

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 WRIT OF CERTIORARI

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Petitioner, pro se

QUESTIONS PRESENTED

The questions present are:

1. Whether the District Court and Third Circuit Court of Appeals violated Petitioners right to due process and right to trial when they ignored evidence, weighed the evidence, determined the truth of the matter, and granted defendants Motion for Summary Judgment?
2. Whether Police Officers are absolutely immune from 42 U.S. Code § 1983 claims, or violated Petitioners 4th and 14th Amendment right by fabricating evidence and testimony in court to establish probable cause?

LIST OF PARTIES

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OPINIONS BELOW

The opinion of the United States court of appeals, appears at **APPENDIX A, 1a-8a** to the petition. The United States district court opinion, appears at **APPENDIX C-E, 11a-26a** to the petition.

JURISDICTION

On October 24, 2017, the Court of Appeals denied petitioners Petition for Rehearing, **APPENDIX B, 9a-10a**. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourth Amendment of the Constitution of the United States reads, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized".

The Fifth Amendment of the Constitution of the United States reads, "No person shall be deprived of life, liberty, or property, without due process of law".

The Seventh Amendment to the Constitution of the United States reads, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved".

The Fourteenth Amendment of the Constitution of the United States reads, Section 1. "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”.

FEDERAL CIVIL RULE 56

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

STATEMENT OF THE CASE

The 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.

ERROR OF FACT & LAW #1

(1) No identification by Natalia Cortes

A. Natalia’s sworn statement on November 2, 2012: **McDonald**: “If you saw the actors again, would you be able to identify them? **Cortez**: “I’m not really sure because it was really dark and most of them had hoods on and like that one in the bike had the ski-mask on”, **APPENDIX F, 27a-28a**.

B. During Justin Evans probable cause hearing, McDonald testified after speaking with the victims and witness Natalia Cortes on November 2, 2012, the Englewood Investigators “**only had Derric Gatti**”. “**On 11/02/12, ECF Doc 72-3, page 19, para #1. “After taking all of the statements from the victims and witnesses. Detective Singh and I drove to the Winton White football stadium to pick up Derric Gaddy for questioning”, ECF Doc 72-3, page 19, paragraph #3, last sentence. Q: After you attempted to interview Derric Gatti, what happened next? McDonald: I mean well, that was pretty much it. All we really knew at that particular point was Derric Gatti. APPENDIX G, 29a-30a**

C. McDonald testified during Justin Evans probable cause hearing that on, November 2, 2012,

Natalia **did not** identify any attackers. Q. Okay. She also said, "I'm not sure I can identify the actors it was really dark". I think, then, that you said **"If you saw them again could you identify them?"** McDonald (A). Right. Yes. Q. So then I think then you showed her the photo array, again? McDonald (A). That was for -- Q. Oh, detective Cabillos. McDonald (A). Yes ECF Doc 72-3, page 121. APPENDIX H, 31a

D. According to detective Cubullos, **Tyrone's (a juvenile)** picture was not in the photo array, and this photo array was the same used by McDonald on November 2, "On 11/13/12, I met with Natalia Cortes 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.** McDonald advised me that the individual that was placed in the photo array was a possible suspect Victory Sarhano. "No photo of any other juvenile suspect was used in this photo array", APPENDIX I, 32a

E. 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. APPENDIX J, 33a

F. Q. So, looking through the photo array, at headquarters, on November 13th, the bottom line is **Natalia could not identify anyone in the photo book as being there that night,** right? McDonald: Right. Doc. 003112688918, #4-21. APPENDIX K, 34a

G. 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

H. Jordan Comet (Q). And, at that point, was there ever a point where you said, I identify a specific person? Natalia Cortes (A). Well, I identified, like, one or

two that kind of stood out, but not him. Doc: 003112688921, para #10, #3-6. **APPENDIX M, 36a**

I. Jordan Comet: And the crucial question is, do you know whether one of those faces that you said might have been there was my client? Natalia Cortez: **No....I'm saying, no, it wasn't him**, ECF Doc. 72-3, page 94, para #17, #1-3. **APPENDIX N, 37a**

J. Prosecutor: Did you recognize any of the pictures that you pointed out as being Tyrone Stephens? Natalia Cortez: No. ECF Doc 72-3, pg 95, para 19, #16-18. **APPENDIX O, 38a**

