

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-13573

TELMA O. HALL,

Plaintiff-Appellee-Cross Appellant,

versus

ALABAMA STATE UNIVERSITY,

Defendant-Appellant-Cross Appellee.

Appeals from the United States District Court
for the Middle District of Alabama
D.C. Docket No. 2:16-cv-00593-JTA

Before JILL PRYOR, BRANCH, and ED CARNES, Circuit Judges.

PER CURIAM:

Telma Hall served as the head coach of the Alabama State University (“ASU”) women’s softball team for more than eight years. Besides serving as head coach, she taught at ASU as an adjunct professor and took classes there as a student.

In March 2014, two parents of players on the softball team complained to ASU about Hall's conduct as head coach. Concerned that Hall was placing players' safety at risk, the university suspended her. During the suspension, ASU continued to pay her coaching salary, but it barred her from having contact with any ASU student. As a result, Hall could no longer teach classes or attend classes as a student. While she was suspended, ASU investigated the accusations against her. After the investigation was complete, ASU terminated her.

Hall sued ASU under Title VII of the Civil Rights Act of 1964, bringing sex discrimination claims arising out of her suspension and termination. ASU moved for summary judgment on both claims. It asserted that it suspended Hall not because of discrimination based on her sex but rather under a longstanding university policy to suspend, pending an investigation, any head coach who was accused of conduct that put students at risk. In response, Hall submitted evidence showing that when a student made accusations that a male head coach had engaged in conduct putting player safety at risk, ASU had not suspended the coach. ASU further asserted that it terminated Hall not because of her sex but rather because of the softball team's poor performance during her tenure as head coach. Hall argued that the district court should not credit this proffered reason because ASU advanced it for the first time during litigation.

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The district court denied ASU summary judgment on the suspension claim, concluding that Hall had come forward with evidence that ASU's stated reason for her suspension was a pretext for discrimination. But it granted summary judgment to ASU on the termination claim. It concluded that Hall had failed to come forward with evidence that ASU's proffered reason for her termination was a pretext for discrimination.

At trial, the jury found that Hall's sex was a motivating factor in the suspension decision and awarded her substantial damages. After the trial, ASU filed a motion for judgment as a matter of law and for a new trial. The court denied its motion.

Both parties appeal. ASU argues that the district court erred in denying its post-trial motion and should have either entered judgment in its favor or ordered a new trial on the suspension claim. Hall argues that the district court erred in granting summary judgment to ASU on the termination claim. After careful review, and with the benefit of oral argument, we affirm.

I. BACKGROUND

Hall challenges ASU's decisions to suspend and terminate her. In this section, we begin by recounting the facts of the case and then turn to the procedural history of Hall's lawsuit.

A. Factual Background

Before becoming a softball coach, Hall attended college at ASU, located in Montgomery, Alabama, where she played on the softball team. After she graduated in 2003, she worked as a middle

school teacher and as the head softball coach for one of ASU's conference rivals.

In 2005, ASU hired Hall as the head coach for its softball team. As head coach, she faced considerable challenges. For instance, when she was hired, ASU did not have enough players to field a team. Hall had to find ASU students willing to join the team to complete the roster. After the first two games in the team's spring 2006 season, three players were injured, and the team had to cancel the remainder of its season.

Another challenge Hall faced as head coach was that the softball team's practice field was filled with rocks, which made it difficult for the team to practice fielding ground balls. The practice field also lacked fencing on one side. As a result, players sometimes had to run into oncoming traffic to retrieve balls. When Hall tried to get more funding from ASU for the team and its facilities, she was told to "[l]eave it alone" and not to ask for more money. Doc. 207 at 37–38.¹ During the eight years that Hall served as head coach, the team had a record of 89 wins and 221 losses.

While serving as ASU's head coach, Hall took advantage of an ASU employee benefit that permits the university's employees to take classes without paying tuition, so long as the classes do not interfere with their job duties. Through this program, she earned a master's degree in physical education. After earning this degree, Hall continued to take ASU classes. In the spring 2014 semester,

¹ "Doc." refers to the district court's docket entries.

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she was enrolled in classes in the university's health information management program.

After earning her master's degree in physical education, Hall began working as an adjunct professor at ASU. She was teaching classes during the spring 2014 semester. Her teaching duties were unrelated to her coaching duties, and she received separate pay for each role.

In the subsections that follow, we discuss the events occurring in early 2014 that led ASU to suspend Hall as head coach. We then discuss ASU's investigation and its decision to terminate her.

1. After Receiving Multiple Complaints, ASU Suspends Hall as Head Coach

Early in the spring 2014 season, the ASU softball team played in a tournament in Birmingham, Alabama.² The team traveled to Birmingham on Friday, February 28. It played games in Birmingham on Saturday and Sunday and returned to Montgomery on Sunday night. At the end of the day on Monday, March 3, ASU suspended Hall from her position as head coach of the softball team.

² In this subsection, we recount the facts underlying Hall's sex discrimination claim arising from her suspension. We rely on the evidence in the trial record, viewing all evidence and drawing all reasonable inferences in favor of Hall, the non-moving party. See *Luxottica Grp., S.p.A. v. Airport Mini Mall, LLC*, 932 F.3d 1303, 1310 (11th Cir. 2019).

On Sunday and Monday, the parents of two players on the team wrote to ASU officials to complain about Hall's conduct during the tournament and raise concerns about her leadership. Their concerns fell roughly into three buckets. First, the parents criticized how Hall handled uniforms and other team clothing. ASU provided players on the softball team with two sets of uniforms. According to the parents, at the Birmingham tournament, Hall required the team to wear the (less favored) yellow uniforms. They also said that Hall had taken away the players' warm-up clothing that the university had provided because the team was performing poorly. And the parents reported that before the final game at the tournament, Hall took back the yellow uniforms and told the players they would have to wear white t-shirts with their numbers written on the back in marker. But, as one parent acknowledged, the players did, in fact, wear their uniforms for the game.

Second, the parents expressed concerns about how the players were fed. They complained that during the Birmingham tournament food was "very scarce" and the players were "always hungry." Doc. 190-15 at 3. They described problems with the players getting enough to eat when on campus at ASU, too. They complained that Hall scheduled practice so late that by the time practice was finished, ASU's cafeteria had closed, so the players could not eat dinner there.

Third, the parents complained about how Hall communicated with the players. They reported that she regularly threatened to remove players from the roster, called them names like "bitch,"

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and told them that they were “worthless” or “going to be replaced.” *Id.* They stated that at the tournament she became upset with several players and forced them to wait on the bus for approximately an hour while the team warmed up.

One of the parents, whose daughter was a sophomore, also described a hazing incident that had occurred the previous school year. She asserted that seniors on the softball team required younger team members “to run through the project area at night wearing a hooded sweatshirt and barefoot.” *Id.* at 1. After the run, one player went to the hospital for dehydration. The parent reported that her daughter said that Hall knew about the incident but did nothing. The same parent also said that in the previous year another player on the team had threatened to “pop” her daughter in the mouth. *Id.* at 2. But the parent did not say that Hall was present for or otherwise aware of this incident.

