

No. 17A797

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

PETITION FOR REHEARING

**Marc and Tyrone Stephens**  
271 Rosemont Place  
Englewood, NJ 07631  
201-598-6268  
Marcstephens3@gmail.com

Petitioner, pro se

## PETITION FOR REHEARING

Pursuant to **Rule 44** of this Court, Petitioner Marc and Tyrone Stephens, hereby respectfully petitions for rehearing of this case before a **full nine-Member Court**. This case involves the 3<sup>rd</sup> circuit and District Court denying petitioners right to due process and right to trial.

The Questions Presented in this case are of profound nationwide importance. The Questions Presented are guaranteed to recur in the absence of a definitive ruling from this Court. In fact, the States continue to intentionally make rulings which conflicts with relevant decisions of this Court.

### THE REASON WHY REHEARING SHOULD BE GRANTED

**1. THIS CASE HAS MERIT AND THE SUPREME COURT'S CAN ENFORCE THEIR "GVR" PROCEDURE FOR SUMMARILY GRANTING CERTIORARI, VACATING THE DECISION BELOW WITHOUT FINDING ERROR, AND REMANDING THE CASE FOR FURTHER CONSIDERATION BY THE LOWER COURT.**

Pursuant to **Rule 10(c)**, the District, and 3<sup>rd</sup> Circuit courts of New Jersey have decided an important question of federal law that conflicts with relevant decisions of this court. "It is emphatically the province and duty of the judicial department to say what the law is". Marbury v. Madison, 5 U.S. 137 (1803) at 177.

The District Court stated, see **Order APPENDIX E, 24a**, "[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)).

**This court ruled:** "Qualified immunity does not protect police officers who are "plainly incompetent or those who knowingly violate the law." Malley v. Briggs, 475 U.S. 335, 341, 106 S.Ct. 1092, 1096, 89 L. Ed.2d 271, 278 (1986). The common law has never granted police officers an absolute and unqualified immunity, Pierson v. Ray, 386 US 547 - Supreme Court 1967, at 555. The United States Supreme Court has made it "clear that procedural regularity notwithstanding, the

Due Process Clause is violated by the knowing use of perjured testimony or the deliberate suppression of evidence favorable to the accused." (Albright v. Oliver (1994) 510 U.S. 266, 299 [127 L.Ed.2d 114, 114 S.Ct. 807] (dis. opn. of Stevens, J.)) "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. Pearson v. Callahan, 555 U.S. 223, 231 (2009). Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

## **2. PETITIONER CONSTITUTIONAL RIGHT TO DUE PROCESS AND RIGHT TO TRIAL WERE VIOLATED WHEN THE DISTRICT COURT AND THE 3RD CIRCUIT GRANTED THE DEFENDANTS MOTION FOR SUMMARY JUDGMENT**

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.

The 3<sup>rd</sup> Circuit erroneously granted a summary judgment in Defendants favor, and refuse to correct their errors. The 3<sup>rd</sup> circuit Panel Opinion states, **APPENDIX A, 5a**, "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.

There was no identification by Natalia Cortes, **APPENDIX I, 32a**. 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", **APPENDIX J, 33a**.

Officer's testimony: Lawyer: "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. **APPENDIX K, 34a.**

Natalia's testimony: 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. **APPENDIX L, 35a.**

Defendant Desmond Singh admits that he suggested Tyrone's name when he states to Justin, Singh: "You're doing good but the more names we give you". **APPENDIX Q, 40a.** Justin Evans: "How they gonna put my name in this?".. "Tyrone was in High School". McDonald: I gave you all of them. **APPENDIX R, 41a.** Justin Evans testified that he implicated Tyrone Stephens because the officer lied to him, Justin Evans: I thought he was one of the people that said I was involved or told them"...and it was "out of revenge". **APPENDIX S, 42a.**

There were no inconsistencies with Tyrone alibi that he was at McDonald's during the time of the attack 1 mile away at 7-eleven. **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". **APPENDIX U, 44a.** The Officer gave false testimony that Natalia Cortes identified Tyrone as the suspect. **APPENDIX X, 47a**

Pursuant to the Supreme Court of the United States, "The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law." Marshall v. Jerrico, Inc., 446 US 238 - Supreme Court 1980 at 242. "federal courts have a constitutional obligation to safeguard personal liberties and to uphold federal law." Stone v. Powell, 428 US 465 - Supreme Court 1976 at 526.

