[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-13983

Non-Argument Calendar

LANITRA JETER,

Plaintiff-Appellant,

versus

JOE ROBERTS,
Dep. D.A., et al.,

Defendants,

JEFFERSON COUNTY DISTRICT ATTORNEY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:20-cv-01863-ACA

Before JILL PRYOR, NEWSOM, and BRANCH, Circuit Judges.

PER CURIAM:

LaNitra Jeter appeals the district court's grant of summary judgment in favor of her former employer, Danny Carr, in his official capacity as the District Attorney ("DA") of Jefferson County, Alabama, as to her claims of retaliation under Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e-3(a).[1] Jeter argues that she established a *prima facie* case of retaliation and the district court erred in determining that the four-month delay between her protected activity and the DA's termination of her employment was too attenuated to satisfy the causation element of a retaliation claim. She also argues that the district court erred in concluding that, even if Jeter did establish a *prima facie* case, she could not establish that the DA's proffered reasons for Jeter's termination—Jeter's extensive history of untrustworthiness and the DA's need to run a skeleton crew in light of the Covid-19 pandemic—were pretextual. Because we agree with the district

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[1] Jeter initially brought multiple claims against multiple defendants, but eventually she substituted Carr as the sole defendant.

court that Jeter failed to establish a *prima facie* case of retaliation, we affirm the district court's summary judgment order.

I. Background

Jeter, a black woman, was hired as a Victim Services Officer ("VSO") with the Jefferson County DA's Office in April 2019. VSOs could use three different types of leave: vacation leave, sick leave, and comp time. New VSOs did not have any vacation or sick leave when they started, but they earned 8 hours of vacation and 8 hours of sick leave per month. To earn comp time, however, VSOs were required to obtain permission to alter their schedules by combining their two 15-minute breaks into a 30-minute lunch and then working through their 1-hour lunch break. This practice allowed VSOs to earn 1.5 hours of comp time for the additional hour of work they performed.

During her first few months of employment, Jeter began to suffer from health problems that required her to use a substantial amount of leave time so that she could attend medical appointments. By September 2019, Jeter's frequent absences caught the attention of Michael McCurry, the DA Office's chief administrator, who discussed his concerns with Jeter's supervisor, Judy Yates. McCurry had found that as of September 19, 2023, Jeter had used all 40 hours of her sick leave, all 40 hours of her vacation leave, and 62 hours of her 66.75 hours of comp time. McCurry and Yates concluded that Jeter was abusing the discretionary comp time policy. Accordingly, Yates informed Jeter that she was suspending her ability to earn comp time.

In addition to concerns over Jeter's use of comp time, Jeter's superiors also became concerned about Jeter's truthfulness because of a fabricated story Jeter told Yates and other employees. Specifically, on September 16, 2019, Jeter took comp time to attend what she said was a mediation involving her husband and his ex-wife in a domestic relations case. When she returned from comp leave, Jeter told Yates and other VSOs that she got angry at her husband's ex-wife during the mediation, threw her to the ground, and was placed in handcuffs by a bailiff until she calmed down. Yates passed along this story to McCurry, who reached out to the judge and mediator assigned to Jeter's husband's case. The judge and mediator confirmed that Jeter's story was fabricated and that no mediation had even taken place on September 16, 2019. As their supervisor, Yates maintained files of all VSOs and would update their files with memos regarding workplace incidents as necessary. Accordingly, Yates documented Jeter's untruthfulness regarding her husband's mediation as well as her absence issues.

On November 12, 2019, Jeter met with Carr to complain about her comp time being taken away.[2] Jeter told Carr that she felt she was being treated unfairly on account of her race, specifically she was the only black VSO and the only VSO to have their ability to earn comp time restricted. Yates was not present at this meeting and testified that she did not know about Jeter's racial

[2] Carr testified that he did not remember the meeting occurring, but conceded for the purpose of summary judgment that the court must accept as true that the meeting happened because Jeter testified that it took place.

discrimination complaint to Carr until after Jeter was terminated. The same day that Jeter met with Carr, Jeter also requested to meet with Yates to discuss the possibility of reinstating her ability to earn comp time. After Jeter's meeting with Yates, Yates allowed Jeter to begin accruing comp time again.

