

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**ILA BERKEIHISER,**

**Plaintiff,**

**Case No. 03-73243  
Honorable John Feikens**

v.

**ALLEN CHEVROLET CADILLAC, INC.,  
a Michigan Corporation,**

**Defendant.**

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**OPINION AND ORDER**

**I. INTRODUCTION**

Plaintiff, Ila Berkeihiser, filed a two count Complaint, pursuant to 42 U.S.C. §2000e-2, also known as Title VII, against her former employer, Defendant Allen Chevrolet Cadillac, Inc., alleging that she was:

- 1) Subjected to a hostile work environment based on her sex; and
- 2) Wrongfully terminated in retaliation for complaining about sexual harassment.

Plaintiff resides in Monroe County, Michigan and Defendant is a car dealership in that community engaged in the business of selling both new and used cars.

In response, Defendant has filed a Motion for Summary Judgment as to both claims.

**II. FACTUAL BACKGROUND**

**These facts are taken from depositions, documents and affidavits, and are docketed on a day-by-day basis, where possible, during the short period of Plaintiff's term of employment.**

**She was hired on April 21, 2003 in Defendant's Used Car Department but she was also assigned to work in the New Car Sales Department. She began work on April 23, 2003 and worked the following four (4) days of that week, April 23rd through April 26th. She worked the week of April 28th through May 2nd, six (6) days, worked on May 5 and May 6, and then was terminated on May 7, 2003. She worked a total of twelve (12) days.**

**Plaintiff's deposition reveals the following facts:**

**She resides in Monroe, Michigan and at the time of her commencement of employment with Defendant she was 26 years old. She indicated that she had worked as an exotic dancer and that she would do exotic dancing to pay for a series of surgeries. She said that these periods of work as a dancer might be a week at a time. She said that she had had six (6) laparotomies caused by endometriosis.**

**Before she began work at Allen Chevrolet-Cadillac, she worked at a place called "The Sharper Image" and before that at "The Tile Shop." She said that her employment at the Sharper Image lasted for about a year and at The Tile Shop, selling retail, for a few months. She left there, she said, because she was experiencing "a lot of pain." She indicated that she had also been employed at The Ralph Thayer Volkswagen Company and that she "quit at that place because I was upset with them, I told them what happened, that they wouldn't give me commissions and I wanted to work for a company that would go over their sales plans with me." She was asked if, in her application for employment at Ralph Thayer Volkswagen, she indicated her prior employment as an exotic dancer. She said she did not because "it wasn't**

experience related.” She said that promotional modeling was, in her view, experience for the job, that she also did hair modeling, and that she was getting phone calls for modeling from New York. (Pl. Dep. 13-14.) She also worked at “fast food places,” including “Hooter’s.” (Pl. Dep. 15.) In addition, she had worked as a cart girl at the Carrington Golf Course in Monroe, Michigan, “a really fine job.” Plaintiff left home at the age of 24 because she “was modeling in Royal Oak a lot.” (Pl. Dep. 16.)

Turning now to the days, 12 in all, when she was employed at Defendant’s place of business, Plaintiff testified in her deposition to the following: Plaintiff was hired by Jerry Davis, the used car Sales Manager, when she first started working on April 23, 2003. When asked what happened at work, and what was said to her, apparently referring to Jerry Davis, Plaintiff said, “a lot of times they would say things like what kind of perfume are you wearing, I want to eat you, I’m going to spank you, things of that nature at any given time all throughout each day.” (Pl. Dep. 19.)

On another occasion, the date of which is uncertain, Plaintiff said that an employee, Mike Walsek, “kind of walked me over there [to a little trailer], come on, come on, I want to spank you, come over here for a minute. I was just like no, you know. That kind of thing made me feel uncomfortable.” (Pl. Dep. 20.) She stated “that happened only once.” (Pl. Dep. 20.)