### 3. THE PETITION FOR WRIT OF CERTIORARI HAS BEEN REVIEWED AND DECIDED BY AN EIGHT-MEMBER BENCH DUE TO THE RETIRING OF JUSTICE ANTHONY KENNEDY.

Justice Anthony Kennedy retired on July 31, 2018 and was succeeded by Brett Kavanaugh on October 6, 2018. This court issued an order denying certiorari on October 1, 2018.

Four of the nine justices are needed to grant a writ of certiorari. "The 'rule of four' is not a command of Congress. It is a working rule devised by the Court as a practical mode of determining that a case is deserving of review, the theory being that if four Justices find that a legal question of general importance is raised, that is ample proof that the question has such importance." *Rogers v. Missouri Pac. R. Co.*, 352 U.S. 521, 529 (1957) (Frankfurter, J., dissenting). *New York v. Uplinger*, 467 U.S. 246, 249 (1984).

Pursuant to Rule 44, "a petition for rehearing is not subject to oral argument and will not be granted except by a majority of the Court". Ordinarily, it is exceedingly rare for this Court to grant rehearing. But "[R]ehearing petitions have been granted in the past where the prior decision was by an equally divided Court and it appeared likely that upon reargument a majority one way or the other might be mustered." Stephen M. Shapiro et al., *Supreme Court Practice* § 15.6(a), at 838 (10th ed. 2013).

The Court has granted rehearing in cases with even splits when it believed that it could find a majority with a new member on the Court who had not participated in the original judgment. *Brown v. Mathias Aspden's Adm'rs*, 55 U.S. (14 How.) 25 (1852). For example, the government petitioned for rehearing in *United States v. One 1936 Model Ford V-8 De Luxe Coach*, 305 U.S. 666 (1938), after this Court divided equally in a case when there was a vacancy due to Justice Cardozo's death, but before the vacancy was filled. This Court granted the petition, *ibid.*, then heard the case after Justice Frankfurter was confirmed. 307 U.S. 219 (1939). Typically, the Court will grant rehearing in expectation of a new Justice being seated, rather than awaiting confirmation. For example, after Justice McReynolds retired on January 31, 1941, the Court affirmed several cases by an equally divided Court. The Court then granted rehearing petitions in all of these cases on April 28, 1941—before Justice

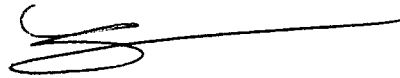
Byrnes was confirmed to fill the vacancy. Kepner, 313 U.S. 597; Frank, 313 U.S. 596; Commercial Molasses, 313 U.S. 596; Toucey, 313 U.S. 596; Gray, 313 U.S. 596. This Court similarly granted petitions for rehearing before a full Bench after a leave of absence by Justice Jackson caused a temporary vacancy in 1945; and after Justice Jackson's death caused a vacancy in 1954. See *MacGregor v. Westinghouse Elec. & Mfg. Co.*, 327 U.S. 812 (1946); *Bruce's Juices, Inc. v. American Can Co.*, 327 U.S. 812 (1946).

By denying certiorari, the Court undermines the public's confidence in the Court's ability to properly consider the important questions of the cases that it hears.

### CONCLUSION

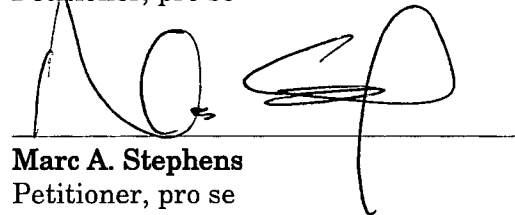
This case is straightforward and has merit. The petition for rehearing should be granted.

Respectfully Submitted,



---

**Tyrone Stephens**  
Petitioner, pro se



---

**Marc A. Stephens**  
Petitioner, pro se

October 24, 2018

# APPENDIX

§ 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 hour, 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.<sup>2</sup> And, since they have failed to establish an underlying constitutional

---

<sup>2</sup> 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.