On the afternoon of Monday, March 3, Melvin Hines, ASU’s athletic director, reviewed the two parents’ written complaints. Around 4:00 p.m. that day, he emailed one of the parents, promising that the university would conduct a thorough investigation. Later that afternoon, he met with several members of the softball team. After meeting with the players, Hines decided that Hall should be suspended. He discussed the decision with John Knight, the university’s executive vice president, and Kenny Thomas, the university’s general counsel. They agreed with the decision.

Afterward, that same day, Hines met with Hall. He told her that based on “some information” he had received, she was suspended with pay from the coaching position. Doc. 207 at 39. He directed her to leave campus immediately. Hall told him that she had “no idea what [he was] talking about” and asked for more information. *Id.* Hines refused to tell her anything else, saying that ASU was going to bring in an outside investigator. Hall asked for a written letter documenting the accusations against her. But Hines refused to provide a letter or any more information about her suspension. According to Hines, he did not want to give Hall information about the accusations against her because he was concerned that she would be “hostile.” Doc. 208 at 113.

Hall left Hines’s office and went to ASU’s human resources office. She again requested a letter documenting the reason for her suspension. A human resources employee told her to go home and that a letter would be forthcoming. Hall left the ASU campus without knowing the accusations against her.

The next day, March 4, Hines drafted a written memorandum to Gwendolyn Boyd, the university’s president. He recommended that ASU place Hall on “indefinite administrative leave” while it conducted an “[i]nvestigation into alleged unsatisfactory conduct pertaining to student-athlete welfare.” Doc. 190-6. The memorandum included no information about the accusations against Hall. Although Hines wrote this memo on March 4, at the direction of ASU’s human resources office, he backdated it to

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March 3. Knight reviewed the recommendation and approved it. The recommendation then went to Boyd, who also approved it.

On March 7, Hall received a written letter from ASU's human resources office about her suspension. The letter stated that Boyd had approved a recommendation that Hall "be placed on administrative leave with pay pending an outcome of the investigation into alleged unsatisfactory conduct pertaining to student-athlete welfare[,] effective immediately." Doc. 190-7. The letter directed that during the suspension Hall could not "contact any student" at ASU. *Id.* Although Hall was suspended from the coaching position and banned from campus, the letter included no information about the accusations against her.

Because of her suspension, Hall was unable to continue teaching or attending classes as a student. The dean who oversaw Hall's work as an adjunct professor reviewed the letter and concluded that because Hall could not have any contact with students, she could not continue to teach. For the same reason, she could not take classes.

2. ASU Completes Its Investigation and Then Terminates Hall

While Hall was suspended, ASU investigated the accusations raised in the parents' written complaints about the players' welfare.³ It hired Michael Buckner, an outside attorney, to conduct

³ In this section, we recount the facts underlying Hall's sex discrimination claim arising from her termination. For this claim, we review the evidence in

the investigation. He interviewed members of the softball team, their parents, Hall, her assistant coaches, and others. According to Hall, even during her interview, which lasted approximately six hours, Buckner never informed her of the accusations against her.

Buckner investigated whether the softball team was involved in a hazing incident the previous school year. He determined that the incident had occurred. But he found no evidence that Hall was aware of the incident before it occurred. Instead, his investigation showed that Hall learned of the incident the day after it occurred and that she was upset about it. Buckner determined that Hall was not responsible for the hazing incident.

Buckner also investigated the parent's report that during the previous year her daughter had been physically threatened by another ASU softball player. He interviewed the player who supposedly made the threat, and she said that she was simply joking with her teammate. Buckner found no evidence that Hall was aware of this incident.

During his investigation, Buckner did find evidence that supported other aspects of the parents' reports. Players told him that Hall had yelled and used threats to try to motivate them. They also said that she had limited the uniforms and other apparel available to the team during the Birmingham tournament. Buckner found

the record at summary judgment, "viewing all evidence and drawing all reasonable inferences in favor of" Hall, the non-moving party. *Phillips v. Legacy Cabinets*, 87 F.4th 1313, 1320 (11th Cir. 2023) (citation modified).

that Hall made players wear white t-shirts during a warmup before one game, but they wore uniforms during the game.

Buckner also investigated the reports about the food provided to the team. He determined that at the Birmingham tournament Hall had provided the players with snacks and meals. Some players told him that during the day at the tournament, they had not had enough time to eat, but others reported having had no problem. He learned that although the players were given dinner each night, some players ended up buying extra food. As part of his investigation, Buckner also spoke with an ASU athletic trainer, who had not traveled with the softball team to Birmingham. She told him that the dinners selected for the team—pizza and fast food—were inadequate from a nutritional standpoint.

Regarding meals for the players on campus at ASU, Buckner found that the softball team's practices sometimes ended after the university's dining hall closed. He determined that during the previous school year the softball coaching staff rarely arranged for players to receive box meals from the cafeteria. He did not address whether Hall arranged for players to receive box meals during the current school year.

During his investigation, Buckner determined that the softball team may have violated a bylaw of the National Collegiate Athletic Association ("NCAA"). Under this bylaw, during the off-season players generally could not practice more than four hours per day or 16 hours total each week. He determined that on several occasions, the team exceeded these limits.

Buckner shared his findings with Boyd and Hines. Based on Buckner's report, ASU notified the NCAA of the softball team's violation involving offseason practice.⁴ Buckner made no recommendation about whether ASU should terminate Hall.

Hines recommended that the university terminate Hall's employment. Knight and Boyd approved his recommendation. On May 2, ASU notified Hall that her employment was terminated. It provided no reason for her termination.

After her termination, Hall filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC"), raising claims arising from her suspension and termination. In EEOC proceedings, ASU asserted that it had a legitimate, non-discriminatory reason for suspending Hall: to investigate the accusations that she had potentially harmed student athletes. And it stated that it terminated her because it learned from the Buckner investigation that she had "mistreated student-athletes and violated some NCAA regulations." Doc. 26-23 at 13. The EEOC ultimately issued Hall a right-to-sue letter on these claims.

⁴ When ASU made this report, it was already under investigation for other, unrelated violations. Ultimately, the NCAA concluded that ASU had violated NCAA bylaws by: (1) allowing student athletes to receive extra benefits from the university's bookstore and (2) having the softball team exceed the number of hours of practice allowed during the offseason. As punishment, ASU was placed on probation with the NCAA for two years, was fined \$5,000, received a public reprimand and censure, and for one year had to reduce the number of hours the softball team could practice in the offseason.

B. Procedural History

Hall sued ASU under Title VII, claiming that she was suspended and terminated because of her sex.⁵ The parties consented to allowing a magistrate judge to decide the case.⁶ *See* 28 U.S.C. § 636(c). In this section, we review the summary judgment ruling on Hall’s termination claim, the trial on her suspension claim, and the proceedings on ASU’s post-trial motion.

