

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MARC A. STEPHENS, TYRONE STEPHENS as individuals,
Petitioner,

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

Respondents.

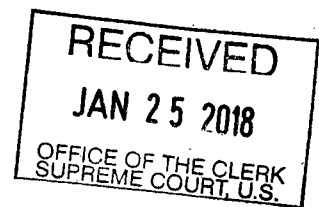
ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

APPLICATION TO EXTEND TIME TO FILE

PETITION FOR A WRIT OF CERTIORARI

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Petitioner, pro se



**REQUEST FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI**

Petitioners Marc and Tyrone Stephens are respectfully asking for an 60 day extension of time to file their Petition for Writ Certiorari with the Supreme Court of the United States. According to Rule 30(2), "An application to extend the time to file a petition for a writ of certiorari must be filed at least 10 days before the specified final filing date as computed under these Rules. The due date to file the Writ Certiorari is January 24, 2018. This Court would have jurisdiction over the judgment under 28 U.S.C. 5 1254(1).

On May 3, 2017, the Court of Appeals issued an opinion, see **EXHIBIT 7**.

On October 24, 2017, the Court of Appeals denied petitioners Petition for Rehearing, see **EXHIBIT 8**.

On November 16, 2017, Petitioner Motion for New Trial was denied, see **EXHIBIT 9**.

On December 1, 2017, the Court of Appeals issued a Mandate. Petitioner was advised by the court of appeals to submit a Judicial Misconduct complaint.

On January 5, 2018, Petitioner filed a Judicial Misconduct Complaint in a attempt to have the erroneous Order modified by the Court, **EXHIBIT 10**.

REASONS TO GRANT THE 60 DAY EXTENSION

1. Petitioner Tyrone Stephens is currently incarcerated, proceeding without counsel, and needs more time to file a Writ of Certiorari

Tyrone Stephens is currently incarcerated at the Bergen County Jail, **EXHIBIT 11**, and proceeding without counsel. The Supreme Court of the United States have held that some procedural rules must give way because of the unique circumstance of incarceration, see *Houston v. Lack*, 487 U. S. 266 (1988). Because the case involves multiple parties, and the cost to print and submit a Petition is substantially high, petitioner Marc and Tyrone Stephens would like to submit one Petition for Writ of Certiorari. Both Marc and Tyrone Stephens are indigent, and has already received indigent status by the Third Circuit.

2. Petitioners are Pro Se, proceeding without Council, and need additional time to research Case Law on Splits between the lower courts.

Petitioner Marc and Tyrone Stephens are proceeding Pro Se, and they do not have immediate access to sophisticated legal systems to research case law on the Splits from lower courts to support their Petition for Writ of Certiorari. Because they are not lawyers, it is very difficult to move at a faster pace. "[N]avigating the appellate process without a lawyer's assistance is a perilous endeavor for a layperson." *Halbert v. Michigan*, 545 U.S. 605, 621 (2005). Accordingly, this Court can and should excuse inadvertent failures to comply with the Court's rules when they result from the difficulties inherent in

proceeding pro se. Cf. *Schacht v. United States*, 398 U.S. 58, 64 (1970) (“The procedural rules adopted by the Court for the orderly transaction of its business ... can be relaxed by the Court in the exercise of its discretion when the ends of justice so require.”). “Our rules of procedure are based on the assumption that litigation is normally conducted by lawyers”, *McNeil v. United States*, 508 US 106 - Supreme Court 1993 at 113.

3. No prejudice to defendants

Granting a 60 day extension will not prejudice the defendants, “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).

4. The Petitioners filed a Judicial Misconduct Complaint with the Executive Branch of the 3rd Circuit which will take 60 days to receive a decision, administrative remedies are not exhausted.