ERROR OF FACT & LAW #2

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

A. Defendant McDonald's testified that none of the victims or codefendants identified Tyrone as the suspect. Comet: Did any of the victims identify my client? **McDonald**: No. Comet: Did any of the codefendants, other than Justin Evans who was accused himself of wearing a mask, did any of them identify my client? **McDonald**: No. ECF Doc 72-3, page 53, para 67, #7-12. **APPENDIX P, 39a**

B. 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"**. ECF Doc 72-2, page 70. **APPENDIX Q, 40a**

C. Justin Evans: **"How they gonna put my name in this?".. "Tyrone was in High School"**. **McDonald**: **I gave you all of them**. ECF Doc 72-2, pg 59. **APPENDIX R, 41a**

D. 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". ECF Doc 72-4, page 8-9. **APPENDIX S, 42a**

E. **Comet**: Did he say, "It's me because the officers are pushing me..." **McDonald**: correct. ECF Doc. 72-3, page 32, #24-25. **APPENDIX T, 43a**

ERROR OF FACT & LAW #3

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

A. **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. **APPENDIX U, 44a**

B. **Tyrone Stephens**: Kinlaw said he seen me! Kinlaw just said he seen me!

1. **Det. McDonald**: "**Kinlaw said he saw you and other people...when Kinlaw saw you on the Ave at this particular time you weren't at home..**"

2. **Marc Stephens**: Were you there?

3. **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.

4. **Marc Stephens**: **Kinlaw said he saw him on the Ave, at, look like 10 o'clock**. Where was this altercation at? The 7-Eléven on the ave.?

5. **Det. McDonald**: up the street.

6. **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.

7. **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?

8. Det. McDonald: That was at **10:00** he said, ECF Doc 72-2, page 91. para 9-14. **APPENDIX V, 45a**

C. 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. **APPENDIX W, 46a**

D. Det. McDonald gave false testimony at the probable cause hearing stating that Natalia Cortes identified Stephens as the suspect, **APPENDIX X., 47a**.

CONCLUSION: The Judges ignored the testimony of the time the victims said the attack occurred, and created their own facts regarding Natalia's ID, **APPENDIX A, 2a**, "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, identified three of the attackers as Tyrone, Justin Evans, and Derrick Gaddy". **APPENDIX A, 3a**, "First, Cortes, while acknowledging that she had earlier identified Tyrone as a perpetrator, testified that she was not actually sure if he was involved". "[A] finding of fact is clearly erroneous if it is without factual support in the record, United States v. Artus, 591 F. 2d 526 - Court of Appeals, 9th Circuit 1979 at 528. **US v. Mageno, 762 F. 3d 933 - Court of Appeals, 9th Circuit 2014 at 943-944**.

ERROR OF FACT & LAW #4

The 3rd Circuit states, "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", Order ECF 91, page 2. **APPENDIX E, 21a-23a.**

A. Plaintiffs did not fail to demonstrate why they should be exempted from New Jersey's affidavit of merit requirement.

Plaintiffs argued in their opposition brief, "The Affidavit of Merit Statute, 2A:53A-28(3) reads, "An affidavit **shall not be required** pursuant to section 2 of this act if the plaintiff provides a sworn statement in lieu of the affidavit setting forth that: the defendant has failed to provide plaintiff with medical records or other records or information having a substantial bearing on preparation of the affidavit; a written request therefor along with, if necessary, a signed authorization by the plaintiff for release of the medical records or other records or information requested, has been made by certified mail or personal service; and **at least 45 days** have elapsed since the defendant received the request".

"Attorneys should begin discovery promptly when facts are needed to comply with the Affidavit of Merit statute. We urge counsel to time their discovery - with court intervention, if necessary - so that facts necessary

to comply with N.J.S.A. 2A:53A-27 are available by the statutory deadlines.” *Fink v. Thompson*, 167 N.J 551, 564-65 (2001). The plaintiffs started **9 months** before filing, and sent 8 notices to defendant for discovery.

