

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,  
IN AND FOR SEMINOLE COUNTY, FLORIDA

CASE NO. 04-CF-2491-A

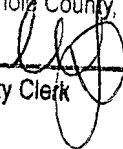
STATE OF FLORIDA,

Plaintiff,

v.

CLEMENTE JAVIER AGUIRRE-JARQUIN,

Defendant.

FILED IN OPEN COURT THIS  
MARCH 13, 2018  
GRANT MALOY  
Clerk of Circuit Court and Comptroller  
Seminole County, Florida  
By:   
Deputy Clerk

**ORDER DISMISSING DEFENDANT'S SECOND MOTION TO DISQUALIFY  
JUDGE JESSICA J. RECKSIDLER**

**THIS MATTER** came before the Court for consideration upon the Defendant's "Second Motion to Disqualify Judge Jessica J. Recksiedler," e-filed on March 9, 2018. While the Defendant has previously filed a motion for disqualification in this case, this Court was not disqualified. Therefore, this motion should be treated as a first motion to disqualify. Consequently, this Court is required by law to review the motion for the sole purpose of determining its legal sufficiency. *Turner v. State*, 598 So. 2d 186 (Fla. 1st DCA 1992). "The facts alleged in a motion seeking to disqualify a trial judge must be evaluated as true for the purposes of determining legal sufficiency." *Messianu v. Pigna*, 180 So. 3d 229, 230 (Fla. 3d DCA 2015). The Court is not permitted to deny the allegations supporting the motion as untrue. To do so establishes independent grounds for disqualification. *Bundy v. Rudd*, 366 So. 2d 440, 442 (Fla. 1978).

The Defendant asserts seven bases for disqualification: 1) the Court struck the panel without input of counsel and based upon improper considerations 2) the Court's misstatements to prospective jurors suggest a bias against the Defendant; 3) the Court description of jury service as a means to do their civic duty suggests the Court's bias against the Defendant; 4) the Court's tone and demeanor suggest the Court is biased against the Defendant; 5) the Court denied the defense's unopposed motion for a two-business day continuance of the trial; 6) the manner in which the Court conducted jury selection proceedings will prevent the Defendant from receiving a fair trial; and 7) cumulative effect. The Defendant swore to the facts contained in the motion, so the motion is compliant with Fla. Stat. §38.10 and Fla. R. Jud. Admin. 2.330.

As required by law, the Court assumes the factual allegations supporting the motion for disqualification are true solely for the purpose of determining legal sufficiency. The Defendant's motion is legally insufficient. *See Correll v. State*, 698 So. 2d 522, 525 (Fla. 1997); *Pilkington v. Pilkington*, 182 So. 3d 776, 779 (Fla. 5th DCA 2015); *Braddy v. State*, 111 So. 3d 810, 834 (Fla. 2012) ("comments, made in the course of the judge's efforts to control the courtroom, are not legally sufficient to require

disqualification”); *Housing Authority of the City of Tampa v. Burton*, 873 So. 2d 356 (Fla. 2d DCA 2004), *disapproved on other grounds*, *Sutton v. State*, 975 So. 2d 1073 (Fla. 2008) (holding that prior adverse rulings, whether legally correct or incorrect, are not a proper basis for disqualification); *Gilliam v. State*, 582 So.2d 610 (Fla. 1991) (holding receiving adverse rulings is not a ground for recusal) *Parker v. State*, 3 So. 3d 974, 982 (Fla. 2009), *Krawczuk v. State*, 92 So.3d 195 (Fla. 2012) (“Where the claim of judicial bias is based on very general and speculative assertions about the trial judge's attitudes, no relief is warranted”); *Fetzner v. State*, 219 So. 3d 834, 837 (Fla. 4th DCA 2017) (“trial court should not be disqualified for attempting to keep the case moving”).

Accordingly, it is

**ORDERED AND ADJUDGED:**

The Defendant’s Second Motion to Disqualify Judge Jessica J. Recksiedler is hereby **dismissed**.

**DONE AND ORDERED** in chambers at Sanford, Seminole County, Florida this 12 day of March, 2018.

  
JESSICA J. RECKSIEDLER, Circuit Judge

Copies furnished this 13 day of March, 2018 to:

Office of the State Attorney

Frank Bankowitz, Esquire  
215 East Livingston Street  
Orlando, FL 32801  
[FJB@bankowitzlaw.com](mailto:FJB@bankowitzlaw.com)

Marie-Louise Samuels Parmer, Esquire  
The Samuels Parmer Law Firm  
Post Office Box 18988  
Tampa, FL 33679  
[Marie@samuelsparmerlaw.com](mailto:Marie@samuelsparmerlaw.com)

  
JUDICIAL ASSISTANT