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.<sup>4</sup> 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

---

<sup>4</sup> 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.

APPENDIX I

Case: 16-1868 Document: 003112432109 Page: 23 Date Filed: 10/11/2016

ENGLEWOOD POLICE				SUPPLEMENTARY INVESTIGATION REPORT			
1. Complaint Number X-2012-025575	2. Mun. Code 0215	3. Phone Number 201-568-2700	4. UCR	21. Prosecutor's Case Number	22. Department Case Number C-2012-018958		
5. Crime/Incident ROBB - ROBBERY - BELATED		5A. New Crime/Incident if Changed		23. Victim(s) New Address if Changed 276 ENGLE ST, ENGLEWOOD NJ, 07631			
				23a. Victim(s) Name DUQUE, JESSON			
6A. New NJG	7. Date of Crime 11/01/2012			Additional Value Stolen Property	40A. Currency	41A. Jewelry	42A. Furs
				43A. Clothing	44A. Auto	Miscellaneous	
46A. S.C.I.C.	49A. Additional Technical Service-Agency			48A. Additional Stolen Property Value		47A. ADUJ Received Property Value	
51A. B.C. Radio		52A. D.C. Radio Cancel		53A. N.C.I.C.			
57. Vehicle	58. Year	59. Make	60. Body Type	61. Color	62. Registration Number & State		63A. Serial Number or Identification
<p>List Name Only of Previous Accused; Complete Information on New Accused; Include Additional Perpetrators; Suspects; Record all Developments Since Last Report; Explain Any Crime Change; List Additional Interviews of Victims; Persons Contacted; Witnesses; Evidence; Technical Services; Stolen Property; Recovered Property; Court Action.</p>							
83. No. of Accused 7	63A. New Accused	64A. Adul	65A. Juvenile 7	66A. Status Crime CLOSED	67A. Status Case CLOSED	68A. UCR Status Month Yr.	69A. Date Cleared
70. Name		Address		71. Age	72. Sex	73. Race	74. DOB
<p>On 11/12/12 at 1449 hrs. I met with Kristian Pardo at the Englewood Police Department to show him a photo array of a possible ADUJ suspect that may have been involved in the Robbery / Aggravated Assault. The photo line-up was created by Det. McDonald and each photograph was placed in a separate folder and properly labeled on the outside. During the identification procedure, Kristian was unable to pick anyone out.</p> <p>On 11/13/12 at 1528 hrs. I met with Natalia Corton at the Englewood Police Department to show her the same photo array that Det. McDonald had provided. During said photo array, Natalia was unable to pick anyone out. I completed the PHOTO ARRAY EVIDENCED IDENTIFICATION PROCEDURE WORKSHEET documenting the array. After the array, Det. McDonald advised me that the individual that was placed in the photo array was of a possible suspect named Victory Sorhuno. No photo of any other juvenile suspect was used in this photo array.</p>							
75A. Name DETECTIVE LIEUTENANT CUBILLOS, CLAUDIA				160	76A. Date Repon 01/04/2013	78A. Reviewed by DETECTIVE LIEUTENANT CUBILLOS	
Signature				Page 1 of 1			

SA 177

APPENDIX J

17. Photos were presented (choose one): sequentially  simultaneously

If sequential presentation, did you explain:

- a. that the witness would be given one photo at a time? Y  N
- b. that he/she can take as much time as he/she wants to make a decision about each photo? Y  N
- c. that when the witness is finished looking at a photo, you would take it back before giving the witness the next photo? Y  N

18. Officers must avoid providing "feedback," that is, signaling to the witness in any way (whether during or after the identification procedure) that the witness correctly identified the suspect. Did you or anyone else present say or do anything during or after the procedure that would have suggested to the witness that he/she correctly identified the suspect? Y  N   
(If yes, detail any actions/gestures/dialogue) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. Did the witness look at all of the photos? Y  N

20. Did the witness identify any photo as depicting the perpetrator? Y  N

21. If yes to #20, did you ask the witness during the procedure to make a statement concerning his/her level of confidence that the photo he/she selected depicts the perpetrator? Y  N   
You must document the exact words and gestures used by the witness to describe his/her level of confidence:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

