IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION and KARI WASYLAK Plaintiffs,	:	**CIVIL ACTION**
v.	:	**NO. 06-1758**
SMOKIN' JOE'S TABACCO SHOP, INC. Defendant.	:	

M E M O R A N D U M

STENGEL, J. **November 7, 2007**

Presently before the Court is the plaintiff's Motion in Limine to Exclude Evidence of Police Reports from the Lower Makefield Police Department. For the reasons set forth below, I will grant the plaintiff's motion.

I. Background

The plaintiff moves this Court to exclude any evidence of police reports which the defendant seeks to introduce through the Custodian of Records from the Lower Makefield Police Department. The Custodian of Records was added to the witness list on September 18, 2007, four months after the Pre-Trial Memorandum was due, in the Defendant's Second Amended Witness List. The defendant subpoenaed any records containing the name of Kari Wasylak from the Lower Makefield Police Department and sent these results to the plaintiff long after the discovery deadline passed and two weeks after the case entered the trial pool.

The Lower Makefield Police Department's file on Ms. Wasylak consists of a total of twelve incident reports. Six of these incident reports occurred before the alleged sexual

harassment began in December, 2004. These incident reports include one attempted suicide by the plaintiff, two threats of physical harm and one assault to the plaintiff by her brother and three threats of physical violence by her ex-boyfriend. The next police incident report was not filed until two years after the alleged sexual harassment began. In January, 2007, the police were called regarding an attempted suicide by the plaintiff who tried to kill herself by slitting her throat and wrists. Following this incident, the police were called out to Ms. Wasylak's house for another reported suicide attempt, a verbal confrontation with her ex-boyfriend, a noise disturbance and a head injury that required emergency room treatment.

The plaintiff suggests that the defendant issued this subpoena as a discovery expedition in order to obtain these reports in an attempt to place Ms. Wasylak in a negative light. The plaintiff argues that the defendant abused process by using trial subpoenas as a discovery tool. Further, the plaintiff asserts that these incident reports should not be permitted into evidence because they were requested and received well after the discovery deadline. Finally, the plaintiff argues that all of this information is irrelevant pursuant to Rule 402 of the Federal Rules of Evidence and will only serve to unfairly prejudice the plaintiff under Rule 403.

On the other hand, the defendant claims that the trial subpoena was not an attempt to engage in extended discovery. The reason for the delay in seeking the trial subpoena during discovery was a result of the plaintiff's failure to inform the defendant that the police were involved in matters pertaining to the plaintiff's damages claim. The defendant asserts that this information is directly relevant to the plaintiff's ongoing severe emotional distress and continuing resultant work loss. Finally, the defendant contends that the records will only be submitted for the purpose of questioning the plaintiff's claim that her extreme emotional distress resulted from

the actions of the defendant and not from the disturbing reports recited in the police reports.

II. Discussion

Trial subpoenas may be used to secure documents for trial preparation or to ensure the availability at trial of original documents previously disclosed by discovery. Puritan Inv. Corp. V. ASLL Corp., 1997 WL 793569 (E.D. Pa.). However, trial subpoenas may not be used as a means of engaging in discovery after the discovery deadline has passed. Id., See BASF Corp. v. Old World Trading Co., 1992 WL 24076, 2 (N.D. Ill. Feb. 4, 1994); Hatchett v. United States, 1997 WL 397730, *3 (E.D. Mich. Feb. 28, 1997)(Trail subpoena cannot be used to obtain belated discovery after discovery period has ended). Further, a trial subpoena is not an appropriate means of ascertaining facts or uncovering evidence that should be discovered in the manner and time provided by the Federal Rules. Puritan, 1997 WL 793569, *2.

Rule 402 of the Federal Rules of Evidence provides that "evidence which is not relevant is inadmissible." FED. R. EVID. 402. Rule 401 further defines relevant evidence as "all evidence having a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." FED. R. EVID. 401. Even if the evidence is deemed relevant, Rule 403 permits the court to exclude evidence "if its probative value is substantially outweighed by the danger of ... confusion of the issues, or misleading the jury, or by considerations of undue delay [or] waste of time." FED. R. EVID. 403.

In this case, the trial subpoena was issued well after the close of discovery. The documents produced in response to the subpoenas will introduce information which could have, and probably should have, been developed during discovery.

The information contained in the police reports regarding Ms. Wasylak's attempted suicides and the physical and verbal abuse she has experienced over the past several years is not relevant to the determination of whether she was sexually harassed and retaliated against while an employee at Smokin' Joe's Tobacco Shop. These reports may have some relevance to the plaintiff's emotional damages claim and to credibility issues. The probative value of this information is substantially outweighed by the danger of misleading the jury and by introducing extraneous negative information about the plaintiff. In my view, the prejudicial impact far outweighs the probative value. The late production of these documents could introduce issues that the plaintiff is not prepared to address at trial.

III. Conclusion

For the reasons discussed above, I will grant the plaintiff's Motion to Limine to Exclude Evidence of Police Reports. An appropriate order follows.

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EQUAL EMPLOYMENT	**:**	**CIVIL ACTION**
OPPORTUNITY COMMISSION and	**:**	
KARI WASYLAK	**:**	
Plaintiffs,	**:**	
	:	
v.	**:**	**NO. 06-1758**
	:	
SMOKIN' JOE'S TABACCO	**:**	
SHOP, INC.	**:**	
Defendant.	**:**	

O R D E R

STENGEL, J.

AND NOW, this 7th day of November, 2007, upon consideration of Plaintiff's Motion in Limine to Exclude Evidence of Police Reports (Document #126), and the defendant's response thereto (Document # 130), it is hereby **ORDERED** that the plaintiff's motion is **GRANTED**.

BY THE COURT:

/s/Lawrence F. Stengel
LAWRENCE F. STENGEL, J.