

## JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

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JCP No. 08-23-90005  
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In re Complaint of John Doe<sup>1</sup>

These are judicial complaints filed by a criminal defendant (“complainant”) against the United States district judge and United States magistrate judge assigned to the complainant’s criminal case.

The first judicial complaint alleges that the district judge (1) intimidated the complainant, who acted pro se, by commenting that the complainant would not be permitted to “make a circus out of the court”; (2) erred in not allowing the complainant to impeach certain witnesses, introduce certain evidence, challenge stop, and challenge the authenticity of certain evidence during trial; (4) erred in not considering out-of-circuit precedent; (4) erred in denying the complainant’s motion for an evidentiary hearing; and (5) erred in denying the complainant’s motion to dismiss the indictment; and (6) unreasonably denied the complainant’s request for a stay of imprisonment pending appeal. Collectively, the judicial complaint alleges that the district judge violated the complainant’s due process rights, acted impartially, and punished the complainant for going to trial.

The second judicial complaint alleges that the magistrate judge violated the complainant’s due process rights and Fourth Amendment rights in recommending that

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<sup>1</sup>Under Rule 4(f)(1) of the Rules Governing Complaints of Judicial Misconduct and Disability of the Eighth Circuit, the names of the complainant and the judicial officer complained against are to remain confidential, except in special circumstances not here present.

the district judge deny the complainant's motion to suppress because the magistrate judge's findings were based "on transparent false reporting and false claims" of the witnesses who testified at the evidentiary hearing.

I have reviewed the record. *See* Judicial-Conduct and Judicial-Disability Proceedings of the Judicial Conference of the United States (J.C.U.S.) Rule 11(b). Prior to trial, the complainant moved to suppress evidence, and the magistrate judge held an evidentiary hearing. The magistrate judge recommended denial of the motion, concluding that reasonable suspicion justified the officers' traffic stop and that a subsequent vehicle search was lawful. The magistrate judge credited the testimony of the officers in making these legal conclusions.

During trial, the trial transcript shows that the complainant, proceeding pro se, made numerous requests of the district judge. In response, the district judge reminded the complainant that the district judge did not "represent" the complainant and would not give the complainant "any more legal advice." Despite being "generous" toward the complainant, the district judge commented that "a huge amount of the jury's time" was being "wast[ed]" and urged the complainant to "start planning" in preparation for the defense's case. The district judge advised the complainant that the district judge was "not going to allow [the complainant] to waste everyone's time just to make a parade out of this thing." In response, the complainant commented, "I'm not making a parade. I'm just fighting for my life, sir. I'm not making a parade so please don't reference that." The district judge replied, "Well, that's exactly what you've done so far. You have done some things that are completely inappropriate under the law. They're not supported by any evidence that could possibly help your cause." The district judge then stated, "I am willing . . . to allow you to make the points you feel you need to make, but what we are not going to do is make this into a circus."

Following the jury's guilty verdict, the complainant moved for an evidentiary hearing so that the complainant could present evidence that the government withheld exculpatory information from him. Specifically, the complainant "argue[d] that the

current state of his cellphone, which was turned over to his relatives after trial, shows that law enforcement tampered with his phone to prevent him from extracting ‘GPS’ data to use for his defense.” The district judge denied the motion, determining that (1) the “cellphone was not newly discovered evidence [that] warrant[ed] a new trial”; (2) “the information about [the] cellphone was not material to any issue at trial”; and (3) even if the cellphone evidence could be used to impeach the witnesses, such reason was “insufficient to obtain a new trial because evidence that merely impeaches is not material.” (Internal quotation marks omitted.)

The complainant then filed a motion to dismiss the second superseding indictment based on the government’s alleged failure to comply with a discovery order. The district judge denied the motion. First, the district judge concluded that the government did comply with the order. Second, the district judge determined that even if the government did not comply with the order, the complainant suffered no prejudice from the government’s alleged delay.

Having reviewed the record, to the extent the judicial complaints’ allegations challenge the magistrate judge’s recommendation on the suppression motion, the district judge’s trial rulings, and the district judge’s orders, they must be dismissed as “directly related to the merits of a decision or procedural ruling.” 28 U.S.C. § 352(b)(1)(A)(ii); *accord* J.C.U.S. Rules 4(b)(1), 11(c)(1)(B). To the extent the judicial complaints allege that the magistrate judge and district judge violated the complainant’s rights, acted impartially, or engaged in other judicial misconduct, such allegations are “frivolous, lacking sufficient evidence to raise an inference that misconduct has occurred.” 28 U.S.C. § 352(b)(1)(A)(iii); *accord* J.C.U.S. Rule 11(c)(1)(C), (D).

The judicial complaint is dismissed.

July 5, 2023

Lavenski R. Smith

Lavenski R. Smith, Chief Judge  
United States Court of Appeals  
for the Eighth Circuit