22. Did you repeat back to the witness the language quoted in the answer to #21 and confirm that is what he/she said about his/her level of confidence? Y  N

23. Was there any other dialogue between anyone in attendance during the identification procedure not described in detail in the answers to #18 and 21? Y  N  (If yes, provide a verbatim/detailed summary of the dialogue)  
\_\_\_\_\_  
\_\_\_\_\_

24. Did you instruct the witness not to discuss the identification procedure or its results with other witnesses and not to obtain information from other witnesses/sources? Y  N

25. Did you preserve the photo array, mug books or digital photos used? Y  N

26. Was this worksheet completed during/immediately following the identification procedure? Y  N  (If not, explain)  
\_\_\_\_\_

*Claudia Cubillo*  
Signature

Claudia Cubillo  
Print Name

Date: 11/13/12 Time: 4:00pm

New Jersey Division of Criminal Justice 8/24/12

APPENDIX K

Detective McDonald - Cross

65

1 Q Okay.

2 A But, it was for a different suspect at that time.  
3 It wasn't for Justin.

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

7 A According to Detective Cabillos, yes.

8 Q Okay.

9 A That's what she said.

10 Q So, looking through the photo array, at  
11 headquarters, on November 13<sup>th</sup>, the bottom line is,  
12 Natalia could not identify anyone in the photo book as  
13 being there that night; right?

14 A Right. But, again, those were different suspects  
15 at that time.

16 Q Okay. Do you know, with certainty, whether  
17 or not Justin's picture was in that November 13<sup>th</sup> photo  
18 book with Detective Cabillos?

19 A No. They were all adults.

20 Q Okay.

21 A All the -- all the suspects were adults.

22 Q Okay.

23 MR. GROSSMAN: Well, Judge, it's not  
24 something for today, but my problem is that I don't  
25 have a -- a transcript was not provided of Ms. Cortez'

APPENDIX L

STATE OF NEW JERSEY IN THE INTEREST OF T.S. -- February 26, 2013

SECRET 5

Cortes - Direct 8

1 A Yeah.  
2 Q And just now in the hallway, when you first  
3 saw him --  
4 A Uh-huh.  
5 Q -- what -- what was -- what was your  
6 reaction? What did you just say?  
7 A I said I'm not -- I'm not really so sure that he  
8 wasn't there -- that he was there.  
9 Q So, you're --  
10 A Like, I've seen him, but I was, like, I'm not  
11 really so sure that he was there.  
12 Q Was he one of the pictures that the officers  
13 showed you?  
14 A Yeah.  
15 Q And were you --  
16 A I think.  
17 Q Did -- I'm sorry?  
18 A I think so. I think he was in one of the  
19 pictures.  
20 Q Okay. And was he one of the pictures that  
21 you pointed out saying it's possible he was there?  
22 THE COURT: You have to say yes or no.  
23 THE WITNESS: Yes.  
24 BY MR. COMET:  
25 Q Are you saying yes or no?

Cortes - Direct 9

1 A Yes.  
2 Q So, you're saying you did point out and say  
3 my --  
4 A I said he might have been there, but I'm not sure.  
5 Q Okay. And --  
6 A That's what I said.  
7 Q -- did you witness Mr. Stephens fighting that  
8 night?  
9 A I didn't quite see anybody's faces who were  
10 actually fighting. Like --  
11 Q Okay.  
12 A -- the only people that I saw were just standing,  
13 like -- just there.  
14 Q Okay. And do you specifically recall whether  
15 my client was specifically there at 10:13 p.m. that  
16 night?  
17 A No.  
18 Q And when the officers asked you -- they --  
19 was there -- was there a point on November 2nd or  
20 November 13th that they videotap -- not video --  
21 audiotaped your conversation with them?  
22 A Yeah.  
23 Q Do you recall that?  
24 A I remember they -- they recorded it.  
25 Q The recorder. And when the recorder was in

ELITE TRANSCRIPTS, INC.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

APPENDIX Q

A I don't even-- uh--

DET. MCDONALD: What about, uh, Brooklyn?

