APPENDIX A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1868

MARC A. STEPHENS;
TYRONE K. STEPHENS,
Appellants

v.

CITY OF ENGLEWOOD; ENGLEWOOD POLICE DEPARTMENT;
DET. MARC MCDONALD; DET. DESMOND SINGH;
DET. CLAUDIA CUBILLOS; DET. SANTIAGO INCLE, JR.;
NATHANIEL KINLAW, individually and in official capacity;
NINA C. REMSON, Attorney at Law, LLC; COMET LAW OFFICES LLC

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. No. 2-14-cv-05362)
District Judge: Honorable William J. Martini

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 2, 2017

Before: RESTREPO, SCIRICA and FISHER, Circuit Judges

(Opinion filed: May 3, 2017)

OPINION*

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*This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Marc and Tyrone Stephens appeal from three orders of the United States District Court for the District of New Jersey granting summary judgment to the defendants and denying reconsideration. Finding no error, we will affirm.

This appeal arises out of several criminal actions instituted against Tyrone Stephens, a minor. In March 2012, Tyrone was charged with theft-related offenses. Marc Stephens, Tyrone's adult brother, retained and paid attorney Nina Remson to defend Tyrone. In June 2012, Tyrone was charged with aggravated assault, and Remson took on that representation as well. Ultimately, Tyrone pleaded guilty. In this action, the Stephenses allege that Remson committed malpractice in the course of this representation. Among other things, they contend that Remson convinced Tyrone to plead guilty despite receiving specific instructions from Marc to refuse all plea offers.

Tyrone was then arrested in November 2012 in connection with an assault committed by several individuals outside a 7-Eleven store a little after 10:00 pm on October 31, 2012. Natalia Cortes, who was a witness to the attack and the cousin of one of the victims, identified three of the attackers as Tyrone, Justin Evans, and Derrick Gaddy. Detectives from the Englewood Police Department interviewed Evans, who, after initially denying that he was involved, confessed to the crime and also stated that Tyrone had been the ringleader. The detectives then obtained a statement (with Marc present) from Tyrone, who denied his involvement. Marc offered Tyrone an alibi that they had been at home together, and Tyrone adopted it. However, Tyrone later admitted

to being in the vicinity of the 7-Eleven — specifically, at a McDonald's down the street — with two different alibi witnesses. Tyrone was taken into custody and the investigation continued.

The next day, detectives arrested Jahquan Graham and placed him in the holding cells in the Bergen County Juvenile Court near Tyrone. According to Detective Kinlaw, he overheard a conversation between Graham and Tyrone. When Graham asked why he was being held, according to Kinlaw, Tyrone stated, "I know why we are here, that fucking rat Derek told. He was brought to the police department and released, he's the only one who wasn't arrested." D.C. dkt. #65-5 at 20.

Tyrone was charged with multiple crimes, including robbery, aggravated assault, and riot. In December 2012, a trial judge found probable cause on all seven counts of the criminal complaint, and then reiterated that finding after a second hearing in February 2013. However, at this point, the prosecutor's case against Tyrone began to unravel. First, Cortes, while acknowledging that she had earlier identified Tyrone as a perpetrator, testified that she was not actually sure if he was involved. Second, Evans pleaded guilty and then recanted his previous statement implicating Tyrone. As a result, the prosecutor dismissed the indictment with prejudice against Tyrone and he was released from jail.

The Stephenses filed the complaint at issue here in August 2014. In addition to bringing claims against Remson for her representation, they have raised various claims under 42 U.S.C. § 1983 and state law against the Englewood detectives, the police department, and the City of Englewood. The defendants moved for summary judgment,

and on November 3, 2015, the District Court granted the motions in full. The Stephenses filed several motions under Fed. R. Civ. P. 59(e), each of which the District Court denied. They then filed a timely notice of appeal.

We have jurisdiction under 28 U.S.C. § 1291. "We review an order granting summary judgment de novo, applying the same standard used by the District Court." Nicini v. Morra, 212 F.3d 798, 805 (3d Cir. 2000).[1]

The District Court concluded that Remson was entitled to summary judgment because the Stephenses failed to comply with New Jersey's affidavit-of-merit statute. This statute requires that, in cases like this one involving allegations of professional malpractice, the plaintiff provide an affidavit from an appropriately licensed person attesting that there is a "reasonable probability that the care, skill or knowledge exercised or exhibited . . . fell outside acceptable professional or occupational standards." N.J. Stat. Ann. § 2A:53A-27; see also Snyder v. Pascack Valley Hosp., 303 F.3d 271, 273 (3d Cir. 2002) (rule "is enforceable in the district courts when New Jersey law applies").

While the Stephenses argue at length that Remson provided deficient representation, they do not meaningfully challenge the District Court's conclusion that their failure to provide an affidavit of merit was fatal to their claims. See N.J. Stat. Ann.

[1] We will address only arguments that the Stephenses raised in their opening brief. See United States v. Jackson, 849 F.3d 540, 555 n.13 (3d Cir. 2017). While the Stephenses purport to incorporate by reference the arguments that they asserted in virtually every filing that they made in the District Court, "[t]his is insufficient to preserve an argument for appellate review." Spitz v. Proven Winners N. Am., LLC, 759 F.3d 724, 731 (7th Cir. 2014).

§ 2A:53A-29 (the failure to provide the affidavit "shall be deemed a failure to state a cause of action"). They do suggest that their failure was caused by Remson's delay in responding to their discovery requests, but the undisputed evidence reveals that Remson provided her entire case file to Marc well before they filed this complaint. The Stephenses have failed to provide any evidence (or even argument) that the discovery materials had "a substantial bearing on preparation of the affidavit" such that they would be excused from filing the affidavit. N.J. Stat. Ann. § 2A:53A-28; see generally Balthazar v. Atl. City Med. Ctr., 816 A.2d 1059, 1066-67 (N.J. Super. Ct. App. Div. 2003). Accordingly, we will affirm the District Court's grant of judgment to Remson.

Meanwhile, the Stephenses assert false-arrest, false-imprisonment, and malicious-prosecution claims against the Englewood defendants. "A finding of probable cause is . . . a complete defense" to each of these claims. Goodwin v. Conway, 836 F.3d 321, 327 (3d Cir. 2016). Probable cause "exists when the facts and circumstances within the arresting officer's knowledge are sufficient in themselves to warrant a reasonable person to believe that an offense has been or is being committed by the person to be arrested." Orsatti v. N.J. State Police, 71 F.3d 480, 483 (3d Cir. 1995). While probable cause requires more than mere suspicion, it does not require the type of evidence needed to support a conviction. See Reedy v. Evanson, 615 F.3d 197, 211 (3d Cir. 2010).

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. See Wilson v. Russo, 212 F.3d 781, 790 (3d Cir. 2000).

While the Stephenses contend that the evidence shows that Tyrone was actually half a mile away at a McDonald's at the time that the assault occurred, the equivocal evidence that they present does not dispel the probable cause described above. See id. at 792-93; Goodwin, 836 F.3d at 328. Further, notwithstanding their arguments to the contrary, no reasonable juror could conclude that the detectives coerced Evans's statement. The transcript of the interrogation reveals that Evans's mother was present the entire time (Evans was then nearly 18 years old), he was read his Miranda rights, the interrogation lasted for just over an over, and the detectives did not use any particularly harsh tactics. See generally United States v. Jacobs, 431 F.3d 99, 108-09 (3d Cir. 2005); Hall v. Thomas, 611 F.3d 1259, 1285-89 (11th Cir. 2010). Accordingly, we discern no error in the District Court's disposition of the Stephenses' constitutional claims against the detectives.[2] And, since they have failed to establish an underlying constitutional

[2] The Stephenses contend that Detective Kinlaw invented the statement that he said he overheard Tyrone make while he was in a holding cell. However, they presented no evidence to support this contention. See generally Blair v. Scott Specialty Gases, 283 F.3d 595, 608 (3d Cir. 2002). While this statement is not relevant to the false-arrest analysis because it post-dated Tyrone's arrest, see Wright v. City of Phila., 409 F.3d 595, 602 (3d Cir. 2005), it does provide still more support for the defendants' decision to charge Tyrone with various offenses.

violation, their claims against the police department and Englewood also necessarily fail. See Kneipp v. Tedder, 95 F.3d 1199, 1212 n.26 (3d Cir. 1996).

The Stephenses' state-law claims fare no better. To make out a claim of intentional infliction of emotional distress, they must show that the defendants engaged in "intentional and outrageous conduct" that was "so severe that no reasonable person could be expected to endure it." Tarr v. Ciasulli, 853 A.2d 921, 924 (N.J. 2004) (citations, alteration omitted). We have already ruled that a reasonable juror would conclude that the officers had probable cause to arrest and charge Tyrone. Consequently, the Stephenses cannot show that the defendants' conduct in arresting and holding Tyrone was outrageous. See, e.g., Harris v. U.S. Dep't of Veterans Affairs, 776 F.3d 907, 917 (D.C. Cir. 2015). The Stephenses also assert that the detectives committed negligence and defamation by telling Justin Evans that Tyrone was under investigation and had implicated Evans in the incident, but the record simply does not support that allegation.

Finally, we agree with the District Court that any amendment to the complaint would have been futile. See generally Grayson v. Mayview State Hosp., 293 F.3d 103, 114 (3d Cir. 2002). And, in light of these rulings, the District Court did not err in denying the Stephenses' Rule 59(e) motions. See generally Exxon Shipping Co. v. Baker, 554 U.S. 471, 485 n.5 (2008); Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

Accordingly, we will affirm the District Court's judgment. We also deny the Stephenses' motion for the recusal of the District Judge, see Securacomm Consulting,

Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000) ("We have repeatedly stated that a party's displeasure with legal rulings does not form an adequate basis for recusal."), and their motion for clarification.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 16-1868

MARC A. STEPHENS;
TYRONE K. STEPHENS,
Appellants

v.

CITY OF ENGLEWOOD;
ENGLEWOOD POLICE DEPARTMENT;
DET. MARC MCDONALD;
DET. DESMOND SINGH;
DET. CLAUDIA CUBILLOS;
DET. SANTIAGO INCLE, JR.;
NATHANIEL KINLAW, Individually and in official capacity;
NINA C. REMSON, Attorney at Law, LLC;
COMET LAW OFFICES LLC

(D.C. No. 2-14-cv-05362)

Present: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR., VANASKIE, SHWARTZ, KRAUSE, RESTREPO, SCIRICA and FISHER[1], *Circuit Judges*.

SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC

The petition for rehearing filed by appellants, Mark A. Stephens and Tyrone K. Stephens in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in

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[1] Judges Scirica and Fisher's vote is limited to panel rehearing only.

regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT:

s/ D. Michael Fisher
Circuit Judge

Dated: October 24, 2017
CJG/cc: Marc A. Stephens
Tyrone K. Stephens
Adam Kenny, Esq.
Marc D. Mory, Esq.
Matthew P. O'Malley, Esq.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARC AND TYRONE STEPHENS, **Plaintiffs,** **v.** **CITY OF ENGLEWOOD, *et al.*,** **Defendants.**	Civ. No. 2:14-05362 (WJM) **OPINION**

WILLIAM J. MARTINI, U.S.D.J.:

Proceeding *pro se*, Plaintiffs Tyrone and Marc Stephens have asserted legal malpractice claims against a law firm, Comet Law Offices, LLC ("Comet"). This matter comes before the Court on Plaintiffs' motion for default judgment against Comet. Because the remaining claims in the case arise exclusively under state law, the Court declines to exercise supplemental jurisdiction over those claims and dismisses the claims without prejudice to Plaintiffs' right to refile them in state court. Consequently, Plaintiffs' motion for default judgment will be **DENIED AS MOOT**.

I. BACKGROUND

In August of 2014, Plaintiffs filed suit against (1) the City of Englewood, (2) the Englewood Police Department, (3) a number of individual police officers; (4) an attorney, Nina Remson; and (5) Comet. On November 3, 2015, this Court issued an order entering summary judgment in favor of Remson, the City of Englewood, the Englewood Police Department, and all individually named police officers.

