In the

United States Court of Appeals

for the Seventh Circuit

No. 21-1194

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FRANSHON STAPLETON,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of Illinois.
No. 18-cr-20028 — **James E. Shadid**, *Judge*.

ARGUED SEPTEMBER 7, 2022 — DECIDED DECEMBER 27, 2022

Before SYKES, *Chief Judge*, and HAMILTON and BRENNAN, *Circuit Judges*.

SYKES, *Chief Judge*. Franshon Stapleton lured vulnerable women into prostitution and exploited them for his financial benefit using threats, force, and other forms of coercion. An anonymous tip led to his arrest, and a 16-count indictment for sex-trafficking crimes followed. Stapleton was convinced that the police had fabricated the anonymous tip and tampered with his cellphone; he wanted his counsel to pursue

these theories. The district court appointed a succession of attorneys to represent him, but he was constantly at odds with them regarding his police-misconduct claims. His dissatisfaction came to a head when the judge denied his motion to suppress the evidence derived from the anonymous tip. At that point Stapleton insisted on representing himself.

After making the inquiries required by *Faretta v. California*, 422 U.S. 806, 835 (1975), the judge accepted Stapleton's invocation of his right to self-representation and appointed a standby attorney. About a month before trial, Stapleton moved for a court-funded expert to investigate his claim that the police had tampered with his phone. The judge denied the motion. The case then proceeded to trial. After a jury was empaneled but before opening statements, Stapleton announced that he would conditionally plead guilty to all charges, reserving the right to challenge the suppression ruling. The judge conducted a Rule 11(b) colloquy and accepted Stapleton's pleas of guilty on all counts. Before sentencing, however, Stapleton moved to withdraw his pleas. The judge ruled against him and imposed a sentence of life in prison as recommended by the Sentencing Guidelines.

Stapleton has not pursued his reserved challenge to the suppression ruling. Instead, he argues that his guilty pleas were invalid because he did not have counsel and was confused about his appellate rights during the plea colloquy. He also challenges the denial of his motion for a court-funded expert to investigate his phone-tampering claim.

We reject these arguments and affirm. Stapleton validly waived his right to counsel after two thorough *Faretta* collo-

quies, and his guilty pleas were likewise knowing and voluntary. And the judge did not abuse his discretion in denying Stapleton's request for a court-funded cellphone expert.

I. Background

In October 2017 the Urbana Police Department received an anonymous tip linking Stapleton to an ongoing sex-trafficking operation in the Champaign-Urbana metro area in central Illinois. Around the same time, Officer Adam Marcotte observed a black Ford Expedition suspiciously parked near a hotel associated with drug and sex-trafficking activity. The vehicle was registered to "Lamar Stapleton" at an address in Springfield, Illinois. A search of the law-enforcement database revealed that Franshon Stapleton lived at the same address.

One month later Officer Marcotte noticed the same Expedition parked at a gas station approximately a mile from the hotel. As the officer was confirming the car's registration, he saw a man walk out of the station and enter the driver's seat of the Expedition. The man matched the tipster's description of Franshon Stapleton. Marcotte knew that Stapleton had a suspended driver's license, so he stopped the vehicle and requested a K-9 assist. When the K-9 alerted for the presence of drugs, Stapleton was arrested. A full search of the vehicle uncovered cash, drugs, drug paraphernalia, hundreds of condoms, and four cellphones.

That night while Officer Marcotte was logging the cellphones into evidence, a text message popped up on one of the phones. The message, which referred to drug-trafficking activity, provided probable cause for several search war-

rants. Follow-up investigation and forensic phone analysis revealed Stapleton's central role in a sex-trafficking conspiracy in which he and two others lured homeless, addicted, and otherwise vulnerable young women into prostitution by fraud, threats, violence, and other coercive measures. Additional investigation culminated in a superseding indictment charging Stapleton with 16 crimes: conspiracy to commit sex trafficking, 18 U.S.C. § 371; three counts of sex trafficking by force, threat, or coercion, *id.* § 1591(a)(1), (b)(1); one count of benefitting from sex trafficking, *id.*; and eleven counts of using a facility in interstate commerce to aid a racketeering enterprise, *id.* § 1952(a)(3)(A).

An assistant federal defender was appointed to represent Stapleton. About nine months later, however, Stapleton wrote to the court complaining about his lawyer. After a hearing to address his complaints, the problem seemed resolved. But soon after, the federal defender withdrew for unrelated reasons, and Attorney Monroe McWard was appointed. At McWard's request, the court later appointed Attorney Mark Wykoff as cocounsel. Stapleton's attorneys then moved to suppress the incriminating evidence stemming from the text message that Officer Marcotte saw on Stapleton's cellphone. The motion alleged in relevant part that the police had unlawfully accessed the contents of Stapleton's cellphone without first obtaining a search warrant.