1. Summary Judgment on the Termination Claim

After discovery, ASU moved for summary judgment. It argued that it did not discriminate against Hall based on her sex when it suspended and terminated her. It asserted that it terminated Hall for a legitimate, non-discriminatory reason: that the “softball program was not successful” during her tenure as head coach. Doc. 20-6 at 70. ASU submitted evidence of the team’s win-loss record during Hall’s tenure as head coach. It also submitted evidence that it had previously raised issues with Hall about the team’s poor performance. In a 2013 performance evaluation, ASU warned Hall

⁵ In her complaint, Hall raised other Title VII claims. She claimed that she was the victim of sex discrimination because ASU paid her less than the male head coach of the baseball team and provided less financial support to the softball team than it gave to male sports teams. She also alleged that she suffered unlawful retaliation after she engaged in protected conduct. The district court granted summary judgment to ASU on these claims. Because Hall does not challenge the grant of summary judgment on these claims, we do not address them.

⁶ Because the magistrate judge was acting as a district court judge pursuant to 28 U.S.C. § 636(c), we refer to the magistrate judge as the “district court.”

that the quality of her work needed improvement, and she was not meeting expectations because the team’s “[o]verall record [was] below 40%.” Doc. 20-7 at 25. It directed that the team’s “[o]verall competitiveness need[ed] to increase.” *Id.* at 31.

The district court granted summary judgment to ASU on the termination claim but not the suspension claim. In reviewing whether the termination claim survived summary judgment, the district court applied the burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). At the first step, the court assumed that Hall had established a prima facie case of discrimination. At the second step, it determined that ASU had proffered a legitimate, nondiscriminatory reason for terminating Hall—namely, the softball team’s poor performance during her tenure as head coach. At the third step, the court considered whether Harris had come forward with evidence that ASU’s stated reason was a pretext for discrimination. It concluded that she had failed to do so. Based on this conclusion, the court granted summary judgment to ASU on the termination claim.

2. Trial on the Suspension Claim

Hall’s sex discrimination claim based on her suspension proceeded to trial. At the two-day trial, several witnesses, including Hall, testified before the jury.

In her testimony, Hall told the jury about the events on March 3, 2014, when Hines suspended her but refused to provide any information about the accusations against her. She testified that because she could not be in contact with ASU students while

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suspended, she was unable to continue teaching or attending classes.

Hall also testified about the concerns the parents raised to ASU. She said that ASU did not tell her about the substance of the parents' complaints until discovery in this case, which was years after her suspension.

Regarding uniforms and other team clothing, she explained that the team had two sets of uniforms and that she had team members vote on which color uniform to wear for the tournament. Thus, for the Birmingham tournament, it was the team who decided that they would wear the yellow uniforms. Hall acknowledged that during warmups before games in the tournament, she had the players wear white t-shirts. She explained that the players did not wear their uniforms during warmups so that they would not get the uniforms dirty before the game started. But, she testified, the players did not wear the t-shirts for any games. She explained that she could not have made the team wear t-shirts, instead of uniforms, for games because the umpires would not let a team play unless it was wearing an official uniform.

Hall also addressed concerns about the players' meals. She testified that, during the Birmingham trip, food was always available to the team. During the tournament days, she provided the team with a box of snacks—including items like fresh fruit, peanut butter, protein bars, and Gatorade—that they could eat throughout the day. She testified that meals were provided each night. On Friday night, the players were given dinner from a restaurant, where

they could place individualized food orders. On Saturday night, the players were given pizza for dinner. Each player received half a large pizza and was able to choose the toppings she wanted. On Sunday night, when the team traveled back to Montgomery, the players ate at McDonald's. Hall used an ASU credit card to purchase snacks and meals, and ASU had receipts documenting the purchases.

Hall also disputed that she deprived players of food by keeping them at practice too late. She explained that she had to schedule practices around players' classes and that sometimes the team finished practice after ASU's dining hall had closed. But she explained that on those evenings she arranged for the cafeteria to prepare meal boxes for the players.

Regarding the accusations about her treatment of the players, Hall acknowledged that when she was in "coach mode," she sometimes yelled or cursed at players. Doc. 207 at 73. She admitted that during the Birmingham tournament she made a team member wait on the bus during warm ups. She explained that the team had recently lost a very close game because, she believed, the team had not played with enough tenacity. When a player came off the bus with body language and a facial expression indicating she did not want to play in or attend the game, Hall told her to get back on the bus and wait until the game was over. Hall gave this instruction because she had recently had a "very in-depth conversation" with the player "about body language and how we get off [the bus] and

how we present ourselves.” *Id.* Hall pointed out that the bus was air-conditioned and had a driver present.

Hall also addressed the hazing accusations. She acknowledged that, more than a year before her suspension and termination, older members of the softball team had forced other team members to run barefoot through Montgomery and that one player ended up in the hospital with dehydration. Hall testified that she learned about the incident at practice the day after it happened. She stopped practice and took immediate steps to address the incident. She expressed disappointment and told the players that she expected that no similar events would occur in the future.

At trial, Hall acknowledged that under ASU’s policies Boyd, the university’s president, had the authority to place a head coach on paid suspension while the university investigated accusations against the coach. Hall explained that she was challenging how she was “treated during that process and what [she] was allowed compared to other people in [a similar] position.” Doc. 208 at 19.

Hall presented evidence to the jury that when the male head coach of the baseball team, Mervyl Melendez, was accused of misconduct related to player safety, ASU did not suspend him while he was under investigation. About a year before Hall’s suspension, Lloyd Kelly, a baseball team member, complained to ASU’s athletic director about Melendez. Kelly reported that Melendez pressured players into taking performance-enhancing drugs. He also complained that Melendez treated African American team members

more harshly than team members of other races. He told the athletic director that Melendez would not let an African American player who grew facial hair in violation of team policy to play in a game but allowed Hispanic players who grew facial hair to play in the same game. Kelly also reported that Melendez cursed at team members and called them names like “bitch[],” “pussy,” and “crybab[y].” *Id.* at 168.

When Kelly complained, ASU did not suspend Melendez. Instead, the day after Kelly complained, Melendez called him into a meeting with the baseball coaching staff. Melendez confronted Kelly, saying, “what the fuck is this, you’re threatening my livelihood, and why would you do that.” *Id.* at 172. He suspended Kelly from the team. After his suspension, Kelly met with Hines and other university officials. According to Kelly, the ASU officials “just kind of laughed it off and swept it under the rug like it was no big deal.” *Id.* at 173–74. Kelly remained suspended for the remainder of the season, which was during his senior year.

After receiving Kelly’s reports, ASU opened an investigation into Melendez’s conduct. The investigation lasted approximately two years. While the investigation was ongoing, ASU allowed Melendez to continue to coach the baseball team. When Kelly initially reported Melendez, Boyd had not yet been installed as ASU’s president, and Hines was not yet serving as athletic director. But when Boyd became the president and Hines became the athletic director, the investigation remained open. Still, Melendez was never suspended from his job as head coach.

At trial, Hall called several other witnesses employed by ASU. Willie Dixon, ASU's director of human resources, admitted that ASU did not follow its policies and procedures when it suspended Hall with pay. Dixon explained that under ASU's policies a supervisor would recommend the suspension of an employee with pay to the university's president, the president would approve it, and human resources would implement it by notifying the employee in writing. According to Dixon, it was not consistent with ASU's policy for a supervisor, like Hines, to verbally notify an employee that she was suspended with pay.

