

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

HASSAN SABIR,	:
Plaintiff,	:
	:
v.	: Civil Action No. 3:97 CV 2249 (CFD)
	:
JAMES C. JOWETT, DENNIS LISEE, and	:
LEWIS FUSARO.	:
Defendants.	:

RULING ON PARTIES' MOTIONS IN LIMINE

I. Plaintiff's Motions

As to the plaintiff's Motion in Limine Re: Police Reports [Doc. # 117], the portion of the motion in limine which requests that the two state police reports be excluded in their entirety is DENIED. The sources of information and other circumstances of the reports do not indicate lack of trustworthiness sufficient to exclude the reports. The portion of the motion in limine which applies to particular statements and portions of the two reports is DENIED, without prejudice to raising specific objections at trial.

The plaintiff's Motion in Limine Re: Settlements With Co-Defendants [Doc. # 118] is GRANTED, by agreement of the parties.

II. Defendants' Motion in Limine [Doc. # 115]

The defendants first seek to preclude under Rules 608(b) and 403 of the Federal Rules of Evidence cross-examination of Detective Jowett about conduct which led to three prior administrative investigations of him conducted by the state police. No reports remain of the first investigation for "inefficiency," dated February 1, 1989 (Investigation No. 89-017), for which Detective Jowett was exonerated, and it appears that the plaintiff has waived or abandoned his

request to cross-examine Detective Jowett about this. Accordingly, the motion in limine is GRANTED, absent objection, as to this conduct.

Similarly, no reports remain of the second investigation for “neglect of duty and inefficiency,” dated November 2, 1989 (Investigation No. 89-197), which was sustained. At a hearing before this Court on the motions in limine, however, defendants’ counsel indicated that this complaint related to an incident in which Trooper Jowett apparently left a police cruiser in gear for driving when the vehicle should have been placed in park.

Rule 608(b) provides in part,

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness’ credibility . . . may . . . in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness’ character for truthfulness or untruthfulness[.]

“The first step in a 608(b) analysis is whether the specific conduct is probative of the witness’ character for truthfulness or untruthfulness.” United States v. Phibbs, 999 F.2d 1053, 1070 (6th Cir. 1993) (quoting United States v. Hill, 550 F. Supp. 983, 990 (E.D. Pa. 1982), aff’d, 716 F.2d 893 (3d Cir. 1983), cert. denied, 464 U.S. 1039 (1984)), cert. denied, 510 U.S. 1119 (1994). Here, Detective Jowett’s conduct with respect to this charge does not relate to his truthfulness or untruthfulness. In addition, the charge is nearly twelve years old, and therefore its probative value is diminished. Further, as to plaintiff’s claim that there is not enough information regarding this charge, the plaintiff chose not to resume the deposition at which the issue first arose, following the granting of a motion to compel.¹ Accordingly, the motion in limine is GRANTED as to this

¹U.S. Magistrate Judge Garfinkel granted the plaintiff’s motion to compel on February 23, 2000, concerning documents relating to sustained administrative investigations of Detective Jowett, such as this one. It was subsequently determined that no documents still existed as to this

charge on the basis that it does not relate to Detective Jowett's truthfulness under Federal Rule of Evidence 608(b), and its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading the jury under Federal Rule of Evidence 403.

The third complaint against Trooper Jowett concerned an incident on July 5, 1998, when \$100 in bail money was reported missing following an arrest. An administrative investigation was conducted (Investigation No. 98-085), and the Court has reviewed the report of Sergeant Marcia Youngquist, the internal affairs investigator who conducted the investigation for the Connecticut State Police. That report indicates that the charges² against Detective Jowett were sustained on one ground, which essentially amounted to a failure to follow administrative procedures when receiving bail money. The disposition of two other charges—for misappropriation of moneys or goods and theft or conversion of state property—is listed as “exonerated.” Based on this record, the Court finds that Detective Jowett was exonerated on the charges of misappropriation and theft.

Applying the standards of Federal Rules of Evidence 608(b) and 403, the Court concludes that the conduct underlying these three charges is not a permissible topic for cross-examination of Detective Jowett. As to the sustained charge, it concerns a failure to follow administrative

particular investigation because of its age.

²A total of five charges were made against Detective Jowett in Investigation 98-085. He was exonerated on a charge of failure to prepare a transmittal sheet concerning the subject arrest. This charge does not relate to credibility, and thus is not a proper subject for cross examination under Federal Rule of Evidence 608(b). A fifth charge of “Shirking duties” is listed as “not sustained,” a classification that is warranted, according to the “Notice of Disposition Classification,” when “[t]here is insufficient evidence to clearly prove or disprove the complaint or incident.” While this disposition is inconclusive, the Court concludes that the conduct underlying such a charge (which also concerns failing to complete a transmittal form) does not appear to be related to truthfulness or untruthfulness, and thus is not a proper subject for cross examination under Federal Rule of Evidence 608(b). The remaining three charges are discussed in the text.

procedures, which is not probative of character for truthfulness or untruthfulness, and thus is not a proper subject for inquiry on cross-examination under Rule 608(b). As to the charges concerning misappropriation of money or theft of property, those allegations would relate to his character for truthfulness or untruthfulness and thus fall within Rule 608(b). However, whatever probative value cross-examination on this conduct may have is substantially outweighed by the danger of unfair prejudice and the risk of misleading the jury, as Detective Jowett was exonerated on those charges. See Fed. R. Evid. 403; see also United States v. Schwab, 886 F.2d 509 (2d Cir. 1989) (holding that the district court committed error in allowing cross-examination of the defendant concerning conduct that led to charges of income tax charges for which he eventually was acquitted); Phibbs, 999 F.2d at 1070 (holding that the district court did not abuse its discretion in permitting cross-examination of an FBI agent about charges that were the subject of an internal disciplinary investigation but for which he was not disciplined); Hill, 550 F. Supp. at 989-990 (not permitting cross-examination of a DEA agent concerning an internal inter-agency investigation after which he was “cleared of all wrongdoing”). Accordingly, cross-examination regarding the conduct that resulted in this administrative investigation will not be permitted, and this portion of the defendants’ motion in limine is GRANTED.

As to the portion of the motion in limine directed at Mrs. Sabir’s testimony, it is DENIED, without prejudice to raising specific objections at trial.

As to the portion of the motion in limine directed at the testimony of the “John Doe” troopers, it is DENIED, without prejudice to raising specific objections at trial.

As to the portion of the motion in limine directed at certain of the plaintiff’s exhibits, it is DENIED, without prejudice to raising specific objections at trial.

SO ORDERED this 30th day of May 2001, at Hartford, Connecticut.

Christopher F. Droney
United States District Judge