Over the next few months, Yates continued to document concerns regarding Jeter's actions. In addition to these documented memos, Joe Roberts, the Chief Deputy DA, testified that Yates would verbally update him regarding concerns about Jeter's performance. Some examples of these concerns included Jeter (1) failing to clock out on her lunch breaks; (2) clocking in a half hour earlier than allowed without requesting permission; and (3) lying about her whereabouts by clocking into courtrooms that were later found to be empty. Despite these concerns, Roberts testified that there was no urgency to terminate Jeter's employment and that it was not unusual for an employee to have issues go on for a while before termination because leadership wanted to help employees become better and more productive.

In March of 2020, in response to the Covid-19 pandemic, Carr and Roberts decided to implement a staffing plan that would limit the number of people physically present in the DA's office on any given day. The plan required one VSO to be physically present at any time, and the identity of the VSO would change daily. That same month, Carr and Roberts discussed Jeter's issues and Carr made the decision to terminate Jeter. Roberts requested a memo

from Yates highlighting Jeter's issues that Carr would reference in his meeting with Jeter.

Yates completed the memorandum on March 13, 2020. The memorandum listed in bullet format multiple issues with Jeter, including, for example: (1) Jeter's abuse of the leave system and taking time away from work; (2) Jeter's failure to follow the chain of command; (3) Jeter's telling of fabricated stories; (4) Jeter's use of office time to deal with her husband's and son's legal issues; (5) Jeter sleeping while observing a trial; (6) her leaving the building without signing out or telling others that she would not be available; and (7) her lying about her whereabouts. Carr did not investigate whether these issues were true or not, taking them at Yates's word. On March 16, 2020, Carr terminated Jeter's employment with the DA's office.

After her termination, Jeter, proceeding pro se, filed the instant lawsuit against Carr, Roberts, Yates, McCurry, and the Jefferson County DA's Office, alleging that the DA's Office engaged in race discrimination by not allowing her to accrue comp time like her white counterparts and retaliated against her by firing her after she complained about the alleged discriminatory conduct. [**Doc. 1**]. After obtaining counsel, Jeter filed the operative Third Amended Complaint ("TAC"), bringing two counts: a claim for racial discrimination under Title VII and 42 U.S.C. § 1981, and a retaliation claim under Title VII and 42 U.S.C. § 1981 against the Jefferson County DA's Office only. Carr was then substituted in place of the DA's office as the sole defendant.

After being substituted as the sole defendant, Carr moved for summary judgment on both counts of Jeter's TAC. Jeter "[did] not contest Carr's motion for summary judgment as to her claims that she was terminated based on her race," leaving only her retaliatory termination claim. The district court determined that Jeter could not make out a *prima facie* case of retaliation under the *McDonnell Douglas*[3] framework for a Title VII claim because four months had elapsed between her alleged protected activity and her termination. The district court also determined that even if Jeter could establish a *prima facie* case, that Carr had provided two legitimate reasons for terminating Jeter's employment that were not retaliatory—the continuing problems with her employment as outlined in Yates's memo and the Covid-19 staffing plan—and that Jeter could not show that these reasons were pretextual. Finally, the district court determined that Jeter had failed to present a convincing mosaic of circumstantial evidence of retaliation. Accordingly, the district court granted summary judgment in favor of Carr. Jeter timely appealed.

[3] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

II. Standard of Review

We review a district court's grant of summary judgment *de novo*. *Owens v. Governor's Off. of Student Achievement*, 52 F.4th 1327, 1333 (11th Cir. 2022). Summary judgment is proper if there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Id.* All submitted evidence is viewed in the light most favorable to the non-moving party. *Id.*

III. Discussion

On appeal, Jeter argues that the district court erred in finding that she had not (1) established a *prima facie* case of retaliation under Title VII; and (2) shown that Carr's motives were pretextual.[4] After review, we affirm the district court's grant of

[4] Jeter also made a passing reference at the end of her pretext argument to an alternative "convincing mosaic" theory of discrimination. As we have recently noted, "a 'convincing mosaic' is a metaphor, not a legal test and not a framework." *Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1311 (11th Cir. 2023). No matter how a plaintiff intends to show discrimination, "the ultimate question in a discrimination case is whether there is enough evidence to show that the reason for an adverse employment action was illegal discrimination." *Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 941 (11th Cir. 2023). Therefore, the only question for a court at summary judgment is "whether the evidence permits a reasonable factfinder to find that the employer retaliated against the employee." *Berry*, 84 F.4th at 1311. As discussed herein, a reasonable juror could not conclude that Carr retaliated against Yates.

summary judgment because Jeter did not establish a *prima facie* case of retaliation.