Consequently, all that remains is a "Negligence/Malpractice" claim and an "Ineffective Assistance of Counsel" claim, both made against Comet. Despite being named in the complaint, Comet has failed to plead or otherwise respond. Consequently, Plaintiffs have moved for default judgment against Comet.

II. DISCUSSION

Before reaching Plaintiffs' motion for default judgment, the Court must decide whether it should exercise supplemental jurisdiction over Plaintiffs' claims against Comet. For the reasons that follow, the Court answers that question in the negative.

28 U.S.C. § 1367 provides that a district court may decline to exercise supplemental jurisdiction over a claim where:

1. the claim raises a novel or complex issue of State law,
2. the claim substantially predominates the claim or claims over which the district court has original jurisdiction
3. the district court has dismissed all claims over which it has original jurisdiction, or
4. in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

§ 1367(c). Moreover, "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors ... will point toward declining to exercise jurisdiction over the remaining state-law claims." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988).

Here, judgment has been entered on all of the federal claims in this action and all that remains are two claims against Comet. The first claim is for "Negligence/Malpractice," which arises exclusively under state law. And while the second claim is labeled "Ineffective Assistance of Counsel," it too arises under state law given that there is no such thing as a §1983 ineffective assistance of counsel claim against a private attorney. *See Polk County v. Dodson*, 454 U.S. 312 (1981) (§1983 does not provide for a "constitutional tort" against a public defender for providing ineffective assistance). *See also Clark v. Vernon*, 228 Fed.Appx. 128, 131 (3d Cir. 2007) ("private attorneys...do not act under the color of state law when performing their function as counsel.")[1] Consequently, the Court will liberally construe the complaint as alleging two separate claims for legal malpractice. *See Dluhos v. Strasberg*, 321 F.3d 365, 369 (3d Cir. 2003) (a court "must liberally construe [*pro se*] pleadings, and ... apply the applicable law, irrespective of whether the *pro se* litigant has mentioned it by name.") (citations omitted).

It is therefore apparent that the remaining claims in this case exclusively involve state law concerns, such as the professional standard of conduct applicable to New Jersey attorneys and whether Comet met that standard when performing its services for Plaintiffs.

[1] Moreover, it is appropriate to construe the "Ineffective Assistance of Counsel" claim as a malpractice claim because the claim extensively cites New Jersey's Rules of Professional Conduct.

Moreover, while the Court has expended time and resources on Plaintiffs' other claims, the claims against Comet have essentially remained stagnant at the early pleading stage. *See Hernandez v. Bank*, Civ. No. 15-cv-470 (KM), 2016 WL 816746, *2 (D.N.J. Feb. 25, 2016) (declining to exercise supplemental jurisdiction may be appropriate where the court has not expended resources in handling the state law claims). The balance of factors decidedly points to this Court declining to exercise jurisdiction over what is now a state law malpractice lawsuit. Therefore, Plaintiffs' claims against Comet with be **DISMISSED WITHOUT PREJUDICE** to Plaintiffs' right to refile those claims in state court. As a result, Plaintiffs' motion for default judgment against Comet will be **DENIED AS MOOT**. *See, e.g., FDIC v. Madison Title Agency*, LLC, Civ. No. 12-3009(MAS)(LHG), 2014 WL 7333196 (D.N.J. Dec. 18, 2014) (denying default judgment motion after declining to exercise supplemental jurisdiction over the claims that were the subject of the motion).

III. CONCLUSION

For the foregoing reasons, the claims against Comet be **DISMISSED WITHOUT PREJUDICE** to Plaintiffs' right to refile those claims in state court. Consequently, Plaintiffs' motion for default judgment is **DENIED AS MOOT**.

/s/ William J. Martini
WILLIAM J. MARTINI, U.S.D.J.

Date: April 6, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARC AND TYRONE STEPHENS, **Plaintiffs,** **v.** **CITY OF ENGLEWOOD, *et al.*,** **Defendants.**	Civ. No. 2:14-05362 (WJM) **OPINION**

WILLIAM J. MARTINI, U.S.D.J.:

Proceeding *pro se*, Plaintiffs Marc Stephens and Tyrone Stephens filed a 20-count complaint against an attorney, the City of Englewood, the Englewood Police Department, and a number of individual police officers. On November 3, 2015, this Court issued an order entering summary judgment in favor of Defendants. Plaintiffs now move for reconsideration of that order. For the reasons that follow, Plaintiffs' motion will be **DENIED**.

I. BACKGROUND

The Court writes primarily for the parties and assumes familiarity with the facts. On August 26, 2014, Plaintiffs filed the instant action against the City of Englewood, the Englewood Police Department, and a number of police officers (collectively, the "Englewood Defendants"). The complaint also asserts claims against attorney Nina Remson and her law firm (collectively, the Remson Defendants). Plaintiffs allege that the Englewood Defendants falsely charged Tyrone in connection with an October 31, 2012 robbery (hereinafter, "the October 31 Incident") that he did not commit. Plaintiffs also allege that the Remson Defendants committed malpractice when representing Tyrone in a separate matter unrelated to the October 31 Incident. After taking discovery, all Defendants moved for summary judgment, and in a November 3, 2015 Order, the Court granted Defendants' motions.

In an opinion accompanying its November 3, 2015 Order, the Court explained its reasons for entering summary judgment in favor of Defendants. *See Stephens v. City of Englewood*, Civ. No. 2:14-05362, 2015 WL 6737022 (D.N.J. Nov. 3, 2015). It first explained that the Remson Defendants were entitled to summary judgment because

Plaintiffs never served them with an affidavit of merit. It further concluded that the record did not support a finding that Plaintiffs were somehow exempted from New Jersey's affidavit of merit requirements. With respect to the Englewood Defendants, the Court explained that the Englewood Police Department had probable cause to arrest Tyrone, which precluded Tyrone from succeeding on his 42 U.S.C. § 1983 claims. Similarly, because the Englewood Police Department possessed sufficient evidence supporting its decision to charge Tyrone, the Englewood Defendants were also entitled to summary judgment on Tyrone's state law claims.