1. FIRST NOTICE AND REQUEST, On November 11, 2013, Plaintiff sent Notice requesting for a few documents and emails, “other records or information”, between defendant and plaintiff Marc Stephens. Plaintiff notice states the reason for the requested information is to obtain an Affidavit of Merit, “This information is needed to present to the judge”, see ECF Document 40-8, page 10. **APPENDIX Y, 48a**

2. SECOND NOTICE AND REQUEST, February 28, 2014, Plaintiff sent Notice of Intent to sue requesting for a few documents and emails, “other records or information”, between defendant and plaintiff Marc Stephens, page 8 – Legal malpractice, see ECF Document 40-8, page 13, 20. **APPENDIX Z, 49a-50a**. The notice clearly informs Remson about the Affidavit of Merit. Marc provided evidence that his emails between him and Remson were hacked, ECF Doc. 84, pages 14, paragraph #2, Police report. **APPENDIX AA, 51a**.

On August 26, 2014, Civil Complaint filed by Plaintiffs stating defendant “agreed in writing not to take plea deals”, see ECF Document 6, page 13, para #16-17. **APPENDIX BB, 52a**.

3. THIRD NOTICE AND REQUEST, October 22, 2014, Plaintiff forward discovery to defendants requesting for a few documents and emails, “other records or information”, between defendant and plaintiff Marc Stephens, question #27, “Provide any and all copies of documents and emails relating to or reflecting any communications between Plaintiff and Defendant”, see EX. D to Pakrul Decl., page 13, ECF document 30-17, page 13. **APPENDIX CC, 53a**.

4. **FOURTH NOTICE AND REQUEST**, November 21, 2014, Plaintiff sends another request for a few documents and emails which defendant tells plaintiff to stop requesting for the documents, "We still urge you to please refrain from engaging in such discovery until we have heard from the court with respect to the parameters of permissible discovery for this litigation", EX. 7 to Marc's Decl, see ECF Document 40-8, page 25. **APPENDIX DD, 54a.**

5. **FIFTH NOTICE AND REQUEST**, Plaintiff sends request for a few documents and emails, "other records or information", between defendant and plaintiff Marc Stephens which defendant ignores. The plaintiff also reminded the defendant that "there are not many emails between us", EX. 8 to Stephens Decl, #2., see ECF Document 40-8, page 27. **APPENDIX EE, 55a.**

45 DAYS IS EXPIRED. ON DECEMBER 8, 2014 PURSUANT TO AFFIDAVIT OF MERIT STATUTE, 2A:53A-28(3), AFFIDAVIT IS NOT REQUIRED IF "AT LEAST 45 DAYS HAVE ELAPSED SINCE THE DEFENDANT RECEIVED THE REQUEST". IN FACT THE PLAINTIFF REQUESTED ON NOVEMBER 11, 2013, 9 MONTHS BEFORE FILING THE COMPLAINT. DEFENDANT CONFIRMED RECEIPT OF THE REQUEST AND TOLD PLAINTIFF TO STOP ASKING FOR THE DISCOVERY. IN ADDITION, UNDER FEDERAL LAW DEFENDANTS HAD 30 DAYS TO ANSWER DISCOVERY WHICH THEY RESPONDED OVER 133 DAYS LATER.

6. **SIXTH NOTICE AND REQUEST**, February 9, 2015, plaintiff is reminding defendant that discovery close on March 21, 2015, and provided Defendant with 7 days to forward requested Discovery, see ECF Document 40-8, page 30. **APPENDIX FF, 56a.**

7. **SEVENTH NOTICE AND REQUEST**, February 16, 2015, plaintiff forwarded a sworn statement "Waiver

for Affidavit of Merit” to Judge Mark Falk., raising the argument that defendant is intentionally withholding discovery and that the Common Knowledge Exception applies by providing exhibits showing Remson agreed in writing not to plead guilty and then later forced Tyrone to plead guilty, ECF Document 33-1, page 1-6. **APPENDIX GG, 57a-61a**

8. **EIGHTH NOTICE AND REQUEST**, February 19, 2015, the plaintiff filed a sworn statement to Judge Falk’s on record stating the “Affidavit of Merit not required”, **APPENDIX HH, 62a**. “[d]efendants delayed production of important documents and records, failed to respond to requisite discovery and engaged in “gamesmanship.” This raises the question whether defendants may have intentionally sought to achieve a technical defeat of valid claims”, **Newell v. Ruiz, 286 F. 3d 166 - Court of Appeals, 3rd Circuit 2002 at 172.** “[w]here the attorney intends to rely solely on the doctrine of “res ipsa loquitur”, **Hubbard ex rel. Hubbard v. Reed, 774 A. 2d 495 - NJ: Supreme Court 2001 at 500** (holding an affidavit of merit is not necessary in common knowledge malpractice cases). “Although res ipsa does not shift the burden of proof to the defendant, it ordinarily assures the plaintiff a prima facie case that will survive summary judgment”. **Jerista v. Murray, 883 A. 2d 350 - NJ: Supreme Court 2005 at 360.** “Common knowledge is sufficient to entitle plaintiffs to the res ipsa inference”, *Id* at 362. “When the average juror can deduce what happened without resort to scientific or technical knowledge, expert testimony is not mandated”. *Id* at 365.

