FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10572

DEMARKUS HALL,

Plaintiff,

ANNE GUTHRIE,
Administrator for the estate of DeMarkus Hall,
EDDIE HUGHES,

Plaintiffs-Appellants,

versus

COAL BED SERVICES INC.,
PATE HOLDINGS INC.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 7:22-cv-00513-LSC

Before NEWSOM, BRASHER, and ED CARNES, Circuit Judges.

ED CARNES, Circuit Judge:

DeMarkus Hall and Eddie Hughes, who are Black, worked for Coal Bed Services, Inc. They complained to one of their work supervisors that another supervisor had discriminated against them based on race. Several weeks later, the supervisor they had complained to fired Hall and Hughes after they refused to take a drug test on a jobsite. Brandon Ramsey, a White coworker, also refused to take that drug test; he walked off the jobsite, realizing that he was being terminated.

Soon thereafter, the company let Ramsey come back to work but wouldn't let Hall and Hughes. And even though all three employees had worked only four hours the day they refused to take the drug test, the company paid Ramsey for a full shift but paid Hall and Hughes for only four hours. The next two workers the company hired for Hall's and Hughes' positions were White men, one of whom it had previously fired for failing a drug test.

Hall and Hughes claim that the company's firing them for their refusal to take a drug test was a pretext for unlawful discrimination and for retaliation. They asserted those claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a), *id.* § 2000e-3(a), against their former employer Coal Bed Services Inc., and under 42 U.S.C. § 1981 against Coal Bed Services and its parent company Pate Holdings, Inc.[1]

The district court granted summary judgment in favor of the defendant companies. We believe there is a genuine issue of material fact as to whether the companies discriminated against Hall and Hughes based on their race and retaliated against them for protected conduct. We reverse the district court's grant of summary judgment and remand for further proceedings.

I.

A. Factual Background

DeMarkus Hall[2] and Eddie Hughes worked as laborer-operators for Coal Bed Services, a subsidiary of Pate Holdings, from September 2020 until Coal Bed Services terminated their

[1] Coal Bed Services has only one shareholder, which is Pate Holdings. And Pate Holdings has only one shareholder, Luther Stan Pate, IV (Stan Pate). Stan Pate testified as the Rule 30(b)(6) representative on behalf of both companies. *See* Fed. R. Civ. P. 30(b)(6).

Coal Bed Services, which was Hall and Hughes' employer, is a defendant as to the Title VII and § 1981 claims, while Pate Holdings is a defendant only as to the § 1981 claims. But in their brief to this Court, the two companies have not distinguished themselves from each other in regard to the § 1981 claims. And we will at times refer to them collectively as "the companies."

[2] After the events involved in this case occurred, Hall died. Anne Guthrie, the administratrix of his estate, has been substituted as a party. To simplify things, in referring to arguments, contentions, and positions we will still refer to Hall as though he were the party in this case.

employment in February 2021.[3] As laborer-operators, Hall and Hughes worked alongside other laborers and equipment operators, and their job duties included various construction and property maintenance tasks. Most of their coworkers at Coal Bed Services were White, including their direct supervisor, Willie Williams.

Brandon Ramsey, a White coworker of Hall and Hughes, also worked on a crew primarily supervised by Willie Williams, and he worked at the same jobsites as Hall and Hughes on most days. Ramsey began working for Coal Bed Services in 2018. Before 2018 he had worked in similar construction positions.

In their depositions Hall and Hughes testified that Coal Bed Services treated them differently from their White coworkers. They testified that their supervisors gave them "dirtier" and more difficult jobs than their White coworkers. And, according to Hall and Hughes, the company did not give them the same opportunities for development and advancement that it gave their White coworkers.[4]

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[3] We view the facts at summary judgment in favor of the nonmovants, here Hall and Hughes. *See Cottrell v. Caldwell*, 85 F.3d 1480, 1486 (11th Cir. 1996). "[W]hat is considered to be the 'facts' at the summary judgment stage may not turn out to be the actual facts if the case goes to trial, but those are the facts at this stage of the proceeding for summary judgment purposes." *Id.*

[4] On at least one occasion someone at Coal Bed Services did give Hall an opportunity to learn how to operate heavy machinery. He took advantage of that opportunity but unfortunately crashed the heavy machine into a company truck.