Plaintiffs now move for reconsideration of the Court's November 3, 2015 Order. A court may grant a motion for reconsideration under Rule 59(e) only if (1) there has been an intervening change in the controlling law; (2) new evidence has become available since the court granted the subject motion; or (3) it is necessary to correct a clear error of law or fact or to prevent manifest injustice. *Max's Seafood Café by Lou–Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (citing *North River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F.3d 1194, 1218 (3d Cir. 1995)). Manifest injustice pertains to situations where a court overlooks some dispositive factual or legal matter that was presented to it. *See In re Rose*, No. 06–1818, 2007 WL 2533894, at *3 (D.N.J. Aug.30, 2007). In this case, Plaintiffs argument appears to be that reconsideration is needed to correct a clear error of law. For the reasons stated below, the Court rejects Plaintiffs' position.

With respect to the Remson Defendants, Plaintiffs have failed to demonstrate why they should be exempted from New Jersey's affidavit of merit requirement, which requires a plaintiff to show "that the complaint is meritorious by obtaining an affidavit from an appropriate licensed expert attesting to the 'reasonable probability' of professional negligence." *Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 149-50 (2003) (citing N.J.S.A. 2A:53A-27). Specifically, the record shows that Plaintiffs failed to inform the Remson Defendants that they required information for the specific purpose of filling out an affidavit of merit. *Scaffidi v. Horvitz*, 343 N.J. Super 552, 554 (N.J. Super. Ct. App. Div. 2001). Moreover, and notwithstanding their bald assertions to the contrary, Plaintiffs have not put forth any evidence refuting the fact that they already possessed sufficient information to comply with New Jersey's affidavit of merit requirement.[1] Finally, the Court finds no reason to revisit its determination that the issues presented in Plaintiffs' legal malpractice claim were sufficiently complex to require the filing of an affidavit of merit. *Palanque v. Lambert-Woolley*, 168 N.J. 398, 406 (2001). Consequently, Plaintiffs' motion for reconsideration with respect to the Remson Defendants is denied.[2]

The Court reaches the same conclusion with respect to the Englewood Defendants. In doing so, the Court will not rehash every argument addressed in the decision accompanying

[1] Most notably, the record shows that Plaintiffs were in possession of Tryone's case file prior to filing the instant lawsuit. While Marc asserts that he lost access to his files after his computer was hacked, he presents no evidence supporting that assertion. Marc's other claims of document destruction are similarly unsupported.

[2] The Court similarly rejects Plaintiffs' argument that the affidavit of merit statute is facially unconstitutional.

its November 3, 2015 Order. Suffice to say, the record shows that Engelwood police officers had probable cause to arrest Tyrone. Specifically, the officers had four main pieces of evidence implicating Tyrone in the October 31 Incident: (1) the alleged photo identification by Natalia Cortes; (2) the statements made by Justin Evans; (3) inconsistencies in testimony regarding Tyrone's alibi; and (4) the statement Tyrone allegedly made to Jaquan Graham while in a holding cell. *Stephens*, 2015 WL 6737022, at *6. In the face of these facts, 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. Consequently, the Court will not reconsider its determination that the Englewood Detectives cannot be held civilly liable for charging Tyrone in connection with the October 31 Incident.

II. CONCLUSION

For the foregoing reasons, Plaintiffs' motion for reconsideration is **DENIED**. An appropriate order accompanies this decision.

/s/ William J. Martini
WILLIAM J. MARTINI, U.S.D.J.

Date: January 13th, 2016

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARC AND TYRONE STEPHENS, **Plaintiffs,** **v.** **CITY OF ENGLEWOOD, *et al.*,** **Defendants.**	Civ. No. 2:14-05362 (WJM) **OPINION**

WILLIAM J. MARTINI, U.S.D.J.:

Proceeding *pro se*, Plaintiffs Marc and Tyrone Stephens have filed a 20-count complaint against an attorney, the City of Englewood, the Englewood Police Department, and a number of individual police officers. Those Defendants have all moved for summary judgment. There was no oral argument. Fed. R. Civ. P. 78(b). For the reasons set forth below, the motions for summary judgment are **GRANTED**.

I. BACKGROUND

Tyrone Stephens, and his older brother, Marc Stephens, bring this action against numerous Defendants.[1] For the purposes of this opinion, the action can divided into two parts: (1) legal malpractice claims against Defendant Nina Remson, and (2) various claims against the City of Englewood, the Englewood Police Department, and some of Englewood's police officers. Unless otherwise noted, the following facts are undisputed.

A. Nina Remson's Representation of Tyrone

In 2012, juvenile complaints were filed against Tyrone in the Superior Court of New Jersey, Bergen County. Remson Decl. at ¶¶ 3-7. In March 2012, Remson and her law firm, Nina C. Remson Attorney at Law, LLC, were retained to represent Tyrone, who was then a minor, in connection with those complaints. *Id.* Marc paid a portion of the retainer

[1] For the sake of brevity and the avoidance of confusion, the Court will refer to Plaintiffs by their first names only.

fees required for Remson's services. In June 2012, Plaintiffs' mother, Viola, retained Remson to represent Tyrone in a separate matter. *Id.* at ¶ 8.

According to Remson, communications between her and Marc became unworkable, which culminated in Marc informing her that he was taking over the representation of Tyrone. Remson further states that her difficulties in communicating with Tyrone caused her to file a motion to be relieved as counsel, which was unsuccessful. In connection with her motion, Remson also turned over her entire case file on Tyrone to Marc and Viola.

According to Plaintiffs, Marc entered into an agreement with Remson providing that Remson would not have Tyrone take a plea deal in connection with the juvenile complaints. *Complt.* at ¶ 131. Marc further contends that Remson violated this agreement by having Marc take a plea agreement with the Bergen County Prosecutor's Office ("BCPO"). *Id.* Remson admits that she appeared in court with Tyrone and Viola and that Tyrone plead guilty in accordance with the plea offer. Remson Decl. at ¶¶ 14-16.