REASONS FOR GRANTING THE PETITION

I. REVIEW IS NEEDED BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT:

Pursuant to **Rule 10**, the following indicate the character of the reasons the Court considers:

(a) The Court will Hear Cases to Resolve a Conflict of Law:

(b) A petition for a writ of certiorari will be granted only for compelling reasons:

(c) A state court or a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The 3rd Circuit Court of Appeals have decided an important question of federal law that conflicts with relevant decisions of this court.

1. POLICE OFFICERS ARE NOT ALLOWED TO FABRICATE EVIDENCE

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

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. POLICE OFFICERS ARE NOT ALLOWED TO "COERCE" JUVENILES, AND AT THE SUMMARY JUDGMENT STAGE THE COURT IS NOT ALLOWED TO WEIGH THE EVIDENCE AND DETERMINE THE TRUTH OF THE MATTER.

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

This court ruled: "[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.

3. THE COURT IS NOT BARRED FROM ADDRESSING ARGUMENTS NOT RAISED IN THE OPENING BRIEF AND SHOULD ALLOW APPELLANTS TO RESUBMIT

A. Panel Opinion states APPENDIX A, 4a, footnote, “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)”.

The court of appeals is allowed to consider arguments not raised in the opening brief, and is allowed to suspend all rules pursuant to FRAP Rule 2 and FRCP Rule 61 in order to prevent manifest injustice. “We consider an argument not raised in an opening brief if: (1) there is “good cause shown,” or “failure to do so would result in manifest injustice”; (2) the issue is raised in the appellee’s brief; or (3) failure to properly raise the issue does not prejudice the defense of the opposing party, *United States v. Ullah*, 976 F.2d 509, 514 (9th Cir. 1992)”, *US v. Mageno*, 762 F. 3d 933 - Court of Appeals, 9th Circuit 2014 at 940. “At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights”, *United States v. Olano*, 507 US 725 - Supreme Court 1993.

4. 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

In considering a summary judgment motion, a court must view the evidence in the light most favorable

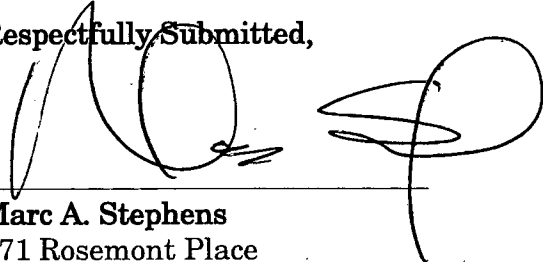
to the non-moving party and give that party the benefit of all reasonable inferences that can be drawn from the evidence. Burton, 707 F.3d at 425. Inferences must flow directly from admissible evidence. See **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986). An issue is "genuine" if it is supported by evidence such that a reasonable jury could return a verdict in the nonmoving party's favor. **Anderson v. Liberty Lobby, Inc.**, 477 U.S. 242, 248 (1986). A fact is "material" if, under the governing substantive law, a dispute about the fact might affect the outcome of the suit. Thus, to withstand a properly supported 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.

As shown above, the Judges took on the role of the Jury, and denied Appellants right to due process and right to trial by jury. The Fifth Amendment of the Constitution of the United States reads, "No person shall be deprived of life, liberty, or property, without due process of law". "At its core, the right to due process reflects a fundamental value in our American constitutional system", **Boddie v. Connecticut**, 401 US 371 - Supreme Court 1971 at 374. The seventh Amendment to the Constitution of the United States reads, "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved".

CONCLUSION

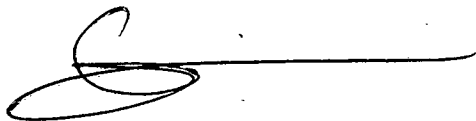
The petition for writ of certiorari should be granted.

Respectfully Submitted,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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A handwritten signature in black ink, featuring a large loop on the left and a long horizontal line extending to the right.

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