Hall and Hughes also testified that other supervisors, including James Toxey, referred to them as "y'all" and "them," instead of using their names, while the same supervisors referred to all the White employees by their names. The pair also took offense to Toxey's tone when he once asked them to wash his truck during work hours, which was not part of their job duties.

Hall and Hughes further testified that in January 2021, they had what they describe as a verbal altercation with supervisor Toxey, which they think was racially motivated on his part. Hughes remembered Toxey belittling them before the altercation began: "[Toxey] was talking crazy. Basically like, the boy stuff, like talking to us like we [were] beneath him. Stuff like that." Hall believes that racism motivated Toxey's comments. He testified that when he confronted Toxey about his behavior, Toxey brushed it off with the comment: "I've got more black friends than y'all."

Supervisor Williams intervened and ended that verbal confrontation. Hall and Hughes told him that Toxey was racist and was treating them differently than he treated other employees. Williams did not ask them for additional information about the incident or why they thought Toxey was racist. Nor did Williams discuss the incident or complaint with anyone other than Toxey himself, who denied that he was racist. Believing the disagreement was due to conflicting personalities, Williams took steps to separate the pair and Toxey from that point on.

Then came the incident that resulted in the end of Hall's and Hughes' employment. Williams testified that on February 19, 2021, an employee reported to him that he had seen Hall and Hughes smoking marijuana on the job. In response to that report, Williams rounded up Hall, Hughes, and the rest of their team and told them all that they had to take a drug test. (Before that testimony was given, Coal Bed Services took a different position in its Equal Employment position statement, representing that the drug test was random and not referring to any report that Hall and Hughes had been seen using drugs at work.

Williams told the employees that if they failed the drug test or refused to take it, they would be terminated. One White worker, Ramsey, refused to take the test and walked off the jobsite, effectively accepting his termination. Hall and Hughes also refused to take the test and understood they were effectively terminated; they, too, left the jobsite.

Hall and Hughes deny that they ever smoked marijuana on the job. There are no written reports to corroborate Williams' statements that another worker had told him that he had seen Hall and Hughes smoking marijuana that day. Unlike occasions where an employee had been terminated for failing a drug test, Williams didn't document Hall and Hughes' reported drug use or their ensuing refusals to undergo drug testing.

A few hours after he had walked off the job site, Ramsey (the White coworker who had refused to take the drug test) had a change of heart. He contacted Williams and asked whether there was anything he could do to "keep from losing [his] job." Williams said he would speak with the executives of Coal Bed Services, Stan

Pate and Alan Davis, about it. Ramsey was at home for several hours before someone at Coal Bed Services called him and told him to come back to the main office, where Davis would meet with him to discuss whether he could have his job back.

During their meeting, Davis offered Ramsey his job back on the condition he would submit to random drug tests in the future. Ramsey agreed to do so. According to him, nobody placed any other conditions on his ability to return to work. He returned to work the next workday and was not subjected to any restrictions. He was not required to pass a drug test before returning to work; the first one he took after returning to work was at least several weeks later.

Hall and Hughes heard about Ramsey's deal and wanted the same treatment. They individually began reaching out to Williams and other members of Coal Bed Services' management team, seeking reemployment.

Hall called Williams the day after losing his job and contacted him several more times in February and March 2021. He asked Williams for his job back. Williams was non-committal. Williams was "very short" on the phone and indicated that he would call Hall back, but he never did.

