In the

United States Court of Appeals

For the Seventh Circuit

No. 21-2418

DIANE RUNKEL,

Plaintiff-Appellant,

v.

CITY OF SPRINGFIELD and JAMES O. LANGFELDER,

Defendants-Appellees.

Appeal from the United States District Court for the
Central District of Illinois.
No. 3:18-cv-03206-SEM-TSH — **Sue E. Myerscough**, *Judge.*

ARGUED JANUARY 21, 2022 — DECIDED OCTOBER 18, 2022

Before HAMILTON and KIRSCH, *Circuit Judges*.[*]

HAMILTON, *Circuit Judge*. Plaintiff Diane Runkel worked as the assistant purchasing agent for the Springfield, Illinois city government under the supervision of the purchasing agent. In early 2018, when the purchasing agent announced that he

[*] Circuit Judge Kanne heard argument but died on June 16, 2022. He did not participate in the decision of this case, which is being resolved under 28 U.S.C. § 46(d) by a quorum of the panel.

planned to leave the position, Runkel asked to be considered for promotion to the top job in the office. Runkel, who is white, later found out that she had not been selected and that the City instead promoted a black candidate, Kassandra Wilkin, who had been working under Runkel's supervision. As an apparent consolation prize, Runkel was offered a substantial $5,000 per year raise in salary. When told she did not receive the promotion, however, Runkel became upset, told a city official that she believed the hiring was discriminatory, and caused a disturbance in the office. Runkel later filed a charge of race discrimination with the U.S. Equal Employment Opportunity Commission (EEOC). The account of her reaction to the decision is disputed, but after telling the City she planned to file the charge, Runkel was disciplined and the promised raise was revoked. Soon after that, she retired.

Runkel has sued the City and Mayor James Langfelder (together, the City) claiming that they refused to promote her based on her race and retaliated against her for reporting this potential discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a)(1) & 2000e-3(a), and the Equal Protection Clause of the Fourteenth Amendment. The City moved for summary judgment, and the district court granted the motion on both claims.

Runkel appeals, arguing that she presents genuine issues of material fact on her discrimination and retaliation claims that preclude summary judgment. We agree. The City has told two incompatible stories about both how and why Wilkin was chosen for promotion and Runkel was not. One of those versions even relies explicitly upon race as a factor in the decision. Regarding Runkel's retaliation claim, the City's explanation for disciplining Runkel and taking away the

promised raise also raises genuine questions. Her emotional and disruptive response to the denial of the promotion could easily warrant some level of discipline, but giving Runkel the benefit of conflicts in the evidence and reasonable inferences from it, a reasonable jury could find that the City's stated non-discriminatory justifications for the promotion decision are pretextual and that the City retaliated against Runkel for claiming racial discrimination. We reverse the district court's grant of summary judgment.[1]

I. *Factual and Procedural Background*

In Springfield, the position of purchasing agent is established in the municipal code itself. The purchasing agent must be "appointed by the director of budget and management

[1] It is not clear that the purchasing agent position Runkel sought is actually a position protected from discrimination under Title VII. The definition of an "employee" covered by Title VII excludes "any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, … or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office." 42 U.S.C. § 2000e(f). In denying a motion to dismiss on this issue, the district court found here that the purchasing agent is not a policy-making appointee because the position is filled by appointment by a non-elected official, the City's director of the Office of Budget and Management. But the appointed purchasing agent must also be approved by the mayor and city council. Springfield, Ill., Code § 38.11 (1995). In addition, Mayor Langfelder testified in his deposition that *he*, not the director of the Office of Budget and Management, appointed Wilkin as purchasing agent. The requirement for approval by elected officials under city ordinance and the mayor's action in appointing the purchasing agent himself tend to indicate that the position may be exempt from protection under Title VII. The City has not renewed this argument on appeal as an alternative ground for affirmance, however, and we do not consider it further here.

with the approval of the mayor and the advice and consent of the city council." Springfield, Ill., Code § 38.11. The purchasing agent is a senior city official and is responsible for preparing and administering the City's contracts and for promulgating rules and regulations governing the City's procurement of supplies, services, and construction. The purchasing agent heads an office and supervises the assistant purchasing agent and one or more buyers.

