

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,
Plaintiff**

* **CIVIL ACTION NO. 23-772**

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* **SECTION "T"**

VERSUS

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* **JUDGE GREG G. GUIDRY**

**STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
STATE POLICE**

*

* **MAGISTRATE JUDGE**

Defendant

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JANIS VAN MEERVELD

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**SURREPLY MEMORANDUM IN RESPONSE
TO DEFENDANT’S REPLY MEMORANDUM IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT**

MAY IT PLEASE THE COURT:

Plaintiff John Stelly submits this Surreply Memorandum in response to Defendant State of Louisiana through Department of Public Safety and Corrections, Office of State Police (“Defendant” or “State Police” or “LSP”)’s Reply Memorandum in Support of its Motion for Summary Judgment [Rec. Doc. 137] (“Reply Brief”) as follows:

This Surreply brings to the Court’s attention errors in legal arguments and facts stated in Defendant’s Reply Brief. With regards to the relative qualifications of Lt. Stelly compared to Lt. Burns in the factor of disciplinary records, which is a factor to consider as required by LSP policy on promotions, P.O. 229, Defendant states as follows:

“As to Burns, Plaintiff claims he was more qualified because he had ... a better disciplinary record. These arguments do not show Plaintiff was clearly more qualified.... Moreover, Plaintiff’s claims about Burns’ discipline are false and have been rebutted. Because the stories about Burns’ conduct were false, Burns was able to secure a verdict against the news agency that ran the

misleading story about him.” Reply Brief, p. 5. This is absolutely incorrect. Stelly has evidence of Burns’ serious disciplinary action and Stelly has evidence that Burns’ disciplinary record that is far inferior to Stelly’s record.

First, Defendant is misleading the Court when it states that Burns secured a verdict against a news agency about stories it ran against Burns that he claimed were false. The deposition testimony of Burns clearly states that although he got a verdict at the trial court level, the Court of Appeals overturned it. Burns’ testimony was:

“It was very strange to me because,
2 again, I've known my -- my ex-wife since we
3 were children. We exchanged kids every
4 Sunday, as part of the -- the divorce
5 agreement, and I knew exactly where she lived.
6 She lived 1.5 miles from my house, so kind of
7 the notion that I needed to run her driver's
8 license to find her location to quote,
9 unquote, "stalk her," it was absolutely
10 shocking to me.
11 So that -- that, I put all that in my
12 Loudermill letter and turned it in. A local
13 news agency still ran the story and
14 categorized it much like you just did now. I
15 went to the 21st JDC, won in court. It went
16 to the First Circuit Court, and my case and

17 two other cases against this agency similarly
18 were also overturned by the First Circuit, so
19 there's a lot.

Rule 30(b)(6) Deposition, p. 60.

Because Burns prevailed at the trial court level against a news agency for the way it characterized Burns' conduct (which verdict was overturned on appeal), does not alter the fact that he was disciplined in 2017 for the violations running from 2013 to 2016, as evidenced by LSP's producing Burns' disciplinary letter during discovery. Also Burns' discipline stated on all of Burns' summary reports for promotions from 10-03-18. On each summary report is noted "Candidates have verified their information for accuracy." Those summary reports have bates numbers LSP_STELLY 000392-000396, 000466, 000483, 000511, 000519, 000529, 000535, and 000546.

Stelly's information about Burns' disciplinary issues was based solely on LSP's letter of discipline to Burns, not a news agency story. Stelly is unaware of the particular news story to which Burns referred, the content of that news story, and the verdict against the news agency that reported it.

LSP provided the letter of discipline. LSP provided nothing indicating that the discipline was later overturned or vacated. The disciplinary letter said that Burns admitted to many of the violations served as the basis for the comparison of their disciplinary histories. Burns on pages 60 and 61 of his deposition admitted to 51 violations.

Q Okay, but isn't it true that of these
25 52 allegations, you admitted to 51 of them?

1 A I -- I admitted to -- yes, sir. I

2 admitted to running my own license plate, not
3 running my ex-wife's driver's license, is what
4 I admitted to.

Burns further admitted on page 64 of his deposition:

“She never took it out of my name, so
5 there was a multitude of reasons there for --
6 for me to just check my own plate. And again,
7 I know I shouldn't have done it. I admitted
8 it to internal affairs.”

Burns further admitted on page 64 and 65 of his deposition to asking his wife to conceal his illegal activity.

Q And did you ask your ex-wife to
20 conceal you having given her that information?

21 A I don't recall that, that
22 information. You know, I did it. It was a --
23 it was a bad time in my life with the divorce
24 and the children's custody, and there were
25 several things involved in that that obviously
1 I'm not proud of.

Stelly accurately stated that he was much more qualified than Burns in disciplinary record. Burns admitted that in his deposition.

Q So going back to the summary report,
9 you agree that -- that Lieutenant Stelly was

10 much more qualified for this position, with
11 regards to disciplinary actions than you were?
12 A Yes, sir, I would say his
13 disciplinary action category is -- is much
14 more favorable than mine; yes, sir.

Burns' disciplinary record made him much less qualified for the promotion than Stelly. It is reasonable to conclude, and the jury may well conclude that someone who knowingly violated policies, was admittedly aware of the potentially terminal consequences of those violations, and conspired to hide those violations made poor decision would be less qualified to be promoted to captain than someone without such a history, like Stelly.

There are two glaring omissions from Defendant's Reply Brief that Stelly must bring to the Court's attention. The first is that this is a mixed motive case, as stated on pages 14 and 15 of Stelly's Opposition Memorandum. Defendant's Reply Brief is silent on this issue and thereby admits that this is a mixed motive case. "If the district court has before it substantial evidence supporting a conclusion that both a legitimate and an illegitimate (i.e., more than one) motive may have played a role in the challenged employment action, the court may give a mixed- motive instruction." Therefore, even though the LSP has legitimate reason for not promoting Stelly, he can prove his case of discrimination if he can prove that race was a motivating factor in LSP not promoting him.

The other glaring omission from Defendant's Reply Brief is Defendant's silence on Stelly's position that the Court may infer that an employer engaged in racial discrimination when promoting workers if statistics, when comparing the number of non-whites and whites promoted, demonstrate a gross statistical disparity. Stelly's Opposition Memorandum at pages 14 and 15. It also failed to refute that Stelly's experts proved that Stelly's panels the black candidates were being promoted to captain compared to the white candidates being promoted resulted in a p-value of 0.0012

which is statistically significant and that large disparity would occur substantially less than 5% of the time. When pressed, Broadway indicated that that would occur about 0.1% by chance.

WHEREFORE, Plaintiff, John R. Stelly, II respectfully requests that this Court deny Defendant's motion for summary judgment.

Respectfully Submitted,

/s/Victor R. Farrugia

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 3rd day of July 2024, a copy of the above and foregoing pleading has been served upon counsel of record for all parties via CM/ECF transmission through the United States District Court for the Eastern District of Louisiana.

/s/Victor R. Farrugia