Under Title VII, an employer may not retaliate against an employee because that employee has opposed any practice made unlawful under that law, or because that employee has made a charge or participated in a proceeding thereunder. 42 U.S.C. § 2000e-3(a). Where, as here, a plaintiff brings a retaliation claim based on circumstantial evidence, the claim is analyzed under the *McDonnell Douglas* burden-shifting framework. *Ring v. Boca Ciega Yacht Club, Inc.*, 4 F.4th 1149, 1163 (11th Cir. 2021). "Under the *McDonnell Douglas* framework, to avoid summary judgment a plaintiff must establish a *prima facie* case of retaliation." *Id.* (internal quotation marks and brackets omitted). To establish a *prima facie* case of retaliation, Jeter "must show that (1) she engaged in statutorily protected expression; (2) she suffered an adverse action; and (3) the adverse action was causally related to the protected expression." *Id.* (quotations omitted).

For purposes of determining whether a plaintiff has established a *prima facie* case, we have construed the causation requirement broadly such that "a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated." *Pennington v. City of Huntsville*, 261 F.3d 1262, 1266 (11th Cir. 2001) (quotations omitted). One way a plaintiff satisfies the causation requirement is by showing that the employer knew of the statutorily protected activity and that there was a close temporal proximity between the employer's awareness

and the adverse action. *Higdon v. Jackson*, 393 F.3d 1211, 1220 (11th Cir. 2004). If there is a substantial delay between the protected activity and the adverse action, however, the retaliation claim fails as a matter of law absent any other evidence showing causation. *Id.* We have held that standing alone, "[a] three to four month disparity between the statutorily protected expression and the adverse employment action is not enough" to establish causation. *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). Nevertheless, the causation element of a *prima facie* case may still be established if a party "present[s] evidence from which a reasonable jury could find" that a causal connection existed between the protected activity and the adverse action. *Id.*

Here, Jeter has not established a temporal connection or any additional circumstantial evidence supporting a causal connection between the protected activity and the adverse action. Jeter met with Carr on November 12, 2019, to complain about the alleged racial discrimination she faced, and she was fired on March 16, 2020, a period exceeding four months. Accordingly, absent additional evidence, Jeter cannot establish that her termination was causally connected to her complaint of racial discrimination. *See, e.g.*, *Thomas*, 506 F.3d at 1364.

Jeter offers four pieces of circumstantial evidence which she argues supports a showing of causation: (1) the rarity of terminations in the DA's office; (2) Roberts's testimony that there was no urgency to terminate Jeter based on her problems; (3) Yates's continuing conversations with Roberts regarding Jeter's

performance and Yates's filing of memos in Jeter's file after Jeter's November meeting with Carr; and (4) the Covid-19 pandemic offering the first opportunity for Carr to terminate Jeter's employment.

None of these pieces of "circumstantial evidence" is convincing. With respect to the first two pieces of circumstantial evidence, Jeter does not explain how the rarity of terminations or the lack of urgency to fire her establish a causal connection in light of her employment issues. Furthermore, the probative value of these assertions is undermined by Roberts's further testimony that employee issues could "go on for a while" before termination because Carr, Roberts, and their staff sought to help struggling employees improve their performance before making the decision to fire them. Yates similarly testified that she did not want to write up Jeter after every infraction because she felt Jeter had potential to be a very good VSO and wanted Jeter's employment to "work out." With respect to Yates's continual monitoring of Jeter's performance, Jeter does not explain how an ongoing evaluation of her performance is related to her complaint, particularly in light of the fact that Yates began documenting Jeter's issues two to three months prior to Jeter's meeting with Carr. Finally, Jeter's argument that the Covid-19 pandemic offered the first opportunity for Carr to fire Jeter is completely speculative and in any event, unsupported by the record which shows that Jeter had performance issues in December 2019, January 2020, and February 2020. Thus, Carr could have terminated Jeter's employment at

multiple times between November 2019 and March 2020, and been justified in doing so.

Because Jeter cannot establish a causal relationship between her protected activity and her termination, she cannot establish a *prima facie* retaliation claim. Because she has not established a *prima facie* case, we need not address Jeter's argument that Carr's motives were pretextual. Accordingly, we affirm the district court's granting of summary judgment.

AFFIRMED.