At the suppression hearing, the government called Agent Michael Mitchell, a forensic expert with the Department of Homeland Security. He testified that Stapleton's cellphone had been set to automatically display all notifications—including private text messages—even if the phone was

locked. Although Stapleton testified to the contrary, Chief Judge Darrow determined that there was "no credible evidence that the officers went in and changed the settings" on the cellphone. She denied Stapleton's motion to suppress.

A few months later, Stapleton filed a pro se motion complaining about his attorneys and requesting new counsel. By then his case had been reassigned to Judge Mihm, who granted the motion and appointed Attorney David Rumley. But the latest attorney–client relationship did not get off to a good start; within two months, Rumley reported that Stapleton would not work with him. Before the court could step in, Rumley moved to withdraw based on an unrelated conflict of interest. Judge Mihm granted the motion and was prepared to appoint another lawyer, but Stapleton said he wanted to represent himself. After advising Stapleton against self-representation, Judge Mihm conducted a formal colloquy pursuant to *Faretta v. California*, 422 U.S. 806. He reminded Stapleton of his Sixth Amendment right to an attorney. He then reviewed with Stapleton the charges against him, the penalties for each charge, and the applicable court rules. The judge advised Stapleton that a lawyer would defend him "far better" than he could defend himself.

Despite Judge Mihm's warning that proceeding pro se was "extremely unwise," Stapleton confirmed that he wanted to do so. Judge Mihm therefore found that Stapleton knowingly and voluntarily waived his right to counsel. But when Stapleton learned later in the same hearing that he would need to relocate to a different jail facility to access discovery material, he changed his mind. He withdrew his self-representation request and asked for new counsel. Judge Mihm appointed Attorney Charles Schierer.

Several months later, Stapleton filed a pro se letter again advising the judge that he wanted to represent himself. Because almost two years had passed since Stapleton's indictment, Judge Mihm warned: "I'm definitely not going to … appoint[] another attorney to represent you. … [T]his has … to come to an end." After warning Stapleton that the decision to proceed pro se was "fraught with problems and risks," Judge Mihm conducted a second *Faretta* colloquy. Stapleton acknowledged that he had never studied the law nor represented himself in the past. The judge again confirmed that Stapleton was aware of the charges against him, the corresponding possible penalties, and the applicable court rules. Judge Mihm advised Stapleton in the "strongest possible terms" that he would be much better served by "a trained lawyer." Then he "strongly urge[d]" Stapleton not to represent himself. Still, Stapleton confirmed that he wanted to do so—in part because he wanted to move for reconsideration of his suppression motion. Judge Mihm found that Stapleton knowingly and voluntarily waived the right to counsel and accepted his invocation of his right of self-representation. But the judge asked Schierer to remain on the case as standby counsel.

Proceeding pro se, Stapleton filed two motions relevant to this appeal. First, he asked the judge to remove Schierer as standby counsel and reappoint Mark Wykoff to his case. Second, he moved for a court-funded expert to examine his cellphone for possible police tampering.

At the next status hearing, Judge Shadid, who had replaced Judge Mihm, denied Stapleton's motion to reappoint Wykoff. The judge reminded Stapleton that he himself had requested Wykoff's removal and that he had already had

"plenty of opportunit[ies] with plenty of lawyers to address the motions that need[ed] to be addressed." Stapleton then refused to accept any further assistance from Schierer, his standby counsel.

Judge Shadid also denied Stapleton's motion for a court-funded cellphone expert. In a written order, the judge explained that Stapleton had failed to justify the request or provide the basic supporting information required for an application for expert-witness funds under the Criminal Justice Act, 18 U.S.C. § 3006A(e)(1). Stapleton's request, the judge concluded, was nothing more than a "fishing expedition."

At a status hearing two weeks before the scheduled trial date, Stapleton asked the judge to continue the trial and appoint yet another lawyer. Judge Shadid declined to do so, explaining that the "request for a lawyer at this stage in the proceeding [was] simply for the purpose of delay." Stapleton then interjected: "I'm not going to trial. I'll plead guilty then, and then I'll come back." He continued: "I'm going to plead, but I'm going to withdraw my plea … after I obtain a lawyer … ."

