

New Hampshire Association of Criminal Defense Lawyers

August 9, 2022

Upon announcement of the not guilty verdicts in the Zhukovskyy case, Governor Sununu issued a statement that, “the fallen seven did not receive justice today and that is an absolute tragedy.” The AG’s office issued a statement disagreeing with the verdict, stating that, “Mr. Zhukovskyy should have been found guilty of the charges and held responsible. . .”

These statements are irresponsible, dangerous, disrespectful to the jurors and damaging to the integrity of the criminal legal system. They are also contrary to rules designed to protect the rights of the accused and protect jurors from undue influence and harassment.

While Governor Sununu is not a lawyer, the Attorney General is. The American Bar Association Criminal Justice Standards for Prosecution speak specifically to what a prosecutor may and may not say after a verdict. “After discharge of a juror, a prosecutor should avoid contacts that may harass or embarrass the juror, that criticize the jury’s actions or verdict, or that express views that could otherwise adversely influence the juror’s future jury service.” The Standards further state that a prosecutor should “respectfully accept acquittals” and that public statements after a verdict, “should be respectful of the legal system and process.”

The Governor and The Attorney General’s statements here have expressly criticized these jurors’ actions in a way that could adversely influence not only these particular jurors’ future jury service, but could adversely influence other potential future jurors throughout the state. Must our jurors fear public excoriation by the governor and chief law enforcement officer if they find (as jurors did here) that the State failed to meet its burden? Neither AG Formella nor Governor Sununu saw and heard the evidence as the jury did. They did not deliberate having heard the Judge’s instructions. And they have no right, in their positions of power and responsibility, to assert that their opinion, rather than that of the fully informed jury, is the correct one.

The day of the accident was a tragic day. Every death is tragic, especially deaths as horrific as that suffered by the victims in this case. But not every tragic death is a crime, which is what the jury decided here after considering all the evidence. We rely on jurors to be impartial. Judges instruct jurors to decide cases without fear or sympathy. That our Governor would so loudly put his thumb on the scale is an abuse of his platform and his office. Agree or disagree, the jury here did its job and their decision deserves respect rather than public condemnation.