Plaintiffs then filed this lawsuit against Remson on August 26, 2014. The complaint as against Remson alleges legal malpractice, breach of contract, and ineffective assistance of counsel. *Complt.* at ¶¶ 124-138. On October 22, 2014 Marc emailed discovery requests to Remson's attorneys. Remson Statement of Material Facts (Remson SUMF) at ¶13. Four days later, on October 26, 2014, Remson filed her answer to Plaintiffs' complaint. ECF No. 16. The answer's Nineteenth Separate Defense contends that "Plaintiffs' claims should be dismissed for failure to timely secure and serve an appropriate Affidavit of Merit." Remson Answer at 31. Remson has yet to receive an Affidavit of Merit from Plaintiffs. Remson SUMF at ¶19.

B. The October 31 Incident

Detectives Desmond Singh, Marc McDonald, Nathaniel Kinlaw, and Detective Lieutenant Claudia Cubillos are police officers employed by the Englewood Police Department. Detective Santiago Incle, Jr. formerly served as a police officer for Englewood. Englewood Statement of Material Facts ("Englewood SUMF") at ¶¶1-5. The Court will refer to those individuals collectively as, "the Englewood Detectives." On October 31 at or around 10:12 pm, three individuals, Kristian Perdomo, Santiago Cortes, and Jeisson Duque were assaulted outside a 7-Eleven. The Court will refer to this event as "the October 31 Incident." The next day, an Englewood Police Officer (who is not named as a Defendant) was dispatched to the Englewood Hospital and Medical Center emergency room to speak with the victims of the assault. *Id.* at ¶12. According to the officer's report, Perdomo stated that he and the two other victims were approached by a group of 20-30 teenage black males who demanded the victims' possessions. When Duque refused, the group kicked, punched, and stomped him. When Perdomo and Cortes attempted to intervene on Duque's behalf, they were also attacked. The attackers then fled in various directions. Witness bystanders contacted the police, and the victims were treated for

various injuries. *Id.* at ¶¶14-15. This resulted in the Englewood Police Department launching an investigation into who was responsible for the October 31 Incident.

In line with its investigation, Detectives McDonald and Singh reported to the hospital to meet with the victims. *Id.* at ¶19. Duque testified that he could not identify any of the attackers, but that one of them was on a bicycle and was wearing a mask. *Id.* at 25. Perdomo provided similar testimony, but also noted that "Derek" – a boy whom Perdomo recognized from the soccer team – was one of the attackers. *Id.* at ¶27.

Detectives Singh and McDonald also interviewed Cortes' sister, Natalia. According to a police report, Natalia identified the photos of the attackers from a photo ID book. *Id.* at 31-33. Specifically, Natalia identified the photos of the following three individuals: Justin Evans, Derrick Gaddy, and Tyrone Stephens. *Id.* at. ¶32.

On November 5, 2012, Detective McDonald received an anonymous tip that Kirk McIntosh Jr. and Jahquan Graham were involved in the October 31 Incident. After being read his Miranda rights and swearing to tell the truth, McIntosh admitted that he was involved in the October 31 Incident, but made no mention of Tyrone. *Id.* at ¶41; *see also* Stephens' Resp. to Englewood SUMF at ¶42. Shortly thereafter, McIntosh was taken into custody and charged with several offenses. *Id.*

That same day, Detectives McDonald and Singh brought in Justin Evans – who Natalia Cortes identified from a photo ID book – for questioning. *Id* at ¶43.[2] After being Mirandized, Evans ultimately admitted under oath to striking one of the victims during the October 31 Incident. He also testified that Tyrone was involved in the attack. Specifically, Evans testified that Tyrone was the architect of the attack and was the first to start punching the victims at the scene. *Id.* at ¶47.

On November 8, 2012, Detectives McDonald and Singh interviewed Tyrone at the Englewood Police Station, all while in the presence of Marc. After being Mirandized, Tyrone denied any involvement in the October 31 Incident. *Id.* at 51. Marc claimed that Tyrone was home at the time of the October 31 Incident, and Tyrone agreed with his brother's recollection. *Id.* at ¶¶53-54. After the interview, Tyrone was taken into custody and charged with several offenses. *Id.* at 57.

According to a Supplementary Investigation Report prepared by Detective Kinlaw (hereinafter "the Kinlaw Report"), on November 9, 2012, Tyrone had a conversation with Jaquan Graham, who was also charged in connection with the October 31 Incident, from a nearby holding cell. According to the Kinlaw Report, when Graham expressed confusion as to why he was in a holding cell, Tyrone stated: "I know why we are here, that f**cking rat Derek told." Englewood SUMF at ¶¶62-63 (citing Pakrul Decl., Ex. 18, Kinlaw Report, prepared November 9, 2012). Tyrone denies ever having this conversation. *Id.* at ¶65.

[2] When questioned by the police, McIntosh also identified Evans as one of the attackers. Pakrul Decl., Ex. 9, McIntosh Transcript, 31:7-18.

After arresting Tyrone, the Englewood Police Department continued its investigation into the October 31 Incident. With respect to the investigation into Tyrone, suspect Jacquire Roberts told police that he was in a car with Tyrone when the October 31 Incident took place. Englewood SUMF at ¶¶74-76. According to the Englewood Detectives, Roberts' recollection conflicted with the alibi given by Marc, which stated that Tyrone was home at the time of the October 31 Incident. *Id.* After interviewing other suspects and witnesses, the Englewood Police Department administratively closed the case and turned it over to the BCPO. *Id.* at ¶81.

In December 2012, Detective McDonald filed criminal complaints against Tyrone for first degree robbery, second degree aggravated assault, and fourth degree riot. Englewood SUMF at ¶82. At a probable cause hearing held before the Honorable Gary N. Wilcox, Detective McDonald testified regarding the investigation into Tyrone. He specifically noted that Natalia Cortes identified Tyrone in a photo ID book, that co-Defendant Justin Evans named Tyrone as the architect behind the attack, and that Tyrone made incriminating statements to another suspect in a holding cell. *Id.* at ¶¶83-86.