Plaintiff Runkel began working for the City when she joined the Office of Budget and Management as a clerk in 2007. She was promoted to the position of buyer in 2008. In that role, she facilitated technical aspects of the purchasing office, including handling documents, sharing information, and entering data. Runkel continued as a buyer until she was promoted to the assistant purchasing agent in 2015. The assistant purchasing agent helps the purchasing agent in preparing specifications for goods and services, administers city contracts, and communicates purchasing requirements with other city departments. The assistant purchasing agent also acts as purchasing agent in that official's absence.

Wilkin, the person promoted to purchasing agent in 2018, began working for the Springfield Office of Public Utilities in 2005. In 2015, she joined the Office of Budget and Management as a buyer and worked in the office under Runkel's supervision. Wilkin remained in that role until she was offered the post of purchasing agent during the events that gave rise to this litigation.

In February 2018, Purchasing Agent Sandy Robinson announced that he was leaving his position. Runkel told Robinson and Director of the Office of Budget and Management William McCarty that she was interested in the role. But

Mayor Langfelder personally chose to appoint Wilkin to the position.

There is some debate over just what happened after Runkel learned she would not be promoted, but it is clear that she became very upset. After meeting with the mayor to discuss Wilkin's appointment, Runkel spoke on the phone with McCarty. Runkel made several remarks that McCarty later termed "disappointing." The City eventually disciplined her for saying "offensive or profane" things during this conversation.

In particular, Runkel told McCarty that she believed that Wilkin had been hired because of her race, and she made several personal remarks about Wilkin. After overhearing part of the conversation, Wilkin stepped into the office to ask Runkel to be quiet. Runkel loudly told Wilkin to get out. The City's director of human resources eventually came to speak with Runkel and suggested that she take the rest of the day off. Runkel went home that afternoon. For the next month, she was in and out of work on a combination of FMLA leave, administrative leave, and suspension.

Runkel retained counsel and notified the City that she was considering filing a charge of race discrimination with the EEOC. She filed her charge with the EEOC on April 5, 2018. The next day, the City asked Runkel to sign a Last Chance Agreement for her conduct on March 1 upon learning she would not receive the promotion. The agreement rescinded the pay raise that Runkel had been offered at that time. The agreement also would have made it easier to terminate her for future infractions. Runkel signed the agreement but retired from her position with the City on April 17. In August 2018,

Runkel filed this suit against the City and Mayor Langfelder claiming racial discrimination in employment and retaliation.

II. *Analysis*

We review de novo the district court's grant of summary judgment, giving Runkel as the non-moving party the benefit of conflicting evidence and any favorable inferences that might be reasonably drawn from the evidence. *Logan v. City of Chicago*, 4 F.4th 529, 536 (7th Cir. 2021). Summary judgment is proper when "the movant shows that 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 of fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Lord v. Beahm*, 952 F.3d 902, 903 (7th Cir. 2020), quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The substantive law of the dispute determines which facts are material. *Id.*

A plaintiff may offer direct and/or circumstantial evidence of discrimination, and "all evidence belongs in a single pile and must be evaluated as a whole." *Igasaki v. Illinois Dep't of Financial and Professional Regulation*, 988 F.3d 948, 957 (7th Cir. 2021), quoting *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 766 (7th Cir. 2016). The conflicting evidence in this case highlight the court's limited role when considering a motion for summary judgment:

> On summary judgment a court may not make credibility determinations, weigh the evidence, or decide which inferences to draw from the facts; these are jobs for a factfinder. Rather, the court has one task and one task only: to decide, based on the evidence of record, whether there

> is any material dispute of fact that requires a trial. Summary judgment is not appropriate if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. We must look therefore at the evidence as a jury might, construing the record in the light most favorable to the nonmovant and avoiding the temptation to decide which party's version of the facts is more likely true. As we have said many times, summary judgment cannot be used to resolve swearing contests between litigants.

Johnson v. Advocate Health & Hospitals Corp., 892 F.3d 887, 893 (7th Cir. 2018) (reversing summary judgment). We "do not weigh conflicting evidence, resolve swearing contests, determine credibility, or ponder which party's version of the facts is most likely to be true." *Stewart v. Wexford Health Sources, Inc.*, 14 F.4th 757, 760 (7th Cir. 2021). We consider first Runkel's claim of discrimination in the promotion decision and then her retaliation claim.

