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ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK
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RICHARD I. WALLSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

June 23, 2016

In re: Notice of Disciplinary Action

Dear Mr. Lewis:

I received your correspondence dated June 22, 2016, regarding your Notice of Disciplinary Action.

As you are well aware, this office drafted a Social Media Policy in February 2015 to clearly set forth what the policies of this office are as to private expression on social media and the reasons for those policies. The policy was drafted in response to prior comments on your social media page in which you were accused of making racially insensitive remarks. The policy states:

“Two types of comments on social media merit special attention and should cause SAO-9 employees to exercise extreme care: comments that can be perceived as showing prejudice or bias.... It is critically important that SAO-9 employees act, and are perceived to act, in a fair, just, impartial and unbiased manner. Online comments by SAO-9 employees exhibiting animus (strong feelings of dislike or hatred) or ridicule of any individual, class or group of people hurt our ability to carry out our important mission and will not be tolerated.”

Based upon our extensive discussions in 2014, you, more than anyone, understand how seriously I take this issue. I explained to you at that time that public trust in the criminal justice system can only be maintained when those empowered to execute the law are, and are perceived to be, free of bias in the execution of their duties. We have all sworn to uphold the United States Constitution and the rights and privileges it guarantees. Among the most vital of the freedoms we enjoy is the freedom of speech. Even that freedom has its limits. The above policy was drafted to balance the free expression of opposing political ideas and the need to maintain public confidence in the criminal justice system.

In 2014, your posts on social media, while deeply offensive to me personally, were, you argued, an expression of political views. At that time, I publicly defended your right to express your views using coarse, offensive language because I believed it was your right to do so. You assured me that you would, in the future, be more cognizant of the public perception of bias that your choice of words created. As you will recall, I resisted the call of many to fire you. After a thorough analysis of your prior cases, you were restored to your former position.

In the days following the massacre of 49 of our fellow citizens, it was brought to my attention that you had posted the following comment approximately six hours after the tragedy at the Pulse nightclub, which the media described as a club serving the LGBTQ community: *“All night clubs should be permanently closed. With or without random gunmen they are zoos,; utter cesspools of debauchery.”* Whether you intended to convey that all those who attend nightclubs are animals (the zoo reference) or whether the reference to “debauchery” was meant to express some objection to the lifestyle choices of those who attended this club, we will never know. I cannot believe that a man of your intelligence would not realize that your comment could bear that interpretation.

I obtained a complete printout of your Facebook postings from the morning of June 12, 2016, and was shocked to discover comments posted a few hours earlier. Apparently, your first response to the massacre of dozens of your fellow citizens was to suggest the entire city of Orlando be leveled. Your Facebook rant, taken as a whole, could be perceived by some as suggesting an act of domestic terrorism. You went on to use phrases like “third world miscreants” and “ghetto thug”. Upon reading these comments, considering our prior discussions in 2014 and giving the issue considerable thought, I directed your supervisor to begin discipline proceedings against you, and to suspend you pending investigation.

The only issue left unresolved at that time was the possibility that you had not authored those words. I directed your Trial Unit Director and the Chief Assistant to give you the opportunity to admit or deny authorship. Once I was informed that you admitted authoring those posts, the investigation was concluded. Your request to speak with me personally was communicated to me by the Chief Assistant. As you know, there is no entitlement to a personal meeting in the review process, and based upon my extensive discussions with you in 2014, further discussion would have been pointless. In lieu of a face-to-face meeting, I instructed that you be allowed time to file a written response to the discipline, but frankly, short of a bona fide claim of mental illness, there was little you could say that would have changed my mind.

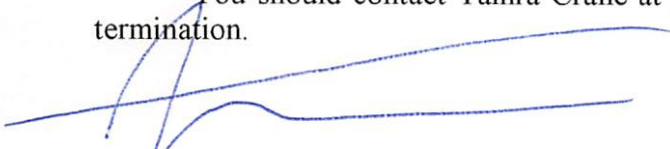
On June 22, 2016, we received your response, which, unfortunately, shows me that the sensitivity training we required you to undergo in 2014 clearly did not have the intended effect. I also have before me a letter from the attorney representing the family of Sasha Samsudean, the victim in *State of Florida v. Stephen Duxbury*. Below is an excerpt from that letter:

Further, Sasha, being a minority and having spent time in downtown, drinking at some point in the evening before her death, gives the family great pause as to whether or not Mr. Lewis is zealously advocating for Sasha or passing judgment based on his personal opinion of Sasha’s race, choice of downtown address, and life choices (including drinking earlier in the evening).