A week later Stapleton filed a "Motion for Change of Plea" in which he asserted that he would "change [his] plea to guilty" so long as he could "obtain counsel" and reserve "all [his] appeal rights." Yet by the final pretrial conference—when the judge addressed the motion—Stapleton had changed his mind. He requested a continuance and the appointment of counsel to pursue his theory that the police had fabricated the initial tip. The judge denied the request since there was "no indication" that Stapleton would "ulti-

mately be satisfied" with another lawyer. Stapleton opted to proceed to trial.

On September 28, 2020, the first day of trial, Stapleton again expressed an interest in pleading guilty if he could preserve the suppression issue for appeal. Although the judge encouraged Stapleton to accept Schierer's "expertise and guidance" and to allow him to help with plea negotiations, Stapleton refused.

Because the situation was fluid and the prosecutor needed to obtain approval from her office before agreeing to a conditional guilty plea, the judge moved forward with jury selection. After a jury was empaneled, the judge asked Stapleton how much time he needed for his opening statement. Stapleton retorted, "I thought that I was pleading guilty." The judge asked, "Are you saying that you want to admit guilt if the government will allow you the right to reserve [a] challenge [to] the motion to suppress?" Stapleton answered, "Yes." The government clarified that it would agree to a conditional guilty plea. Stapleton then signed a Notice of Conditional Plea in which he admitted his guilt and reserved the right to appeal the denial of his suppression motion.

With that, Judge Shadid placed Stapleton under oath and conducted a change-of-plea hearing as required by Rule 11(b) of the Federal Rules of Criminal Procedure. During the ensuing colloquy, the judge reiterated that Stapleton reserved his right to challenge the adverse suppression ruling. Stapleton then pleaded guilty to all 16 counts. The judge found that the pleas were knowing and voluntary and accepted them.

Two months later Stapleton filed four successive pro se motions to withdraw his guilty pleas, asserting his innocence and alleging government misconduct. Judge Shadid denied the first in a text order, then addressed and denied the others at the beginning of the sentencing hearing. He explained that the transcript of the guilty-plea colloquy defeated Stapleton's arguments and clearly established that his guilty pleas were "knowingly and voluntarily made."

The judge then turned to sentencing. He began by adopting the presentence report's calculation of the Guidelines sentencing range, which produced a recommended sentence of life in prison. The government then presented testimony from Agent Mitchell and the case officer from the Urbana Police Department. The prosecutor also called one of Stapleton's codefendants to testify about Stapleton's offense conduct. Lastly, Judge Shadid received victim-impact statements from two of the victims. The prosecutor urged the judge to impose the life sentence recommended by the Guidelines. When the opportunity for allocution came, Stapleton at length denied any wrongdoing.

In his sentencing remarks, Judge Shadid emphasized the gravity and scope of Stapleton's sex-trafficking operation, the irreparable harm he had caused to the victims, and Stapleton's history of violence against and exploitation of women—all of which, he said, justified a life sentence as recommended by the Guidelines. The judge imposed a sentence of life in prison, and this appeal followed.

II. Discussion

Proceeding with counsel on appeal, Stapleton has declined to pursue his preserved challenge to Judge Darrow's

suppression ruling.[1] He instead raises two issues unrelated to that ruling. First, he challenges the denial of his motions to withdraw his guilty pleas, arguing that he did not knowingly and voluntarily plead guilty because he was both deprived of his right to counsel and confused about his appellate rights. Second, he challenges the denial of his motion for a court-funded cellphone expert.

A. Plea Withdrawal

A defendant has "no absolute right" to withdraw a guilty plea after it has been accepted. *United States v. Collins*, 796 F.3d 829, 834 (7th Cir. 2015). Rather, to prevail on a motion to withdraw a guilty plea before sentencing, the defendant has the burden to "show a fair and just reason" for the request. FED. R. CRIM. P. 11(d)(2)(B). Successfully showing that the plea was not knowing and voluntary obviously satisfies this standard. *United States v. Graf*, 827 F.3d 581, 583 (7th Cir. 2016). "But the defendant bears a heavy burden of persuasion" on a motion to withdraw his guilty plea—especially when, as in this case, the judge conducted a proper Rule 11(b) colloquy. *Collins*, 796 F.3d at 834. The purpose of the Rule 11(b) colloquy is to confirm that the defendant has made a knowing and voluntary decision to plead guilty; "[o]nce a proper Rule 11 colloquy has taken place, the 'fair and just … escape hatch is narrow.'" *Id.* at 835 (quoting *United States v. Mays*, 593 F.3d 603, 607 (7th Cir. 2010)).

Stapleton contends that he did not knowingly and voluntarily plead guilty for two reasons: (1) he was deprived of his

[1] We offered Stapleton an opportunity to file a supplemental brief on the suppression issue, but he declined to do so.