A. *Discrimination on the Basis of Race*

Under Title VII of the Civil Rights Act of 1964, it is unlawful for employers to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Runkel claims that the City violated § 2000e-2(a)(1) by denying her the promotion because she is white.

Runkel argues that she offered sufficient evidence to overcome summary judgment based on both the old "direct"

method of proof and under the *McDonnell Douglas* burden-shifting framework. After issuing opinions for several decades distinguishing between direct and indirect methods of proving employment discrimination, our decision in *Ortiz v. Werner Enterprises* rejected the distinction between direct and indirect evidence and the corresponding methods of proof. 834 F.3d at 765 ("Accordingly, we hold that district courts must stop separating 'direct' from 'indirect' evidence and proceeding as if they were subject to different legal standards."). We tried to simplify the analysis, saying that we and district courts should consider all available evidence and, when deciding a motion for summary judgment, should ask whether a reasonable jury could find that the relevant decision was motivated in part by an unlawful criterion. *Id.* After *Ortiz*, however, one way to make that showing remains the framework for circumstantial evidence of discrimination adopted by the Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), as adapted to a wide variety of discrimination cases. See *Reives v. Illinois State Police*, 29 F.4th 887, 892 (7th Cir. 2022); *Johnson*, 892 F.3d at 894.

Runkel, who is white, makes a claim of "reverse discrimination." Title VII protects people of all races, including white people, from race discrimination. *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273, 280 (1976). "Because it is the unusual employer who discriminates against majority employees," however, we have modified the first element of a prima facie claim under the *McDonnell Douglas* framework for reverse discrimination claims. *Mlynczak v. Bodman*, 442 F.3d 1050, 1057 (7th Cir. 2006), quoting *Gore v. Indiana Univ.*, 416 F.3d 590, 592 (7th Cir. 2005).

Applying that framework here, avoiding summary judgment requires Runkel to offer evidence that (i) the City had "reason or inclination to discriminate invidiously" against white people, or there were "fishy" circumstances, *Gore*, 416 F.3d at 592, quoting *Phelan v. City of Chicago*, 347 F.3d 679, 684 (7th Cir. 2003); (ii) she was qualified for the position; (iii) she was rejected for the position; and (iv) the position was given to a person outside her protected class who was similarly or less qualified than she was. See *Logan*, 4 F.4th at 536. If she makes her prima facie case, the burden shifts to the City to provide a legitimate, non-discriminatory reason for the decision not to promote Runkel. *Id.*

After the City offered such a reason, the burden shifted back to Runkel to submit evidence that the City's explanation is a pretext. *Id*. at 536–37. Runkel need not present evidence that race was the sole cause or even a but-for cause of the City's decision not to promote her. "Race discrimination claims under Title VII simply require that race be a 'motivating factor in the defendant's challenged employment decision.'" *Lewis v. Indiana Wesleyan Univ.*, 36 F.4th 755, 759 (7th Cir. 2022), quoting *Comcast Corp. v. National Ass'n of African American-Owned Media*, 140 S. Ct. 1009, 1017 (2020).[2]

[2] Runkel also claims that the City and mayor's race discrimination violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and she seeks relief under 42 U.S.C. § 1983. This appeal presents no relevant difference between the statutory and constitutional prohibitions, so our discussion of her Title VII claims applies equally to her equal protection claim. See *McReynolds v. Merrill Lynch & Co.*, 694 F.3d 873, 885 (7th Cir. 2012); see also *Barnes v. Board of Trustees of the Univ. of Illinois*, 946 F.3d 384, 389 (7th Cir. 2020) ("The legal standard for analyzing racial discrimination claims under Title VII and § 1983 is the same.").

For the first element, Runkel has offered evidence that the City had "reason or inclination to discriminate invidiously" against her as a white person, *Gore*, 416 F.3d at 592, quoting *Phelan*, 347 F.3d at 684. She offers evidence that the mayor chose Wilkin at least partly because he wanted to appoint a black person as purchasing agent for political and/or policy reasons. In an interview, the mayor later specifically cited his hiring of a black woman (Wilkin) to the position of purchasing agent as an example of how his administration was "moving toward reflecting the city's demographics." The prior purchasing agent, Sandy Robinson, had been the only black person among the fifteen senior city officials who reported directly to the mayor. When Robinson announced he planned to resign, Mayor Langfelder testified, he sought to replace him first by offering the position to one Darryl Harris, who is also black, and when Harris declined, the mayor decided to offer the position to Wilkin.

