

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 12-165

Complainant: No. 1444510356A

Judge: No. 1444510356B

ORDER

The complainant alleged that a superior court judge engaged in judicial misconduct by ruling that a witness could testify at his trial notwithstanding his claim that the identification procedure the police used was unduly suggestive.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the provisions of Article 6.1 of the Arizona Constitution or the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After reviewing the information provided by the complainant, the commission found no evidence of ethical misconduct and concluded that the judge did not violate the Code in this case. The commission does not have jurisdiction to review the legal sufficiency of the judge's ruling. Accordingly, the complaint is dismissed in its entirety pursuant to Rules 16(a) and 23.

Dated: August 6, 2012.

FOR THE COMMISSION

/s/ George Riemer

George A. Riemer
Executive Director

Copies of this order were mailed to the complainant and the judge on August 6, 2012.

This order may not be used as a basis for disqualification of a judge.

To: State of Arizona, Commission on Judicial conduct
1501 W. Washington Street, Suite 229
Phoenix, Az. 85003

Date: June 7, 2012

From:

On June 1,st 2012 I had A Messerault hearing set for misidentification. Judge was ill and it was vacated til the June 4th 2012. I which time Judge was still ill so it was vacated til June 6th, 2012. On June 6, 2012 3 witnesses took the stand, Det.

Jumping into the problem that I have with the Judge is the Facts that follow:

① Reliability of witness initial identification is key to its Admissibility, U.S. v Dring, C.A.9 (Cal.) 1991, 930 F.2d 687, Certiorari denied 113 S. Ct. 110. 506 U.S. 836, 121 L. Ed. 2d 68. Criminal law key 337.6

* In this case the lone witness stated that he didn't know the suspect, and only saw the back of the suspects head when everything happen. Furthermore when the witness was asked if he had gotten a profile shot of the

guy in Det. Audio Interview Transcripts with He stated " Yes. Yeah, when you sent me a picture, I... A suspect was unknown until Det. Showed A single photo on 3 different time, sometime before the second interview on 1/18/11, that he didn't make a report about, Also on 1/18/11, and 3/11/11, his last contact with that was on 3/11/11 was not recorded. Admitted to lying to Det. during the whole investigation, And now a year a five months later changes his story completely, And has been given Amunity.

② The showing of only a single suspect to witnesses is the most suggestive and thus the most objectionable method of pretrial identification. *Sanchell v. Parnatt*, C.A. 8 (web) 1976. 530 F.2d 286. Criminal Law key 339.8(c)

* Det. , during the June 6, 2012 hearing with Judge , Admitted to going against Police procedure, and Policy when he showed the single photo of , to more than 3 times. He also made suggestive statements from his own words during his 1/18/11 interview w/ " This picture is the guy you met as Knittie while you

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were tattooing and is the same guy that you saw attack that night." Judge said himself that the showing of a single photo was very suggestive, also heard say that he lied to the Det. during the whole investigation, yet still allowed his testimony to be in trial.

* "Impropriety" includes conduct that violates the law, court rules, or provisions of this code, and conduct that undermines a judge's independence, integrity, or impartiality.

* Rule 2-2 Impartiality And Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

③ Police detective's alleged insistence to eyewitness to take a really good look at the photograph of defendant after failing to get an identification from eyewitness on several prior occasions constituted undue suggestiveness, as would support determination that subsequent in-court identification of defendant by eyewitness was unreliable, in prosecution for second-degree murder and robbery. C.A.3

(PA) 2005, 428 F.3d Certiorari 127 S.Ct. 928.
 549 U.S., 110, 166 L.Ed. 2d 701, Criminal Law.
 Key 339.10(2)

* Again From the transcripts of Det.
interview w/ On 1/18/11
 he stated in Lines 20-22 " So, I just wanted
 to clarify with you that this picture, And I'll show
 you again, this is the same picture that I showed
 you before. This picture is the guy you met
 as Knittie while you were tattooing and is
 the same guy that you saw attack that
 night!"

* There wasn't A record of him making
 A report or nothing the first time he showed
 A single photo.

④ Police Abuse of Identification procedures during
 course of criminal Investigation is not beyond
 reach of constitution Kirby v. Illinois U.S. 111. 1972, 92
 S.Ct. 1877, 406 U.S. 682, 32 L.Ed. 2d 411 criminal
 law key 339.6.

* Judge disregarded the fact that A single
photo was shown on 3 different times to the lone
witness, Also the fact that

Det. admitted to going against Mesa police policy, and procedures during his investigation when he showed the single photo of to witness 3 times.

⑤ Line between an identification that is admissible but likely to carry little weight and one that is inadmissible because tainted by an impermissibly suggestive pretrial identification does not lie in the same place for both judge and jury trials; tainted identification evidence cannot be allowed to go to a jury because they are likely to accept it uncritically however, an experienced trial judge will undoubtedly receive it skeptically and accord it no more weight than it deserves. *Smith v. Paderick* C.A.4 (VA) 1975, 519 F.2d 70, certiorari 96 S.Ct. 293, 423, U.S. 935, 46 L.Ed. 2d 267 criminal law key 339.10 (1).

⑥ Rule 2.4 external influences in judicial conduct

① A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