Hall also testified about calling company owner Pate and asking if he could come back to work. Pate, like Williams, told

Hall he would call him back. But, like Williams, Pate never did. And Pate didn't respond to a follow-up call from Hall either.[5]

Hughes also tried to get his job back. He testified that he texted Williams but received no response. Hughes also spoke with another supervisor on the phone and conveyed that he was willing to submit to the same conditions under which Ramsey had been rehired. The other supervisor said he would call Hughes back, but like all the others, he never did.

Despite Hall, Hughes, and Ramsey all working the same number of hours the day they refused the drug tests, Coal Bed Services compensated them differently for that partial day's work. The company paid Hall and Hughes for only the four hours of work they completed before they refused to take the drug tests and left the jobsite. Ramsey, on the other hand, was paid for a full shift of work — even though he, like Hall and Hughes, had worked only four hours before walking off the jobsite.

In March 2021, several weeks after firing Hall and Hughes, Coal Bed Services rehired Michael Morris, a White laborer the

[5] Pate remembers these events differently. According to Pate, he had an in-person conversation with Hall at the main office of Coal Bed Services, during which Pate "begged" Hall to stop using drugs so that he could return to work, but Hall refused. Hall disputes that, testifying that he never had an in-person conversation with Pate, never refused to stop smoking marijuana, and never received a reemployment offer. (Coal Bed Services' Equal Employment position statement didn't refer to any in-person conversations between Hall and Pate.) Given the procedural posture of the case, we take Hall's testimony as true. *See supra* at 4 n.3.

company had fired eight months earlier for failing a drug test. The company made him take a drug test before he started working again, but he was not drug tested any more after that. The next laborer hired after Morris was also White.

B. Procedural History

Hall and Hughes sued Coal Bed Services under Title VII, and they sued both Coal Bed Services and Pate Holdings under 42 U.S.C. § 1981, alleging that the companies had discriminated against them because of their race and retaliated against them because of their complaints of racial discrimination. Their jointly filed complaint alleged four causes of action against the two companies. Hall and Hughes alleged that Coal Bed Services violated Title VII by (1) discriminating against them based on their race and (2) retaliating against them because of their complaints of racial discrimination. And they alleged that both companies violated § 1981 by (3) discriminating against them based on their race and (4) retaliating against them because of their complaints of racial discrimination.

After discovery closed, the district court granted the companies' joint motion for summary judgment on all four of the claims.

II.

We review *de novo* the grant of summary judgment. *Sierra Club v. Tenn. Valley Auth.*, 430 F.3d 1337, 1345–46 (11th Cir. 2005). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

III.

Hall and Hughes claim that Coal Bed Services violated Title VII and that Coal Bed Services and Pate Holdings violated 42 U.S.C. § 1981 by discriminating against them because of their race. They also claim that Coal Bed Services violated Title VII and that both companies violated 42 U.S.C. § 1981 by retaliating against them for their complaints of racial discrimination.

A. The Discrimination Claims

We first discuss the Title VII discrimination claim against Coal Bed Services, and then we will turn to the § 1981 discrimination claim against both companies.

1. The Title VII Discrimination Claim

Title VII prohibits employment discrimination "because of [an] individual's race." 42 U.S.C. § 2000e-2(a)(1). To defeat his employer's motion for summary judgment on a Title VII discrimination claim, a plaintiff may use the *McDonnell Douglas* framework or the convincing mosaic approach, which we have characterized as "two paths to the same destination—the ordinary summary judgment standard." *McCreight v. AuburnBank*, 117 F.4th 1322, 1335 (11th Cir. 2024). Whichever path is used, the destination is the same: an answer to whether the evidence is sufficient for a reasonable jury to infer illegal discrimination. *Id.*

Some examples of evidence a plaintiff may use to construct a convincing mosaic of discrimination include: "(1) suspicious timing, ambiguous statements, and other bits and pieces from which an inference of discriminatory intent might be drawn; (2) systematically better treatment of similarly-situated employees; and (3) [a showing] that the employer's justification is pretextual." *Poer v. Jefferson Cnty. Comm'n*, 100 F.4th 1325, 1337 (11th Cir. 2024) (quotation marks omitted and alterations adopted).