Tyrone's attorney, Jordan Comet, then presented a defense on behalf of his client. He called Tyron Roy, who testified that on the night of the October 31 Incident, Tyrone Stephens joined him for a car ride, accompanied him to McDonalds, and then was dropped off at home. *Id.* at ¶88. Tyrone's attorney also pointed out that the alleged identification made by Natalia Cortes was nowhere to be heard on the audio recording of her interview. Pakrul Decl., Ex. 26, Transcript of 12/20/12 Probable Cause Hearing at 22:23-23:1. Throughout the course of the hearing, Tyrone's attorney attempted to poke other holes in the prosecution's case. *Id.* at 23:1-56:21.

After hearing the evidence, Judge Wilcox noted that the prosecution may have some difficulty proving that Tyrone was guilty beyond a reasonable doubt. However, he noted that a probable cause hearing does not involve such a stringent burden of proof, and that the State demonstrated a well-grounded suspicion that Tyrone committed the alleged offense. *Id.* at 96:16-97:4.

On February 26, 2013, Judge Wilcox held another hearing to, among other things, hear additional evidence from Tyrone challenging the State's case against him. Englewood SUMF at 90. Of particular note was the testimony of Natalia Cortes, which was at times confusing and inconsistent. Ms. Cortes first seemed to testify that she recalled identifying Tyrone as one of the persons responsible for the October 31 Incident. However, just minutes later she testified that she did not identify Tyrone Stephens whatsoever. Englewood SUMF at ¶¶91-95. Notwithstanding Ms. Cortes' testimony, Judge Wilcox concluded that there was probable cause for the issuance of a criminal complaint against Tyrone. Englewood SUMF at ¶¶97-99. A Grand Jury then indicted Tyrone later that year. *Id.* at ¶100.

After Tyrone was indicted, his co-defendant, Justin Evans, took a plea deal in which he plead guilty to the charges arising out of the October 31 Incident. *Id.* at ¶101. Evans admitted to the charged offenses and stated that he falsely implicated Tyrone as an

accomplice. Evans believed that Tyrone implicated him as a person involved in charged offenses, so he decided to falsely accuse Tyrone as revenge. *Id.* at ¶¶101-14. Defendants point out, however, that Evans never claimed that the police forced him to implicate Tyrone. *Id* at. ¶105. After Evans recanted his accusations, prosecutors dismissed the indictment against Tyrone, who was released from jail shortly thereafter. *Id.* at ¶107.

Tyrone's claims in connection with this incident are against the Englewood Detectives, the Englewood Police Department, and the City of Englewood. Like Remson, all of those Defendants have moved for summary judgment.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56 provides for summary judgment "if the pleadings, the discovery [including, depositions, answers to interrogatories, and admissions on file] and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56; *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986); *Turner v. Schering-Plough Corp.*, 901 F.2d 335, 340 (3d Cir. 1990). A factual dispute is genuine if a reasonable jury could find for the non-moving party, and is material if it will affect the outcome of the trial under governing substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The Court considers all evidence and inferences drawn therefrom in the light most favorable to the non-moving party. *Andreoli v. Gates*, 482 F.3d 641, 647 (3d Cir. 2007).

Initially, the moving party has the burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. Once the moving party has met this burden, the nonmoving party must identify, by affidavits or otherwise, specific facts showing that there is a genuine issue for trial. *Id.* The opposing party must do more than just rest upon mere allegations, general denials, or vague statements. *Saldana v. Kmart Corp.*, 260 F.3d 228, 232 (3d Cir. 2001). Rather, to withstand a proper motion for summary judgment, the nonmoving party must identify specific facts and affirmative evidence that contradict those offered by the moving party. *Anderson*, 477 U.S. at 256–57.

III. CLAIMS AGAINST NINA REMSON

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. New Jersey's affidavit of merit statute requires that a plaintiff show "that the complaint is meritorious by obtaining an affidavit from an appropriate licensed expert attesting to the 'reasonable probability' of professional negligence." *Ferreira v. Rancocas Orthopedic Assocs.*, 178 N.J. 144, 149-50 (2003) (citing N.J.S.A. 2A:53A-27). The plaintiff must provide the affidavit within sixty days of the filing of the answer or, for good cause shown, within an additional sixty-day period. *Id.* at 150. Where a plaintiff fails to serve the affidavit within 120 days of the filing

of the answer, the complaint is subject to dismissal with prejudice. *Id.* Regardless of how a claim is labeled, it will be subject to the affidavit of merit requirement if it is based on the allegation that an attorney deviated from the acceptable standard of care. *See New Hampshire Ins. Co. v. Diller*, 678 F. Supp.2d 288 (D.N.J. 2009); *Nagim v. N.J. Transit*, 369 Super 103, 116 (N.J. Super. Ct. Law. Div. 2003).

Plaintiffs admit that they never served Remson with an affidavit of merit. However, they put forth a number of arguments for why they were not required to comply with the affidavit of merit statute. The Court rejects these arguments and will enter summary judgment in Remson's favor.

Plaintiffs first argue that the statute does not apply because the Court did not hold a *Ferreira* conference. However, the failure to hold a *Ferreira* conference does not toll the affidavit of merit statute's 120-day deadline. *Paragon Contractors, Inc. v. Peachtree Condominium Ass'n*, 202 N.J. 415, 425-26 (2010). Plaintiffs also contend that Remson failed to provide them with the discovery needed to complete an affidavit of merit. Therefore, Plaintiffs argue that N.J.S.A. § 2A:53A-28 allows them to file a sworn statement in lieu of an affidavit of merit. In order to avail themselves of that exception to the requirement, however, Plaintiffs were required to notify Remson that they needed certain information for the preparation of an affidavit of merit. *Scaffidi v. Horvitz*, 343 N.J. Super 552, 554 (N.J. Super. Ct. App. Div. 2001). The record shows that Plaintiffs did not provide Remson with any notification of that sort. Therefore, Plaintiffs' argument is without merit. Moreover, the record shows that Plaintiffs were in possession of Remson's entire case file on Tyrone at the time they filed this lawsuit. Plaintiffs have not explained why that information was insufficient to comply with the statute, especially considering that the affidavit of merit requirement "is not concerned with the ability to prove the allegation contained in the complaint...." *See Hubbard v. Reed*, 168 N.J. 387, 394 (2001). For those reasons, the Court also rejects Plaintiffs' argument that Remson is equitably estopped from raising an affidavit of merit defense. *Cf. Stoecker v. Echevarria*, 408 N.J. Super. 597 (N.J. Super. Ct. App. Div. 2009).