On another day, presumably during the week of April 28th, Plaintiff testified that Rick Walsek and Brad Allen were looking at pornographic scenes on the internet. She said she saw them do that 3 or 4 times. She stated:

“The office right in front of Jerry’s so it was Jerry’s office and then the office up from him was like a little office that a guy had

worked there had quit. He had a computer in his office so I guess Rick took over that office or something. He would stay in that office. We would all go in there, use the computer in there 'cuz some of our desks didn't have computers. I don't think I ever really used it. I might have checked my e-mail once. I would walk by for a question, I would go up to them with a question, it would be on the screen, woe, and, um, Brad said – I said what are you guys looking up, brutal rape scene. Why are you looking that up at work. Oh, yeah, he said I love that shit.

**Q. Did you have a reason to be in the office?**

**A. Yes, with a question because if Jerry wasn't around I would, or I could use the computer too if I wanted to. I had access to the computer too. I would go in there and use it, he would be on it, I would ask him a question or, there's a lot of down time, we would hang out, we'd hang out there or at my desk or whose ever desk.**

**Q. When you walked into the office would the computer screen be facing you or would it be facing the opposite direction?**

**A. Facing me, yes.**

**Q. I'm just drawing a box, it represents this office you're talking about. Why don't you put a desk, chair, door.**

**A. Here's the door, Here's a desk. Here's a computer, but it's kind of facing this way towards the door.**

**Q. Where would the desk chair be where the person would sit at the desk?**

**A. Right here.**

**Q. The monitor would be facing the door?**

**A. On an angle. Anybody who walked by could see it, you know how they swivel.**

**Q. Were there windows going out into the showroom?**

**A. Yes.**

- Q. Which walls were there windows?**
- A. All around. The door's here, door's here, there's a window going all around. There's a window to the outside.**
- Q. It's pretty much a glass office?**
- A. Yes, ma'am. Yup.**
- Q. Could you see the monitor from outside the office?**
- A. Yes, you could see it from outside. I couldn't tell what was on it but –**
- Q. You would walk in, ask them what are you looking at, they would tell you some rape scene?**
- A. Yeah. It was on there.**
- Q. What would happen after that?**
- A. I just couldn't believe it. I was, I don't know."**

**(Pl. Dep. 30-32.)**

**She was then asked, "Did you stay there, did you leave, did you ask questions?" (Pl.**

**Dep. 32.) Plaintiff as follows:**

- "A. He would click it off, click it down. Then he'd say give me something to look up on the computer, I've been looking up things all day. I need something else to look up, you know. I was like look up something about redheads, and, um, they have a redheaded fan club. He said I already looked up redheads.**
- Q. What did you want him to look up on the Internet about redheads?**
- A. I told him there was a redhead fan club. I don't know if there is or not but someone told me once that he belongs to a redhead fan club. They do pageants and stuff like that.**

**Q. Did you tell him about the redhead fan club when you walked into the office?**

**A. Yes.**

**Q. Did he look up the redhead –**

**A. No. He said he already looked up stuff, there wasn't anything on it. I didn't know what else to look up 'cuz I don't know anything about computers. I don't know.**

**Q. How did the conversation end?**

**A. I walked away."**

**(Pl. Dep. 32-33.)**

**She was then questioned further about this incident and testified as follows:**

**"Q. Did you ever tell anybody about seeing the computer screen?**

**A. The other lady that works there in new cars sales, I said do you know they look up these things on the Internet when they're here.**

**Q. What did she say?**

**A. She didn't think it was a big deal. She said yeah, they're guys, they do that all the time. If she wants to use a computer she'll go to a different computer, there's another computer you can use she said."**

**(Pl. Dep. 33.)**

**On another day, it is not clear whether it was during the week of April 28th, she said that Davis told her, "I want to eat you." Her testimony regarding this statement is as follows:**

**"Q. Who made that statement to you?**

**A. Jerry.**

**Q. Once or ten times, five times?**

A. I probably heard it ten times.”

Her testimony continued:

“Q. In what context was that statement made to you?

