #7-12**.

NOVEMBER 7, 2012 - JUSTIN EVANS SWORN STATEMENT AND MCDONALD AND SINGH DEFAMATION OF TYRONE STEPHENS

19. Justin Evans states "I can give them a list full of names of people that don't like me". I guarantee at least one of them was there", page 29. Justin Evans states, "I don't like a lot of people", "There's a lot of people I'm beefing with that I have problems with.. Bryant"..I know Tyrone Stephens they don't like me.. Jacquise, Jahquann, all them". "I'm sure they don't like me", Ex. 9 (Page 43 line 10-16), Justin Evans states, "I'm not asking you, but if it was them I'm pretty sure they said my name"..Shakeem, anyone of them. They don't really like me, I know they don't", Ex. 9 (Page 43 line 17-18), McDonalds states to Justin Evans, "I don't know how you were able to name everybody that was there specifically", **ECF Doc. 72-2, page 57**, "right on point I don't understand how you were able to do that", Pamela Evans asked Justin, "These are all the people you hate? Justin replies, "Yup". Defendant Marc McDonalds states to Justin Evans, "Did they force you to do this man? We gonna beat your behind if you don't go..". Justin states, "They didn't force me to do anything because **I don't even hang out with Tyrone..I don't associate myself..I don't associate myself with Tyrone none of them..I don't talk to none of them**", **ECF Doc. 72-2, page 58**.

20. Justin Evans mentioned, "How they gunna put my name in it. I don't even mess with Jacquise and them. They do know me. I don't know why they said they don't know me. We all went to school together", **ECF Doc. 72-2, page 59**.

21. Defendant Marc McDonalds yells to Justin, "**You named everybody that was there, you left a few people out!** Help yourself out, man or we walking out of here with your statement as is and then were going to leave it like that and let them in Hackensack decide what

the hell they gunna do!”, **ECF Doc. 72-2, page 60-61.**

22. Det. McDonald **testified** that he told Justin, "we are going to bring more people in that's in investigation, these people are going to say what they said, and if your names comes up again after this point when you got an opportunity to talk you are going to be royally screwed when this goes to court, I can promise you that!". Because if these people are saying this, and when we bring in this next group and they say what they said and they still put you in it, it's going to be nothing anybody can do!, **ECF Document 71-2, page 5 #48.**

23. Justin Evans states, "With Tyrone and them, yeah I was with him". Defendant Marc McDonalds immediately cuts in because he realize he just implicated Tyrone, "No, no, no don't do it to pacify your mother, or to pacify us!", **ECF Doc. 72-2, page 61.**

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".

24. 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.

25. Justin Evans mentioned that on October 31, 2012, Tyrone was wearing blue jeans, a green army jacket, and a ski mask, and that Jacquise Roberts was the person on the bicycle", **ECF Document 72-2, page 65-66.**

26. Jeisson stated the suspect that initially approached and requested for his money was riding a bicycle, wearing a black jacket, and a ski-mask, of which he was only able to see his eyes and mouth, **ECF Document 77-6, page 58.**

27. Witness Natalie Cortes stated the individual who initially approached victim Jeisson Duque was riding a bike and wearing a ski-mask. **ECF Document 72-2, page 17.**

28. Santiago stated, the one he remember the most was the guy with the ski-mask who was riding on the bike, **ECF Document 72-2, page 28.**

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".

29. 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.**

30. McDonald testified that him and defendant Singh were the "first to suggest a bike" to Justin Evans, **ECF Document 72-3, page 119.**

31. 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.**

32. 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.**

33. 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.**

DEFENDANTS FILED COMPLAINTS AND TESTIMONY

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**”.

34. 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.**

35. 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.**

36. 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.**

37. 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.**

38. Defendant McDonald **testified** that **all victims** and witnesses Natalia Cortes identified the suspect was wearing a “black sweat suit with three white stripes down the sleeves”, and that victim Kristian Perdomo stated it was a “Adidas style sweatshirt”, see Ex. 16 (page 41, paragraph 5-18), **ECF Document 72-3, page 40.**

39. 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.** McDonalds **Testified** that during his investigation and preparing the police report he only listened to the audio recording of the victims, witnesses, and co-defendants while preparing the police report, and that nothing outside the audiotapes would be in the police report, **ECF Document 72-3, page 30-31.**

40. McDonald **testified** Natalia identified Tyrone as the suspect and participated in the attack on October 31, 2012 at 10:00pm, **ECF Doc. 72-3, page 27.**

41. McDonald **testified** that on November 2, 2012, Natalia Cortes picked Tyrone Stephens from a mug shot book, **ECF Doc. 72-3, page 113.**

42. Defendant McDonald **testified** that it is standard procedure to re-record a witness statement if it was not initially recorded, **ECF Doc. 72-3, page 52 #1-17.**

43. On July 29, 2013, During a Grand Jury hearing, Det. McDonald **testified** that Natalia Cortes was able to identify Tyrone Stephens because the mask probably fell off of his face, **ECF Doc. 72-4, page 3.**

44. Defendant McDonald **testified** that Tyrone Stephens was at McDonald’s restaurant at **10:00pm,** and 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.**