Sixth Amendment right to counsel, and (2) he was confused about his appellate rights. Because Stapleton presented neither of these arguments to the district judge in his plea-withdrawal motions, our review is limited to correcting plain error. *See United States v. Dyer*, 892 F.3d 910, 914 (7th Cir. 2018) (per curiam).

Plain-error review in this context "requires the defendant to demonstrate a clear or obvious error during the plea process and 'a reasonable probability that, but for the error, he would not have entered the plea.'" *United States v. Hogue*, 998 F.3d 745, 751 (7th Cir. 2021) (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004)). We find no error, and certainly no plain error, in Judge Shadid's denial of Stapleton's plea-withdrawal motions. Stapleton was not denied his right to counsel, and the judge had no obligation to inform him about the consequences of his pleas on a potential appeal.

We begin with the right to counsel. The Sixth Amendment guarantees a criminal defendant "the right to … the Assistance of Counsel for his defence." U.S. CONST. amend. VI. It also implies a right to self-representation. *Faretta*, 422 U.S. at 819; *United States v. Mancillas*, 880 F.3d 297, 301 (7th Cir. 2018). To invoke this right, a defendant must first knowingly and intelligently waive his right to counsel. *Mancillas*, 880 F.3d at 301.

To ensure that the defendant is aware of the consequences of self-representation, we have encouraged judges to "engage in a thorough and formal inquiry" that probes the defendant's "age, education level, and understanding of the criminal charges and possible sentences." *United States v. Vizcarra-Millan*, 15 F.4th 473, 486 (7th Cir. 2021) (quoting

United States v. Johnson, 980 F.3d 570, 577 (7th Cir. 2020)). The judge "should also inform the defendant of the difficulties of proceeding pro se." *Id.* (quotation marks omitted). Yet we have recognized that a judge sits "on the razor's edge" when a defendant chooses between self-representation and "representation by counsel with whom [he] is irrationally dissatisfied." *Id.* (quoting *United States v. Oreye*, 263 F.3d 669, 672 (7th Cir. 2001)). If a *Faretta* colloquy is too cursory, it may be insufficient to guard against an unknowing waiver of the right to counsel; if the colloquy is too exacting, it risks depriving the defendant of his right to represent himself. *Id.* We therefore hesitate to "police too closely the details" of a *Faretta* colloquy. *Id.*

Stapleton asks us to do just that. Judge Mihm conducted two full *Faretta* hearings, yet in Stapleton's view the judge failed to adequately inform him of the assistance that counsel could offer. He contends that if he had known that counsel could file additional motions or locate an expert to investigate his cellphone settings, he would not have pursued self-representation. He maintains that the absence of counsel during the "pivotal time" of his decision to plead guilty caused him to enter his pleas unknowingly.

We disagree. After two thorough *Faretta* colloquies, Stapleton twice validly waived his right to counsel. Both times he confirmed that he understood the charges against him and the severe penalties he faced if convicted. Judge Mihm also reminded Stapleton that if he chose to represent himself, he was "on [his] own." And Stapleton acknowledged that Judge Mihm could neither "tell" nor "even advise" him on how to try his case. He also said he understood that he would be expected to follow the rules govern-

ing a criminal trial. Judge Mihm concluded both colloquies by advising Stapleton that a lawyer would represent him "far better" than he could represent himself. The judge warned that self-representation was "extremely unwise," and he "strongly urge[d]" Stapleton against trying to represent himself. But both times Stapleton affirmed that he wanted to do so, and Judge Mihm found both waivers to be knowing and voluntary.

Moreover, after Stapleton waived his right to counsel for the second time, Judge Mihm explicitly cautioned him about standby counsel's limited role. This led to the following exchange:

> THE COURT: Just a moment. Now I want to make a point about standby counsel, and that is he is standby counsel. We are not going to have a situation where you will do some things, and then you'll agree to have him do some things. Do you understand?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: You're going to represent yourself.
>
> Now, you can ask him maybe to do some research for you on a particular point or give some legal advice on some issue that's raised, but you're going to be representing yourself.
>
> Do you understand?
>
> THE DEFENDANT: Yes, Your Honor.

These inquiries were more than sufficient to produce not just one but two knowing and voluntary waivers of counsel.