A. Just they thought I smelled good when I walked by they would say what kind of perfume are you wearing? I want to eat ya.”

Then on May 2, 2003, she testified the following occurred:

“The last Friday that I worked there a lady came in, I don’t know her name, but she was a real pretty lady and I said who’s that, they said she used to work here, she used to be a stripper, she used to be a dancer and she used to wear fishnet stockings to work and all these tight things to work and everything like that. Then they mentioned another lady that worked there, Melanie Jacobs who was also a dancer. I never once ever mentioned that to them that I danced ‘cuz I would never do that. Um, so they were talking about the clothes she would wear, she wore fishnet stockings to work, tight clothes. I always dressed in slacks and long sleeve button-up shirts. I was joining obviously the conversation ‘cuz I was wondering who the lady was. I said I would know better than to wear fishnet stockings to work around you guys, you know. They said, well, at least you could show a little more leg, ‘cuz I dressed in slacks and a button-up shirt. They said you could show a little more leg. We were all there together, it wasn’t just the sales manager, it was the other sales associates. I didn’t really say anything.”

(Pl. Dep. 21.)

As to Saturday, she testified as follows:

“So, um, the next day which was Saturday I decided to wear a skirt, I wore a skirt down to my knees. I was the only person, the only used car sales person there at that time. I know it was an open floor but the new car sales people were there on the new car sales side and, um, the other guy had the day off so it was just me. Jerry met me on the lot, and, um, said something to me that made me uncomfortable, I don’t remember what it was. It made me feel great, here we go, I wore a skirt, and, you know. We went inside and I was working on a car deal. He came into my office, I sat in my chair and he came around and he sat down across the

side from me and he looked at me through his glasses and he said I bet you can be a real screamer during sex. It made me really, really uncomfortable. I said please don't talk to me like that. I said I'm just gonna say something to him, this went far enough. I said please don't speak to me like that, it makes me uncomfortable. He laughed and said oh, you don't like our mushy comments that we make to you. I said, no, it makes me uncomfortable. The rest of the day he didn't really talk to me. He was kind of real short. I sensed the different type of attitude towards me. I thought maybe he's upset at me or something."

(Pl. Dep. 21.)

Referring to Monday, May 5, Plaintiff said: "Monday came around and I was really excited because the car deal I was working on was being delivered that day. I was excited so I went up to him Monday morning (presumably Jerry Davis) and I just asked him a question about the deal. I was really excited because I was going to sell a car, he just walked right past me didn't stop, didn't address my question, he said calm down before I spank you and he walked out the door." (Pl. Dep. 22.)

On Wednesday, May 7, 2003, Plaintiff testified that the following occurred:

"Then Wednesday came around and I, I didn't know how I felt about the job, I said I don't know, all these things are happening, I'm gonna call off today and just think about what's going on or if I want to work here. I said I'm gonna go over to my mom's house and explain to her how I feel. I went over to my mom's house and I called into work, it was just before, it was like around 8:00 or, I don't remember what time it was, I wasn't supposed to be at work yet. I was calling in to tell them I wasn't going to be there that day, that I was going to the doctor. They said no, we need you here today.

At that time I explained to my mom what was going on, my brother Wolfgang too, and they just hit the roof. I went into work, I did end up being late, I was about half an hour late that day and then, um, I hadn't eaten breakfast yet, I asked Rick, he wasn't really a manager but he could give authority, things like that if Jerry wasn't around. I said I can go to Cracker Barrel

and get something to eat. I went and got something to go. I ran to Cracker Barrel, came back. Then my mom pulled in the driveway and I saw her car through the window. I went out there to talk to her. She said I need to talk to you. Wolfgang called a lawyer and we think what you're going through is sexual harassment."

(Pl. Dep. 23-24.)