One detail is particularly telling on this issue, or at least a jury might reasonably find it to be telling. There is evidence that Wilkin's resume was not emailed to Mayor Langfelder until *after* he had already offered her the role. Along with the other evidence, this detail might support a reasonable jury's inference that the mayor was more interested in Wilkin's race than in her (substantial) qualifications. See *Gore*, 416 F.3d at 592, quoting *Phelan*, 347 F.3d at 684.

The second element requires Runkel to offer evidence that she was qualified to serve as the purchasing agent. *Logan*, 4 F.4th at 536. She offers evidence that McCarty, the director of the Office of Budget and Management, was planning to have her promoted to purchasing agent in an acting capacity if the hiring process became prolonged. Runkel also claims that

when she served as assistant purchasing agent, she repeatedly managed the duties of the office when the prior purchasing agents were absent. The job descriptions for the positions also indicate significant overlap. The purchasing agent and assistant purchasing agent were both responsible for administering City contracts, preparing and reviewing specifications for materials and services, and developing and maintaining reliable sources of supplies and services. Runkel has presented enough evidence for a reasonable jury to find that she was qualified to serve as purchasing agent.

For the third element, Runkel must offer evidence that she was actually rejected for the position. *Logan*, 4 F.4th at 536. The situation here is not as clear as in other cases because the City did not formally invite or entertain applications for the position of purchasing agent. Nevertheless, Runkel testified that she told the outgoing purchasing agent and McCarty, who technically would make the appointment, subject to approval from the mayor and city council, that she was interested in the position. She also asked repeatedly for updates on the selection process. McCarty told the mayor of Runkel's interest in the position. A reasonable jury could find that she sought and was rejected for the position. She can meet the third element of a prima facie case.

For the fourth element, Runkel must show that the City chose to promote someone of a different race who was similarly or less qualified. *Logan*, 4 F.4th at 536. The City ordinance states that the official selecting the purchasing agent "shall give due consideration to the experience and ability required for the proper and effective discharge of the duties of the office." Springfield, Ill., Code § 38.11. This is too vague to

provide much guidance about appropriate qualifications, so we turn to Runkel and Wilkin's resumes.

Runkel had worked in purchasing for about eight years longer than Wilkin, and at a more senior level. On the other hand, Wilkin had experience in the City's electric utility company, and she had attained higher levels of education than Runkel had. The City argues that experience as the assistant purchasing agent has not been a prerequisite for appointment as purchasing agent in the past. We assume that is true, but that is not the same as saying that a reasonable jury would have to conclude that Wilkin was better qualified. A reasonable jury could find that the two were at least similarly qualified. For purposes of summary judgment, Runkel has supported a prima facie case for racial discrimination in the promotion decision, shifting the burden to the City to explain its decision.

So what has the City said about why Wilkin was selected? An important part of the evidence here is the City's response to Runkel's EEOC charge, for it conflicts with other evidence on several key points. (The record includes an attorney's draft response to the EEOC charge. The City has not offered a later version or tried to disavow the draft, and Runkel is certainly entitled to rely upon it in any event.) The City tried to explain to the EEOC the process by which Wilkin was promoted to purchasing agent. In this account, the City claimed that an unnamed decision-maker had compared Wilkin and Runkel and had selected Wilkin because: (i) she was better-educated; (ii) she had more seniority; (iii) she had displayed greater professionalism on the job; and (iv) Runkel misbehaved after learning of Wilkin's appointment. At least the first three of these are non-discriminatory explanations for Wilkin's hiring,

sufficient to shift the burden back to Runkel at the third step of the *McDonnell Douglas* burden-shifting method.