Dixon also testified about what generally would happen if an ASU employee who was both a coach and a professor was suspended with pay from coaching. Dixon stated that a coach's suspension because of accusations related to her coaching duties generally would not bar her from continuing to teach. Instead, it would be up to the university's provost to decide whether the employee would continue teaching. And under ASU's policies a coach who was suspended with pay from coaching could continue to attend classes as a student.

Hall called Boyd as a witness at trial. Boyd testified that it was ASU's policy to suspend a coach with pay, pending an investigation, if the coach had been accused of putting students in harm's way. She explained that this policy appeared in ASU's human resources manual, which required that "anyone who puts any student in jeopardy must be investigated as to whatever is happening to put the student's welfare in jeopardy." Doc. 208 at 51–52. She

agreed that “as part of the process of an investigation, an employee is supposed to be given a chance to know what allegations are being made against [her] so that [she] can respond to those allegations.” *Id.* at 59. Boyd testified that these policies were in effect when she took over as ASU’s president and remained in effect during the entire term of her presidency.

Boyd also described the process of suspending an ASU employee with pay. She testified that ASU’s president alone had the authority to suspend an employee with pay. She explained that she relied on ASU supervisors to provide her with recommendations and that she did not micromanage the supervisors. She could not recall any instance when she overrode a supervisor’s employment-related recommendation.

Boyd testified about Hall’s suspension. She suspended Hall after reviewing Hines’s written recommendation, which Knight had also approved. Boyd testified that in making this decision, she reviewed the two parents’ written complaints about Hall. She also considered verbal reports from unidentified ASU students who told her that the softball team had been involved in an incident over the previous weekend (the weekend of February 28) in which team members were forced to run around Montgomery. When Hall’s attorney pointed out that a parent had reported that this hazing incident occurred a year earlier, Boyd insisted that she had heard from students about a hazing incident occurring the previous weekend, also, even though the team had been playing at the tournament in Birmingham. Boyd admitted that before suspending

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Hall, she made no personal attempt to determine whether the accusations against Hall were true.

Boyd also was asked about Melendez and his tenure as head coach of the men's baseball team. She agreed that under ASU's policy the university would suspend a coach if a student complained that the coach was telling team members to take performance-enhancing supplements. But she testified that she was unaware of the accusations made against Melendez that occurred before her tenure as university president.

Hall called Hines to testify as well. He testified about the process leading to Hall's suspension with pay. He said that before meeting with Hall on March 3 to tell her that she was suspended, he met with human resources. But he did not recall meeting with Boyd, and he did not know whether Boyd was aware of the suspension at that point.

Hines testified that Boyd became involved the next day, on March 4, after he wrote the memorandum recommending suspension. He stated that after he prepared this recommendation, he talked with Boyd about Hall. Hines testified that during this conversation no one mentioned Hall's sex.

After Hall rested her case, ASU moved for judgment as a matter of law. The district court denied the motion.

In its defense case, ASU called just one witness, Buckner. He testified that he investigated Kelly's accusations against Melendez, but did not meet with Kelly despite Buckner's attempts to contact

him. At the end of the trial, ASU renewed its motion for judgment as a matter of law. The court denied the motion.

Both Hall and ASU submitted proposed jury instructions. Hall requested a jury instruction on a cat's paw theory of causation—that the jury could find ASU liable if a supervisor recommended Hall's suspension and Hall's sex "motivated the supervisor[s] recommendation," even though the supervisor "did not make the ultimate decision to suspend" Hall. Doc. 157 at 21. ASU objected to the instruction, arguing that it was inapplicable under the facts of the case. The court overruled ASU's objection.

When the court instructed the jury, it gave Hall's requested cat's paw instruction. ASU again objected. The court overruled the objection.

The jury returned a verdict in Hall's favor, finding that her sex was a motivating factor in ASU's decision to suspend her. The jury awarded her \$800,000 in damages.

3. Post-Trial Proceedings

After the trial, ASU renewed its motion for judgment as a matter of law and moved for a new trial.⁷ It argued that it was entitled to judgment as a matter of law because Hall's trial evidence

⁷ ASU labeled its post-trial submission as a motion for judgment notwithstanding the verdict, instead of a renewed motion for judgment as a matter of law. In the 1990s, the Federal Rules of Civil Procedure changed the label for a motion for "judgment notwithstanding the verdict" to a renewed motion for "judgment as a matter of law." See Amendments to the Federal Rules of Civil Procedure, 134 F.R.D. 525, 679–82 (1991). We treat ASU's post-trial motion as

was insufficient to allow a reasonable jury to find that (1) she was suspended because of her sex or (2) her suspension with pay qualified as an adverse employment action under Title VII. Alternatively, ASU asked the court to order a new trial based on the erroneous cat's paw instruction. ASU further requested that the court reduce the damages to \$300,000 because of a statutory cap on the amount of damages Hall could recover.

In a thorough order, the court denied ASU's post-trial motion as to all issues except the amount of the damages award. Based on the damages cap established by federal law, the court reduced the amount of the award to \$300,000. *See* 42 U.S.C. § 1981a(b)(3)(D) (setting a \$300,000 cap for "compensatory damages . . . for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses" under Title VII when the employer has more than 500 employees).

ASU appeals the denial of its post-trial motion, and Hall cross-appeals the summary judgment in ASU's favor on her termination claim.

II. STANDARD OF REVIEW

We review *de novo* the district court's denial of a renewed motion for judgment as a matter of law. *Luxottica Grp., S.p.A. v.*

a renewed motion for judgment as matter of law. *See McGinnis v. Am. Home Mortg. Servicing, Inc.*, 817 F.3d 1241, 1265–66, 1265 n.1 (11th Cir. 2016) (Julie Carnes, J., concurring in part and dissenting in part).

Airport Mini Mall, LLC, 932 F.3d 1303, 1310 (11th Cir. 2019). “Judgment as a matter of law is appropriate only if the facts and inferences point overwhelmingly in favor of one party, such that reasonable people could not arrive at a contrary verdict.” *Id.* (citation modified). “We consider all the evidence, and the inferences drawn therefrom, in the light most favorable to the nonmoving party.” *Id.* (citation modified). And “we will not second-guess the jury or substitute our judgment for its judgment if its verdict is supported by sufficient evidence.” *Id.* (citation modified).

We review for abuse of discretion a denial of a motion for a new trial, “giving deference to the district court where a new trial is denied.” *Am. Builders Ins. Co. v. S.-Owners Ins. Co.*, 71 F.4th 847, 854 (11th Cir. 2023) (citation modified).

“Our review of jury instructions is simultaneously *de novo* and deferential.” *Bhogaita v. Altamonte Heights Condo. Assoc.*, 765 F.3d 1277, 1285 (11th Cir. 2014). “We review jury instructions *de novo* to determine whether they misstate the law or mislead the jury to the prejudice of the objecting party but give the district court wide discretion as to the style and wording employed.” *Id.* (citation modified). “We reverse only where we are left with a substantial and ineradicable doubt as to whether the district court properly guided the jury.” *Id.* (citation modified).