As a reminder, we view the evidence in the light most favorable to Hall and Hughes, making reasonable inferences in their favor as well. *See Phillips v. Legacy Cabinets*, 87 F.4th 1313, 1320 (11th Cir. 2023). Doing that, this is the convincing mosaic of evidence showing intentional racial discrimination: (a) White co-worker Ramsey, who lost his job the same day Hall and Hughes did for the same conduct, asked to be rehired and was given his job back the next work day, while they were stonewalled in their repeated attempts to get their jobs back under the same conditions as Ramsey; (b) all three men worked a half shift the day they lost their jobs, but the company paid Ramsey as though he had worked a full shift, while it paid Hall and Hughes for only four hours of work; (c) the company replaced Hall and Hughes with two White laborers, one of whom had been fired by the company less than a year earlier for failing a drug test; (d) the company told the EEOC that the drug test that led to the terminations was random, but Williams later insisted in his deposition that the test had been administered because an employee reported that he had seen Hall and Hughes smoking marijuana on the job; (e) the company did not give Hall and Hughes the same opportunities to improve their skills and advance that it gave White employees at the same level, and it gave Hall and Hughes the dirtiest jobs among the laborers; and (f) one of their supervisors, Toxey, never referred to Hall and Hughes by name, calling them "y'all" and "them," while always referring to White employees by name, and he once belittled them by calling them "boys" and telling them that he had "more black friends than" they did.

Taking that mosaic of evidence and drawing from it reasonable inferences in favor of Hall and Hughes, it is convincing enough that a jury reasonably could find that Coal Bed Services racially discriminated against them when it terminated them from their employment and did not consider them for reemployment on the same terms as it did their co-employee Ramsey.

Coal Bed Services protests that for Hall and Hughes to get past summary judgment there must be "actual evidence of a racial motive," apparently meaning direct evidence of it. But the convincing mosaic approach requires a convincing mosaic of evidence, not a convincing mosaic including some direct evidence of race discrimination. *See Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 946 (11th Cir. 2023) (explaining that "[a] 'convincing mosaic' of *circumstantial evidence* is simply enough evidence for a reasonable factfinder to infer intentional discrimination in an employment action—the ultimate inquiry in a discrimination lawsuit") (emphasis added). To put it somewhat differently, evidence is evidence; circumstantial evidence *is* "actual" evidence. *See id.* at 946 n.2 ("A plaintiff proving her case through the convincing mosaic standard may point to any relevant and admissible evidence."). Just as circumstantial evidence can be sufficient to convict an accused of a crime, it can be sufficient for a jury to find that an employer discriminated against an employee. And in this case it is sufficient.

Coal Bed Services also argues that we shouldn't count, or at least shouldn't count for much, the more favorable treatment given Ramsey because he is, the company asserts and the district court found, not a valid comparator under the *McDonnell Douglas* framework. The court found he wasn't a close enough comparator under *McDonnell Douglas* because he was not similarly situated in all material respects. Although they were all three subject to the same policies and had the same supervisor, Ramsey had more construction experience, had been working for the company longer, and had a different title and different tasks than Hall and Hughes did. Hall and Hughes' daily work consisted of "shoveling mud out of holes, cleaning up buildings, tearing down buildings, leveling ground, and other manual labor as needed." Ramsey, by contrast, was a heavy equipment operator. Some of his work involved "operating heavy machinery including excavators, bulldozers, compactors, dump trucks, and rock trucks." We will assume, without deciding, that because of the difference in length of service and nature of tasks performed, Ramsey was not a valid comparator for *McDonnell Douglas* purposes.