A *Faretta* inquiry is not a "talismanic procedure." *Vizcarra-Millan*, 15 F.4th at 486 (quoting *Torres v. United States*, 140 F.3d 392, 401 (2d Cir. 1998)). Judge Mihm's questions adequately advised Stapleton of the dangers of self-representation, and Stapleton understood that he was giving up the benefits of trained counsel. Indeed, his invocation of his right to self-representation seemed to be a strategic, even if imprudent, maneuver—one that would allow Stapleton to continue to litigate the adverse suppression ruling. "A defendant who waives his right to counsel for strategic reasons tends to do so knowingly." *United States v. Harrington*, 814 F.3d 896, 900 (7th Cir. 2016). We see no error, let alone plain error, in the judge's determination that Stapleton knowingly and intelligently waived his right to counsel.

Stapleton's additional argument that Judge Shadid "misrepresented the appeals process" during the guilty-plea colloquy is likewise meritless. He concedes that Judge Shadid fully complied with the requirements of Rule 11(b). Nonetheless, he insists that he was confused about the scope of an appeal regarding the reserved suppression issue. But Judge Shadid told Stapleton that an appellate court would address only the issues reserved for appeal and would look at all the evidence related to those issues. We struggle to find any error in these statements.

At oral argument we sought clarification of Stapleton's position on this point. Counsel's response suggested a somewhat narrower claim: that Judge Shadid's statements during the plea colloquy implied that a reviewing court would neither receive nor consider the government's response to Stapleton's appeal. That contention cannot be

squared with the record. Judge Shadid stated explicitly that the reviewing court would receive argument from the government and review the record "[t]o the extent that[] [it] related to the motion to suppress." And in any event, the judge is not obligated to inform the defendant of the specific effects of his guilty plea on a potential appeal. *Dyer*, 892 F.3d at 914; *United States v. Adigun*, 703 F.3d 1014, 1020 (7th Cir. 2012). Nonetheless, Judge Shadid took great care to explain exactly which issues Stapleton was—and was not—reserving for appeal. Stapleton has not identified an error, plain or otherwise, in the judge's denial of his plea-withdrawal motions.

B. Court-Funded Expert

Stapleton also argues that the judge wrongly denied his motion for a court-funded expert to investigate the notification settings on his cellphone. He theorizes that an investigation would confirm that prior to its seizure, the phone had been set to prevent notifications from appearing on the home screen. Stapleton therefore posits that if Officer Marcotte saw an incoming text message, he must have changed these settings despite lacking a warrant to do so.

Under the Criminal Justice Act, § 3006A(e)(1), an indigent defendant may obtain funding for "investigative, expert, or other services necessary for adequate representation" by submitting an ex parte application. If the judge finds that "the services are necessary and that the [applicant] is financially unable to obtain them," he "shall authorize" those services. *Id.* "Expert services should be provided where a reasonable attorney would engage such services for a client having the independent financial means to pay for them." *United States v. Smith*, 502 F.3d 680, 686 (7th Cir. 2007) (quota-

tion marks omitted). But an overly literal application of this standard could result in the government financing a "fishing expedition." *United States v. King*, 356 F.3d 774, 778 (7th Cir. 2004) (quotation marks omitted). Therefore, before granting a § 3006A(e)(1) motion, "it is appropriate" for a judge to first satisfy himself "that a defendant may have a plausible defense." *Id.* (quotation marks omitted). On review we apply an abuse-of-discretion standard.

We note first that Stapleton's conditional guilty pleas did not preserve a challenge to the denial of his § 3006A(e)(1) motion. But rather than assert waiver, the government addressed Stapleton's argument on the merits. We will do the same. *See Adigun*, 703 F.3d at 1022 ("An opposing party can 'waive waiver' if it fails to assert the preclusive effect of the waiver before the appellate court.").

Stapleton's challenge fails for two reasons. First, he lacked a plausible argument that the police tampered with his cellphone. Agent Mitchell, a forensic expert from the Department of Homeland Security, testified at the suppression hearing that Stapleton's phone was set to display all notifications—including private text messages—on the home screen. At the same hearing, Chief Judge Darrow found "no credible evidence" that the police had altered these settings. Stapleton's funding request thus resembles a classic "fishing expedition."

Second, Stapleton failed to establish the necessity of his request. His motion contained several obvious holes: it did not identify an expert and outline the expert's qualifications and likely testimony, nor did it estimate the cost. *See United States v. Knox*, 540 F.3d 708, 718 (7th Cir. 2008) (affirming the denial of a § 3006A(e)(1) motion for an investigative trip

where the defendant had not explained "when, where, and how he would make contact with the witnesses"). Cost is a particularly relevant factor because absent court approval, § 3006A(e)(3) limits government funding to $2,400. In sum, Stapleton's motion contained several unresolved unknowns. The judge did not abuse his discretion in denying it.

AFFIRMED