Plaintiffs further argue that under the "common knowledge exception," the affidavit of merit requirement does not apply in this case. The common knowledge exception provides that an affidavit of merit is not required where the alleged careless acts are "quite obvious" so that "'jurors' common knowledge as lay persons is sufficient to enable them, using ordinary understanding and experience, to determine a defendant's negligence without the benefit of the specialized knowledge of experts.'" *Palanque v. Lambert-Woolley*, 168 N.J. 398, 406 (2001) (citing *Hubbard*, 168 N.J. at 394). This is not one of those cases. Plaintiffs' claims implicate a thicket of complicated legal issues surrounding Remson's relationship with her client. While Remson apparently believed that taking a plea deal would be in Tyrone's best interest, Marc adamantly contends that he instructed her to take the case to trial. Remson was therefore faced with a conundrum; she had to balance what she believed to be the best interests of her client, who at the time was a minor, with the

wishes of an older brother who paid a portion of the retainer fee and claimed to be Tyrone's guardian. *See Restatement (Third) of Law Governing Lawyers* §24A, cmt. b (in cases where interests of minor client conflict with wishes of legal guardian, attorney must exercise informed professional judgment).[3] Whether Remson acted negligently in this unique scenario is not the type of question that a lay person could answer without the benefit of specialized experts. Consequently, the common knowledge exception does not apply and summary judgment will be entered in Remson's favor.

IV. CLAIMS AGAINST THE ENGLEWOOD DETECTIVES

A. 42 U.S.C. § 1983 Claims: False Arrest, "False Evidence," Malicious Prosecution, False Imprisonment, Conspiracy

Plaintiffs assert a number of different Section 1983 claims against the Englewood Detectives. First is Tyrone's Section 1983 claim accusing the Englewood Detectives of false arrest. In order to prevail on his false arrest claim, Tyrone must show that the Englewood Detectives arrested him without probable cause. *Groman v. Township of Manalapan*, 47 F.3d 628, 634 (3d Cir. 1995). Indeed, "[t]he proper inquiry in a section 1983 claim based on false arrest ... is not whether the person arrested in fact committed the offense but whether the arresting officers had probable cause to believe the person arrested had committed the offense." *Id.* (citing *Dowling v. City of Phila.*, 855 F.2d 136, 141 (3d Cir. 1988)). While probable cause requires more than mere suspicion, it does not require the type of evidence needed to support a conviction. *See Reedy v. Evanson*, 615 F.3d at 197, 212 (3d Cir. 2010) (quotations and citations omitted). Probable cause to arrest exists where the arresting officer possesses sufficient knowledge to form a reasonable belief that the person being arrested is committing or has committed the charged offense. *Id.* (citing *Orsatti v. N.J. State Police*, 71 F.3d 480, 482 (3d Cir. 1995)). Put simply, the relevant inquiry is whether, after considering the totality of the circumstances, there was a "fair probability" that the arrestee committed the crime at issue. *Id.* (citing *Wilson v. Russo*, 212 F.3d 781, 789 (3d Cir. 2000). *See also Illinois v. Gates*, 462 U.S. 213, 230 (1983).

Viewing the evidence in a light most favorable to the non-movants, the Court concludes that the Englewood Detectives had probable cause to arrest Tyrone. 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. In opposing summary judgment, Tyrone focuses on the fact that the alleged photo identification made by Ms.

[3] Plaintiffs also argue that the affidavit of merit statute is "facially unconstitutional" because it imposes excessive cost on litigants defendants. This argument is without merit. *See Porter v. Dept. of Treasury*, 564 F.3d 176, 180 (3d Cir. 2009) (litigants who are granted *in forma pauperis* status must bear the costs of expert witness fees)

Cortes was not recorded. He further emphasizes that at a probable cause hearing, Ms. Cortes (arguably) testified that the identification never took place. However, even if the Court were to disregard the photo identification, it would not change the fact that Justin Evans informed the Englewood Detectives that Tyrone was one of his accomplices in the October 31 Incident.[4] *See, e.g., Green v. City of Paterson*, 971 F.Supp. 891, 907 (D.N.J. 1997) (citing *United States v. Harris*, 956 F.2d 177, 180 (8th Cir. 1992)). Moreover, the record shows that a grand jury indicted Tyrone on some of the charges for which he was arrested. Under Third Circuit precedent, the indictment provides an independent basis for concluding that the Englewood Detectives had probable cause to arrest Tyrone. *See, e.g., Trabal v. Wells Fargo Armored Serv. Corp.*, 269 F.3d 243, 251 (3d Cir. 2001) (grand jury indictment "establishes probable cause by definition").

For the same reasons, the Englewood Detectives are entitled to summary judgment on Tyrone's malicious prosecution claims. *Estate of Smith v. Marasco*, 318 F.3d 497, 521 (3d Cir. 2003) (malicious prosecution claim requires showing that defendants acted maliciously and for reasons other than bringing plaintiff to justice). Moreover, the above analysis requires that the Court also enter judgment in favor of the Englewood Detectives on Tyrone's false imprisonment claim. *Groman*, 47 F.3d at 636 (an arrest without probable cause cannot be the source of a false imprisonment claim) (citing *Baker v. McCollan*, 443 U.S. 137, 142 (1979)).