A Oh, yeah, Brook.

Q This is what we gotta stop doing. Alright, you're doing good, alright. You're doing good but the more names we give you--

A Uh-huh.

Q You say, oh, yeah, yeah.

A Brooklyn but--

Q You know who was there, dude. Help yourself.

A I don't remember every-- I'm being honest though. I can't remember everybody that was there. I'm being honest.

DET. MCDONALD: I'm talking about the people that took part in the beating. I-- it was a lot of people there. There was 20-30 people there at least.

A Uh-huh.

DET. MCDONALD: Did he take part in the beating?

A Yeah. Uh--

PAMELA EVANS: That's not Brooklyn from the building?

A Yeah.

Q Gaddy.

PAMELA EVANS: What?

A Yeah.

PAMELA EVANS: Oh, great.

A Graham.

APPENDIX R

Q But you said a little while ago that they call you bitch ass Justin, this, that and the other.

A Yeah, but that-- yeah, that's the point. But I'm saying, like, with them, that's how they like to play around but I honestly know that's how they really feel about me. I know that's how they feel.

Q Alright, uh, we're not getting anywhere with this. Uh--

PAMELA EVANS: I just want you to know--

A Alright.

PAMELA EVANS: This doesn't look good. This doesn't look good at all.

A I know it don't look good but I'm saying that-- but that's the thing, how they gonna put my name in it? I don't even mess with Jaquis and them like that. I know how Tyrone and them get down.

PAMELA EVANS: Alright, but I'm just saying, he-- look, he was-- he's talking about a whole different group of people. People that-- you know what I'm saying, that don't know you, Justin.

A They do know me. I don't know why they said they don't know me. They do know me.

PAMELA EVANS: Oh, this is horrible.

DET. SINGH: No, no, no, not--

A We all went to school together. They--

Q This-- this-- this group. No, no, no, not even them.

A Tyrone was in high school--

Q I gave you all of them.



APPENDIX S

Page 10

1 A. I made the first statement saying he was part of it  
2 because I thought he was one of the people that said I was  
3 involved or told them --

4 Q. All right. So you --

5 THE COURT: Was it out of revenge?

6 THE WITNESS: Yeah.

7 THE COURT: Go ahead.

8 BY MS. D'ALESSANDRO:

9 Q. All right. And you're saying today that that  
10 first statement was not true. Is that correct?

11 A. Yes.

12 Q. And you're telling us that he was not involved  
13 on that particular day.

14 A. No involvement.

15 Q. No involvement.

16 MS. D'ALESSANDRO: All right. Thank you.

17 THE COURT: Mr. Burke?

18 MR. BURKE: The state is satisfied.

19 THE COURT: The court is satisfied.

20 Defendant's got advice of extremely competent counsel he's  
21 satisfied with. He's entered his plea today freely and  
22 voluntarily. He's knowingly, intelligently and freely  
23 given up his rights to self-incrimination, to a trial by  
24 jury, to confront witnesses against him.

25 He's clearly not under the influence of any

APPENDIX U

STATE OF NEW JERSEY IN THE INTEREST OF T.S. -- December 20, 2012

SHEET 46

Court Decision

90

1 recall where they went afterwards?  
2 MR. MILLER: He said they got to the car  
3 together and he did not recall where they went next.  
4 THE COURT: Okay.  
5 MR. COMET: Correct.  
6 THE COURT: All right. All right. I want to  
7 be fac-- I want to be accurate. So, that's what the  
8 videotape says?  
9 MR. COMET: Audiotape. Yes.  
10 THE COURT: Audiotape. Okay. All right.  
11 All right.  
12 And, finally, Detective McDonald testified  
13 that he also learned through his investigation that at  
14 a court appearance -- and, again, this was admittedly  
15 hearsay -- but Tyrone was overheard telling one of his  
16 co-defendants that they were caught because of that rat  
17 Derek.  
18 And now on cross-examination -- again, Mr.  
19 Comet was very thorough -- very thorough in his -- in  
20 establishing the inconsistencies in Justin's statement.  
21 He also was thorough as far as establishing the lack of  
22 corroboration in regards to Justin's statement. He  
23 also established a potential motive for Justin  
24 fabricating his statement, his admitted dislike of his  
25 client, Tyrone.