We review *de novo* a district court’s grant of summary judgment, “viewing all evidence and drawing all reasonable inferences in favor of the non-moving party.” *Phillips v. Legacy Cabinets*, 87 F.4th 1313, 1320 (11th Cir. 2023) (citation modified). “Summary

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judgment is appropriate when the evidence, viewed in that light, presents no genuine dispute of material fact and compels judgment as a matter of law.” *Id.*

III. DISCUSSION

We start our discussion with the issues ASU raised in its appeal challenging the denial of its post-trial motion seeking judgment as a matter of law and a new trial on the sex discrimination claim arising out of Hall’s suspension. After addressing these issues, we turn to Hall’s cross-appeal challenging the grant of summary judgment to ASU on her sex discrimination claim arising out of her termination.

A. ASU’s Challenges to the District Court’s Denial of Its Post-Trial Motion

On appeal, ASU challenges the court’s denial of its renewed motion for judgment as a matter of law and its motion for a new trial.⁸ We address each issue in turn.

⁸ On appeal, ASU also challenges the district court’s denial of summary judgment on the suspension claim, arguing that Hall failed to come forward with sufficient evidence that she was subject to an adverse action or that a similarly situated individual outside her protected class was treated more favorably.

We generally do not review the denial of summary judgment after a trial on the merits. As the Supreme Court has explained, a district court’s determination at the summary judgment stage that there is “genuine dispute as to a material fact” is, by its nature, interlocutory. *Ortiz v. Jordan*, 562 U.S. 180, 188 (2011) (citation modified). “Once the case proceeds to trial, the full record developed in court supersedes the record existing at the time of the summary-judgment motion.” *Id.* at 184. As a result, any post-judgment appeal “must be

1. ASU’s Post-Trial Motion for Judgment as a Matter of Law

On appeal, ASU argues that it was entitled to judgment as a matter of law on the suspension claim because Hall failed to introduce evidence establishing that (1) she suffered an adverse employment action when ASU suspended her with pay or (2) ASU suspended her because of her sex. As to each issue, we reject ASU’s arguments.

evaluated in light of the character and quality of the evidence received in court” at trial, not based on the summary judgment record. *Id.*

Consistent with *Ortiz*, we have concluded that a party generally “may not appeal an order denying summary judgment after there has been a full trial on the merits.” *Carrizosa v. Chiquita Brands Int’l, Inc.*, 47 F.4th 1278, 1339 (11th Cir. 2022) (citation modified). Instead, when a defendant urges after a trial that the plaintiff failed to prove her case, it must raise a “sufficiency-of-the evidence issue by postverdict motion for judgment as a matter of law.” *Id.* (citation modified). But an exception to this general rule allows an appellate court after a trial to review a “pure question of law” resolved at summary judgment, because its decision is “unaffected by future developments in the case.” *Dupree v. Younger*, 598 U.S. 729, 736 (2023).

This exception does not apply here. On appeal, ASU raises no pure question of law. Instead, it is attempting to challenge, after a trial, the district court’s decision at summary judgment that there were disputed issues of fact on the suspension claim. We thus decline to address ASU’s challenge to the denial of summary judgment on the suspension claim.

a. Whether the Trial Evidence Supported the Jury’s Finding that Hall Suffered an Adverse Employment Action

We consider whether a reasonable jury could find that Hall suffered an adverse employment action. Title VII, of course, bars an employer from engaging in discrimination when “refus[ing] to hire” an individual or “discharg[ing]” an employee because of her sex. 42 U.S.C. § 2000e–2(a)(1). But it extends further than prohibiting discrimination in hiring and firing decisions. It also prohibits an employer from “discriminat[ing] against any individual with respect to [her] compensation, terms, conditions, or privileges of employment.” *Id.* To establish that she was subject to an adverse employment action covered by Title VII, an employee must show that the employer’s decision “brought about some ‘disadvantageous’ change in an employment term or condition.” *Muldrow v. City of St. Louis*, 601 U.S. 346, 354 (2024) (quoting *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998)).

Hall introduced sufficient evidence at trial to establish that she suffered an adverse employment action. ASU suspended her with pay, pending an investigation. It also directed that while Hall was suspended, she could have no contact with students. The no-contact condition meant that Hall could no longer teach classes as an adjunct faculty member or attend the classes in which she was enrolled without paying tuition. Because ASU’s employment decision meant that Hall could no longer teach or attend classes, we conclude that the decision brought about a disadvantageous change in the terms or conditions of her employment.

This conclusion is consistent with the Supreme Court’s recent decision in *Muldrow*. In that case, a female police officer was transferred from a police department’s specialized intelligence division to a different job in the department, and a male officer took her place. *Id.* at 350–51. Although her new position had the same rank and pay, she no longer worked with high-ranking officials and instead supervised neighborhood patrol officers. *Id.* at 351. Because the officer no longer worked in the intelligence division, she lost her status as a deputized task force officer with the Federal Bureau of Investigation and lost the use of a car that came as part of the position. *Id.* at 350–51. Her schedule also changed. In her previous position, the officer worked a traditional Monday-through-Friday schedule. *Id.* But in the new position, she was placed on a rotating schedule that required her to work weekend shifts. *Id.*

The officer sued her employer under Title VII for unlawful sex discrimination. *Id.* The district court granted summary judgment to the employer, concluding that the officer had failed to show that the “transfer effected a ‘significant’ change in [her] working conditions producing ‘material employment disadvantage.’” *Id.* at 352 (citation modified). The Eighth Circuit affirmed, concluding that the officer had failed to “show that the transfer caused a ‘materially significant disadvantage.’” *Id.* at 353 (citation modified).

The Supreme Court considered whether the officer had shown a sufficient change in her employment conditions to survive summary judgment. *Id.* The Court consulted the plain text of Title VII, which prohibited an employer from “discriminat[ing]

against any individual with respect to [her] compensation, terms, condition, or privileges of employment, because of such individual's . . . sex." *Id.* at 354 (quoting 42 U.S.C. § 2000e-2(a)(1)). It focused on whether the officer's transfer resulted in "worse treatment" with respect to the "terms or conditions" of her employment. *Id.* (citation modified). It explained that an employee satisfied this standard by "show[ing] some harm respecting an identifiable term or condition of employment." *Id.* The Court emphasized the "'terms or conditions' phrase" in Title VII was not used "in the narrow contractual sense" and covered "more than [] 'economic or tangible' [harms]" *Id.* (quoting *Oncale*, 523 U.S. at 78); *see also Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986) (explaining that the phrase "terms, conditions, or privileges of employment" in Title VII "evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women" (citation modified)). The Court said that to have a claim under the statute, the officer had to "show some harm respecting an identifiable term or condition of employment." *Muldrow*, 601 U.S. at 354–55.

The Court rejected the employer's argument that the officer had to show that the change to the terms or conditions of her employment was "significant." *Id.* at 355. It explained that nothing in the statutory text distinguished between changes "causing significant disadvantages" and those "causing not-so-significant ones." *Id.* It criticized appellate decisions that concluded employers were entitled to summary judgment in cases where an employee's pay remained the same but he was forced to "work at a new job site," change to a position that "involv[ed] only nighttime work," or take

an “administrative role supervising fewer employees.” *Id.* at 355–56 (citation modified). It explained that these “employees suffered some injury in employment terms or conditions” and that the circuit courts had improperly rewritten Title VII to compel the “workers to make a showing that the statutory text does not require.” *Id.* at 356. After rejecting the argument that an employee had to show a significant change in the terms or conditions of employment, the Supreme Court remanded the case for the Eighth Circuit to apply the correct standard. *Id.* at 360.