Runkel thus needed to offer evidence that these reasons are pretextual, meaning false, allowing an inference that the City's true intent was discriminatory. See *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 511 (1993) ("The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will *permit* the trier of fact to infer the ultimate fact of intentional discrimination…."); see also *Joll v. Valparaiso Community Schools*, 953 F.3d 923, 932 (7th Cir. 2020) ("Employment discrimination law has long recognized that an employer's dishonest explanation of a decision can support an inference that its real reason was unlawful."); *Hasham v. California State Bd. of Equalization*, 200 F.3d 1035, 1045 (7th Cir. 2000) ("Pretext does not require that plausible facts presented by the defendant not be true, only that they not be the reason for the employment decision.").[3]

[3] Some of our opinions have been phrased in ways that suggest that a showing of pretext requires a plaintiff to show the employer's non-discriminatory reason was dishonest, *and also* to show that the employer's true reason was discriminatory. E.g., *Logan*, 4 F.4th at 537 ("[I]n order to show pretext, Logan must 'show that (1) the employer's non-discriminatory reason was dishonest and (2) the employer's true reason was based on a discriminatory intent.'"), quoting *Stockwell v. City of Harvey*, 597 F.3d 895, 901 (7th Cir. 2010); *Hobbs v. City of Chicago*, 573 F.3d 454, 462 (7th Cir. 2009) ("Our recent Title VII cases explain that a plaintiff demonstrates pretext by showing the employer's proffered nondiscriminatory reason is a lie and the real reason is based on discriminatory intent."). This language should not be interpreted to suggest that a plaintiff must show both

Runkel has offered such evidence. The City's fourth stated reason for promoting Wilkin instead of Runkel is, on its face, an after-the-fact rationalization of the City's hiring decision. Given the direction of time's arrow, Runkel's later actions upon learning she would not be promoted could not possibly have been a reason for the City's earlier decision not to promote her.

As for the other stated reasons, and equally troubling for the defense, the mayor testified that he made the decision to promote Wilkin without ever comparing her to Runkel:

> Q. I mean, I think you said just a while ago, you never even considered [Runkel] for the position [of purchasing agent], right?
>
> A. Correct.

Based on this evidence that the City never even made the claimed comparison between the two, a reasonable jury could also find that the first three of the City's claimed justifications for promoting Wilkin were dishonest, not reflecting the actual facts. A jury could thus reasonably find that all four of the justifications provided by the City were dishonest, permitting an inference of unlawful motive.

Next, the City has also claimed that the substantive reason it hired Wilkin was because the mayor "was impressed" with her qualifications for the position. Mayor Langfelder testified that he wanted to hire Wilkin because he appreciated her

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pretext *and* some additional evidence of discrimination to permit the inference of unlawful intent. If it were interpreted that way, it would be circular and would conflict with *St. Mary's Honor Center v. Hicks*, 509 U.S. at 511.

work ethic, and he knew that she had obtained a master's degree while working for the City. The mayor added that when he chose Wilkin, he was considering centralizing the purchasing services across different components of city government, and he believed her experience at the municipal utility company's billing department would be valuable in her new role. At the time of her appointment, Wilkin worked as a buyer in the office overseen by the purchasing agent, and the mayor believed that she "understood both the utility and the [Office of Budget and Management] side of things." Now, if this version of events were the only version, we would tend to agree that a reasonable jury could not find racial discrimination. Wilkin was clearly qualified for the role, and neither Title VII nor any other source of applicable law required the City to go through a formal, competitive civil-service-style selection process.

As discussed above, however, Runkel has presented evidence that flatly contradicts that benign version of the decision, in terms of both process and substance. Runkel has offered quite direct evidence that the City's decision was motivated at least partly by race. Mayor Langfelder also testified that he did not compare Wilkin to other candidates for the role. That testimony contradicted the City's explanation of the hiring decision in response to Runkel's EEOC charge. Add all of Runkel's evidence together and the City's different stories for the hiring appear inconsistent as to both the procedure used (was there a comparison of candidates or not?) and the substantive reasons for the hiring (was race part of the decision?). In addition to some direct evidence of race being a factor, the inconsistencies in the evidence permit the inference that the City's non-discriminatory explanations for promoting Wilkin are dishonest, in turn allowing a reasonable jury to

infer the City's true purpose was intentional racial discrimination. E.g., *Joll*, 953 F.3d at 932. We must therefore reverse summary judgment on Runkel's race discrimination claims under 42 U.S.C. § 2000e-2(a)(1) and the Equal Protection Clause.

B. *Retaliation*

Runkel also claims that the City retaliated against her for complaining of racial discrimination to the EEOC by rescinding her promised raise and placing her on the Last Chance Agreement. Title VII prohibits employers from retaliating against an employee because she "has made a charge, testified, assisted, or participated in any manner in an investigation" of racial discrimination. 42 U.S.C. § 2000e-3(a). The issue is whether, construing the evidence in Runkel's favor and giving her the benefit of reasonable inferences, a reasonable jury could find that (i) she engaged in activity protected under Title VII; (ii) she suffered an adverse employment action; and (iii) her protected activity and the adverse action(s) were causally connected. *Rozumalski v. W.F. Baird & Assocs.*, 937 F.3d 919, 924 (7th Cir. 2019).

