

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
Urbana DivisionUS EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

RENT-A-CENTER EAST INC.,

Defendant.

Case No. 16-2222

ORDER

This case is before the Court on the Third Motion in Limine (#60) and Defendant's Motion to Supplement Motion in Limine No. 3 (#85) filed by Defendant, Rent-A-Center East, Inc. ("Defendant"). Plaintiff, US Equal Employment Opportunity Commission ("Plaintiff") filed its Response to Motion in Limine (#78). For the reasons discussed below, Defendant's Third Motion in Limine (#60) and Motion to Supplement Motion in Limine No. 3 (#85) are GRANTED.

I. Background

Plaintiff filed its Complaint on July 18, 2017 alleging that Defendant violated Title VII when it discharged Megan Kerr. Kerr was employed by Defendant beginning in May 2005 and was an assistant manager at Defendant's Rantoul, Illinois location from July 2010 until July 2014. Defendant discharged Kerr on July 21, 2014. Plaintiff alleges that Defendant terminated Kerr because she is transgender, while Defendant maintains that it terminated Kerr for other reasons.

On December 15, 2017, in preparation for trial, Defendant filed eight motions in limine. Defendant's Third Motion in Limine asks the Court to bar all evidence or testimony relating to the alleged mistreatment of Amber Shumate, the customer who purchased the RAC merchandise that Ms. Kerr allegedly used the company vehicle to

deliver, by Defendant's private investigator. Defendant, in its response, argues that RAC's private investigator attempted to persuade Shumate not to testify in this case.

On January 23, 2018, the Court entered a Text Order directing Defendant to supplement its motion with Shumate's deposition testimony, which Defendant did on January 25, 2018. Accordingly, the Court grants Defendant's Motion to Supplement Motion in Limine No. 3 (#85).

II. Analysis

Defendant argues that any allegations of mistreatment by RAC's private investigator are irrelevant and unduly prejudicial and therefore inadmissible under Federal Rules of Evidence 401 and 403. Plaintiff, on the other hand, argues RAC's private investigator attempted to persuade Shumate not to testify in this action and therefore this evidence is admissible as evidence of Defendant's consciousness of guilt. After reviewing the cases cited by Plaintiff as well as Shumate's deposition testimony, the Court concludes that there is no evidence that RAC's investigator attempted to persuade Shumate not to testify and therefore Defendant's Third Motion in Limine is granted.

Plaintiff cites to two cases for the proposition that an attempt to persuade a witness not to testify is admissible as evidence of guilt. While these cases do stand for that proposition, these cases clearly demonstrate attempts to influence witnesses. In *Ty Inc. v. Softbelly's Inc.*, 353 F.3d 528 (7th Cir. 2003), a representative of the plaintiff's company telephoned the defendant's star witness and told the witness that if the witness testified it would cost him a tremendous amount of money and "cause a lot of problems." 353 F.3d at 534. In *U.S. v. Shorter*, 54 F.3d 1248 (7th Cir. 1995), a criminal defendant wrote a letter to a co-defendant with various statements such as "if you don't remember everything or if you don't see things the way they do what can they do" and "you can tell them what you know without giving them nothing." 54 F.3d at 1251-52.

Here, Shumate's testimony does not demonstrate that RAC's private investigator attempted to discourage her from testifying or persuade her to alter her statements. According to Shumate's deposition testimony, RAC's investigator came to her home in

the evening and asked her if she had bought the furniture, how she knew Ms. Kerr, if she communicated with Ms. Kerr, and if Kerr was the one who moved the furniture. Shumate Dep., p. 16, ln. 13-24; p. 17, ln. 1-24; p. 18, ln. 1-4.