Speaking of Jerry Davis, Plaintiff said:

"He said if you don't want to be here just leave. I said I'm not going to do that, I don't want to portray that I don't want to be here, it's my job, I'm not going to leave if they need me.... I told my mom, no, I can't leave, I'm staying. She said anyway, here's the number, I want you to call the lawyer. I said okay... promise me you'll go in there now and call. I said okay, I'll call. I came in to work and I was on the phone with her. Jerry came in and said that I was fired."

(Pl. Dep. 24.)

Plaintiff also testified as follows:

**“Q. If Mr. Davis had not come in at that moment would you have worked out the rest of the day?”**

**A. Sure, oh, yeah, ‘cuz he told me not to leave. I said mom, I’m not leaving. She left and I stayed.**

**Q. Do you think you would have returned to work the next day?”**

**A. Oh, yeah, I needed a – I mean, I don’t know what I would have done.**

**A. I might have probably went to someone at work with my problem.**

**Q. Who?”**

**A. Probably Tom or the owner or somebody.”**

**(Pl. Dep. 25-26.)**

**As to the number of cars she sold, Plaintiff commented: “No actually I sold four, Sport Track, Cavalier, Malibu and possibly one other.” (Pl. Dep. 38-39.)**

**Several affidavits were filed by employees of Defendant.**

**An affidavit of employee Terri Lynn Bosanac states that she is the Administrative Assistant at Allen Chevrolet-Cadillac, and that no complaints were made to her as to any derogatory or sexual remarks allegedly made to Plaintiff. (Def. Mt. Summary Judgment, Ex. A.)**

**An affidavit filed by Mark Jarriat states that he did not hear any derogatory or sexual remarks made to Plaintiff, nor “did she complain to me of any remarks.” (Def. Mt. Summary Judgment, Ex. A.)**

**An affidavit filed by employee Mary Connors, a sales person who had worked at Allen Chevrolet-Cadillac for nine (9) years, states that Plaintiff never complained to her that persons were making derogatory or sexual statements to her. Connors further stated that she had never heard anyone make sexual or derogatory statements to Plaintiff, that Plaintiff did complain that she was not making money, and that Plaintiff could “swing on a pole.” (Def. Mt. Summary Judgment, Ex. A.)**

**A reprimand was given to Plaintiff on May 1, 2003, stating that she was “taking too long for lunch.” (Def. Mt. Summary Judgment, Ex. C.)**

**Also filed is a case document, an Employee Handbook, which outlines the procedure to be followed in the event of harassment of an employee. (Def. Mt. Summary Judgment, Ex. G.)**

### III. STANDARDS APPLICABLE TO MOTIONS FOR SUMMARY JUDGMENT

In *Schemansky v California Pizza Kitchen, Inc.*, 122 F. Supp. 2d 761, my colleague, Judge Gerald Rosen, set forth an apt discussion on the standards which I adopt.

Summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. (56)(c).

Three 1986 Supreme Court cases – *Matsushita Electrical Industrial Co. v Zenith Radio Corp.*, 475 U.S. 574 (1986); *Anderson v Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Celotex Corp. v Catrett*, 477 U.S. 317 (1986) – ushered in a “new era” in the standards of review for a summary judgment motion. These cases, in the aggregate, lowered the movant’s burden on a summary judgment motion.<sup>12</sup> According to the *Celotex* Court,

“In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof.”

*Celotex*, 477 U.S. at 322.

After reviewing the above trilogy, the Sixth Circuit established a series of principles to be applied to motions for summary judgment. They are summarized as follows:

- \* Cases involving state of mind issues are not necessarily inappropriate for

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<sup>12</sup>“Taken together the three cases signal to the lower courts that summary judgment can be relied upon more so than in the past to weed out frivolous lawsuits and avoid wasteful trials.” 10A Charles Alan Wright, Arthur R. Miller, Mary Lay Kane, *Federal Practice & Procedure*, § 2727, at 35 (1996 Supp.).

summary judgment.