Tyrone also brings a claim for "false evidence" under Section 1983. This claim arises out of Plaintiffs' allegation that Detective Kinlaw lied in his police report by falsely claiming that Tyrone made incriminating comments to Jaquan Graham while in a holding cell. This claim fails for two primary reasons. First, aside from his own self-serving claim that he never made incriminating statements to Graham, Tyrone has not offered a shred of evidence undermining the credibility of the Kinlaw Report. *Kirleis v. Dickie, McCamey & Chilcote, P.C.*, 560 F.3d 156, 161 (3d Cir. 2009). Second, 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)). Therefore, the Englewood Detectives are entitled to summary judgment on Tyrone's false evidence claim. Moreover, the Englewood Detectives are entitled to summary judgment on Tyrone's conspiracy claim because without an actual deprivation, there can no liability for conspiracy under Section 1983. *See Holt Cargo Sys. V. De. River Port Auth.*, 20

[4] Tyrone argues that the identification did not establish probable cause because Evans made it only after police misleadingly told him that Tyrone implicated him in the October 31 Incident. However, the Supreme Court has held that "[p]loys to mislead a suspect or lull him into a false sense of security" do not raise constitutional concerns so long as they do not rise to the level of coercion. *Illinois v. Perkins*, 496 U.S. 292, 297 (1990). Because there is nothing on the record indicating that the Englewood Detectives coerced Evans into identifying Tyrone, Evans' identification was sufficient to establish probable cause for Tyrone's arrest.

F.Supp.2d 803,843 (E.D.Pa. 1998) (citing *Andree v. Ashland County*, 818 F.2d 1306, 1308 (7th Cir. 1987).

B. State Law Claims: Intentional Infliction of Emotional Distress, Negligence, N.J.S.A. 10:6-1

The Englewood Detectives are also entitled to summary judgment on Plaintiffs' state law claims. With respect to Tyrone's New Jersey Civil Rights Act ("NJCRA") claim, judges in this district have repeatedly interpreted the NJCRA analogously to Section 1983. *See, e.g., Chapman v. New Jersey, No. 08-4130, 2009 WL 2634888*, *3 (D.N.J. August 25, 2009). Moreover, the provisions of the New Jersey Constitution that are relevant to this case do not afford more protection than their federal counterparts. *See Sebastian v. Vorhees Tp.*, No. 08—6097, 2011 WL 540301, *7 n.11 (D.N.J. Feb. 8, 2011) (citing *Desilets on behalf of Desilets v. Clearview Regional Bd. of Educ.*, 627 A.2d 667, 673 (N.J. Super. Ct. App. Div. 1993). Having found that the Englewood Detectives did not violate Section 1983, it therefore follows that those individuals did not violate the NJCRA.

The Englewood Detectives are also entitled to summary judgment on Tyrone's Intentional Infliction of Emotional Distress ("IIED") claim. To make out a claim for IIED, a plaintiff "must establish intentional and outrageous conduct by the defendant, proximate cause, and distress that is severe." *Tarr v. Ciasulli*, 181 N.J. 70, 77 (2004) (citing *Buckley v. Trenton Saving Fund Soc'y*, 111 N.J. 355, 366 (1988)). Conduct will be deemed "outrageous" for the purposes of a Section 1983 claim only where it is "'so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Buckley v. Trenton Sav. Fund Soc'y*, 111 N.J. 355, 365-67 (1988) (quoting *Restatement (Second) of Torts* § 46 cmt. d). Even construing the evidence in a light most favorable to Plaintiffs, nothing on the record indicates that the Englewood Detectives committed outrageous conduct. At the very least, the Englewood Detectives received a statement from a suspect implicating Tyrone as the architect of the October 31 Incident. Moreover, Tyrone has produced no evidence refuting the fact that the Englewood Detectives received inconsistent statements regarding Tyrone's whereabouts during the relevant time period.[5] Therefore, the Englewood Detectives did not commit outrageous conduct, and they are entitled to summary judgment on Tyrone's IIED claim.

Similarly, there is no evidence supporting Tyrone's negligence and defamation claims. To make out a negligence claim, a plaintiff must prove the following four elements: (1) a duty of care owed to plaintiff by defendant, (2) a breach of that duty by defendant, (3)

[5] Similarly, with the exception of self-serving denials made by Tyrone himself, Plaintiffs have not put forth a scintilla of evidence casting doubt on the legitimacy of the Kinlaw Report, which stated that Tyrone made incriminating statements to another suspect.

proximate cause, and (4) actual damages. *Brunson v. Affinity Fed. Cred. Union*, 199 N.J. 381, 400 (2009). To make out a defamation claim, a plaintiff must prove the following three elements: "(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 to at least negligence." *DeAngelis v. Hill*, 180 N.J. 1, 13 (2004). Tyrone has not presented any evidence indicating that the Englewood Detectives acted negligently. Based on witness statements, the Englewood Detectives reasonably identified Tyrone as a suspect in the October 31 Incident and decided to charge him. The fact that the BCPO ultimately dropped its case against Tyrone does not change that result.

V. CLAIMS AGAINST THE CITY OF ENGLEWOOD AND THE ENGLEWOOD POLICE DEPARTMENT

As explained in the foregoing section, the Englewood Detectives are entitled to summary judgment on all claims against them. For the reasons stated below, the same goes for the City of Englewood and the Englewood Police Department. It is well settled that "[w]ithout a constitutional violation by the individual officers, there can be no § 1983 or *Monell* ... liability." *Phillips ex rel. Estate of Phillips v. Northwest Regional Communications*, 391 Fed. Appx. 160, 168 n. 7 (3d Cir. 2010) (citing *Sanders v. City of Minneapolis*, 474 F.3d 523, 527 (8th Cir. 2007)). In light of that rule, the City of Englewood and the Englewood Police Department are also entitled to summary judgment on Plaintiffs' Section 1983 claims, including the claim for "[f]ailure to [i]mplement [a]ppropriate [p]olicies, [c]ustoms, and [p]ractices." For the same reason, those Defendants are entitled to summary judgment on Plaintiffs' state law claims. *See, e.g., Hart v. City of Jersey City*, 308 N.J. Super. 487, 493 (N.J. Super. Ct. App. Div. 1998) (police department cannot be liable on *respondeat superior* theory where individual police officers were not liable).

VI. CONCLUSION

For the foregoing reasons, all three motions for summary judgment are **GRANTED**. An appropriate order accompanies this decision.

/s/ William J. Martini
WILLIAM J. MARTINI, U.S.D.J.

Date: November 3, 2015