That Ramsey isn't a valid comparator for *McDonnell Douglas* purposes doesn't matter; it doesn't because this is a convincing mosaic analysis. *See McCreight*, 117 F.4th at 1335 (explaining that "employees with significant evidence of illegal discrimination who lack the comparator evidence [that is] often required to set out a case under *McDonnell Douglas*" can use the convincing mosaic approach instead).[6] And the strikingly different treatment of Ramsey is highly significant because he engaged in the same misconduct on the same day at the same time as Hall and Hughes. And like Hall and Hughes, he was terminated for it. And like Hall and Hughes, he wanted to get his job back after he was terminated. But unlike Hall and Hughes, he was rehired immediately while Hall and Hughes struggled unsuccessfully to get anyone at the company to even talk to them about such a possibility.

The mosaic of evidence in this case, enhanced by the reasonable inferences due a nonmovant, is convincing enough to put the question of intentional racial discrimination to a jury. A jury,

[6] Coal Bed Services' assertion that an employee reported having seen Hall and Hughes smoking marijuana on the job but no one had reported seeing Ramsey doing that doesn't matter for present purposes. As we've noted, at this stage we have to view the evidence in the light most favorable to nonmovants Hall and Hughes and draw all reasonable inferences in their favor. The company told the EEOC that Hall and Hughes were fired for refusing a drug test. It said nothing to the EEOC about anyone reporting that either or both of them had been seen smoking marijuana on the job. It was not until discovery, through Williams' deposition, that it was asserted that the drug test was administered because an employee had reported seeing Hall and Hughes smoking marijuana on the jobsite. That conflict in Coal Bed Services' story line poses two possible inferences: either it was not telling the whole truth in its letter to the EEOC, or it was not being truthful when it remodeled its story during litigation. For present purposes, we are required to infer that Coal Bed Services told the truth sooner instead of later, and that there was no report that Hall and Hughes had been smoking marijuana on the job.

considering the evidence in the light most favorable to Hall and Hughes and drawing all reasonable inferences in their favor could reasonably find that the reason they were treated worse than Ramsey is their race.

2. The § 1981 Discrimination Claims

Hall and Hughes also asserted discrimination claims against Coal Bed Services and Pate Holdings under 42 U.S.C. § 1981. That section provides that "[a]ll persons within the jurisdiction of the United States shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens." 42 U.S.C. § 1981. A plaintiff asserting an action under § 1981 must prove that discrimination was a but-for cause of the loss of his employment contract. *See Comcast Corp. v. Nat'l Assoc. of Afr.-Am. Owned Media*, 589 U.S. 327, 340–41 (2020); *see also Phillips*, 87 F.4th at 1321 & n.5. That's the same standard we just applied to Hall and Hughes' single-motive Title VII discrimination claim. *See Phillips*, 87 F.4th at 1321 n.5.

For the same reasons as discussed in Part III.A.1, *supra*, Hall and Hughes have shown that a genuine issue of material fact precludes summary judgment against them on their § 1981 claims that racial discrimination caused their loss of employment. *Cf. Jenkins v. Nell*, 26 F.4th 1243, 1249 (11th Cir. 2022).

B. The Retaliation Claims

Hall and Hughes also claim that Coal Bed Services violated Title VII and that Coal Bed Services and Pate Holdings violated 42 U.S.C. § 1981 by retaliating against them for their complaints of racial discrimination. We discuss those claims in turn.