DEFENDANTS POLICE REPORTS AND TESTIMONY

45. 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.**

46. 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.**

47. Cubillos reviewed McDonald investigation report and complaints filed against Tyrone Stephens, **ECF Doc. 72-3, page 13-19.**

48. According to **defendants General Orders**, the Defendant Chief Lawrence Suffern and Deputy Chief Thomas Loschiavo were notified about the incident that occurred **at 10:00pm**. The General Order dated July 6, 2011 states that “all supervisors should make the appropriate notifications to department unit heads and administrative staff, when a significant event occurs within the City of Englewood”...“Depending on the Event, Tour Commander may coordinate with the Unit head, who shall make the notification to the Chief and Deputy Chief”. In the General Order dated August 16, 2012, it clearly has Captain Thomas Loschiavo as the officer who signed the Order which states that “**Only Approved/Closed arrest reports are to be sent to the Court**”. On October 31, 2012, Chief Lawrence Suffern was actually the Deputy Chief, and Deputy Chief Thomas Loschiavo was Captain of the Englewood Police Department. So, pursuant to their own General Orders, both defendant Lawrence Suffern and Thomas Loschiavo were given notice of the event that occurred on October 31, 2012 at 10:00pm, which required their approval or supervision before the arrest report was sent to the Court, ECF Doc. 72-2, page 3-6.

49. Appellees brief Page 7, admit, Detectives Marc McDonald, Desmond Singh, Claudia Cubillos, Santiago Incle, 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”.

COURT 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”.

50. 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.

51. On August 5, 2013, a grand jury brought back an indictment of only 1 count of Robbery and Riot, dropping five charges, which includes **2 counts of Robbery**, and **all 3 counts of Aggravated Assault**, ECF Document 72-4, page 4.

52. 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, AND TESTIMONY IN ORDER TO CREATE PROBABLE CAUSE AND ARE LIABLE FOR ALL COUNTS

For a plaintiff to prevail against an individually named defendant under a §1983 claim, the plaintiff must establish each of the following elements: 1) that the conduct complained of was committed by a person acting under the color of state law; 2) that this conduct deprived the plaintiff of rights, privileges, or immunities secured by the Constitution or laws of the United States; and 3) that the defendant's acts were the proximate cause of the injuries and consequent damages sustained by the plaintiff. See *Adickes v. S.H. Kress and Co.*, 398 U.S. 144 (1970); ***Powell v. Ridge*, 189 F.3d 387, 400 (3d. Cir. 1999).** applies this paragraph to all counts.

Appelles Brief page 6, Defendants City of Englewood, Englewood Police Department, Marc McDonald, Desmond Singh, Claudia Cubillos, Santiago Ingle, Jr., Nathaniel Kinlaw, Lawrence Suffern, Thomas Loschiavo, and Kevin Hayes acted under the color of law when each defendant had a duty of due care, and conspired to fabricate evidence against Tyrone Stephens. The defendants' acts were the proximate cause of Tyrone spending 1 year and 35 days in jail.

a. Count 1 - False Arrest

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants' legal argument regarding false arrest in the complaint, **ECF Doc. 34-3, page 6**, and **brief ECF Doc. 71, page 6**. **Plaintiff applies this paragraph to all counts.**

At common law, the elements of a false arrest claim were (1) the detention of the plaintiff, and (2) the unlawfulness of the detention. (“The right to be free from illegal arrest plainly enjoys [constitutional] protection.”); *Patzig v O’Neil*, 577 F2d 841, 848 (3d Cir 1978) (“Clearly, an arrest without probable cause is a constitutional violation actionable under § 1983.”). The Fourth Amendment forbids a state from detaining an individual unless the state actor reasonably believes that the individual has committed a crime — that is, the Fourth Amendment forbids a detention without probable cause. See, generally, *Bailey v. United States*, ___ U.S. ___, 133 S.Ct. 1031, 1037, 185 L.Ed.2d 19 (2013). ***Halsey v. Pfeiffer*, 750 F. 3d 273 - Court of Appeals, 3rd Circuit 2014 at 291.**

(1) Plaintiff Tyrone Stephens was unlawfully detained on November 8, 2012, **ECF Document 72-3, page 122-126.** (2) The detention was unlawful 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 (**Facts #1-10**). McDonald testified that on November 2, 2012, they had no leads of the suspects, only Derric Gatti, (**Facts #16**). On November 8, 2012, McDonald then files multiple charges against Tyrone, which was reviewed by Cubillos, (**Facts #39, #47**). McDonald then testified in court that Natalia identified Tyrone from a photo ID book and clothing on November 2, 2012, and changed the time of the incident. (**Facts #40-44**). All charges were later dismissed (**Facts #51-52**).

b. Count 2 - Failure to Implement Appropriate Policies, Customs, and Practices

Appellants incorporate statement of facts section 1-52, herein, see Appellants' legal argument regarding Failure to Implement Appropriate Policies, Customs, and Practices, see complaint ECF Doc. 34-3, page 7, and brief ECF Doc. 72, page 3. **Plaintiff applies this paragraph to all counts.**