Court Decision

91

1 With regard to Natalia's testimony -- again,  
2 I was not clear frankly in what was recorded and what  
3 was not recorded. But at the end of Mr. Comet's cross,  
4 it was clear to me, at least, that the -- any ID that  
5 may or may not have occurred of the juvenile Tyrone by  
6 Ms. Cortes was not recorded. So, that to me is the  
7 only thing that was clear.  
8 But, again, he did an excellent job in  
9 pointing out the inconsistencies in some of Justin's  
10 statements, as well as, again, the lack of -- of other  
11 witnesses identifying his client as the perpetrator.  
12 I also heard the test-- brief testimony of  
13 Tyrone Roy. I found Tyrone to be credible as a  
14 witness. And clearly the -- the reason Tyrone Roy was  
15 called is to establish time line, indicating that,  
16 again, he and another friend, Anthony Man-- Mancini,  
17 picked up Tyrone at his house at approximately 9:40,  
18 9:45. At approximately 10 p.m. they went to  
19 McDonald's. They ate food there for about ten or 15  
20 minutes. And then Anthony drove Tyrone Stephens home,  
21 which would have taken about another ten or 15 minutes.  
22 So, I think the juvenile's argument here is  
23 that, again, the time line -- and, again, the act was  
24 alleged to have occurred at 10:13 p.m. -- that Tyrone,  
25 at that time, would have either been at McDonald's or

ELITE TRANSCRIPTS, INC.

14 Boonton Avenue, Butler, New Jersey 07405  
973-283-0196 FAX 973-492-2927

## APPENDIX X

Miller - Closing Statement

84

1 dislocated shoulder -- shoulder. They all had  
2 lacerations. They all had swelling.

3 To say that a first degree robbery is -- is  
4 somehow an improper charge here, I think is way off  
5 base.

6 With -- with -- with regards to the defense  
7 of an alibi in -- in terms of events as to a probable  
8 cause determination -- well -- and -- and the evidence  
9 that defense counsel puts forth is that Tyrone Stevens  
10 say he was at McDonald's around ten o'clock. This  
11 offense is alleged to happen on or about 10:22 p.m.

12 So, Tyrone Stevens says he was at the  
13 McDonald's, which is a two minute walk away, a short  
14 while prior to when this offense occurred.

15 Honestly, the -- the state sees probable  
16 cause here, and the state urges this Court to find  
17 probable cause as well.

18 MR. COMET: Just -- sorry, Judge, just one  
19 correction. It was not 10:22. According to all the  
20 statements and according to --

21 THE COURT: 10:13.

22 MR. COMET: -- 10:13, Judge. That makes a  
23 huge difference in the time line.

24 THE COURT: Okay. Thank you.

25 (Extended pause)

Court Decision

85

1 THE COURT: All right. I heard the  
2 testimony, this afternoon, of Detective McDonald of the  
3 Englewood Police Department, who testified, again, that  
4 on the evening in question, three victims, Santiago  
5 Cortez, Jason Duque, and Christian Perdomo, were  
6 attacked outside a 7-Eleven. They were approached by a  
7 victim (sic) in a mask, who tells Santiago to,  
8 basically, give him his stuff.

9 Santiago doesn't speak English.

10 Santiago's friend, Jason, comes out from the  
11 7-Eleven to see what's going on. Jason tells the  
12 person that "We're not going to give you anything."

13 The mask person left, then came back with, at  
14 least, four people, and proceeded to beat up the three  
15 individuals, who all -- all three sustained injuries.

16 That's Detective McDonald's testimony  
17 regarding his investigation of what the victims of this  
18 offense told him.

19 In addition, there was a -- a witness -- eye-  
20 witness to the attack, named Natalia Cortez. Detective  
21 McDonald testified that she did, in fact, I.D. Tyrone  
22 as participating in the attack.

23 As I'll -- as I'll explain later, there's  
24 some question as to whether or not defense counsel  
25 maintains, and I have no reason to disbelieve him based