On January 17, 2018, the Office of the Executive Circuit acknowledge receipt of the Petitioner’s Complaint of Judicial Misconduct, **EXHIBIT 10**. The court advised that it will take up to **60 days** to receive a decision. If the Chief Judge of the Court of Appeals modify the order, Petitioners Marc and Tyrone Stephens will not need to submit a Petition for Writ of Certiorari with the Supreme Court of the United States. An extension should be granted because all Administrative remedies are not exhausted before filing a petition of writ of certiorari. *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935).

5. There are important constitutional questions that were determined adversely by the court of appeals.

The 3rd Circuit three judge panel “intentionally ignored all testimony”. As mentioned above, Petitioners filed a complaint of judicial misconduct and are seeking the following errors of facts and laws to be modified in the Opinion which are violating Petitioner’s right to due process and right to trial. Below is the argument raised in Petitioner’s Judicial Misconduct Complaint:

ARGUMENT

The nature of the judges William J Martini of the District Court, Scirica, Restrepo, and Fisher of the United States Court of Appeals for the Third Circuit, factual and legal errors, as shown below, are malicious, conducted in bad faith, bias, abuse of authority, intentional disregard of the law, and egregious. “[W]e need not reject the possibility of an exceptional case developing where the nature and extent of the legal errors are so egregious that an inference of judicial misconduct might arise”. *In re Charge of Judicial Misconduct*, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982). “[Error] involving the denial of basic fundamental rights may constitute judicial misconduct”. *In re Dileo*, 83 A. 3d 11 -

NJ: Supreme Court 2014 at 20. In re Quirk, 705 So.2d 172, 178 (La.1997). (“A single instance of serious, egregious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct.” (citing Jeffrey M. Shaman, Judicial Ethics, 2 Geo. J. Legal Ethics 1, 9 (1988))). See Alvino, supra, 100 N.J. at 97 n. 2, 494 A.2d 1014. It is emphatically the province and duty of the judicial department to say what the law is. Marbury v. Madison, 5 US 137 - Supreme Court 1803 at 177.

The Judges for the District Court granted and the 3rd Circuit affirmed the defendants motion for summary judgment despite the record showing clear disputed facts. The judges refuse to correct their errors and send this case to trial. “[I]n order to prevail, a party seeking summary judgment must demonstrate that “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “If the evidence “presents a sufficient disagreement” over a factual issue, summary judgment must be denied”. See Chiari v. City of League City, 920 F.2d 311, 314–15 (5th Cir. 1991). “[i]f ... there is any evidence in the record from any source from which a reasonable inference in the [nonmoving party's] favor may be drawn, the moving party simply cannot obtain a summary judgment....” Aman v. Cort Furniture Rental Corp., 85 F. 3d 1074 - Court of Appeals, 3rd Circuit 1996 at 1081.

MANIFEST INJUSTICE AND COURT ERROR OF FACT #1-3

The Panel Opinion states, Page 5, “The facts here, viewed most favorably to the Stephenses, do not create a genuine dispute as to whether probable cause existed when Tyrone was arrested. The defendants had three compelling pieces of evidence implicating Tyrone in the attack: (1) the identification by Natalia Cortes; (2) the statement made by Justin Evans that Tyrone had participated in the attack; and (3) inconsistencies in testimony regarding Tyrone’s alibi. This evidence was more than sufficient to establish probable cause. EXHIBITS 1-6 ATTACHED BELOW.

(1) No identification by Natalia Cortes

A. Photo array eyewitness identification worksheet for Natalia states the following: “Did the witness identify any photo as depicting the perpetrator?” The answer checked is “No”, SA186, #20 also same ECF Doc. 42, page 9. #20.

EXHIBIT 1.

B. Jordan Comet (Q). Did you witness Mr. Stephens fighting that night? Natalia Cortes (A). I didn’t quite see anybody’s faces who were actually fighting. SA234, Doc 003112432109, Page: 80, para #9, #7-10. **EXHIBIT 2.**

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

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

In addition, all investigating officers knew before speaking with the victims, Natalia, and Justin that the victims were attacked at 7-eleven at 10pm, and that Tyrone was at McDonalds at 10pm, almost 1 mile away.