The time of the incident was 10pm and testimony proves it was impossible for Tyrone to be located both at 7 eleven and McDonalds (**Facts #1-10**). McDonald gave false testimony that Natalia identified Tyrone as the suspect and he participated in the attack on October 31, 2012 in the parking lot of 7 eleven at 10:00pm (**Facts #40**). McDonald testified that on November 2, 2012, Natalia Cortes picked Tyrone Stephens from a mug shot book (**Facts #41**). Defendant McDonald testified that it is standard procedure to re-record a witness statement if it was not initially recorded, and that he did not re-record Natalia when she identified Tyrone as the suspect (**Facts #42**), yet McDonald testified after speaking with the victims and witness Natalia Cortes on November 2, 2012, the Englewood Investigators "only had Derric Gatti" (**Facts #16**). Due to McDonald false testimony and not following standard procedures, Judge Wilcox found probable cause against Tyrone. In addition, McDonald testified that he and defendant Singh "suggested Tyrone's name, the black ski-mask, bike, and the orange and red colored jacket" to Justin Evans (**Facts #29-33**). McDonald testified that it is standard procedure to suggest names. McDonald also testified that he and defendant Singh coerced Justin to implicate himself and Tyrone into the incident at 7 eleven (**Facts #24**).

Pursuant to defendants own General Orders, both defendant Chief Lawrence Suffern and Deputy Chief Thomas Loschiavo were given notice of the event that occurred on October 31, 2012 at 10:00pm, which required their approval or supervision before the arrest report was sent to the Court. The General Order dated August 16, 2012, clearly has defendant Captain Thomas Loschiavo as the officer who signed the Order which states that "**Only Approved/Closed arrest reports are to be sent to the Court**". As proven, the defendants Temple, Hayes, Suffern, Loschiavo, McDonalds, Singh, Kinlaw, Inle Jr., and Cubillos, confirmed, or were aware of, based on their investigation and General Orders, willfully and maliciously falsified victims and witnesses sworn statements, the police reports, complaints, and testimony in court in order to establish probable cause against plaintiff Tyrone Stephens, a 17 year old minor, (**Facts #34-52**). "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)**.

c. Count 3 - Falsifying Evidence (McDonald)

Appellants incorporate statement of facts section 1-52, herein, see Appellants' legal argument regarding falsifying evidence, see complaint ECF Doc. 34-3, page 8, and brief ECF Doc. 71, page 12. **Plaintiff applies this paragraph to all counts.**

The time of the incident was **10pm** and testimony proves it was impossible for Tyrone to be located both at 7 eleven and McDonalds (**Facts #1-10**). “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.**

d. Count 4 - Falsifying Evidence (McDonald)

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants’ legal argument regarding falsifying evidence, see complaint ECF Doc. 34-3, page 9, and brief ECF Doc. 71, page 12. **Plaintiff applies this paragraph to all counts.**

The time of the incident was **10pm** and testimony proves it was impossible for Tyrone to be located both at 7 eleven and McDonalds (**Facts #1-10**). McDonald testified that on November 2, 2012, Natalia Cortes picked Tyrone Stephens from a mug shot book (**Fact #39-41**), but also testified that on November 2, 2012, Englewood Investigators only had Derric Gatti as a suspect (**Fact #16**). Judge Wilcox found probable cause due to McDonald’s false testimony which resulted in Tyrone spending 1 year and 35 days in jail (**Fact #50**). “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.**

e. Count 5 - Falsifying Evidence (Kinlaw)

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants’ legal argument regarding falsifying evidence, see complaint ECF Doc. 34-3, page 11, and brief ECF Doc. 71, page 12. **Plaintiff applies this paragraph to all counts.**

Kinlaw’s police report, (**Fact #46**) which was reviewed by Cubillos, is false 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 (**Facts #1-10**). Judge Wilcox found probable cause due to Kinlaw’s false report which resulted in Tyrone spending 1 year and 35 days in jail (**Fact #50**). “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.**

f. Count 6 – Defamation

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants’ legal argument regarding Defamation, see complaint ECF Doc. 34-3, page 12, brief ECF Doc. 71, page 8, and brief ECF Doc. 72, page 11. **Plaintiff applies this paragraph to all counts.**

The Restatement provides that in addition to damages, the elements of a defamation claim are: (1) the assertion of a false and defamatory statement concerning another; (2) the unprivileged publication of that statement to a third party; and (3) fault amounting at least to negligence by the publisher.

