IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

REBECCA B. MCKNATT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 02-1659-SLR
	)	
STATE OF DELAWARE, DEPARTMENT OF PUBLIC SAFETY,	)	
	)	
Defendant.	)	

MEMORANDUM ORDER

I. INTRODUCTION

On December 3, 2002, plaintiff Rebecca McKnatt commenced this action against defendant State of Delaware, Department of Public Safety. (D.I. 1) In her complaint plaintiff asserted claims of: (1) gender discrimination and sexual harassment in violation of Title VII; (2) retaliation in violation of Title VII; and (3) discrimination against plaintiff by failing to promote her. (Id. at ¶¶ 41-55) On January 31, 2003, defendant filed an answer denying plaintiff's allegations. (D.I. 5) The court held a jury trial commencing on November 4, 2004 and concluding on November 10, 2004. (D.I. 70-74) After plaintiff had rested, defendant moved, under Fed. R. Civ. P. 50(a), for partial judgment as a matter of law on plaintiff's hostile work environment claim. (D.I. 63; D.I. 73 at 120-22) The court reserved judgment on the motion. (D.I. 73 at 122) On November

10, 2004, the jury returned a verdict for plaintiff on her hostile work environment claim. (D.I. 68) Presently before the court is defendant's renewed motion for judgment as a matter of law on plaintiff's hostile work environment claim or, in the alternative, for remittitur.[1] (D.I. 78) The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331. For the reasons set forth below, the court denies defendant's motion.

II. STANDARD OF REVIEW

To prevail on a renewed motion for judgment as a matter of law following a jury trial, the moving party must show that the evidence and the justifiable inferences therefrom do not afford any rational basis for the verdict. See Delli Santi v. CNA Ins. Cos., 88 F.3d 192, 200 (3d Cir. 1996). In assessing the sufficiency of the evidence, the court must view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in favor of the nonmovant. See Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., 46 F.3d 258, 269-70 (3d Cir. 1995). The appropriate inquiry is whether the record is "critically deficient of the minimum quantum of evidence from which the jury might reasonably afford relief." Simone v. Golden Nugget Hotel & Casino, 844 F.2d 1031, 1034 (3d Cir. 1988) (quoting Link v.

[1] Defendant's renewal of its motion for judgment as a matter of law, together with the fact that defendant's renewed motion presents every argument made in its original motion, renders its original motion (D.I. 63) moot.

Mercedes-Benz of N. Am., Inc., 788 F.2d 918, 921 (3d Cir. 1986)). In making such a determination, "the court may not weigh the evidence, determine the credibility of witnesses, or substitute its version of the facts for the jury's version." Jaguar Cars, 46 F.3d at 269 (quoting Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1166 (3d Cir. 1993)). "While a 'scintilla of evidence is not enough to sustain a verdict of liability,' the question is 'whether there is evidence upon which the jury could properly find a verdict for that party.'" Id. at 269-70.

III. DISCUSSION

A. Hostile Work Environment

At issue is whether plaintiff presented sufficient evidence at trial to create a rational basis for the jury to find that sexual harassment at her place of employment was so pervasive and regular that it amounted to a hostile work environment. Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer to "discriminate against any individual with respect to [her] compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]" 42 U.S.C. § 2000e-2(a)(1). "It is well established that a plaintiff can demonstrate a violation of Title VII by proving that sexual harassment created a hostile or abusive work environment." Kunin v. Sears Roebuck & Co., 175 F.3d 289, 293 (3d Cir. 1999). "In order to be actionable, the

harassment must be so severe or pervasive that it alters the conditions of the victim's employment and creates an abusive environment." Weston v. Pennsylvania, 251 F.3d 420, 426 (3d Cir. 2001). In order to determine whether an environment is sufficiently hostile or abusive, courts must look to the totality of the circumstances, including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris v. Forklift Sys., Inc., 510 U.S. 17, 23 (1993). To bring a successful claim for a sexually hostile work environment under Title VII, an employee must establish that: (1) she suffered intentional discrimination because of her sex; (2) the discrimination was pervasive and regular; (3) the discrimination detrimentally affected plaintiff; (4) the discrimination would detrimentally affect a reasonable person of the same sex in that position; and (5) the defendant is liable under a theory of respondeat superior liability. Weston, 251 F.3d at 426; see also Kunin, 175 F.3d at 293.