- \* **The movant must meet the initial burden of showing “the absence of a genuine issue of material fact” as to an essential element of the non-movant’s case. This burden may be met by pointing out to the court that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case.**
- \* **The respondent cannot rely on the hope that the trier of fact will disbelieve the movant’s denial of a disputed fact, but must “present affirmative evidence in order to defeat a properly supported motion for summary judgment.”**
- \* **The trial court no longer has the duty to search the entire record to establish that it is bereft of a genuine issue of material fact.**
- \* **The trial court has more discretion than in the “old era” in evaluating the respondent’s evidence. The respondent must “do more than simply show that there is some metaphysical doubt as to the material facts.” Further, “[w]here the record taken as a whole could not lead a rational trier of fact to find” for the respondent, the motion should be granted. The trial court has at least some discretion to determine whether the respondent’s claim is plausible.**

*Betkerur v Aultman Hospital Association*, 78 F.3d 1079, 1087 (6th Cir. 1996). *See also*, *Street v J.C. Bradford & Co.*, 886 F.2d 1472, 1479-80 (6th Cir. 1989). This Court will apply these standards in deciding Defendant’s motion for summary judgment in this case.

#### **IV. PLAINTIFF HAS NOT SHOWN SHE WAS SUBJECTED TO A HOSTILE WORK ENVIRONMENT**

In *Harris v Fork Lift Systems, Inc.*, 510 U.S. 17, 21-22 (1993), the Court explicitly stated:

**“Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment – an environment that a reasonable person would find hostile or pervasive – is beyond Title VII provisions. Likewise, if the victim does not subjectively perceive the environment to be abusive, the conduct has not altered the condition of the victim’s employment and there is no Title VII violation”**

*See also Meritor Savings Bank, FSB v Vincent*, 477 U.S. 57, 67 (1986).

In *Bowman v Shawnee State University*, 220 F.3d 456, 463 (6th Cir. 2000), the court stated:

**“The issue is not whether each incident of harassment standing alone is sufficient to sustain a cause of action in a hostile environment case, but whether – taken together – the reported incidents make out such a case. The work environment as a whole must be considered rather than to focus on individual acts of alleged hostility. Isolated incidents, however, unless extremely serious, will not amount to discriminatory changes in the terms or conditions of employment.”**

In *Newman v Federal Express Corp.*, 266 F.3d 401, 405 (6th Cir. 2001), the court made this pronouncement:

**“Specifically, we consider ‘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.’ [...] The Supreme Court has consistently held that ‘simple teasing, offhand comments and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment.’ [...] Finally ... the work environment must be both objectively and subjectively offensive.”**

I turn now to the Plaintiff’s claims. These are a series of statements, attributed by her mainly to employees Davis and Walsek, such as: “What kind of perfume are you wearing,” “I want to eat you,” and “I’m gonna spank you.” Other statements were “show a little leg” and “I bet you can be a real screamer during sex.”

When she was first questioned about these statements, she attributed them mainly to Davis and Walsek, but in doing so she said, “[u]m, well a lot of times they would say things like what perfume are you wearing; I want to eat you and I’m going to spank you,

things of that nature, at any given time all throughout each day.” (Pl. Dep. 19.) What is troublesome about this response is its generality. It was made in the context of a question concerning when she first met Davis to which she responded “[o]n the first day of work.” According to her response, these statements began on her very first day of work and continued uninterruptedly thereafter. I question the plausibility of her total response when she was asked what happened.

With regard to her claim that she was told, on May 2, 2003, “[a]t least you could show a little more leg,” her full statement about this alleged incident is on page 7 of this Opinion. She ended her statement by saying “[w]e were all there together... I didn’t really say anything.” (Pl. Dep. 21.)