(1) On November 7, 2012, defendant McDonald stated, or implied, that Tyrone Stephens was under criminal investigation for attacking three victims, and coerced Justin Evans to implicate Tyrone (**Facts #19-26**). Justin later testified that he implicated Tyrone because of McDonald and Singh suggesting Tyrone's name (**Facts #33**); (2) defendant McDonald made this false statement to third parties Justin and Pamela Evans (**Facts #19**) (3) McDonald knew the statement was false because he testified, and his police report states, after speaking with the victims and witnesses on November 2, 2012, the Englewood Investigators did not have any leads only Derric Gatti, and obtain a tip on Monday, November 7, 2012, regarding Kirk McIntosh and Justin Evans. McDonald also testified that none of the victims or co-defendants mentioned that Tyrone was involved, only Justin Evans (**Facts #16-18**). McDonald also knew defendant Kinlaw saw Tyrone at McDonalds Restaurant at 10pm. (**Facts #1-10**) McDonald testified that he and Singh coerced Justin to implicate Tyrone, and suggested names to Justin (**Facts #29-33**). Tyrone was not under criminal investigation at the time McDonald made the false statement.

g. Count 7 – Conspiracy

Appellants incorporate statement of facts section 1-52, herein, see Appellants' legal argument regarding Conspiracy, see complaint ECF Doc. 34-3, page 14, and brief ECF Doc. 71, page 16. **Plaintiff applies this paragraph to all counts.**

The principal element of a conspiracy is an agreement between the parties to inflict a wrong against or injury upon another person, and an overt act that results in damage. **Morgan v. Union Cnty. Bd. of Chosen Freeholders, 633 A.2d 985, 998 (N.J. Super. Ct. App. Div. 1993).**

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". Defendants admit Cubillos reviewed the fabricated reports prepared by McDonald stating Natalia identified Tyrone as the suspect, **ECF Document 72-3, page 19, paragraph 3**. And also admit, Detectives Marc McDonald, Desmond Singh, Claudia Cubillos, Santiago Incle, 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". All Englewood Detective Defendants knew that (1) the incident took place at 7 eleven at 10pm, and Tyrone was seen by Kinlaw at McDonalds at 10pm, (**Facts #1-10**), (2) that they had no leads on November 2, "All we really knew was at that particular point was—was Derric Gatti", **ECF Document 72-3, page 13, paragraph 14-20**. (3) and that no victims or codefendant identified Tyrone as the suspect, **ECF Document 72-3, page 53, #7-12**. All police reports which states Tyrone was identified as the suspect and by clothing are absolutely fabricated because the testimony shows that it was impossible for Tyrone to be at 7 eleven at 10pm because he was at McDonalds (**Facts #1-10**). McDonald's and Kinlaw's reports which were reviewed by Cubillos, see Appellees brief page 10, "Det. Kinlaw prepared a Supplementary Investigation Report, that was reviewed by Det. Lt. Cubillos", proves that they were all in agreement to conspire against Tyrone, and maliciously and willfully filed fabricated police reports, and submitted them to the Bergen County Prosecutors office. Tracy Temple filed a fabricated police report, which was reviewed by Kevin Hayes, stating that the victims said they were attacked at 10:12, and victim Jeisson could identify the ski-mask person. Jeisson stated he could only see the suspect's eyes and mouth. McDonald

testified that the victims stated the incident occurred at 10pm (Facts #1). McDonald later gave false testimony that the attack occurred at 10:15, then 10:22 (Facts #44). McDonald then testified that Natalia and the victims stated the suspect was wearing a black Adidas sweatshirt with three white strips down the sleeves, and that Natalia stated Tyrone participated in the attack. Kinlaw's false report was needed because McDonald and Singh stated on record that Kinlaw saw Tyrone at McDonalds at 10pm, "Kinlaw said that he saw you...that was at 10 o'clock he said that" (Facts #4-6), and because McDonald and Singh suggested Tyrone's name to Justin Evans, which caused Justin to falsely implicate Tyrone (Facts #29-33). McDonald, Singh, Kinlaw, Ingle, and Cubillos knew Tyrone was not involved, but still allowed Tyrone to be processed (Facts #34, 46, 47). The defendants charged Tyrone with 7 criminal charges, Appellees brief Page 10, "Detective McDonald arrested Tyrone Stephens and filed the Complaints against him for first degree robbery, second degree aggravated assault and fourth degree riot". According to the General Orders, the supervisors and decision makers, which includes Defendants Lawrence Suffern, Thomas Loschiavo, Kevin Hayes, and Det. Lt. Cubillos **approved** the fabricated police reports and complaints filed against Tyrone, "Only Approved/Closed arrest reports are to be sent to the Court", ECF Doc. 72-2, page 3-6, and Appellees brief Page 10, "On or about January 4, 2013, the Englewood Police investigation was administratively closed and turned over to the Bergen County Prosecutors Office ("BCPO")". Tyrone was detained on November 8, 2012, and Judge Conte signed the dismissal releasing Tyrone on December 13, 2013. Tyrone spent 1 year and 35 days in jail.

h. Count 8 - Malicious Prosecution

Appellants incorporate statement of facts section 1-52, herein, see Appellants' legal argument regarding Malicious Prosecution, see complaint ECF Doc. 34-3, page 17, and brief ECF Doc. 71, page 11. **Plaintiff applies this paragraph to all counts.**

To prevail on a Fourth Amendment malicious prosecution claim under section 1983, a plaintiff must establish that: (1) the defendant initiated a criminal proceeding, (2) the criminal proceeding ended in [the plaintiff's] favor; (3) the defendant initiated the proceeding without probable cause; (4) the defendant acted maliciously or for a purpose other than bringing the plaintiff to justice; and (5) the plaintiff suffered deprivation of liberty consistent with the concept of seizure as a consequence of a legal proceeding. **Halsey v. Pfeiffer, 750 F. 3d 273 - Court of Appeals, 3rd Circuit 2014 at 297.**

(1) Supplementary Investigation Report prepared by McDonald and Kinlaw, which report was reviewed by appellee, Cubillos (Facts #46). McDonald testified that he signed the complaint against Tyrone (Facts #34, 47, 39); (2) the grand jury dismissed 5 charges, and Judge Conte dismissed the remaining 2 charges (Facts #51, 52); (3) the incident took place at 7 eleven at 10pm and Judge Wilcox ruled Tyrone should have been at McDonalds or Home during the time of the incident (Facts #1-10); (4) the Englewood defendants fabricated sworn statements, police reports, and testimony in order to create probable cause to arrest Tyrone (Facts #1-52); (5) Tyrone spent 1 year and 35 days in jail.

i. Count 9 - False Imprisonment

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants' legal argument regarding False Imprisonment, see complaint ECF Doc. 34-3, page 18, and brief ECF Doc. 71, page 7. **Plaintiff applies this paragraph to all counts.**

All police reports which states Tyrone was identified as the suspect and by clothing are absolutely fabricated because testimony shows that it was impossible for Tyrone to be at 7 eleven at 10pm (**Facts #1-10**). McDonald testified after speaking with the victims and witness Natalia Cortes on November 2, 2012, the Englewood Investigators "only had Derric Gatti" (**Facts #16**). On November 7, 2012, defendant McDonald stated, or implied, that Tyrone Stephens was under criminal investigation for attacking three victims, and coerced Justin Evans to implicate Tyrone (**Facts #19-26**). On November 8, 2012, Tyrone was detained against his will by defendants fabricating police reports, sworn statements, and stating Natalia identified Tyrone as participating in the attack. McDonald testified he and Kinlaw filed the complaint against Tyrone (**Facts #34, 39, 46**). Judge Wilcox found probable cause against Tyrone based on McDonald and Kinlaw false police reports, which were reviewed by Cubillos (**Facts #47**). Where "the police lack probable cause to make an arrest, the arrestee has a claim under §1983 for false imprisonment based on a detention pursuant to that arrest." **Groman v. Manalapan, 47 F.3d 628, 636 (3d Cir.1995)**. A false imprisonment claim under 42 U.S.C. §1983 is grounded in the "Fourteenth Amendment's protection against deprivations of liberty without due process of law," **Baker v. McCollan, 443 U.S. 137, 142 (1979)**.

j. Count 10 - Intentional Infliction of Emotional Distress

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants' legal argument regarding Intentional Infliction of Emotional Distress, see complaint ECF Doc. 34-3, page 20, and brief ECF Doc. 71, page 14. **Plaintiff applies this paragraph to all counts.**

All police reports and testimony which states Tyrone was identified as the suspect and by clothing were absolutely **intentionally fabricated** because testimony shows that it was impossible for Tyrone to be at 7 eleven at 10pm (**Facts #1-10**). Defendant City brief page 35, admits Marc and Tyrone met all elements. **Subbe-Hirt v. Baccigalupi, 94 F.3d 111, 115 (3d Cir. 1996)** (reversing dismissal of intentional infliction of emotional distress claim where plaintiff suffered from stress, including post-traumatic stress disorder); "reasonable minds could conclude that that alleged conduct has met [outrageous] standard." See *Obendorfer v. Gitano Group, Inc.*, 838 F.Supp. at 955; *Borecki v. Eastern Intern. Management Corp.*, 694 F.Supp. at 61. **Subbe-Hirt v. Baccigalupi, 94 F. 3d 111 - Court of Appeals, 3rd Circuit 1996 at 118. Kane v. Chester Cnty. Dept. of Children, Youth and Families, 10 F. Supp. 3d 671, 693 (E.D. Pa. 2014)**

k. Count 11 – Negligence

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants' legal argument regarding Negligence, see complaint ECF Doc. 34-3, page 21. **Plaintiff applies this paragraph to all counts.**

All police reports which states Tyrone was identified as the suspect and by clothing are absolutely fabricated because testimony shows that it was impossible for Tyrone to be at 7 eleven at 10pm (**Facts #1-10**). According to the General Orders, the supervisors and decision makers, which includes Defendants Lawrence Suffern, Thomas Loschiavo, Kevin Hayes, and Det. Lt. Cubillos were fully aware they had no suspect but Derric Gatti on November 2, (Facts #16) and still approved the fabricated police reports and complaints filed against Tyrone, (**Facts #45, 47**), “Only Approved/Closed arrest reports are to be sent to the Court”, ECF Doc. 72-2, page 3-6, and Appellees brief Page 10, “On or about January 4, 2013, the Englewood Police investigation was administratively closed and turned over to the Bergen County Prosecutors Office (“BCPO”)”. “A supervisor may be personally liable under § 1983 if he or she participated in violating the plaintiff's rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced” in the subordinate's unconstitutional conduct. Id. (citing **Baker v. Monroe Twp., 50 F.3d 1186, 1190–91 (3d Cir.1995)**).