Through counsel, Runkel told Mayor Langfelder on March 22, 2018 that she was considering filing a charge of race discrimination with the EEOC, and her lawyer attached the proposed charge. Runkel actually filed a charge on April 5, 2018. These actions qualify as protected activity under Title VII. See *Poullard v. McDonald*, 829 F.3d 844, 856 (7th Cir. 2016). Runkel claims she suffered an adverse employment action a few days later when the City placed her on the Last Chance Agreement that both rescinded her $5,000 raise and made it easier for the City to fire her. We agree. Runkel has evidence to satisfy the first two elements of a retaliation claim. The

disputed question is whether her evidence would allow a reasonable jury to find that a retaliatory motive caused the adverse action(s). See *Igasaki*, 988 F.3d at 959.

Runkel offers evidence that the City's true concern about her behavior on March 1 was that she complained of race discrimination. The Last Chance Agreement states: "Due to the unprofessional and unbecoming conduct, as well as the belligerent manner in which she treated a co-worker, the offer of a pay increase discussed on March 1, 2018 is rescinded." At first glance, that sounds like a perfectly legitimate rationale for disciplinary action, and it seems clear that her reaction was unprofessional to at least some degree. But was such a strong response independent of any retaliatory motive?

The City has no written documentation for Runkel's offensive conduct other than McCarty's vague recollection of events sent in an email to Director of Human Resources James Kuizin on April 18, 2018, the day after Runkel retired:

> I don't recall the specifics of the entire conversation other than to say I mostly listened and that there were two things she said that stuck with me because *I felt they were inappropriate to say, even given the circumstances*. While I don't remember the exact words spoken, one comment or set of comments were directed at [Wilkin's] ethnicity. *Basically, her contention was that the only reason* [*Wilkin*] *got the job is because she was "black."*
>
> She also made accusations [of a personal nature about Wilkin]. It was during these comments that she suddenly started yelling at someone to

> "get out of my office" multiple times. She then said she would call me back, which did not occur. I found out later that [Wilkin] and someone else had come back into the Purchasing office at some point and had overheard [Runkel's] comments, which prompted her to enter [Runkel's] office. (Emphases added.)

McCarty's testimony corroborates this earlier written account.

Giving Runkel the benefit of reasonable inferences from the evidence, McCarty's written recollection from 2018 would tend to support a finding that one of the reasons the City took disciplinary action against Runkel, including rescinding the promised raise, was because she accused the City of choosing the new purchasing agent based on race. The City provides no evidence that conclusively rebuts that interpretation. Wilkin and her unnamed companion who overheard Runkel on March 1 were not deposed, and other city officials were not present when the conduct occurred. Even if a jury might have to conclude that some degree of discipline would have been justified under the circumstances, the severity of the actual discipline is relevant here.

The McCarty evidence does not stand alone. Even worse for the City's defense is evidence specific to rescinding the promised pay raise. Mayor Langfelder—the only official who actually had the authority to rescind Runkel's promised pay raise—testified that he did not recall why he rescinded the raise *or even that he did so*. Director Kuizin testified that the basis for the City's decision to discipline Runkel on March 26 was a statement provided by Ramona Metzger about Runkel's conduct on March 1. When asked whether Metzger put her

statement in writing, Kuizin stated "I believe so." But Metzger was not deposed, and there is no statement of hers in evidence.

Runkel has offered evidence that would allow a reasonable jury to find that the City retaliated against her for her protected activity claiming what she believed was race discrimination, and the City's evidence does not conclusively foreclose such a finding.

To be clear, we are not deciding the ultimate merits of Runkel's claims for discrimination or retaliation. The City chose to move for summary judgment, and only on certain issues. That choice requires us to give Runkel the benefit of conflicts in the evidence and favorable inferences. When we do so, it is clear that the City's reasons for its actions must be decided by a jury, not on summary judgment. The judgment of the district court is REVERSED and the case is REMANDED for further proceedings consistent with this opinion.