1. Tyrone Stephens: No I was not there at all! I was not there! I didn't see any fight, anything! Kinlaw seen me at McDonald's. I pulled up at McDonalds.
2. Marc Stephens: Kinlaw said he saw him on the Ave, at, look like 10 o'clock. Where was this altercation at? The 7-Eleven on the ave.?
3. Det. McDonald: up the street.
4. Tyrone Stephens: That's it right there! I was in front of McDonalds. I just hopped out of a car. I walked in McDonalds and said what's up Kinlaw.
5. Tyrone Stephens: If Kinlaw just said that he seen me, you just said it on here, you heard Kinlaw say that he seen me. He seen me at McDonalds, and he was talking to a little kid Willie. I think he was with Ron, right there at McDonalds. If you say that's the time, than how could I be at two places at once?
6. Det. McDonald: That was at 10:00 he said, ECF Doc 72-2, page 91. para 9-14. **EXHIBIT 4**

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

1. McDonald: On or about 10pm.
2. Prosecutor: And what day did they say the attack occurred?
3. McDonald: October 31, Halloween.
4. Prosecutor: Where did Tyrone say that he was at that time?
5. McDonald: He stated he was initially at McDonald's. Doc: 003112688943. **EXHIBIT 5**

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

Judge Gary Wilcox: "I heard the brief testimony of Tyrone Roy. I found Tyrone to be credible as a witness. And clearly the reason Tyrone Roy was called is to establish time line, indicating that, again, he and another friend, Anthony Mancini, picked up Tyrone at his house at approximately 9:40, 9:45. At approximately 10pm they went to McDonalds. They ate food there for about ten or 15 minutes. And then Anthony drove Tyrone Stephens home. So, I think the Juveniles argument here is that, again, the time line, and again, the act was alleged to have occurred at 10:13pm-- that Tyrone at that time, would have been at McDonald's". Doc: 003112688950. **EXHIBIT 6.**

MANIFEST INJUSTICE AND COURT ERROR OF LAW #1

The District Court stated, see Order page 8, “even if Tyrone did offer such evidence, “[i]t is well settled that police officers are absolutely immune from § 1983 suits for damages for giving allegedly perjured testimony...” Blacknall v. Citarella, 168 Fed.Appx. 489, 492 (3d Cir. 2006) (citing Briscoe v. LaHue, 460 U.S. 325 (1983)).

Marc Stephens' Response: “A police officer who fabricates evidence against a criminal defendant to obtain his conviction violates the defendant's constitutional right to due process of law”. Halsey v. Pfeiffer, 750 F. 3d 273 - Court of Appeals, 3rd Circuit 2014 at 279.

MANIFEST INJUSTICE AND COURT ERROR OF LAW #2

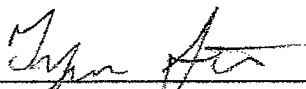
3rd Circuit Opinion, Page 6, “Further, notwithstanding their arguments to the contrary, no reasonable juror could conclude that the detectives coerced Evans's statement.

Marc Stephens' Response: “[T]he question of whether a criminal defendant was coerced is a matter well within “lay competence” and thus a jury is not foreclosed from considering whether there was coercion even if there is “unequivocal, uncontradicted and unimpeached testimony of an expert” addressing the issue. Quintana-Ruiz v. Hyundai Motor Corp., 303 F.3d 62, 76-77 (1st Cir. 2002). Halsey v. Pfeiffer, Court of Appeals, 3rd Circuit 2014. “[I]t is clear enough from our recent cases that at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter”, Anderson v. Liberty Lobby, Inc., 477 US 242 - Supreme Court 1986 at 249. Celotex Corp. v. Catrett, 477 US 317 - Supreme Court 1986.


CONCLUSION

As indicated above, there is a clear abuse of discretion and judicial misconduct. Petitioners respectfully ask the court to grant an extension.

Respectfully Submitted,



Tyrone Stephens
Plaintiff, pro se



Marc Stephens
Plaintiff, pro se