Shumate testified that the investigator “really really upset” her and that she “was in tears” by the time he left. Shumate Dep., p. 18, ln. 8-10. When asked to elaborate, Shumate stated that the investigator “was very pushy” and that he often would “rephrase the question” after she gave an answer. Shumate Dep., p. 18, ln. 12-14. Shumate testified that this upset her because “[h]e would push to get more and I didn’t have any more to give him.” Shumate Dep., p. 18, ln. 14-15. She further stated that the investigator “demanded [Shumate] look up the other people in front of him with [her] phone to try and find the names, and [Shumate] didn’t know most of [the] people anymore.” Shumate Dep., p. 18, ln. 17-19. Shumate testified that she was particularly objectionable to the investigator referring to Ms. Kerr as “Jason.” Shumate Dep., p. 19, ln. 9-10.

When asked specifically what she believed the investigator was “trying to do,” Shumate stated that she did not know. Shumate Dep., p. 20, ln. 1-3. Shumate was expressly asked whether she believed that the investigator was trying to influence her in any way (including her participation in the lawsuit) to which Shumate replied that the investigator “continued to try to change the question.” Shumate Dep., p. 20, ln. 4-9. Shumate characterized the investigator as “aggressive” and not “polite.” Shumate Dep., p. 20, ln. 18-20. Finally, Shumate stated that her interaction with the investigator did affect her willingness to participate in these proceedings and stated that after the meeting she “didn’t want to do it.” Shumate Dep., p. 21, ln. 8-14.

There is nothing in Shumate’s deposition testimony to show that RAC’s private investigator made any attempt to persuade Shumate not to testify or alter her testimony. Shumate’s deposition testimony, at best, shows that the investigative tactics made her uncomfortable and that RAC’s investigator may have been abrupt and rude. This is a far cry from the investigator trying to convince Shumate not to testify or alter her testimony.

The record is clear that Shumate was uncomfortable and upset by the factual questions asked and the way they were asked. Particularly, Shumate seemed to be upset that RAC's investigator referred to Ms. Kerr by a male name. Shumate Dep., p. 19, ln. 9-10. Shumate also seems to have been uncomfortable being asked the same question in multiple ways and upset about the tone used by RAC's investigator. This does not mean that RAC's investigator was attempting to persuade her not to testify or change her testimony. This testimony does nothing to suggest RAC's consciousness of guilt.

Plaintiff's argument also ignores that RAC's investigator was not the only person who seemed to upset Shumate. Shumate testified that the EEOC investigator, Gloria Mayfield, was not nice to her either and that Mayfield was in fact "extremely rude" to her. Shumate Dep., p. 73, ln. 18-23; p. 74, ln. 1. Additionally, during her deposition Shumate asked to take a break because she felt like she was "going to throw up." Shumate Dep., p. 99, ln. 21-22. Plaintiff's counsel indicated that Shumate suffers from anxiety and that he believed Defense counsel's questions were "laced with a tone of ridicule and sarcasm." Shumate Dep., p. 100, ln. 1-11.

Shumate appears to have been upset by RAC's investigator, Plaintiff's investigator, and Defense counsel. Her deposition responses show that she does not want to be involved in this lawsuit. While the Court appreciates the burden that litigation puts on third party witnesses, the evidence as a whole merely shows a witness who is easily upset and does not want to testify in this case. It does not, as Plaintiff argues, show that RAC's investigator attempted to discourage Shumate from testifying or to alter her testimony.

With there being no attempt to persuade Shumate not to testify, her "treatment" by RAC's investigator is irrelevant to the issues in this case.¹ Defendant's Third Motion in Limine is granted. The parties are barred from introducing any evidence or testimony regarding the alleged mistreatment of Amber Shumate by RAC's investigator.

¹ The Court's opinion on the admissibility of this testimony might change if Defense, on cross-examination, attempts to demonstrate inconsistencies between her testimony and her statements made to RAC's investigator. In that instance, the witness may be allowed to explain or deny the prior inconsistent statement.

III. Conclusion

For the reasons discussed above, Defendant's Third Motion in Limine (#60) and Defendant's Motion to Supplement Motion in Limine No. 3 (#85) are GRANTED.

ENTERED this 26th day of January, 2018.

s/ERIC I. LONG

UNITED STATES MAGISTRATE JUDGE