1. The Title VII Retaliation Claim

Title VII prohibits retaliation against an employee because he "has opposed any practice made an unlawful employment practice" by Title VII. 42 U.S.C. § 2000e-3(a). An employer may not retaliate against an employee because the employee complained about racial discrimination. *See id.*

Where a retaliation claim is based on circumstantial evidence, as Hall and Hughes' is, we have "primarily" relied on the *McDonnell Douglas* framework when reviewing a summary judgment. *Yelling v. St. Vincent's Health Sys.*, 82 F.4th 1329, 1337 (11th Cir. 2023) (quotation marks omitted).[7] Under that burden-shifting test, Hall and Hughes must first show that they (1) engaged in a statutorily protected activity, (2) experienced an adverse action, and (3) that their protected conduct caused the adverse action. *See id.* The burden then shifts to the employer to "articulate a legitimate, non-discriminatory reason or reasons for its actions." *Id.* (quotation marks omitted). The burden then re-shifts back to the plaintiff to show that each of the employer's proffered reasons is pretextual.

[7] We do not mean to imply that a plaintiff cannot use a convincing mosaic approach to defeat summary judgment on a Title VII retaliation claim. *See Berry v. Crestwood Healthcare LP,* 84 F.4th 1300, 1310 (11th Cir. 2023) ("Without relying on the *McDonnell Douglas* framework, an employee may prove retaliation with any circumstantial evidence that creates a reasonable inference of retaliatory intent."); *id.* at 1313 ("To be sure, an employee can prove retaliation without the *McDonnell Douglas* framework."); *Yelling*, 82 F.4th at 1342 (same); *see also Berry*, 84 F.4th at 1311 (explaining that a plaintiff's retaliation claim survives summary judgment when "the evidence permits a reasonable factfinder to find that the employer retaliated against the employee").

See id. At bottom, to succeed against a motion for summary judgment Hall and Hughes were required to present enough evidence for a reasonable jury to find that Coal Bed Services retaliated against them because of their complaints of racial discrimination. *See id.* at 1338–39.

As to the prima facie case component, it is uncontested that Hall and Hughes complained to Williams that Toxey had discriminated against them because of their race, a statutorily protected activity. *See Yelling*, 82 F.4th at 1337. It's also uncontested that about one month later Coal Bed Services fired them and then refused to rehire them, an adverse action. *See id.*

Coal Bed Services contends that Hall and Hughes' retaliation claim should fail for at least two reasons: (1) their complaint of racial discrimination wasn't objectively reasonable; and (2) they cannot show causation.

First, Coal Bed Services contends that Hall and Hughes' complaint of racial discrimination was not "objectively reasonable" because it was unreasonable as a factual matter for them to think that Toxey was discriminating against them. The company is correct that we require a plaintiff's complaint to be "objectively reasonable." *See, e.g.*, *Clover v. Total Sys. Servs., Inc.*, 176 F.3d 1346, 1351 (11th Cir. 1999). That doesn't mean, though, that we require a plaintiff "to prove that the discriminatory conduct complained of was actually unlawful." *Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1311 (11th Cir. 2016). Instead, "[t]he conduct opposed need only be close enough [to unlawful] to support an objectively reasonable belief that it is" unlawful. *Id.* (quotation marks omitted).

Hall and Hughes point to the following as evidence that their belief that the racial discrimination they suffered and complained about was "objectively reasonable": (a) supervisors, including Toxey, referred to them as "y'all," and "them," instead of using their names, while the same supervisors referred to all the White employees by their names; (b) Toxey used a demeaning tone one time when he asked them to wash his truck (which was not part of their job duties); (c) Hughes remembered Toxey belittling them directly before they complained to Williams about Toxey's conduct: "[Toxey] was talking crazy. Basically like, the boy stuff, like talking to us like we [were] beneath him. Stuff like that."; and (d) Hall remembered that when he confronted Toxey about that perceived racist behavior, Toxey responded: "I've got more black friends than y'all." Hall and Hughes contend that it was objectively reasonable for them to think that Toxey treated them differently because of their race.

We agree. Hall and Hughes' complaint of racial discrimination was "objectively reasonable." *See Clover*, 176 F.3d at 1351. The evidence of Toxey's behavior (viewed in the light most favorable to Hall and Hughes) is "close enough to support an objectively reasonable belief" that he was discriminating against them because of their race. *See Furcron*, 843 F.3d at 1311 (quotation marks omitted); *see also Clover*, 176 F.3d at 1351.