The following day, Saturday, May 3, 2003, Plaintiff said Davis “said something to [her] that made [her] uncomfortable,” but Plaintiff said, “I don’t remember what it was.” (Pl. Dep. 22.) (See page 8 of this Opinion for her extended response). On that same day, Plaintiff stated that Davis said to her, “I bet you can be a real screamer during sex.” (Pl. Dep. 22.) Plaintiff said, “please don’t talk to me like that,” and in her deposition stated that, “[i]t made me really, really uncomfortable.” (Pl. Dep. 22.)

By Monday, May 5, 2003, she said “I was really excited because the car deal I was working on was being delivered that day,” and she wanted to speak with Davis. (Pl. Dep. 22.) (For her full response, see page 8). It seems that Plaintiff’s state of mind had changed. She was upset because Davis would not talk to her.

One of the events which Plaintiff claims made the workplace a hostile environment is that several employees used computers located on and adjacent to the sales floor to look

up pornographic displays on the internet. Plaintiff describes this event as set forth on pages 4 through 6 of this Opinion. The difficulty with Plaintiff's claim as to pornography in the workplace is that she apparently was compliant with it.

In her deposition at page 30, and repeated in my Opinion in the pages aforesaid, she describes what the employees were looking at. She talks about a rape scene. She was asked "Did you stay there, did you leave, did you ask questions?" Her answer is revealing. She said that she was told by one of the employees to "give me something to look up on the computer, I've been looking up things all day." She responded that he could look up something about redheads – "they have a redhead fan club." To which he said, "I already looked up redheads." Then this colloquy followed:

**Q. What did you want him to look up on the internet about redheads?**

**A. I told him there was a redhead fan club. I don't know if there is or not but someone told me once that he belonged to a redhead fan club....**

**Q. Did you tell him about the redhead fan club when you walked in the office?**

**A. Yes.**

**Q. Did he lookup the redhead fan club?**

**A. No, he said he already looked up stuff and there wasn't anything on it.**

**Q. How did the conversation end?**

**A. I walked away."**

When she told a fellow female employee about this, that person "didn't think it was a big deal." (Pl. Dep. 33.) (See page 6 of this Opinion). The employee said, "yeah, they're

guys, they do that all the time.” (Pl. Dep. 33.)

It is difficult to accept Plaintiff’s claim that pornography in the workplace created a hostile work environment, particularly when she appeared to be compliant in viewing the screen and suggesting that they look up the red-head fan club.

Earlier reference was made to the event that occurred on May 5, 2003, and its sequel on Wednesday, May 7, 2003, the date of her termination. (See Plaintiff’s description of these events on pages 8, 9 and 10 of this Opinion).

These events must be taken in sequence. Plaintiff said, “I’m gonna go over to my mom’s house and explain to her how I feel.” (Pl. Dep. 23.) Plaintiff stated that she went over to her mom’s house and “called into work ... around 8:00 or I don’t remember what time it was, I wasn’t supposed to be at work yet.” (Pl. Dep. 23.) Plaintiff was “calling in to tell them I wasn’t going to be in there that day that I was going to the doctor.” (Pl. Dep. 23.) They said, “no, we need you here today.” (Pl. Dep. 23.) It was then that she explained to her mom and to her brother, Wolfgang, what was going on.

When she arrived at the dealership she said she had not eaten breakfast and that she wanted to get something to eat. When she returned, her mother came by car into the driveway at the dealership. Plaintiff “went out to talk to her.” Her mother said, “I need to talk to you. Wolfgang called a lawyer and we think what you’re going through is sexual harassment.” (Pl. Dep. 24.)

Her mother wanted Plaintiff to call a lawyer and Plaintiff said, “I told my mom no I can’t leave I am staying.” Her mother said, “anyway, here’s the number, I want you to call the lawyer.” Plaintiff said, “okay.” Her mother said, “promise me you’ll go in there now

and call.” Plaintiff said, “okay, I’ll call.” While Plaintiff was talking to the lawyer, “Jerry came in and said that I was fired.” (Pl. Dep. 24.)

