NOT FOR PUBLICATION

In the United States Court of Appeals
For the Eleventh Circuit

No. 24-12308
Non-Argument Calendar

KEITH N. MCKNIGHT,
an individual,

Plaintiff-Appellant,

versus

UNITED PARCEL SERVICE, INC.,
a foreign corporation,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:22-cv-00622-PGB-RMN

Before ROSENBAUM, ABUDU, and ED CARNES, Circuit Judges.

PER CURIAM:

Keith McKnight sued his former employer, United Parcel Service, Inc. (UPS). He alleged, among other things, unlawful retaliation under federal and state law. The retaliation claims went to trial, and the jury returned a verdict against him. McKnight contends that the district court abused its discretion in a pre-trial decision to exclude the testimony of a witness that he wanted to call at trial. Because McKnight has failed to show that the testimony's exclusion affected his substantial rights at trial, we affirm. [1]

I. The Facts

McKnight began working at UPS' Kissimmee Center in 2014. He became a package delivery driver in 2017 and held that job until March 2022. He testified that he enjoyed his job as a delivery driver because it reminded him of his "missions" during his time in the military. According to McKnight, before 2020, he received only positive feedback and received multiple awards for his commitment to safe driving. It wasn't until late 2020, when Nicole Strickland became the new Kissimmee Center manager, that he started having what he described as "issues."

During his first interaction with Strickland as his new manager, she and Mike Alberni, the UPS district manager, stopped McKnight inside the Kissimmee hub while he was exiting in a UPS truck. The two accused him of speeding, made him fix his seatbelt

[1] McKnight also challenges the court's judgment as a matter of law denying his request for punitive damages. Given our decision on McKnight's first challenge, his second one is moot.

— which he was wearing incorrectly — and told him he could no longer sit on the large stuffed alligator that was strapped to his driver's seat with bungee cords, which he used as a seat pillow for lumbar support.

McKnight's second interaction with his new manager occurred the next workday, and it didn't go well either. McKnight was given a "rental" truck instead of a generally preferred, brown UPS truck. He testified that he didn't think anything of it at the time because brown trucks were not always available, and the more senior drivers had priority in the assignment of any available ones.

But when McKnight checked inside the back of the rental truck, he thought it was "chaos," so on his own initiative he went to the "yard" and found an empty brown truck. He assumed that the brown truck had not been available to the loading team when they were loading packages for his route, so he decided to take it. As he moved packages from the rental truck to the brown one, Manager Strickland "jumped on the truck" and asked, "Who authorized you to do this?" McKnight felt this interaction and all other interactions with Manger Strickland were hostile. Based on those perceived hostile interactions, McKnight filed "repeated complaints" alleging that Manager Strickland took discriminatory action against him. He had some future rental truck assignments, but he was unsure whether they were in retaliation for his repeated complaints of discrimination.

UPS and the International Brotherhood of Teamsters (Teamsters or the union) had a collective bargaining agreement, which included a multi-step grievance process to address any discrimination and retaliation concerns. To initiate the grievance process, the employee fills out a written grievance form and gives it to a shop steward (a UPS driver who acts on behalf of the union to represent other UPS drivers). McKnight began using this grievance process in December 2020 right after Strickland became his new manager.

In the eighteen-month period between December 2020 and June 2022, McKnight filed approximately 2,100 grievances, or as he put it, about 15 each day. In some of his grievances, he alleged that Manager Strickland, District Manager Alberni, and the rest of the UPS management team bullied, intimated, harassed, discriminated, and retaliated against him due to his race and because of his prior grievance filings. He used the multi-step grievance process not only to address any discrimination concerns he had but also to address any "write-up[s]" he received because, according to him, if he did not address a write-up he would be terminated.

Throughout McKnight's employment, UPS also had several different routes employees could use to access protections of its anti-discrimination and anti-retaliation polices, including a human resources hotline which employees could call anonymously. McKnight testified that he called this anonymous hotline multiple times. On February 7, 2021, he called the hotline to report that his "life [was] in danger"; that "Alberni has to kill [him], and it [was]

only a matter of time [until he] is taken out"; and that his gun had been stolen and he was going to be "executed with [his] own weapon." McKnight's gun was later found inside his home garage.

McKnight also reported to the hotline that his "phone was being tapped" and that the "Teamsters union was paid off so when [he was] either fired or executed, nothing [would] get out" and that "[a]nything that [he] had on paper [would] disappear." And he voiced his "fear of retaliation" being inflicted on his "friends and family."

McKnight began writing "sabotage" on any customers' packages that were misloaded on his trucks. He told management he had a drone gathering evidence against them. And he filed grievances when he was assigned to a vehicle that needed repairs, alleging that assigning him to unrepaired vehicles or vehicles in need of servicing threatened his life. He also reported to the hotline that District Manager Alberni was "out to kill him" by assigning him unsafe work trucks, complaining that his truck broke down while on a route. But during that same phone call, he admitted that after he notified management, the management team delivered him a replacement truck to complete his route.

In addition to filing grievances and calling the hotline to report his management team, he began using the company's DIAD messaging system to send unprofessional messages about the management team's incompetency. DIAD is the electronic device that UPS drivers use to scan packages, and it provides the drivers with

their order of delivery. (The system is not designed for reporting grievances.)

Other UPS employees, including a shop steward and members of the management team, voiced their concerns about McKnight's behavior. They complained that he was engaging in unsafe conduct, and they expressed concern about his mental health. Because of their concerns and complaints, UPS management performed "observations" where a driver is followed to ensure he is following all safety methods and procedures.[2] McKnight testified that he bought his drone to gather "evidence," intending to get "them [to] stop following [him]." But he admitted at trial that he had never used it.

Due to increasing concern over McKnight's behavior, on February 12, 2021, he was taken off duty and referred to an Employee Assistance Program (EAP) for a mandatory evaluation. The EAP helps employees who may need access to resources for mental health concerns or substance abuse. Third-party medical vendors are among the resources available to employees through the EAP. One of these third-party medical vendors is Resources for Living, which provides counseling services to the UPS workforce. If an employee is referred to Resources for Living due to a safety concern, the employee talks with a clinical consultant, and the consultant makes a recommendation about treatment. While keeping any

[2] Manager Strickland testified during trial that typically "observations" involve a supervisor riding in the truck with the driver, but because of COVID precautions, a supervisor would instead follow the driver during this time.

specific treatment confidential, Resources for Living communicates with the UPS Occupational Health Department and provides reports on whether the employee is undergoing treatment and whether the employee is compliant. Occupational Health in turn keeps the employee's local management team updated until the employee is cleared to return to work.

As part of his EAP initial mandatory referral, during February and March of 2021 McKnight had several sessions with licensed clinical social worker David Congdon. Congdon diagnosed McKnight with adjustment disorder anxiety but released him to return to work, and McKnight returned to UPS on March 8, 2021.

But in May 2021, an employee called the hotline to report that he thought McKnight "could hurt any employee at any moment" and that he thought McKnight was "not mentally well." So the concerns over McKnight's behavior continued. And so did McKnight's grievances.

Some of McKnight's grievances made their way through the multi-step process to the panel-hearing stage and were scheduled to be heard during a June 2021 hearing. McKnight arrived at the June hearing carrying a military rucksack — packed with copies of all his grievances — and wearing a bulletproof vest. His attire alarmed the attendees, but after he allowed union delegate Dave

Concannon[3] to search his person and rucksack for weapons, he was let into the hearing room, and the hearing was held.

Soon after that hearing, Manager Strickland communicated to Resources for Living that customers were complaining about the way McKnight delivered packages and that he was writing "sabotage" on misloaded packages. Manager Strickland explained that McKnight talked about recording management with a drone and attended a panel hearing in a bulletproof vest. Resources for Living then contacted Occupational Health Manager Jill Cutaiar to inform her that based on the information relayed to them, they recommended that McKnight undergo a fitness-for-duty evaluation (fitness evaluation) to determine whether he could perform the essential functions of his job.[4]

Accepting the recommendation, UPS placed McKnight on paid leave and required him to undergo the fitness evaluation. McKnight again complied and met with board certified clinical neuropsychologist David Maroof, PhD, who evaluated whether McKnight was fit for duty. Before receiving the fitness evaluation results, McKnight signed an authorization form giving union delegate Concannon, Occupational Health Manager Cutaiar, and

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[3]As the union delegate (or business agent) for UPS employees, Concannon was very familiar with McKnight because he had handled many of the grievances that could not be resolved by management.

[4] The UPS Occupational Health Department was considering whether to send McKnight for a fitness evaluation before the hearing, but he was not given one and removed from the workforce until after the hearing.

Occupational Health Nurse Andrew Davis access to the results. In the fitness evaluation report, Dr. Maroof concluded that McKnight has a "psychiatric condition that would preclude him from performing the essential functions of his job"; that McKnight experienced "prominent persecutory ideation[s] that likely rise[] to the level of paranoid delusions," suspicion, feelings of distrust, and "serious interpersonal difficulties." Dr. Maroof's report recommended that McKnight take "three months off of work to establish care with psychiatry."

Although McKnight completed the fitness evaluation in June 2021, UPS management did not receive the report that McKnight was deemed unfit for duty until December 23, 2021. According to UPS Labor Relations Manager Roy French, a "communication breakdown" was the reason for the delay. (McKnight himself did not receive a copy of the fitness evaluation report until February 2022.) Due to the delay in management getting the fitness report, UPS continued to pay McKnight while he was off duty from June 2021 to January 7, 2022. On January 7, 2022, Labor Relations Manager French, Manager Strickland, and union delegate Concannon met with McKnight in person to inform him that his pay was to be stopped and that he needed to apply for short-term disability to maintain a portion of his compensation and his benefits.

McKnight never applied for short-term disability, however, because he did not think he was disabled. And although he initially attended some appointments with medical personnel and

counselors, he refused to take any medication prescribed to him, stating that he didn't need it.

Because McKnight did not apply for short-term disability his pay and insurance were discontinued in January 2022. And without insurance McKnight's participation in the EAP ended, and he was no longer able to attend appointments. Resources for Living informed Occupational Health Manager Cutaiar that McKnight was not participating in the treatment plan and was discharged from the program due to noncompliance. Cutaiar then relayed that information to Labor Relations Manager French.

French sent McKnight written warnings of termination from employment should he continue his noncompliance with his EAP treatment plan. When McKnight's noncompliance persisted, French advised Manager Strickland to terminate him. On March 17, 2022, Strickland sent McKnight a final letter explaining that he was considered out on unauthorized leave because of his failure to comply with the EAP, and because of that failure his employment was terminated.

II. The Lawsuit

McKnight sued UPS, claiming discrimination based on race and retaliation in violation of Title VII of the Civil Rights Act of 1964 (Title VII), the Florida Civil Rights Act (FCRA), and 42 U.S.C. § 1981. Only his retaliation claims survived summary judgment. And McKnight did not appeal the grant of judgment against him on the other claims.

A. The Excluded Testimony

Before trial, UPS moved *in limine* to exclude the testimony of McKnight's former coworker and fellow delivery-truck driver Kyle Longest. Longest previously provided deposition testimony about statements he claimed that UPS managers had made to him.

During his deposition, Longest described Manager Strickland as a "tyrant" who attempted to "go straight after her employees" without involving the union. But he admitted that he didn't have any firsthand knowledge of McKnight's specific experiences. His deposition testimony was instead that every UPS employee, not just McKnight, who reports unfair treatment or speaks up for themselves is subjected to "more scrutiny and retaliation." And he said that UPS management did not limit retaliation to complaints about treatment based on a protected category, such as race.

According to Longest, UPS management mistreats anyone who speaks up for themselves on "any matter." He testified that "multiple managers have told [him], 'Just get in line.'" He also stated, "I don't know for sure, but I'm saying if they said it to me, I'm sure [the managers] said it to [McKnight]. Just '[i]f you get in line, you know, you won't deal with this discrimination and harassment.'" He claimed that every manager he's ever had made that statement to him. (He testified that he's had at least four managers during his time at UPS.) He explained that his personal definition of "discriminate" and "harass" is when "they oversupervise you, when they overdiscpline you, when they overharrass you

whenever they talk to you[,] . . . [and] pay attention to you more than everyone else so . . . they can try and find something against you."

After ordering supplemental briefing on the admissibility of Longest's remarks and considering the parties' arguments, the court found "that the probative value" of Longest's statements concerning Manager Strickland was "outweighed by [their] prejudicial effect." The court noted that it was unlikely that "every manager" Longest ever had "used the same phraseology," and therefore, Longest must be paraphrasing. The court based its conclusion on the "inherent unreliability" of Longest's testimony about UPS management as well as the lack of a connection between the managers' alleged statements to any statutorily protected activity undertaken by McKnight or any other employee. For those reasons, the court granted the motion *in limine* to excluded Longest's testimony about the "statements and actions he attributes to UPS management."

B. The Trial

At trial, the jury heard testimony from: McKnight; Manager Strickland; District Manager Alberni; human resources employee Vanessa Boyd (who reviewed the anonymous complaint alleging McKnight was mentally unwell and who investigated many of McKnight's complaints); Labor Relations Manager French; union delegate Concannon; and Occupational Health Manager Cutaiar.

McKnight testified that Strickland and Alberni treated him unfairly, that they often called him into their office to "bombard"

him with issues or threaten him with termination, and that they tried to intimidate him into retracting his daily grievances. Strickland, Alberni, Boyd, and French all testified about the concerns with McKnight's mental health because of his behavior. They also testified about efforts to provide him with the appropriate mental health resources. Concannon admitted that when McKnight showed up to the June 2021 panel hearing in a bulletproof vest, he wasn't "overly worried." He also testified about the communications he had with UPS management and McKnight, and about his efforts to ensure McKnight remained covered under insurance, which included instructing McKnight to apply for short-term disability when his pay was discontinued and providing McKnight a short-term disability application packet.

After McKnight rested, UPS moved for a directed verdict on McKnight's retaliation claims and his requests for punitive damages related to those claims. McKnight argued that there was an open factual question as to whether his complaints about being targeted were paranoid delusions or realistic concerns. But he offered no argument on punitive damages. The court denied UPS' motion for a directed verdict as to the retaliation claims but granted it as to McKnight's request for punitive damages.

UPS called Occupational Health Manager Cutaiar who testified about the EAP and the Occupational Health Department's reliance on Resources for Living's representations about whether an employee has complied with treatment plans. Cutaiar testified that she relays that information about compliance to the

employee's local management. She explained that while McKnight disagreed with Resources for Living's claim that he was noncompliant, her department deferred to Resources for Living's determinations on compliance. She also agreed that McKnight should have been told to apply for short-term disability soon after his fitness evaluation in June 2021, but UPS had failed to inform him until January 7, 2022. She also understood that even when McKnight was told he needed to apply for short-term disability, he did not do so.

After UPS rested, it renewed its motion for a directed verdict on McKnight's retaliation claims, and the court again denied it. The court instructed the jury that to succeed in his claims for retaliation, McKnight needed to prove by a preponderance of the evidence that UPS referred him for a fitness evaluation or terminated his employment because he had engaged in protected activity.[5] The court further explained that, in making its determination on whether McKnight had met that burden, the jury needed to consider whether UPS' referral for the fitness evaluation was an "adverse employment action"; whether UPS took an "adverse employment action" because of McKnight's protected activities; and whether UPS' proffered reasons for referring McKnight for the

[5] UPS never disputed that McKnight engaged in statutorily protected activity. So, the court only briefly explained to the jury that a "protected activity" is "filing a grievance alleging discrimination," and in "this case Mr. McKnight claims UPS retaliated against him because he took steps to enforce his lawful rights under Section 1981[,] . . . Title [VII,] . . . and/or the Florida Civil Rights Act." The court also provided the jury a damages instruction, but the jury never reached that issue.

fitness evaluation and terminating him were pretextual. (The phrase "adverse employment action" is not entirely correct, but no one challenges the jury instructions on appeal. *See infra* at 18–19 n.7.) The jury returned a verdict in favor of UPS, finding that McKnight failed to prove that 1) "the [fitness evaluation referral] constitute[d] an adverse employment action" and 2) "UPS would not have terminated him but for his protected activity."

McKnight challenges the district court's exclusion of Longest's testimony. He argues that we should reverse the jury's verdict in favor of UPS and remand for new trial because the court abused its discretion in its ruling on UPS' motion *in limine* to exclude that testimony.

III. Discussion

We review a district court's ruling on a motion *in limine* for abuse of discretion. *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1161 (11th Cir. 2005). A district court abuses its discretion when it "applies an incorrect legal standard, applies the law in an unreasonable or incorrect manner, follows improper procedures in making a determination, or makes findings of fact that are clearly erroneous." *Aycock v. R.J. Reynolds Tobacco Co.*, 769 F.3d 1063, 1068 (11th Cir. 2014) (citation omitted).

But even if a district court abuses its discretion, an evidentiary error, such as an incorrect ruling on a motion *in limine*, is grounds for reversal only if it affects a party's substantial rights. *See* Fed. R. Evid. 103(a) ("A party may claim error in a ruling to . . . exclude evidence only if the error affects a substantial right of the

party . . . ."); Fed. R. Civ. P. 61 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights."); *Proctor v. Fluor Enters., Inc.*, 494 F.3d 1337, 1352 (11th Cir. 2007); *see also id.* at 1349 ("To gain a reversal based on a district court's evidentiary ruling, a party must establish that (1) its claim was adequately preserved; (2) the district court abused its discretion in interpreting or applying an evidentiary rule; and (3) this error affected a substantial right.") (quotation marks omitted).

To establish that the claimed error affected his substantial rights, McKnight must show that the exclusion of Kyle Longest's testimony "probably had a substantial influence on the jury's verdict." *Proctor*, 494 F.3d at 1352 (citation omitted); *see Burchfield v. CSX Transp., Inc.*, 636 F.3d 1330, 1333 (11th Cir. 2011) ("[W]e will not overturn an evidentiary ruling unless the moving party establishes a substantial prejudicial effect.") (citation omitted). Evidentiary errors may substantially prejudice a jury when the admitted or excluded evidence "sp[eaks] directly to the ultimate disputed issue in the case." *Burchfield*, 636 F.3d at 1337–38 (reversing defense verdict where defense counsel repeatedly told the jury that a video showed the same events resulting in plaintiff's injuries, but it actually showed those events under different conditions, thereby "unfairly prejudicing the jury on the pivotal issue in the case" and probably having "a substantial prejudicial effect").

Another example of a case involving exclusion of testimony that had a substantial prejudicial effect is *Rosenfeld,* a slip-and-fall

case. We found substantial prejudicial effect there because the district court excluded expert testimony about the defendant's flooring choice, which would have shown that the flooring had an inadequately low coefficient of friction when wet. *See Rosenfeld v. Oceania Cruises, Inc.*, 654 F.3d 1190, 1192–94 (11th Cir. 2011). The plaintiff's theory was that the defendant unreasonably chose slick flooring even though it knew the area was "heavily trafficked and susceptible to spills." *Id.* at 1193. The exclusion of the expert's testimony prevented the jury from "consider[ing] whether [the defendant's] choice of . . . flooring caused [the plaintiff's] injuries," which was "particularly problematic in light of the negligence instruction given to the jury that 'the plaintiff alleges that the injury was caused by [d]efendant's failure to choose an adequate flooring surface for the area where the accident occurred.'" *Id.* at 1194. That "show[ed] a substantial prejudicial effect" from the erroneous evidentiary exclusion, requiring reversal. *Id.* at 1192, 1194.

McKnight doesn't clear the substantial prejudice bar like the appellants did in our *Burchfield* and *Rosenfeld* decisions.[6] To prevail at trial on his claims for retaliation, McKnight had to prove that he "engaged in statutorily protected activity, he suffered a materially adverse action, and there was some causal relation between the two events." *Goldsmith v. Bagby Elevator Co.*, 513 F.3d 1261, 1277

[6] McKnight's failure to meet the substantial prejudice requirement renders it unnecessary for us to address whether the court abused its discretion at all in excluding the testimony. *See Proctor*, 494 F.3d at 1349.

(11th Cir. 2008) (explaining these are the same elements of a claim of retaliation under both Title VII and Section 1981).

For trial, the parties stipulated that McKnight could present only two theories of adverse actions to support his retaliation claims: 1) McKnight's referral for a fitness evaluation[7] and 2) McKnight's employment termination.

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[7] In this case, the jury was provided special interrogatories to assist in reaching its verdict. Question one was: "Did Mr. McKnight prove by a preponderance of the evidence that his referral for a Fitness for Duty Evaluation constitutes an adverse employment action?" Before the jury began deliberations, the district court gave the following instruction:

> An adverse employment action is any type of action that would have a reasonable employee reluctant to make or support a charge of discrimination. Put another way, if a reasonable employee would be less likely to complain about alleged discrimination because they knew UPS would require them to undergo a fitness-for-duty evaluation, then that action is an adverse employment action. Just to pin that down a little bit, when you're talking about an action — you have protected activity, which is filing a complaint, a grievance of some sort, and retaliation is an adverse employment action that chills the desire of a reasonable employee to engage in that conduct. So there has to be a causal link between the referral for fitness-for-duty and an attempt to chill an employee's determination to continue to raise claims they're entitled to raise under Title [VII].

No one has challenged on appeal the interrogatory or use of the phrase "adverse *employment* action" in the jury instructions.

But for clarity purposes, we note that under *Burlington*, "[t]he scope of [Title VII's] antiretaliation provision extends beyond workplace-related or employment-related retaliatory acts and harm." *Burlington N. & Santa Fe Ry. Co. v.*

A. The Fitness Evaluation Referral

Beginning with the fitness evaluation referral, McKnight's theory of the case was that UPS couched McKnight's "realistic concerns" of race discrimination and threats on his life as paranoia to create a pretextual reason for referring him for the evaluation and did so in retaliation of his many filed grievances of race discrimination. He argues that Longest's testimony bore on that "pretext issue" which was the "central dispute" of the case. Thus, he says that the exclusion of Longest's testimony was not harmless.

But even if Longest's testimony provided evidence of pretext, the jury determined, through special interrogatory, that McKnight failed to "prove by a preponderance of the evidence that his referral for a [fitness evaluation] constitutes an adverse employment action." And McKnight points to nothing in Longest's testimony that would have affected the jury's determination on that issue. He could not have prevailed on any of his retaliation claims without proof of an adverse action. *See Alvarez v. Royal Atl. Devs., Inc.*, 610 F.3d 1253, 1268, 1271 (11th Cir. 2010); *Goldsmith*, 513 F.3d at 1277. So, regardless of whether the testimony was admitted or

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White, 548 U.S. 53, 67 (2006). This means that actionable retaliation is not limited to "so-called ultimate employment decisions." *Id.* (quotation marks omitted). The correct phrasing is "materially adverse action." *See id.* at 68; *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 924 (11th Cir. 2018); *see also* 11th Cir. Pattern Jury Inst. 4.6 annot. & cmt. I.B (revised Sept. 2025) (noting that under *Burlington*, the standard applied to retaliation claims is "materially adverse action"); *cf. Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680–81 (11th Cir. 2014) (explaining that issues not raised are waived).

excluded, it could not have had a substantial influence on the verdict and therefore could not have affected any substantial right. *See Proctor*, 494 F.3d at 1352.

B. The Termination

McKnight's second theory of retaliation was based on his termination, which is an adverse action. *See Hurlbert v. St. Mary's Health Care Sys., Inc.*, 439 F.3d 1286, 1297–98 (11th Cir. 2006). On this theory of retaliation, the jury had the task of determining the causation issue: whether UPS would not have terminated McKnight but for his engagement in protected activity. *See Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 352 (2013) ("Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action."). The court instructed the jury that in making this determination it needed to consider the issue of pretext.[8] It instructed the jury to consider "the circumstances of UPS' decision" to terminate McKnight and

[8] The court's instruction to the jury to consider pretext in relation to the termination was as follows:

> UPS claims it terminated Mr. McKnight's employment because he failed to comply with the fitness-for-duty report requirements. . . . [Y]ou may consider whether you believe the reasons UPS gave for the decisions. If you do not believe the reasons that it gave for the decisions, you may consider whether the reasons were so unbelievable that they were a cover-up to hide the true retaliatory reasons for the decision. That is a pretext.

whether UPS' proffered reason for terminating him — his noncompliance with the EAP — was pretextual.

McKnight argues that his "case was circumstantial by necessity on the issues of pretext and retaliatory intent" and Longest's testimony would have corroborated McKnight's testimony and credibility. According to him, the court excluded "critical" corroborating evidence that would have helped him to overcome the parade of UPS managers presented at trial who placed McKnight's sanity into question before the jury. And he contends that a reasonable jury "could [have] conclude[d] that" Longest's testimony about UPS managers instructing employees who complain to "get in line" or to "do his or her job" and the increased supervision was evidence of UPS' retaliatory intent. But it's a long way from Longest's testimony about his managers' comments and actions to the ultimate issue that was before the jury.

At trial, the jury heard UPS admit that a "communication breakdown" delayed both McKnight and the local management team from learning that he had been deemed unfit for duty. The evidence showed, however, that the delay was not the reason that McKnight lost his benefits and was unable to comply with the EAP. McKnight admitted that he refused to comply with UPS management and union delegate Concannon's instructions to apply for short-term disability despite warnings that he'd lose his insurance without it. And multiple communications by UPS managers and Concannon to McKnight about the need to comply with the EAP were admitted into evidence at trial.

The jury also heard evidence of UPS' good-faith belief that McKnight was noncompliant with his treatment plan. *See Gogel v. Kia Motors Mfg. of Ga., Inc.*, 967 F.3d 1121, 1148 (11th Cir. 2020) (en banc) ("[W]hen assessing whether an employer has *properly* imposed an adverse action on an employee based on that employee's conduct, the question is not whether the employee actually engaged in the conduct, but instead whether the employer in good faith believed that the employee had done so.") (emphasis added); *see also Jefferson*, 891 F.3d at 924 (explaining an employer "may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for an unlawful reason.") (citation omitted and alteration adopted).

And the jury learned that UPS did not initiate the chain of notifications about McKnight's noncompliance. Instead, third party company Resources for Living did that. McKnight points to none of Longest's deposition testimony that even discusses any of the evidence supporting the jury's verdict. Instead of providing insight into any of the evidence that supports the verdict, Longest admitted that he is ignorant of the details of McKnight's experiences with UPS management and the circumstances surrounding McKnight's termination. Longest's deposition testimony was too far removed from the events presented at trial that led to McKnight's termination to have "probably had a substantial influence on the jury's verdict." *Proctor*, 494 F.3d at 1352.

We see no similarity between this case and our *Rosenfeld* decision where the district court excluded testimony that directly

addressed the issue before the jury. *See Rosenfeld*, 654 F.3d at 1193–94. Even if excluding Longest's testimony somehow prejudiced the jury about McKnight's mental state, that prejudice does not speak to the ultimate issue of whether his engagement in protected activity was the but-for cause of his termination, which is what the special interrogatory tasked the jury with determining.

It was McKnight's burden to show that the evidentiary exclusion "probably had a substantial influence on the jury's verdict," and thereby "affected a substantial right." *See Proctor*, 494 F.3d at 1349, 1352 (quotation marks omitted). He has failed to do that.

IV. Conclusion

Because we cannot conclude that the exclusion of Longest's testimony affected McKnight's substantial rights, he is not entitled to a reversal.[9] *See id.* at 1352.

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[9] Because the "FCRA is patterned after Title VII[,] and . . . federal case law on Title VII applies to FCRA claims," we affirm the verdict as to McKnight's state law claim of unlawful retaliation for the same reasons we affirm his federal claims. *Palm Beach Cnty. Sch. Bd. v. Wright*, 217 So. 3d 163, 164–65 (Fla. Dist. Ct. App. 2017) (en banc) (issuing en banc opinion to correct the causation standard for an FCRA retaliation claim and match it to Title VII's causation standard in light of *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013)); *see Alvarez*, 610 F.3d at 1271 ("[C]laims brought under [the FCRA] are analyzed under the same framework [as Title VII.]"); *see also State v. Jackson*, 650 So. 2d 24, 27 (Fla. 1995) ("[A] long-standing rule of statutory construction in Florida recognizes that if a state law is patterned after a federal law on the same subject, the Florida law will be accorded the same construction as given to the federal act in the federal courts.").

AFFIRMED.