Second, Coal Bed Services contends that Hall and Hughes cannot establish causation because their own misconduct broke the chain of causation. More specifically, even though they were fired about a month after they complained about Toxey's conduct to a supervisor, the company argues they can't show that their complaint caused their termination because in the meantime they had refused to take a drug test, a terminable offense.

We've said that to establish causation, "a plaintiff need only show that the protected activity and the adverse action were not wholly unrelated." *See, e.g.*, *Clover*, 176 F.3d at 1354 (quotation marks omitted). We've held that when the decision-maker was aware of the protected conduct, temporal proximity between that awareness and the adverse action can be enough to establish causation. *See, e.g.*, *Farley v. Nationwide Mut. Ins. Co.*, 197 F.3d 1322, 1337 (11th Cir. 1999); *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007). For example, in *Farley*, we held that a plaintiff had satisfied his burden of causation where the totality of the evidence of it was that his supervisors knew about his complaint and he was fired seven weeks after making it. *See* 197 F.3d at 1337. We explained that seven weeks between complaint and termination was close enough to create a "causal nexus for purposes of establishing a prima facie case" of retaliation. *See id*. In this case there were only about four weeks between the time Hall and Hughes complained about their supervisor Toxey discriminating against them and the date they were fired and not rehired.

The district court, relying on two of our unpublished, non-binding opinions for support, concluded that Hall and Hughes couldn't show causation because the "report" that they had been "spotted smoking marijuana on the job and their refusal to take a drug test broke the causal chain." *Cf., e.g.*, *Phillips*, 87 F.4th at 1327 n.13 ("Unpublished decisions, of course, are not binding.").

Hall and Hughes rebut that conclusion's premise. In their sworn testimony, they have repeatedly denied that they used drugs on the job. And as they point out, the company has no written documentation to support the alleged report of their drug use, even though it had written documentation to support past reports of drug use involving other workers who had not participated in a protected activity. In fact, the company informed the EEOC that the drug test was "random," not that it was administered in response to a report of drug use on the job. And when co-worker Ramsey refused to take the same drug test that Hall and Hughes refused to take, the company didn't treat that refusal as "misconduct" that barred him from being rehired immediately. It promptly granted his request to come back to work.

Viewing all of the evidence in the light most favorable to Hall and Hughes, they've created a prima facie case of retaliation, and they've done enough to show that the company's proffered non-retaliatory reason for terminating them and then not rehiring them is pretextual. *See Farley*, 197 F.3d at 1337; *Thomas*, 506 F.3d at 1364.

Whether summary judgment should have been granted on the Title VII retaliation claim comes down to this question: could a reasonable jury find that Hall and Hughes were fired or weren't rehired as retaliation for their complaint of racial discrimination. A reasonable juror could answer that question either way. *Cf., e.g.*, *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 926 (11th Cir. 2018) ("In short, and taking all the circumstances together, the question whether Sewon fired Jefferson to retaliate for her complaint about perceived racial discrimination, is a question for a jury."). Summary judgment should not have been granted against Hall and Hughes on their Title VII retaliation claim.

2. The § 1981 Retaliation Claims

Hall and Hughes also claim that Coal Bed Services and Pate Holdings violated 42 U.S.C. § 1981 by retaliating against them because of their complaints of racial discrimination. "Retaliation claims are also cognizable under 42 U.S.C. § 1981 and are analyzed under the same framework as Title VII claims." *Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1134 (11th Cir. 2020) (en banc). Same framework, same evidence, same conclusion under § 1981 as under Title VII. Hall and Hughes have shown that a genuine issue of material fact precludes summary judgment on their § 1981 claim that the companies retaliated against them for their complaints of racial discrimination.

IV.

The judgment of the district court is **REVERSED**, and the case is **REMANDED** to the district court for further proceedings.