Consistent with *Muldrow*, we conclude that Hall suffered harm to the terms or conditions of her employment when ASU suspended her. Although she was suspended with pay, ASU changed the terms and conditions of her employment when it no longer allowed her to teach as an adjunct faculty member or attend class as a student.

ASU resists this analysis. It argues that we should not follow *Muldrow* because the employee in that case was transferred to a new position, whereas Hall was suspended with pay. We acknowledge that the employee in *Muldrow* faced a transfer and Hall did not. But this distinction makes no difference for our purposes. Importantly, to resolve the issue before it in *Muldrow*, the Supreme Court interpreted the plain language of Title VII that protects employees from discrimination “with respect to [their] compensation, terms, conditions, or privileges of employment.” *See id.* at 354 (quoting 42 U.S.C. § 2000e-2(a)(1)). The Court then explained that to satisfy this broad statutory language, an employee

must show “some harm respecting an identifiable term or condition of employment.” *Id.* at 355. Because Hall seeks protection under the same statutory language and the statutory language is not limited to employees who are transferred, we apply *Muldrow* and ask whether Hall showed that she experienced “some harm respecting an identifiable term or condition of employment.” *Id.* at 354–55.

ASU insists that under our pre-*Muldrow* decision in *Davis v. Legal Services of Alabama, Inc.*, Hall suffered no adverse employment action. 19 F.4th 1261 (11th Cir. 2021). We disagree. In *Davis*, the executive director of a nonprofit was suspended with pay from his duties after his colleagues and subordinates complained about him to the organization’s board. The other employees complained that he failed to follow the organization’s policies and procedures and created a hostile work environment. *Id.* at 1264. While the executive director was suspended, the organization posted a security guard in front of its building and hired an individual to handle public relations issues related to the suspension. *Id.* Unbeknownst to the organization, the public relations specialist had a poor relationship with the executive director because of an unrelated previous matter. *Id.* The executive director sued the organization under Title VII, alleging that it engaged in race discrimination when it suspended him with pay. *Id.*

We affirmed the district court’s grant of summary judgment to the organization. *Id.* at 1271. The appeal turned on what constituted an actionable adverse employment action under Title VII.

We described adverse employment actions as “tangible employment actions, which are those actions that affect continued employment or pay—things like terminations, demotions, suspensions without pay, and pay raises or cuts—as well as other things that are similarly significant standing alone.” *Id.* at 1266 (citation modified). We concluded that “a simple paid suspension [was] not an adverse employment action” under Title VII. *Id.* at 1267. We then considered whether the case involved accompanying circumstances that “escalated [the] paid suspension to an adverse employment action.” *Id.* We concluded that the organization’s other actions against the executive director, which included hiring the public relations specialist and placing a security guard in front of the building, did not bring the actions to the level of an adverse employment action. *Id.*

ASU argues that under *Davis* the additional actions that it took against Hall when it suspended her with pay did not rise to the level of an adverse employment action. Assuming that *Davis* remains good law after *Muldrow*,⁹ nothing in *Davis* alters our conclusion. Certainly, one of the organization’s additional actions in *Davis*—posting a security guard at the front of its building—bears some similarity to ASU’s forbidding Hall from having contact with

⁹ We said in *Davis* that “a simple paid suspension is not an adverse employment action.” 19 F.4th at 1267. We need not decide today whether an employee who is simply suspended with pay suffers an adverse employment action under *Muldrow* because the issue is not before us in this case. As we explain above, ASU took actions beyond suspending Hall with pay.

students and effectively barring her from entering the campus. After all, both cases involved the employer ensuring that the employee did not return to the premises while the employer's investigation was pending.

But, unlike in *Davis*, Hall's exclusion from campus resulted in disadvantageous changes to the terms or conditions of her employment. Hall served not only as ASU's head softball coach, but she also worked as an adjunct faculty member and, as a benefit of her employment, attended classes as a student. Even though under ASU's policies a head coach's suspension with pay from her coaching role did not automatically bar her from continuing to teach as an adjunct faculty member or to avail herself of the employment benefit of taking classes without paying tuition, ASU barred Hall from both teaching and attending class. In contrast, in *Davis* there was no indication the executive director suffered similar effects from the organization's decision to place an additional security guard outside its building. On the facts of this case, even under *Davis*'s reasoning, Hall suffered an adverse employment action.

We thus conclude that ASU is not entitled to judgment as a matter of law because a reasonable jury could find that she suffered an adverse employment action.

b. Whether the Trial Evidence Supported the Jury's Finding that ASU Engaged in Intentional Discrimination

ASU argues that it was entitled to judgment as a matter of law on the separate ground that Hall failed to prove that it engaged

in intentional discrimination by suspending her because of her sex. We reject this argument. Hall introduced sufficient evidence that a reasonable jury could have found that ASU engaged in intentional discrimination.

To prevail on a Title VII claim, an employee must establish that her employer engaged in intentional discrimination. When an employer attacks on appeal a jury’s finding at trial that the employer engaged in intentional discrimination, “we ask only one question: whether there is a sufficient evidentiary basis for the jury to find that the defendant intentionally discriminated against the plaintiff.” *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th 939, 947 (11th Cir. 2023). To prevail on appeal, the defendant must establish that “the evidence, taken as a whole, was insufficient to support the jury’s verdict.” *Id.* at 948.

As the Supreme Court has recognized, it may be “difficult” to answer the factual question of what motivated an employer’s decision because “[t]here will seldom be eyewitness testimony as to the employer’s mental processes.” *U.S. Postal Serv. Bd. of Govs. v. Aikens*, 460 U.S. 711, 716 (1983) (citation modified). In evaluating an employer’s motivation, a jury may infer intentional discrimination from evidence that the employer treated a comparator—that is, a similarly situated individual outside the plaintiff’s protected class—more favorably. *Tynes*, 88 F.4th at 948 (recognizing that at trial “comparator evidence is relevant to the ultimate question of intentional discrimination”). “[T]o the extent that there are material differences between the [plaintiff] and her comparators at [the

trial stage] . . . , it is the jury’s role—not ours—to determine how much weight the comparator evidence should be given.” *Id.* at 947.

In addition, a jury may infer that an employer engaged in intentional discrimination from the fact that it offered a nondiscriminatory reason for the employment decision that the jury determines is false. *See Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 147 (2000). To be sure, a jury’s rejection of an employer’s proffered reason for its action “does not *compel* judgment for the plaintiff.” *Id.* at 146. But “it is *permissible* for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer’s explanation.” *Id.* at 147. That is, “[i]n appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose.” *Id.* The application of this inference is “consistent with the general principle of evidence law that the factfinder is entitled to consider a party’s dishonesty about a material fact as affirmative evidence of guilt.” *Id.* (citation modified).