l. Count 12 - Negligent Supervision

Appellants incorporate statement of facts section 1-52, herein, see Appellants’ legal argument regarding Negligent Supervision, see complaint ECF Doc. 34-3, page 22, and brief ECF Doc. 72, page 8. **Plaintiff applies this paragraph to all counts.**

All police reports which states Tyrone was identified as the suspect and by clothing are absolutely fabricated because testimony shows that it was impossible for Tyrone to be at 7 eleven at 10pm (**Facts #1-10**). All defendants were aware that they had no leads of the suspects on November 2, 2012 (**Facts #16**). McDonald and Kinlaw filed false police reports, and testified in court that the victims and witness Natalia identified Tyrone by clothing and as participating in the attack at 7 eleven at 10pm (**Facts #34-44**). Cubillos reviewed McDonald and Kinlaw fabricated reports which stated Natalia identified Tyrone from a mug shot book (**Facts #47**), and Hayes reviewed the report of Tracy Temple which has a fabricated time of incident at 10:12pm (Facts #45). According to the General Orders, the supervisors and decision makers, which includes Defendants Lawrence Suffern, Thomas Loschiavo, Kevin Hayes, and Det. Lt. Cubillos approved the fabricated police reports and complaints filed against Tyrone, “Only Approved/Closed arrest reports are to be sent to the Court”, ECF Doc. 72-2, page 3-6, and Appellees brief Page 10, “On or about January 4, 2013, the Englewood Police investigation was administratively closed and turned over to the Bergen County Prosecutors Office (“BCPO”)”. Tyrone was detained on November 8, 2012, and Judge Conte signed the dismissal releasing Tyrone on December 13, 2013 (**Facts #52**). Tyrone spent 1 year and 35 days in jail. “A supervisor may be personally liable under § 1983 if he or she participated in violating the plaintiff's rights, directed others to violate them, or, as the person in charge, had knowledge of and acquiesced” in the subordinate's unconstitutional conduct. Id. (citing **Baker v. Monroe Twp., 50 F.3d 1186, 1190–91 (3d Cir.1995)**).

m. Count 13 - Negligent Hiring

Appellants incorporate statement of facts section 1-52, herein, see Appellants’ legal argument regarding Negligent Hiring, see complaint ECF Doc. 34-3, page 24, and brief ECF Doc. 72, page 11. **Plaintiff applies this paragraph to all counts.**

n. Count 14 - Violation of Civil Rights N.J.S.A. 10:6-1

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants' legal argument regarding Violation of Civil Rights N.J.S.A. 10:6-1, see complaint **ECF Doc. 34-3, page 25**, and brief **ECF Doc. 72, page 17**. **Plaintiff applies this paragraph to all counts.**

Appellees 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". All Englewood Detective Defendants knew that (1) the incident took place at **7 eleven at 10pm**, and Tyrone was seen by Kinlaw at **McDonalds at 10pm**, (**Facts #1-10**), (2) that they had no leads on November 2, "All we really knew was at that particular point was—was Derric Gatti", **ECF Document 72-3, page 13, paragraph 14-20**. (3) and that no victims or codefendant identified Tyrone as the suspect, **ECF Document 72-3, page 53, #7-12**.

o. Count 15 - Respondent Superior

Appellants incorporate statement of facts **section 1-52**, herein, see Appellants' legal argument regarding Respondent Superior, see complaint **ECF Doc. 34-3, page 26**, and brief **ECF Doc. 72, page 17**.

II. THE DISTRICT COURT DECISION MUST BE REVERSED BECAUSE THERE ARE DISPUTED MATERIAL FACTS AND NO PROBABLE CAUSE TO ARREST TYRONE STEPHENS

The District Court erroneously stated The Englewood Detectives 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 **Order page 7**.

McDonald testified that the victims stated they were attacked at **at 7-eleven at 10pm** and that Tyrone was at **McDonalds**. Judge Wilcox ruled Tyrone would have been at McDonald's or Home during the time of the incident (**Facts #1-10**), McDonald testified that Natalia did not ID any attackers, and Natalia testified that she did not identify Tyrone on November 2 or November 13 (**Facts #11-15**), McDonald testified that the investigating officer only had Derric Gatti on November 2, 2012 (**Facts #16**), It is impossible for Tyrone to be located both at 7-eleven and McDonalds at 10pm, which means all police reports, and testimony by defendants are willfully and maliciously fabricated in order to produce probable cause. If Kinlaw didn't file a fabricated police report stating Tyrone admitted guilt to attacking the victims (**Facts #46**), and if McDonald didn't give false testimony that Natalia identified Tyrone, and that victims identified clothing

that matched Tyrone's (**Facts #34-44**), on December 20, 2012 and on July 29, 2013, the court and grand jury **would not** have found probable cause. **Patzig v O'Neil, 577 F.2d 841, 848 (3d Cir 1978)** ("Clearly, an arrest without probable cause is a constitutional violation actionable under § 1983."). The Fourth Amendment forbids a state from detaining an individual unless the state actor reasonably believes that the individual has committed a crime — that is, the Fourth Amendment forbids a detention without probable cause. See, generally, *Bailey v. United States*, ___ U.S. ___, 133 S.Ct. 1031, 1037, 185 L.Ed.2d 19 (2013). **Halsey v. Pfeiffer, 750 F. 3d 273 - Court of Appeals, 3rd Circuit 2014 at 291**. "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**.