My decision predated receipt of this letter, but I include it as an example of what I tried so desperately to teach you last time. Our reputation is the sum of our deeds and our words, so we must choose them carefully. We are imbued with great power over the lives of our fellow citizens. It is essential that we act without bias and are perceived as acting without bias.

I affirm the finding of your supervisor that you violated the social media policy of this office. Based upon your most recent comments that are the subject of this discipline and your history in this regard, I can no longer defend you as a prosecutor free of bias. Therefore, the recommendation of termination is also upheld. You shall remain on suspension until June 30, 2016 at which time your employment with this office will be terminated. You will not be awarded any discretionary leave payments. While I have extensively quoted our social media policy and your violation of same, I remind you that you serve at the pleasure of the State Attorney and are subject to termination without cause. Even absent the existence of the social media policy, I would have found your actions sufficient grounds for termination.

You should contact Tamra Crane at 407.836.1369 to handle all logistics related to your termination.



Jeffrey L. Ashton
State Attorney, 9th Judicial Circuit

Attachments

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June 21, 2016

BY HAND DELIVERY AND MAIL

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Office of the State Attorney
Orange & Osceola Counties
415 North Orange Avenue
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407-836-2400

Re: State of Florida vs Duxbury, Stephen, 2015-CF-014382-A-O

Honorable Mr. Ashton:

I am the attorney representing the family of the late Sasha Samsudean, who as you know, was a young 27-year-old woman who was brutally raped and murdered by Stephen Duxbury in her home at the Uptown Apartment Complex. The case is next scheduled for trial in October of 2016, which is almost one year after her murder. I write to express the family's wishes to ask your office to remove Assistant State Attorney Kenneth Lewis from the case and reassign another experienced prosecutor to this matter as soon as possible.

Over this past weekend the Samsudean family and I both learned of numerous hurtful and outright racially insensitive public statements that Mr. Lewis has made which include the following public tweet released only hours after the recent Orlando Massacre:

Downtown Orlando has no bottom. The entire city should be leveled. It is void of a single redeeming quality, it is a melting pot of 3rd world miscreants and ghetto thugs, It is void of culture. If you live down there, you do it at your own risk and at your own peril. If you go down there after dark, there is seriously something wrong with you. Disney does everything in its power to shield visitors to Disney from its northern blight. That doesn't change reality. Disney may be the happiest place on earth but Orlando is a national embarrassment....

Apparently this wasn't a single isolated incident because less than two years ago Mr. Lewis had said in another public tweet "*Happy Mother's day (sic) to all the crack hoers out there, It's never too late to tie your tubes, clean up your life and make a difference to someone out there that deserves a better mother.*"

Being a former prosecutor myself, I know the importance of having a jury respect and trust the presenter of facts. As it stands, proof beyond a reasonable doubt is a high burden and one juror can disrupt the outcome of any case, Mr. Lewis' unnecessary racist and insensitive public comments could sway a juror from ignoring the facts and viewing the evidence on their opinion of Mr. Lewis, which is not fair to the victim in this matter.

Further, Sasha, being a minority and having spent time in downtown, drinking at some point in the evening before her death, gives the family great pause as to whether or not Mr. Lewis is zealously advocating for Sasha or passing judgment based on his personal opinion of Sasha's race, choice of downtown address, and life choices (including drinking earlier in the evening). Mr. Lewis' other comments on Supreme Court Justice Sonia Sotomayor and his support of racist Donald Sterling confirms some inherent racial bias of Mr. Lewis.

We have no desire to make this a public matter, and we are hoping that you can discretely remove Mr. Lewis without any further issue. If you would like to discuss further, please feel free to give me a call at the number above.

Please let me know of your decision by the close of business Thursday, June 23 2016. If our request is not granted, we are prepared to make our grievances public.

Very truly yours,

A. George

Abe George, Esq.

cc: by email
Samsudean Family