Applying these principles, we conclude there was a sufficient evidentiary basis for the jury to find that ASU discriminated against Hall based on her sex when it suspended her. To begin, Hall showed that ASU treated a similarly situated individual outside her protected class—Melendez, the head coach of the men’s baseball team—more favorably than it treated her. ASU received reports that both Hall and Melendez had put students’ safety at risk. When ASU received a report about Hall, it immediately suspended her from her coaching position, provided her with no information

about the allegations against her, and barred her from having contact with any ASU student. But when Kelly told ASU that Melendez was urging players on the baseball team to take performance-enhancing supplements and treating players differently based on their race, it allowed Melendez to continue to coach and told him of the precise accusations against him. Upon learning about the accusations, Melendez confronted Kelly and suspended him from the team. Even when ASU learned that Melendez had suspended Kelly in retaliation for Kelly reporting him, it allowed Melendez to continue to coach the baseball team while it investigated the accusations against him.

From this same evidence, the jury also could have inferred that ASU's stated reason for Hall's immediate suspension—adherence to a policy to suspend any coach who was accused of endangering student welfare—was not the true reason for its decision. Because there was evidence that ASU adhered to the policy for a female coach, but not for a male coach, a reasonable jury could infer that Hall's sex was a motivating factor in ASU's suspension decision. *See Reeves*, 530 U.S. at 147 (“Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it can be quite persuasive.”)

In addition, although ASU asserted that it suspended Hall based on its policies, she introduced evidence showing that the university departed from other policies when it suspended her. For example, the jury heard testimony that the only person at ASU who

could suspend an employee with pay was Boyd, the university's president, and that an employee would receive written notification from the human resources office at the time of her suspension. A reasonable jury could find that ASU failed to follow these policies when it suspended Hall. There was evidence that Hines, without consulting Boyd, made the decision to suspend Hall with pay on March 3. And Hines, rather than human resources, communicated the suspension to Hall and did not provide her with written notification.

Hall introduced evidence of other policies that ASU failed to follow when she was suspended. Witnesses testified that, under ASU's policies, if an employee who was both a coach and a professor was suspended with pay from a coaching position because of accusations related to her coaching duties, ASU generally would allow the employee to continue teaching. It would be up to the university's provost to suspend the employee from teaching. These policies also permitted a coach who was suspended with pay to continue attending classes as a student. But when Hall was suspended from her coaching position, the university barred her from continuing to teach or attend classes. From Hall's evidence of ASU's failure to adhere to its policies in connection with her suspension, a reasonable jury could infer that, contrary to ASU's explanation, it was unconcerned about following its policies.

Hall also introduced evidence that ASU took steps to cover up how it made the decision to suspend her. The day after Hines

suspended her, he wrote a memo to Boyd that purported to recommend Hall's suspension. Although Hines drafted the memo on March 4, at the direction of human resources, he backdated it to March 3. At trial, ASU did not explain why Hines backdated the memo. A jury could infer from this evidence that Hines backdated the memo to make it appear as though Boyd had been involved in the March 3 decision to suspend Hall because Hines had suspended Hall for a discriminatory reason.

Hall presented the jury with other evidence to show that ASU offered a false justification for her suspension. At trial, Boyd testified that she decided to suspend Hall after hearing reports from students that during the previous weekend the softball team had engaged in hazing by making team members run barefoot through Montgomery. But Boyd could not identify any of the students who made these reports. And there was no other evidence indicating that a hazing event occurred the weekend before Hall was suspended. To the contrary, the evidence showed that the softball team left Montgomery on Friday, drove to Birmingham for a tournament, stayed overnight at a hotel in Birmingham on Friday and Saturday nights, and did not return to Montgomery until Sunday evening. Hall's attorney suggested to Boyd that she might have been mistaken because one of the written complaints about Hall reported a similar hazing incident that had occurred a year earlier, yet Boyd insisted that the hazing incident students reported to her had happened the weekend before Hall was suspended. A reasonable jury could have found that Boyd's testimony was not credible. The jury further could have found that Boyd offered a contrived

reason for Hall's suspension "to cover up a discriminatory purpose." *Reeves*, 530 U.S. at 147; *see also Holland v. Gee*, 677 F.3d 1047, 1063 (11th Cir. 2012) (explaining that evidence from trial that challenged the credibility of the ultimate decisionmaker "further supported the finding of discrimination").

ASU tries to chip away at Hall's considerable collection of evidence by pointing to differences between Melendez and Hall. It notes that when the investigation into Melendez began, Boyd was not yet ASU's president and thus was not involved in the decision to allow him to continue coaching pending investigation. Given these differences, ASU argues that Melendez was not materially similar to Hall and thus a reasonable jury could not infer an intent to discriminate from the different ways in which ASU treated the two head coaches. ASU's argument is flawed because it fails to view the evidence in the light most favorable to Hall. After all, the jury also heard testimony that ASU had a longstanding policy of automatically suspending with pay any coach accused of putting student safety at risk and that this policy existed before Boyd became president. What is more, the record shows that even though Melendez remained under investigation when Boyd became president, he was allowed to continue coaching. So, a reasonable jury could find that the different treatment the two coaches received showed that ASU intended to discriminate against Hall. In any event, even if there were some material difference between Hall and Melendez, it was the jury's role, not the court's, "to determine how much weight the comparator evidence should be given." *Tynes*, 89 F.4th at 947.

Because ASU failed to demonstrate that the trial evidence could not support the jury's verdict, we affirm the district court's denial of ASU's renewed motion for judgment as a matter of law.

2. ASU's Post-Trial Motion for a New Trial

ASU next argues that it is entitled to a new trial because the district court erred in giving the jury an instruction allowing it to find ASU liable under a cat's paw theory. According to ASU, the instruction should not have been given because the evidence introduced at trial did not support this theory. Because we see no error in the district court's decision to give this instruction, we reject ASU's argument.

Under a cat's paw theory, an employer "may be held liable for the [discriminatory] animus of its non-decisionmaking employee when . . . that employee's discriminatory conduct causes a decisionmaking employee to take an injurious action against the plaintiff." *Ziyadat v. Diamondrock Hosp. Co.*, 3 F.4th 1291, 1298 (11th Cir. 2021). For a cat's paw theory to apply, the plaintiff must show that the "decisionmaker acted in accordance with the [lower-level employee's] decision without herself evaluating the employee's situation." *Llampallas v. Mini-Circuits, Lab, Inc.*, 163 F.3d 1236, 1249 (11th Cir. 1998). Accordingly, a cat's paw theory applies when a decisionmaker simply "rubber stamp[s]" a discriminatory decision. *Stimpson v. City of Tuscaloosa*, 186 F.3d 1328, 1332 (11th Cir. 1999).

"The purpose of jury instructions is to give the jury a clear and concise statement of the law applicable to the facts of the case."