In order to prevail, a party seeking summary judgment must demonstrate that "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the evidence "presents a sufficient disagreement" over a factual issue, summary judgment **must be denied**. See **Chiari v. City of League City, 920 F.2d 311, 314-15 (5th Cir. 1991)** (quotation omitted).

III. THE DISTRICT COURT ERRED BY DENYING PLAINTIFFS 1ST & 2ND 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**. "There is no indication that the court meant to limit the usual rule that the district court is free to reconsider its decisions based on any reasonable ground", **cf. Rosen v. Rucker, 905 F.2d 702, 707 n. 5 (3d Cir. 1990)** (second motion which is first request for reconsideration of issue arising only after court's original order treated as a Rule 59(e) motion for purposes of Fed.R.App.P. 4(a)(4) when it is first opportunity to reconsider issue (in that case, delay damages)). **Bane v. Netlink, Inc., 925 F. 2d 637 - Court of Appeals, 3rd Circuit 1991, footnote 1**. In **Turner v. Evers, 726 F. 2d 112 - Court of Appeals, 3rd Circuit 1984 at 114**, "We recognize, of course, the imperfection of the "apple metaphor": it is often difficult to decide which judicial act constitutes the apple".

Errors of fact: In the first reconsideration Judge Martini stated the incident took place at 10:12pm, ECF document 82, page 2. Fact: McDonald testified the victims stated the incident took place in the parking lot of 7 eleven at 10pm, not 10:12pm (**Facts #1-10**).

Errors of law: "Judge Martini states, "**Under Third Circuit precedent, the indictment provides an independent basis for concluding that the Englewood Detectives had probable cause to arrest Tyrone**". The law: "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**.

In the second reconsideration Judge Martini states, "**Plaintiff's argument appears to be that reconsideration is needed to correct a clear error of law**". **Opinion, ECF document 91, page 2**. And also stated, "**Plaintiffs now appear to conjure new theories in support of their claims, e.g., that the Englewood Defendants falsified sworn statements so that they could bring charges against Tyrone. Even assuming that Plaintiffs raised such allegations in their opposition to summary judgment, they are nonetheless unsupported by anything in the record**". As discussed above, the time of the incident was 10pm and it was impossible for Tyrone to be located both at 7 eleven and McDonalds (**Facts #1-10**), which proves all defendants reports and testimony **are fabricated**.

IV. THE DISTRICT COURT ERRED BY DENYING PLAINTIFF'S RIGHT TO AMEND THE COMPLAINT AND TO CONDUCT DEPOSITIONS

On February 16, 2015, the plaintiffs requested to amend the complaint to add new parties Lawrence Suffern, Thomas Loschiavo, Tracy Temple, and Kevin Hayes. Marc Stephens was already a party to the complaint but needed to insert his claims correctly. Plaintiffs wanted to conduct depositions with the requested new parties but Judge Martini did not make a decision. Because the motion to amend had a return date of April 20, 2015, the Plaintiffs request for discovery extension was granted by Judge Mark Falk on June 4, 2015, **ECF Doc. 48, 49**. The defendants would not allow Marc and Tyrone Stephens to propound discovery on the new parties because they claimed Marc was not a party to the lawsuit, **ECF Doc. 72-4, page 12**. On November 3, 2015, which is **9 months** after the motion to amend was timely submitted, Judge Martini dismissed the case before the request to amend the complaint was approved, and plaintiffs could not conduct depositions on the new parties.

"A motion for leave to amend is to be liberally granted, and without consideration of the ultimate merits of the amendment". *Notte v. Merchants Mut. Ins. Co.*, 185 N.J. 490, 500-01 (2006). "We must accept as true all factual allegations in the amended complaint and all reasonable inferences that can be drawn from them. The amended complaint must be construed in the light most favorable to the plaintiff", *Banks v. Wolk*, 918 F.2d 418, 423 (3d Cir.1990). Under Federal Rule of Civil Procedure 15(c) a pleading relates back to the date of the original pleading when "the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading." **Bensel v. Allied Pilots Ass'n, 387 F.3d 298, 310 (3d Cir. 2004)**. If a proposed amendment is not

clearly futile, the court should grant leave to amend, *Scott v. New Jersey State Police*, Dist. Court, D. New Jersey 2014”.

