

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SHERRY ELLIS, <i>et al.</i> ,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No.: CIV-16-019-HE
)	
DANIEL HOLTZCLAW, <i>et al.</i> ,)	
)	
<i>Defendants.</i>)	

**OBJECTION OF DEFENDANT HOLTZCLAW
TO PLAINTIFF REGINA COPELAND’S MOTION FOR PROTECTIVE
ORDER**

Plaintiff Regina Copeland has moved for a protective order seeking restrictions on questions by the Defendant, Daniel Holtzclaw, during her upcoming deposition. (Doc. 161). Defendant Holtzclaw objects to the motion, and objects to any restrictions on his examination of the Plaintiff during a deposition.

The Amended Complaint filed by Copeland alleges generally that Holtzclaw, while acting as an Oklahoma City police officer, used his position to commit sexual assaults and batteries against her on or about April 25, 2014. *See* Doc. 6 at 2, ¶ 7.

In her motion for protective order, she requests that this Court preclude Holtzclaw from asking her any questions about the allegations that she has made

against him. Holtzclaw perceives this as a misuse of Rule 26, a misapplication of the doctrine of collateral estoppel, and an abuse of discretion in the even this Court would grant such a motion.

First, Rule 26(c)(1), while it does authorize protection from “annoyance, embarrassment, oppression, or undue burden or expense,” Holtzclaw does not read that Rule as precluding the accused from questioning the accuser about the details of her allegations against him, nor has Copeland cited any cases indicating otherwise. In Holtzclaw’s view, this Rule is best read as dealing with discovery tactics that cause those things that are removed from the core of the allegations of the Plaintiff; or at the very least, the legal basis for restricting discovery should grow increasingly more stringent the closer to the core allegations of the Plaintiff the contested discovery encompasses.

Here, Copeland alleged in this civil case that Holtzclaw committed “sexual assaults and batteries” on her. Doc. 6 at 2, ¶ 7. However, at his criminal trial, Holtzclaw was convicted of one count of First Degree Rape involving Copeland. To the extent that she is alleging sexual assaults and batteries other than that, her motion is not well founded.

In addition, Holtzclaw perceives that he is entitled to Due Process of law under the Fifth Amendment, and questioning his accuser about the facts and details of her

allegations against him must fall within his Due Process rights.

Second, Copeland asserts that the doctrine of collateral estoppel must prevent questioning Copeland about the details of her claims. Doc. 161 at 2-3. She is wrong.

Collateral estoppel does not apply here because she asserts in her Amended Complaint that he had a motive of racial animus in selecting her, that his actions caused extreme emotional and mental distress, and that his actions were malicious and oppressive, none of which were elements of the crimes for which he was convicted, nor at issue before the jury in his criminal case; and as pointed out, *supra*, she has alleged sexual assaults and batteries (plural) whereas the jury in the criminal case convicted Holtzclaw of a single count of rape against Copeland.

Further, the Plaintiffs (Sherry Ellis and Carla Raines) have already tried to assert collateral estoppel on these issues against Holtzclaw in relation to the pre-termination employment hearing prior to his trial, and this Court rejected their assertions in an Order filed on April 10, 2020, concluding that the issues were not the same and that Holtzclaw did not have a full and fair opportunity to litigate the claims. Doc. 121. Holtzclaw asserts that the same result should apply here, that there is nothing special about Copeland's claims in this regard, and that the issue is *res judicata*, in addition to Copeland alleging multiple acts of sexual assault when the jury found Holtzclaw guilty of only one.

Third, although he had been convicted of a criminal act related to Copeland, Holtzclaw denied that allegation prior to his criminal trial, and continues to deny them in this civil litigation (per Holtzclaw's deposition in this case). Copeland and the other Plaintiffs have placed these facts in issue and Holtzclaw is entitled to contest them, examine them, and question his accusers on the accusations they have made.

Finally, Copeland asserts that not only must Holtzclaw be precluded from asking her about the details of her allegations, but he must also be precluded from asking her about the investigation by the Oklahoma City Police Department. Doc. 161 at 7. Holtzclaw objects to any such limitations.

Copeland ascribes motivations that she imagines Holtzclaw must have in asking those questions (to prepare issues for a possible post-conviction attack on his criminal convictions), and therefore, according to Copeland, such questioning would be "disproportionate to the needs of the case." *Id.* This is not a proper objection. Plaintiff counsel should not be allowed to speculate on the subjective motivations of the Defendant in conducting discovery (which are irrelevant), and then ask the Court to accept that speculation as true and then issue a discovery order.

The discovery process is designed to facilitate and discovery admissible evidence for trial. The testimony of Copeland is admissible evidence. The integrity of the investigation or lack thereof is admissible evidence. These things bear upon

the ultimate issue of fact at issue in the case, the credibility of the witness, and the integrity of the Oklahoma City Police Department.

CONCLUSION

The motion for protective order should be denied. Questioning Copeland about the allegations she has made, and the mode and manner of the investigation of those allegations by the Oklahoma City Police Department are neither harassment nor oppression. They are the proper subject of inquiry by the accused and he must be allowed to ask questions pertaining to these issues.

DATED this 20th day of September, 2020.

Respectfully submitted,

/s/ James L. Hankins

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of September, 2020, I electronically transmitted the attached Notice of Appeal to the Clerk of Court using the ECF System for filing. Based on the records currently in the file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF Registrant:

Kymerli J.M. Heckenkemper
Melvin C. Hall
Damario Solomon-Simmons
Benjamin L. Crump

/s/ James L. Hankins

James L. Hankins