Christopher v. Cutter Laby's, 53 F.3d 1184, 1194 (11th Cir. 1995) (citation modified). A jury instruction on a particular theory is warranted when “there [is] a factual basis for the charge.” *Id.* As a result, a court’s instruction is appropriate so long as there is “any evidence” in the record to support the theory addressed by the instruction. *Id.* But the fact that the district court gave an instruction unsupported by the record does not mean that a party is automatically entitled to a new trial. *Id.* Instead, the appellant must show that it was “prejudiced” by the improper instruction. *Id.*

After reviewing the evidence introduced at trial, we conclude that the district court did not err in giving the jury a cat’s paw instruction because there was at least some evidence to support a cat’s paw theory. There was evidence in the record that supported an inference that on March 3 Hines, after reviewing the parents’ written complaints and meeting with members of the softball team, decided to suspend Hall. Later that day, without consulting Boyd, he met with Hall in person and suspended her. A reasonable jury could have found that when Boyd, a few days later, signed a memo formally approving Hall’s suspension, she was simply rubber-stamping Hines’s earlier decision, especially given her testimony that she could not recall an instance when she had overridden a supervisor’s employment-related recommendation. True, Boyd testified that she was the only person at ASU with the authority to suspend an employee with pay and that she made the decision to suspend Hall. But the jury was not required to credit her testimony, which conflicted with other evidence in the record. *See Redding v. Coloplast Corp.*, 104 F.4th 1302, 1312–13 (11th Cir. 2024)

(explaining that juries are tasked with making credibility determinations). And in any event, the question before us is simply whether there was “any evidence” in the record to support a cat’s paw theory. *See Christopher* , 53 F.3d at 1194.

ASU argues that even if Boyd relied on Hines’s recommendation instead of making her own decision, the court still should not have given a cat’s paw instruction because there was no evidence that Hines acted with a discriminatory intent. It points out that Hines “expressly testified” at trial that he did not consider Hall’s sex when suspending her. Appellant’s Br. 49. But, again, the jury was not required to believe him. And, as we described above, given the evidence that Hines suspended Hall after receiving reports that she put students at risk but did not suspend Melendez after learning about Kelly’s accusations, there was some evidence that he had an intent to discriminate.

After carefully reviewing the evidence, we cannot say that the court erred in giving a cat’s paw instruction. Thus, the district court did not err in denying Hall’s motion for a new trial.

B. Whether the District Court Erred in Granting Summary Judgment on the Termination Claim (Cross Appeal)

On cross appeal, Hall argues that the district court erred in granting summary judgment to ASU on her sex discrimination claim arising out of her termination. She asserts that she introduced sufficient circumstantial evidence to support an inference that ASU terminated her because of her sex, and thus the court should have denied the summary judgment motion. We disagree.

The *McDonnell-Douglas* framework is one way for a Title VII plaintiff to survive summary judgment. Under this framework, a plaintiff must first establish a prima facie case. *See Lewis v. City of Union City*, 918 F.3d 1213, 1220 (11th Cir. 2019) (en banc). To state a prima facie case for discrimination, a plaintiff must show, among other things, that her “employer treated similarly situated employees outside her class more favorably.” *Id.* at 1221 (citation modified). To meet the “similarly situated” requirement for a prima facie case, the plaintiff and her comparator must be similarly situated “in all material respects.” *Id.* at 1226 (citation modified).¹⁰

If the plaintiff establishes a prima facie case, the burden then shifts to the defendant to articulate a legitimate, non-discriminatory reason for its employment action. *See Tex. Dep’t of Cmty. Affs. v. Burdine*, 450 U.S. 248, 253 (1981). If the defendant meets this burden, the plaintiff has the opportunity to show by a preponderance of the evidence that the defendant’s proffered reasons “were not its true reasons, but were a pretext for discrimination.” *Id.* “This final question merges with the plaintiff’s ultimate burden of persuading the factfinder that she has been the victim of intentional discrimination.” *Tynes*, 88 F.4th at 944 (citation modified).

¹⁰ As we noted above, when a case proceeds to trial, the factfinder may consider evidence of other employees outside the plaintiff’s protected class who were treated more favorably even if these employees were not similarly situated in all material respects. This is because it is possible that comparators are not sufficiently similar to the plaintiff “to establish a prima facie case” of discrimination under *McDonnell Douglas* “yet still relevant to the ultimate question of discrimination.” *Tynes*, 88 F.4th at 947.

The *McDonnell-Douglas* framework is “an evidentiary tool that functions as a procedural device.” *Id.* (citation modified). Notably, even when a plaintiff cannot establish a prima facie case of discrimination by identifying a comparator who is similarly situated in all material respects, she still may survive summary judgment by coming forward with a “convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker.” *Id.* at 946 (citation modified). We have explained that the convincing-mosaic approach “treats an employment discrimination suit in [the] same way we would treat any other case—jumping directly to the ultimate question of liability and deciding whether the moving party is entitled to judgment at that stage of the case.” *Id.* at 947.

In arguing that she introduced sufficient evidence of discriminatory intent, Hall relies upon the *McDonnell-Douglas* burden-shifting framework. We assume that she established a prima facie case of discrimination regarding ASU’s decision to terminate her as head coach. ASU then proffered a legitimate, non-discriminatory reason for terminating Hall: the team’s poor win-loss record. During Hall’s tenure as coach, the softball team won 89 games and lost 221 games, meaning the team won less than 30% of its games.

Hall failed to come forward with evidence that this proffered reason was a pretext for discrimination. She has not, for example, submitted evidence creating a factual dispute about the team’s record while she was coaching. And an employer, certainly, may terminate a head coach because the team performed poorly.

Hall nevertheless argues that this reason was pretextual because over time the university has given shifting reasons for her termination. She points out that in EEOC proceedings ASU reported that Hall was terminated for mistreating students. She says that it was only during discovery in this case that ASU identified the team's losing record as a reason for her termination. But the fact that ASU did not immediately cite the team's poor performance as a reason for terminating Hall does not establish pretext. At most, the record shows that the team's poor performance "was an additional, but undisclosed, reason for the decision" to terminate her. *Tidwell v. Carter Prods.*, 135 F.3d 1422, 1428 (11th Cir. 1998).

Despite Hall's failure to carry her burden under *McDonnell Douglas*, she could survive summary judgment by coming forward with a convincing mosaic of circumstantial evidence that would allow a jury to infer that she was terminated because of her sex. In considering whether a plaintiff has established a convincing mosaic, "we look beyond the prima facie case to consider all relevant evidence in the record to decide the ultimate question of intentional discrimination." *Tynes*, 88 F.4th at 947. Under this approach, a court "must consider the totality of a plaintiff's circumstantial evidence," which "may include, among other things, (1) suspicious timing or ambiguous statements, (2) systematically better treatment of similarly situated employees, and (3) pretext." *Yelling v. St. Vincent's Health Sys.*, 82 F.4th 1329, 1342 (11th Cir. 2023) (citation modified). At bottom, the mosaic of evidence must be enough "to

allow a reasonable jury to infer” that the employer intended to discriminate. *Id.*

We have considered this approach, and we conclude that she failed to adduce a convincing mosaic of evidence showing that she was terminated because of her sex. Accordingly, we affirm the district court’s grant of summary judgment to ASU on Hall’s sex discrimination claim based on her termination.

IV. CONCLUSION

For the above reasons, we **AFFIRM**.