

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

EDWIN S. BELL : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA et al. : NO. 05-4433

MEMORANDUM AND ORDER

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE October 17 , 2006

After an eight day trial, the jury returned a verdict in favor of the Defendants in this Title VII - discrimination and retaliation case. After the court denied Plaintiff's Motion for a New Trial, the Plaintiff filed an appeal in the Third Circuit. The Defendants have now filed a Motion for an Order Requiring the Plaintiff to Order a Complete Transcript. The defense argues that the issues presented on appeal warrant the complete trial transcript. The Plaintiff argues that the portions of the transcript that have not been transcribed are irrelevant to any of the issues on appeal. (Plaintiff's Memorandum of Law, at 1).

The Plaintiff argues that of the seven appellate claims, two relate to discovery before trial; three relate to the dismissal of the First Amendment claims pretrial; and the final two relate to the adequacy of the court's jury charge. The Plaintiff's assessment is that none of the non-transcribed testimony is relevant to these issues. We disagree.

If the Circuit Court determines that the jury charge was flawed, the court must then determine whether the flawed charge prejudiced the Plaintiff. See Armstrong v. Burdette Tomlin Memorial Hosp., 438 F.3d 240, 247 (3d Cir. 2006)(citing Watson v. S.E. Penn. Transp. Auth., 207 F.3d 207, 221-22 (3d Cir. 2000))("[h]armless errors in parts of a jury charge are not sufficient grounds on which to vacate a judgment and order a new trial"). In this case, we believe

the portions of the trial that have been transcribed are insufficient to allow the Circuit Court to perform a harmless error analysis if they ultimately determine that the jury charge was flawed.

For example, one of the ultimate reasons given for Mr. Bell's discipline and termination was his failure to cooperate in the investigation of an incident involving John Brown. Additionally, one of Mr. Bell's contentions is that he was treated with disrespect at Mr. Brown's disciplinary hearing. We find it unfathomable that the Plaintiff does not consider Mr. Brown's testimony essential to appellate review. Similarly, we believe the expert testimony is also necessary. The defense expert opined that Plaintiff suffered from a paranoia concerning his job. This certainly factors into the assessment of the Plaintiff's testimony. Likewise, the Plaintiff's expert testimony should be considered.

Rule 10(b) of the Federal Rules of Appellate Procedure requires an appellant to order a transcript of the parts of the District Court proceedings that the appellant considers necessary. Once the appellant advises the appellee of the requested transcription, the appellee may serve on the appellant additional parts to be ordered. If the appellant fails to order the parts designated by the appellee, the appellee may "move in the district court for an order requiring the appellant to do so." Fed.R.App.P. 10(b)(3)(C). Because we conclude that the entire transcript is necessary for appellate review, we will grant the Defendants' motion.

An appropriate Order follows.

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AND NOW, this 17th day of October, 2006, upon consideration of the Defendants' Motion for an Order Requiring Plaintiff to Order a Complete Trial Transcript, the response, thereto, and for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that the Motion is GRANTED.

BY THE COURT:

/s/Jacob P. Hart

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE