

NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 25-12295  
Non-Argument Calendar

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PATRICK WELLS BYRNE,

*Plaintiff-Appellant,*

*versus*

GOODWILL SOUTH FLORIDA TEP, LLC,

*Defendant-Appellee.*

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Appeal from the United States District Court  
for the Southern District of Florida  
D.C. Docket No. 0:24-cv-61276-MD

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Before LUCK, LAGOA, and KIDD, Circuit Judges.

PER CURIAM:

Patrick Wells Byrne appeals the district court's grant of summary judgment on his Fair Labor Standards Act overtime claim and its exclusion of his TOPS! text messages to support his claim. We

conclude that the district court acted within its discretion by excluding the late-produced texts. But even without those texts, Byrne’s sworn testimony and declaration created genuine disputes of material fact about whether he worked unpaid overtime and whether Goodwill knew or should have known of that work. We therefore affirm the district court’s evidentiary ruling but vacate its entry of judgment in favor of Goodwill.

### **I. BACKGROUND**

Goodwill operates thrift stores. Byrne worked as an hourly Assistant Operations Manager, first at Goodwill’s Broward location and later at its Miami Gardens location. Byrne’s regular schedule was from 8:00 a.m. to 4:30 p.m., he earned \$27.40 per hour and \$41.10 per overtime hour, and he received policies prohibiting off-the-clock work and instructing employees how to report pay issues. Byrne asserted that those written policies did not reflect Goodwill’s actual practices. He contended that his direct supervisors, Kevin Martin and Javier Fernandez—Martin at both the Broward and Miami Gardens locations and Fernandez at Miami Gardens—required him to work before clocking in, after clocking out, and through lunch breaks, while the time records understated his weekday hours.

Byrne sued Goodwill under the Fair Labor Standards Act (“FLSA”) for unpaid overtime wages. After discovery, Goodwill moved for summary judgment, relying on its time and payroll records, written policies, and declarations from Byrne’s supervisors

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and coworkers. Byrne opposed the motion with his deposition testimony, response to Goodwill's statement of facts, and sworn declaration, arguing that Goodwill's records were inaccurate and that he was required to work off the clock.

Byrne testified during his deposition that the hours shown on his paystubs reflected only the hours for which he was paid, not the hours he allegedly worked off the clock. According to Byrne, that off-the-clock work occurred before 8:00 a.m. and after 4:30 p.m. He testified that he came in early every day to open gates, open loading docks and bay doors, prepare the daily work schedule, and load Goodwill's outdated computers.

Byrne also testified about after-hours work related to TOPS! transportation. He testified that, after clocking out, he routinely had to stay with employees while waiting for TOPS!, which he described as Goodwill's third-party transportation vendor for certain employees, because TOPS! was routinely late. When asked about being the last person to leave, Byrne identified TOPS! not showing up to pick up employees as one reason he remained after work. He further testified that there were emails and phone calls from him to human resources reporting that TOPS! was running late "weeks upon weeks" and "day to day." Byrne also testified that he complained to human resources and supervisors about having to wait after work for hours for TOPS! to pick up employees and about having to wait for Dana Lattamoore—Goodwill's Asset Protection Investigator—to fix or remotely address the alarm issue at Goodwill's stores.

At Goodwill's request, the district court excluded Byrne's TOPS!-related text messages from consideration at summary judgment because they were not produced in discovery. But that exclusion did not eliminate Byrne's separate deposition testimony and declaration testimony about TOPS!-related waiting time.

Byrne's declaration similarly stated that Martin told him he could not clock out after 4:30 p.m. unless authorized, but that if the work could not be completed on the clock, it had to be completed off the clock. Martin also allegedly told Byrne to clock out for lunch every day regardless of whether Byrne actually took a lunch break. Byrne also identified additional off-the-clock duties, including closing the warehouse, checking bathrooms, making sure employees had left, handling online listings, sending and responding to emails, receiving late donation trucks, setting or troubleshooting the alarm, opening doors, powering equipment, organizing carts, and letting employees into the building.

Goodwill disputed Byrne's account. Martin and Fernandez denied instructing Byrne to work off the clock or telling him he was salaried. Goodwill also relies on an email from Adolfo Aragon—Goodwill's Director of Loss Prevention—telling Byrne that he should not be working off the clock and responding to emails unless he was exempt. Goodwill further disputes the alleged April 1, 2024, in-person meeting with Fernandez—in which Byrne claims Fernandez told him to continue working off the clock after 4:30 p.m.—because Fernandez submitted a declaration and Airbnb records stating that he was in Georgia from March 31 through April 4,

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2024. Goodwill further argued that Byrne's TOPS! theory is limited because TOPS! did not operate in Miami-Dade County and because participants waiting for transportation were supervised by counselors, not Byrne. Additionally, Goodwill relied on declarations stating that Byrne left during lunch or left to pick up his children and, therefore, did not regularly work through lunch or close the Miami Gardens location.

Finally, Goodwill relied on its time and payroll records. It says Byrne worked fewer than 40 hours in 45 weeks because of holidays, vacation, or sick days, and that the remaining 56 weeks reflect paid overtime. Goodwill also argued that Byrne knew how to report pay issues because he submitted manual timesheets, processed hours for other employees, and reported a final-paycheck issue after termination, but never reported the off-the-clock overtime he now claims.

The district court granted Goodwill's motion. In doing so, the district court excluded Byrne's late-produced TOPS! text messages, found Byrne's declaration insufficient to create a genuine dispute, concluded that Byrne failed to show unpaid overtime under the FLSA, and entered final judgment for Goodwill.

Byrne raises two issues on appeal. First, he argues that the district court erred in granting summary judgment because his sworn testimony and declaration created genuine disputes of material fact about whether Goodwill required him to work uncompensated overtime before clocking in, after clocking out, and during lunch breaks. Second, he argues that the district court abused

its discretion by excluding his TOPS!-related text messages, but he also contends that, even without those texts, his deposition testimony and declaration still create a triable issue on his unpaid overtime claim.

## II. STANDARD OF REVIEW

We review a grant of summary judgment de novo, applying the same legal standard as the district court. *Carroll v. Carnival Corp.*, 955 F.3d 1260, 1263 (11th Cir. 2020); *Mendez v. Wal-Mart Stores E., LP*, 67 F.4th 1354, 1359 (11th Cir. 2023). Summary judgment is proper only when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute is genuine if a reasonable jury could return a verdict for the nonmovant, and a fact is material if it might affect the outcome under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

We review a district court’s ruling on the admissibility of evidence for abuse of discretion. *Camps v. Bravo*, 142 F.4th 743, 749 (11th Cir. 2025). Under that standard, this Court must affirm unless the district court made a clear error of judgment or applied the wrong legal standard. *Ameritas Variable Life Ins. Co. v. Roach*, 411 F.3d 1328, 1330 (11th Cir. 2005). The district court’s evidentiary ruling is entitled to a range of choice, and reversal is warranted only if the ruling was manifestly erroneous. *Camps*, 142 F.4th at 749.

## III. DISCUSSION

The FLSA requires an employer to pay an employee one and one-half times the regular rate for work performed in excess of

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forty hours per week. *Allen v. Bd. of Pub. Educ. for Bibb Cnty.*, 495 F.3d 1306, 1314 (11th Cir. 2007) (citing 29 U.S.C. § 207(a)(1)). An employee who is not properly compensated may bring a private action for unpaid overtime. *Bailey v. TitleMax of Ga., Inc.*, 776 F.3d 797, 801 (11th Cir. 2015) (citing 29 U.S.C. § 216(b)). To prevail, the employee must show two things: first, that the employee worked unpaid overtime, and second, that the employer knew or should have known that the employee was doing so. *Id.*; *Allen*, 495 F.3d at 1314–15.

The employee bears the burden of proving that the employee performed overtime work without proper compensation. *Allen*, 495 F.3d at 1315. But that burden is applied in light of the FLSA's remedial purpose and the employer's statutory duty to keep accurate wage and hour records. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946). When the employer's records are accurate, the employee can satisfy the burden by relying on those records. *Id.* But when the employer's records are inaccurate or inadequate, the employee is not required to prove the precise extent of uncompensated work. *Id.* Instead, the employee satisfies the initial burden by showing that the employee performed work that was not properly compensated and by producing evidence sufficient to show the amount and extent of that work as a matter of just and reasonable inference. *Id.*; *Allen*, 495 F.3d at 1316. Once the employee makes that showing, the burden shifts to the employer to produce evidence of the precise amount of work performed or evidence negating the reasonableness of the inference drawn from

the employee's evidence. *Mt. Clemens*, 328 U.S. at 687–88. If the employer fails to do so, damages may be awarded even though they are approximate. *Id.* at 688.

Those FLSA principles operate within the ordinary summary judgment framework. At this stage, the district court—and now our Court—must view the evidence and draw reasonable inferences in favor of the nonmovant. See *Feliciano v. City of Miami Beach*, 707 F.3d 1244, 1247 (11th Cir. 2013). A court's role is not to weigh the evidence, decide credibility, or determine the truth of disputed facts, but only to decide whether a genuine issue exists for trial. *Liberty Lobby*, 477 U.S. at 255.

At the same time, to defeat summary judgment, the non-movant must point to record evidence, not mere allegations or speculation. Fed. R. Civ. P. 56(c), (e); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). A scintilla of evidence is not enough. *Liberty Lobby*, 477 U.S. at 252. Nor can conclusory allegations, unsupported speculation, or facts with no real basis in the record defeat summary judgment. *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005). And a court need not accept a version of events that is blatantly contradicted by the record, internally inconsistent, implausible on its face, or based on facts that could not have been observed. *Scott v. Harris*, 550 U.S. 372, 380 (2007); *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985); *Schultz v. Am. Airlines, Inc.*, 449 F. Supp. 3d 1301, 1311 (S.D. Fla. 2020), *aff'd*, 855 F. App'x 656 (11th Cir. 2021).

But the fact that testimony is self-serving does not make it insufficient. Rule 56(c)(4) permits a party to rely on an affidavit or declaration if it is based on personal knowledge, sets out facts that would be admissible in evidence, and shows that the declarant is competent to testify. Fed. R. Civ. P. 56(c)(4). Under *United States v. Stein*, a litigant's self-serving statements based on personal knowledge or observation can defeat summary judgment, and Rule 56 does not require those statements to be corroborated by independent evidence. 881 F.3d 853, 857–58 (11th Cir. 2018) (en banc). Thus, a court may reject conclusory, speculative, inadmissible, or blatantly contradicted testimony, but it may not disregard sworn testimony merely because it is self-serving or uncorroborated. *Id.*

These principles govern Byrne's appeal. The question is not whether the district court believed Byrne's testimony or whether every document in the record corroborated that testimony. The question is whether Byrne offered admissible, nonconclusory evidence, based on personal knowledge, from which a reasonable jury could find that he worked unpaid overtime and that Goodwill knew or should have known of that work. We conclude that Byrne satisfied that threshold and that summary judgment was improper.

To survive summary judgment, Byrne had to create a genuine dispute that he worked unpaid overtime and that Goodwill knew or should have known he was doing so. *Bailey*, 776 F.3d at 801; *Allen*, 495 F.3d at 1314–15. He met that burden through sworn testimony and declaration evidence that he worked before clocking

in, after clocking out, and through lunch breaks, and that his supervisors directed or permitted that work.

This case is controlled by the summary judgment principle recognized in *United States v. Stein*. There, the government relied on IRS records showing unpaid taxes, and the taxpayer responded with her own affidavit stating, based on her recollection, that she had paid the amounts due. *Stein*, 881 F.3d at 855–56. The district court granted summary judgment because the taxpayer had no documents corroborating her affidavit. *Id.* at 856. Sitting en banc, this Court reversed that approach, holding that a Rule 56 affidavit may create a genuine dispute even if it is self-serving and uncorroborated. *Id.* at 857–59. The Court emphasized that Rule 56 requires personal knowledge, admissible facts, and competence to testify, but does not require independent corroboration. *Id.* at 856–58.

The same principle applies here. Goodwill relied on its time and payroll records, just as the government in *Stein* relied on IRS records. Byrne responded with sworn testimony and a declaration stating that those records did not capture the work he performed off the clock. He testified that the hours on his paystubs reflected only the hours for which he was paid, not the additional work he performed between 7:00 and 8:00 a.m. and after 4:30 p.m. He also testified that he came in early every day to open gates, open loading docks and bay doors, turn on slow computers, and prepare the daily work schedule. Under *Stein*, the district court could not disregard that testimony merely because it came from Byrne himself or because it lacked independent corroboration.

Byrne also offered evidence that Goodwill knew or should have known about the alleged off-the-clock work. In his declaration and summary judgment response, Byrne stated that Martin told him he could not clock out after 4:30 p.m. without authorization, but that if the work could not be completed on the clock, it had to be completed off the clock. Martin also allegedly told him to clock out for lunch every day regardless of whether he actually took a lunch break, to stop clocking in before 8:00 a.m. even though the morning work still had to be completed, and to stop clocking out after 4:30 p.m. because human resources and payroll were complaining about overtime. That testimony, if credited, supports both elements of Byrne's FLSA claim: unpaid overtime and employer knowledge.

Goodwill and the district court relied heavily on evidence contradicting Byrne's account, including Goodwill's written policies, statements from other employees, time records, and the Aragon email telling Byrne not to work off the clock. That evidence may be persuasive to a jury, but it does not eliminate the factual dispute at summary judgment. The existence of a written policy prohibiting off-the-clock work does not conclusively establish that Goodwill followed that policy in practice. Nor does Byrne's failure to respond to Aragon's email conclusively disprove his testimony that Martin gave him different instructions. At summary judgment, a court may not weigh Byrne's testimony against Goodwill's contrary evidence and choose the more persuasive account. *See Liberty Lobby*, 477 U.S. at 255.

The TOPS! evidence that was not excluded by the district court illustrates the same point. Byrne testified during his deposition that, after clocking out, he routinely stayed with employees waiting for late TOPS! transportation, that TOPS! delays were one reason he was the last person to leave, and that he complained to human resources that TOPS! was running late “weeks upon weeks” and “day to day.” His declaration likewise states that Martin and Fernandez required him to remain with employees until TOPS! arrived. Goodwill’s evidence that TOPS! did not operate in Miami-Dade County may limit or weaken the TOPS! theory for the Miami Gardens period, but it does not erase Byrne’s sworn testimony about TOPS!-related waiting time at the Broward location or his broader testimony about other unpaid opening, closing, lunch, and alarm-related work.

The Fernandez evidence narrows the claim but does not defeat it. Byrne alleged that Fernandez continued Martin’s off-the-clock instructions during an April 1, 2024, meeting. Goodwill responded with Fernandez’s declaration and Airbnb records showing that Fernandez was in Georgia from March 31 through April 4, 2024. That evidence directly undermines the April 1 meeting. But it does not undermine Byrne’s earlier theory based on Martin’s alleged instructions. Byrne’s testimony identifies an earlier span of alleged off-the-clock instructions beginning around October 15, 2022, and continuing through Martin’s later instructions on July 26, 2023, and November 10, 2023. Thus, even if the Fernandez-based theory is disregarded, the record still supports a triable issue for the period beginning October 15, 2022, and continuing through March

25, 2024, the end of Byrne’s Seventh Period and the last full period before the claim shifts to Fernandez.

Nor did Byrne need to prove the precise amount of unpaid overtime at summary judgment. Because Byrne contends that Goodwill’s records were inaccurate, his burden was to produce evidence showing the amount and extent of uncompensated work as a matter of just and reasonable inference. *Mt. Clemens*, 328 U.S. at 687; *Allen*, 495 F.3d at 1316. He did so by testifying that he typically worked before 8:00 a.m., after 4:30 p.m., and through lunch, and by estimating that he averaged approximately 48 hours per week. Goodwill remains free to challenge that estimate, rely on its payroll records, and argue that many weeks involved fewer than forty hours or already-paid overtime. But under *Mt. Clemens*, those arguments go to the reasonableness and amount of recovery, not whether Byrne’s sworn evidence created a triable issue.

In short, this is not a case where Byrne offered only speculation or a conclusory allegation that he “worked overtime.” He identified the tasks he performed, the approximate times he performed them, the supervisors who allegedly directed the work, and the reasons Goodwill’s records failed to capture it. Goodwill offered substantial contrary evidence, but resolving that conflict requires credibility determinations and weighing competing evidence. Under Rule 56, that is the jury’s role. The district court’s entry of judgment in favor of Goodwill is therefore vacated.

Byrne also challenges the district court’s exclusion of the TOPS! text messages at summary judgment. But we find that the

district court did not abuse its discretion when it excluded the messages. Under Rule 26(a), (e), parties must disclose required information and timely supplement or correct those disclosures when they learn that a prior disclosure is materially incomplete or incorrect. Fed. R. Civ. P. 26(a), (e). Under Rule 37(c)(1), a party who fails to disclose information required by Rule 26 may not use that information on summary judgment unless the failure was substantially justified or harmless. Fed. R. Civ. P. 37(c)(1). Federal Rules of Civil Procedure 26 and 37 are clear, and Byrne offered no argument against their application before the district court.

Nor could he. The district court correctly applied Rule 26 and Rule 37(c)(1) in concluding that the evidence was disclosed too late. The text messages were responsive to Goodwill's discovery requests, but Byrne did not produce them during discovery. Instead, he attached them for the first time to his summary judgment response. Byrne made no showing that his failure to produce the messages was substantially justified or harmless. The district court therefore acted within its discretion by refusing to consider the texts.

#### IV. CONCLUSION

We **AFFIRM** the district court's exclusion of Byrne's TOPS! text messages but **VACATE** the district court's entry of summary judgment in favor of Goodwill and remand for further proceedings.