V. EXPERT OPINION NOT REQUIRED ON DUTY OF CARE, STANDARD OF CARE, CAUSATION, DAMAGES AND LEGAL MALPRACTICE UNDER DOCTRINE OF RES IPSA LOQUITUR

Marc McDonald, Desmond Singh, Claudia Cubillos, Santiago Ingle, Jr., Tracy Temple, and Nathaniel Kinlaw acted under the color of law when each defendant conspired to fabricate evidence against plaintiff Tyrone Stephens (**Facts #1-52**). Lawrence Suffern, Thomas Loschiavo, and Kevin Hayes were negligent and allowed fabricated police reports to be submitted to the courts. The defendants’ acts were the proximate cause of Tyrone spending 1 year and 35 days in jail and Marc Stephens’s emotional distress. Plaintiffs are entitled to inference of negligence under doctrine of res ipsa loquitur, without providing expert testimony. **Jerista v. Murray, 883 A. 2d 350 - NJ: Supreme Court 2005**. Res ipsa is available if it is more probable than not that the defendant has been negligent. **Buckelew, supra, 87 N.J. at 526, 435 A.2d 1150; Tierney, supra, 214 N.J.Super. at 30, 518 A.2d 242**. If res ipsa applies, the factfinder may draw “the inference that if due care had been exercised by the person having control of the instrumentality causing the injury, the mishap would not have occurred.” **Brown, supra, 95 N.J. at 288-89, 471 A.2d 25 (quoting Bornstein, supra, 26 N.J. at 269, 139 A.2d 404)**. Because the inference is purely permissive, the factfinder “is free to accept or reject” it. **Buckelew, supra, 87 N.J. at 526, 435 A.2d 1150**. Common knowledge is sufficient to entitle plaintiffs to the res ipsa inference, **Jerista v. Murray, 883 A. 2d 350 - NJ: Supreme Court 2005**. When the average juror can deduce what happened without resort to scientific or technical knowledge, expert testimony is not mandated. **Jerista v. Murray, 883 A. 2d 350 - NJ: Supreme Court 2005**. “The occurrence bespeaks negligence.” **Rose v. Port of New York Authority, 293 A. 2d 371 - NJ: Supreme Court 1972**.

VI. PLAINTIFFS ESTABLISHED PROXIMATE CAUSED DAMAGES

Due to the defendant’s willful and malicious acts, plaintiff Tyrone Stephens was detained for 1 year and 35 days (400 days, 9600 hours), suffered mental and physical injury while in Bergen County Jail, the plaintiff fell on a slippery surface and injured his back at the Bergen County Juvenile detention center in Teterboro, **ECF Document 72-4, page 16-18**. Plaintiff was required to obtain two lawyer and make 12 court appearances; the length of prosecution was from November 8, 2012 – February 18, 2013 (**Facts #34 &52**); plaintiff was unable to attend his prom, graduate high school, unable to finish his GED, obtain employment, loss the enjoyment of life, and received substantial damage to his reputation, **ECF Document 72-4, page 28-31, Tyrone Stephens Declarations #237-319**. In addition, Plaintiff Marc Stephens who is the guardian of Tyrone, has suffered mentally, has lost job opportunities, loss of consortium, divorce, emotional distress, loss of weight, and pain and suffering due to the direct proximate cause of the defendants malicious actions, negligence and intentional infliction of emotional distress, see **Marc and Tyrone Stephens Declaration, ECF Document 71-4**. Expert testimony is not required because “a rational jury could reasonably conclude that defendant’s conduct was atrocious and intolerable”, **Taylor v. Metzger, 706 A. 2d 685 - NJ: Supreme Court 1998 at 510**;

VII. DOCTRINE OF PRESUMED DAMAGES PERMITS APPELLANTS TO SURVIVE A MOTION FOR SUMMARY JUDGMENT

Where a plaintiff does not proffer evidence of actual damage to reputation, the doctrine of presumed damages permits him to survive a motion for summary judgment and to obtain nominal damages, thus vindicating his good name. **WJA v. DA, 43 A. 3d 1148 - NJ: Supreme Court 2012.**

CONCLUSION

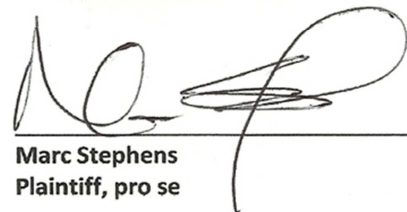
The plaintiff respectfully ask and pray that the court enter an order to reverse the District Court ruling in its entirety because the Englewood Officers did not have probable cause to arrest Tyrone, and ask the court to enter an order to permit plaintiffs to finish depositions on added parties by granting the request to amend the complaint, and set this case for trial thereafter.

Respectfully Submitted,

November 4, 2016



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se

CERTIFICATE OF SERVICE

Plaintiffs-Appellants, pro se, hereby certify that on November 4, 2016, Plaintiffs filed (1) Reply Brief to the United States Court of Appeals for the Third Circuit using the CM/ECF system, which will then send a notification to the defendants, and their counsel:

Marc Mory, Esq. (via e-mail) mmory@dvorakandassociates.com
Adam Kenny, Esq. (via e-mail) akenny@weinerlesniak.com
Marc Pakrul, Esq. (via e-mail) MPakrul@tompkinsmcguire.com

MARC ANTHONY STEPHENS
Plaintiff-Appellant, pro se

By: s / Marc Anthony Stephens
Marc Anthony Stephens
TYRONE STEPHENS
Plaintiff-Appellant, pro se

By: s / Tyrone Stephens
Tyrone Stephens