The cases teach that a court must look at the totality of the events that occurred to determine whether the reported incidents sustain a finding of a hostile work environment.

It is clear that on May 7, 2003, Plaintiff’s mother and her brother had been in contact with a lawyer, and her mother then came to the dealership and told her, “we think what you’re going through is sexual harassment.” (Pl. Dep. 24.) Her mother gave her the lawyer’s phone number and told her to call. Plaintiff wanted to stay and said to her mother, “I can’t leave I am staying.” Her mother insisted that she call the lawyer, “promise me you’ll go in now and call.” Reluctantly she did so.

The cases also teach that the work environment must not only be objectively offensive but also subjectively offensive. Even after Plaintiff was terminated, she indicated that she might have returned to work the next day. She said, “I might have probably went to someone at work with the problem.” When asked who that was she said, “[p]robably Tom or the owner or somebody.” (Pl. Dep. 26.)

To sum up, in *Black v Zaring Homes*, 104 F.3d 822 (6th Cir. 1997), *cert denied* 522 U.S. 865, the court stated:

“Although the verbal comments were offensive and inappropriate, and the record suggests that defendant’s employees did not always conduct themselves in a professional manner, Title VII was not designed to purge the workplace of vulgarity.”

In *Bowman v Shawnee State University*, 220 F.3d 456, 463 (6th Cir. 2000), the court emphasized:

**“The issue is not whether each incident of harassment standing alone is sufficient to sustain the cause of action in a hostile environment case, but whether - taken together - the reported incidents make such a case. The work environment as a whole must be considered rather than a focus on individual acts of alleged hostility. Isolated incidents, however, unless extremely serious, will not amount to discriminatory changes in the terms or conditions of employment.”**

**The cases wisely have raised a high bar. In requiring that the offensive conduct be severe, the United States Supreme Court used a word that means “unsparing” or harsh in treating others, conduct that is extremely serious. It also requires that the conduct be pervasive, i.e., it must permeate the entire work environment. The offensive statements in this case were not severe or pervasive.**

**Moreover, given the facts of this case discussed above, I do not believe Plaintiff can state a plausible claim for subjective harassment. Her behavior clearly shows that she did not feel harassed. As I discussed earlier, when she saw co-workers viewing rape scenes on an office computer, she suggested they look up a redhead fan club. By her own testimony, she voluntarily initiated or joined conversations with co-workers who had previously made comments of a sexual nature to her, and even chose to participate in conversations about the sexual appeal of previous co-workers. This is not the behavior of a person who feels harassed by such actions; no reasonable person could find otherwise. Therefore, even if such actions did meet the objective test, Plaintiff fails to meet the subjective test of harassment.**

**Thus, Summary Judgment is granted in favor of Defendant as to the hostile work environment claim.**

**Plaintiff also claims retaliatory discharge.**

Assuming that Plaintiff has established a *prima facie* case, Defendant argues that Plaintiff was terminated for non-discriminatory reasons, including her tardiness and poor performance. Plaintiff argues that she performed well because she sold 3 or 4 cars in 2 weeks time. Both Plaintiff and Defendant agree that Plaintiff was late prior to the date she was terminated and received a reprimand for that conduct. Both Plaintiff and Defendant also agree that on the day of Plaintiff's termination, Plaintiff arrived late for work and then sought to take an early lunch break. According to Defendant's disciplinary procedures, Davis was within his rights to terminate Plaintiff's employment after she arrived late on May 7 because, by that time, Plaintiff had already received a warning for tardiness. It would appear Plaintiff can not demonstrate that Defendant's articulated reason for firing her, her tardiness, was pretextual. Accordingly, Summary Judgment is granted in favor of Defendant on this count. IT IS SO ORDERED.

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**JOHN FEIKENS**  
**UNITED STATES DISTRICT JUDGE**

**DATED:**