The record is replete with evidence indicating a hostile work environment. Plaintiff testified that notepads used by defendant consisted of recycled domestic violence charts which contained nude diagrams of women. (D.I. 71 at 31) Plaintiff introduced a copy of this diagram into evidence. (PX 1)

According to plaintiff, employees of defendant would doodle and put explicit marks on the drawings and leave them where plaintiff and the general public could find them. (D.I. 71 at 32) Colonel Gerald Pepper corroborated this testimony by plaintiff. (D.I. 71 at 105) Although defendant did remove the diagrams from its notepads, plaintiff testified that it did so only after she had made several complaints. (D.I. 72 at 27-28) Plaintiff also testified about several comments Captain Jay Lewis, her supervisor, made to her, including: (1) "[Goddamn] women and police work, what the hell were they thinking[?]" (D.I. 70 at 140); (2) that plaintiff "allowed [her] alligator, crocodile mouth to override [her] hummingbird rear end" (D.I. 71 at 36); (3) that plaintiff should "rip [her] [goddamn] stripes off of [her] shirt and shove them up [her] rear end" (D.I. 71 at 36); and (4) that plaintiff was a baby and she should grow up (D.I. 71 at 36). Plaintiff also alleged that Captain Lewis directed several profanity-laden personal attacks at her. (D.I. 70 at 131, 137) The testimony of Captain Lewis, Dr. Caren DeBarnardo, and Sergeant Sherri Benson corroborated part or all of this testimony by plaintiff. (D.I. 72 at 112; D.I. 73 at 43-44, 69-70) Plaintiff also testified that, on one occasion, Captain Lewis patted plaintiff on the top of her head several times "like you pat a small dog or child[.]" (D.I. 70 at 141) Finally, plaintiff testified that, when she appealed Captain Lewis'

decision not to sponsor her for a promotion, Lewis called her into his office for a 45 minute meeting where he proceeded to "degrade[] and cuss[]" plaintiff out. (D.I. 71 at 35-36) Captain Lewis testified that this 30 to 45 minute meeting did take place, that it became very emotionally charged, and that profanity was used "[b]y all involved." (D.I. 72 at 120) Faced with this evidence, the court concludes that the jury could properly find that defendant created a hostile work environment.

B. Affirmative Defense

The court instructed the jury in this matter that, if it found that plaintiff established a claim of a hostile work environment, then defendant could establish an affirmative defense upon showing, by a preponderance of the evidence, that: (1) defendant "exercised reasonable care to prevent and promptly correct any sexually harassing behavior"; and (2) "plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by defendant to prevent harm otherwise." (D.I. 73 at 179-80) The jury found that plaintiff established a claim of a hostile work environment. (D.I. 68 at 2) However, the jury found that defendant did not meet its burden to establish an affirmative defense. (Id. at 3) The court concludes that there is sufficient evidence of record to support the jury's verdict that defendant did not meet its burden of proof. (D.I. 14; D.I. 71 at 39-42, 48-57, 114; D.I. 73 at

120-22, 170-71, 173-76; D.I. 74 at 28-29, 33, 47-48). Consequently, the court denies defendant's renewed motion for judgment as a matter of law on the basis of an affirmative defense to plaintiff's hostile work environment claim.

C. Remittitur

Plaintiff and defendant both produced evidence that plaintiff suffered emotional pain, suffering, and mental anguish due to the hostile environment in which she worked. Plaintiff, Colonel Pepper, Sergeant Bernard Miller, Captain Lewis, Sergeant Vince Fiscilla, and Dr. Caren DeBarnardo all testified as to the emotional effect defendant's hostile work environment had on plaintiff. (D.I. 70 at 140-41; D.I. 71 at 53, 58, 111; D.I. 72 at 97-98, 103, 121, 124, 144, 146-49; D.I. 73 at 30, 32-33, 36, 41) Faced with this evidence, the court denies defendant's motion for remittitur.

IV. CONCLUSION

At Wilmington this 12th day of May, 2005, for the reasons set forth above;

IT IS ORDERED that defendant's renewed motion for judgment as a matter of law on plaintiff's hostile work environment claim or, in the alternative, for remittitur (D.I. 78) is denied.

United States District Judge