In the

United States Court of Appeals

For the Seventh Circuit

No. 24-1355

TIMOTHY UPCHURCH,

Plaintiff-Appellant,

v.

STATE OF INDIANA and INDIANA DEPARTMENT OF CORRECTION,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 1:19-cv-04644 — **Sarah Evans Barker**, *Judge*.

ARGUED APRIL 16, 2025 — DECIDED JULY 25, 2025

Before SYKES, *Chief Judge*, and ST. EVE and JACKSON-AKIWUMI, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Timothy Upchurch, a Black man, has worked at the Indiana Department of Correction's Correctional Industrial Facility ("CIF") for more than thirty years. He brought discrimination and retaliation claims against the State of Indiana under Title VII, 42 U.S.C. §§ 2000e–2(a)(1), 2000e–3(a), challenging his demotion from Correctional

Lieutenant to Officer, and subsequent written reprimands, a suspension, and non-promotions. The district court substituted the Indiana Department of Correction for the State of Indiana as the defendant, then granted summary judgment to the Department. We affirm.

I. Background

Upchurch is a Black Correctional Officer at CIF. First hired in 1994 as an Officer, he was promoted to Sergeant in November 2007 and Lieutenant in September 2015. In January 2019, Warden Wendy Knight demoted him two levels.

His demotion back to an Officer position followed an investigation into a harassment complaint by Officer Colin White against Officer David Myers. As relevant here, White told the investigator that on November 18, 2018, Myers called the shift supervisor's office, reached Upchurch, and made fun of White, including by telling Upchurch, "White hasn't had sex with his wife since he got married." Officer Ty Palmer, who was in the shift supervisor's office with Upchurch that day, confirmed the inappropriate comment, stating that Upchurch had repeated it to him. Myers, meanwhile, told the investigator that "he could have [made the comment to Upchurch] but he doesn't remember," and "if he did [make the comment,] it would be because White told him that." Upchurch denied hearing or repeating the comment. The investigator ultimately credited Palmer's account and recommended Upchurch receive a two-level demotion. Warden Knight agreed, imposing the demotion on January 2, 2019.

Since the demotion, Deputy Warden Andrew Cole has issued Upchurch three written reprimands in lieu of suspensions: in February 2019 for refusing mandatory overtime; in

March 2019 for an unauthorized 30-minute leave; and in July 2020 for 11.5 hours of unauthorized leave. In addition, Cole suspended Upchurch for 10 days in February 2021 for possessing and using chewing tobacco found in a corridor, which Cole attributed to Upchurch, although Upchurch denied that he brought the tobacco into the facility.

Over this period and through September 2021, Upchurch unsuccessfully applied for more than twenty positions at CIF and other Department facilities.[*] The Department states that its disciplinary actions explain many of the non-promotions: Under a policy at both CIF and the Department's Indiana Women's Prison ("IWP"), employees are ineligible for a promotion within twelve months of formal discipline, including a suspension or a written reprimand in lieu of a suspension. All but five of Upchurch's applications for promotions at CIF and IWP fell within a year of formal discipline.

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[*] At CIF, Upchurch applied for a Captain position in May 2019; Lieutenant and Sergeant positions in July 2019; a Sergeant position in November 2019; Lieutenant and Sergeant positions in February 2020; Lieutenant and Captain positions in June 2020; a Lieutenant position in August 2021; and a Lieutenant position in September 2021.

At Indiana Women's Prison, he applied for Sergeant and Lieutenant positions in August 2019; Sergeant and Captain positions in April 2020; a Lieutenant position in May 2020; a Correctional Caseworker position in July 2020; and a Lieutenant position in August 2021.

At Miami Correctional Facility, he applied for a Lieutenant position in October 2020; a Sergeant position in February 2021; and a Lieutenant position in August 2021.

He also applied for Parole Officer positions in May and August 2020.

From March to July 2020, the only relevant period when the policy described by the Department did not preclude Upchurch from promotion at CIF, he applied for a Sergeant and a Lieutenant position at CIF. Warden Knight made the hiring decisions for both positions. She selected Brandon Richey, a Sergeant at Pendleton Correctional Facility, for the Lieutenant position, and Jerry Gilley, a Captain at Pendleton, for the Captain position. In her affidavit, Knight explained that Richey and Gilley had superior qualifications to Upchurch: Richey brought experience as a Sergeant at a maximum-security facility (Pendleton), and Gilley had served as a Captain at CIF before transferring to Pendleton.

Upchurch claims that race discrimination and retaliation for his complaints about discrimination motivated his disciplinary record and non-promotions. Since May 2019, he has filed five charges of discrimination and retaliation with the Indiana Civil Rights Commission and the Equal Employment Opportunity Commission ("EEOC"). The EEOC responded to each charge with a right-to-sue letter. In November 2019, Upchurch filed this lawsuit against the State of Indiana, invoking Title VII of the Civil Rights Act, 42 U.S.C. § 2000e–2 *et seq*.

During discovery, Upchurch did not take any depositions in this case, including those of the decisionmakers. After the close of discovery, the State of Indiana moved for summary judgment, arguing that the Indiana Department of Correction, as Upchurch's employer under Title VII, was the proper defendant. The district court agreed that Upchurch had sued the wrong defendant. Rather than grant the State's motion, however, the court substituted the Department for the State pursuant to Federal Rule of Civil Procedure 21.

The Department then moved for summary judgment. The district court granted the motion, finding insufficient evidence in the record of race discrimination or retaliation for a reasonable jury to return a verdict for Upchurch.

On appeal, Upchurch challenges the district court's decision to substitute the Department for the State as the defendant, and its determination that the record contains insufficient evidence to support his Title VII claims.

II. Discussion

Title VII prohibits an employer from "discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of" his race. 42 U.S.C. § 2000e-2(a)(1). It further prohibits an employer from discriminating against employees or applicants for employment because they have complained of race discrimination. § 2000e-3(a).

In this case, we first define Upchurch's "employer" under Title VII. We then consider whether record evidence permits an inference of illegal discrimination or retaliation.

A.

In lawsuits arising from state employment, "the particular agency or part of the state apparatus that has actual hiring and firing responsibility" is the "employer" for purposes of Title VII and thus the appropriate defendant. *DaSilva v. Indiana*, 30 F.4th 671, 674 (7th Cir. 2022) (quoting *Hearne v. Chi. Bd. of Educ.*, 185 F.3d 770, 777 (7th Cir. 1999)).

Applying this rule, we agree with the district court that the Indiana Department of Correction, not the State of Indiana, is the relevant employer here. Although the State Personnel

Department provides human resource services (such as investigation services in this case), the Department has the authority to hire and fire correctional workers in its facilities. *Cf. Sutherland v. Mich. Dep't of Treasury*, 344 F.3d 603, 611–12 (6th Cir. 2003) (holding that the Michigan Department of Treasury was the "employer" of auditors under Title VII); *see also Holman v. Indiana*, 211 F.3d 399, 401 n.1 (7th Cir. 2000) (assuming that the Indiana Department of Transportation was the "employer" of workers in its maintenance department under Title VII). Indeed, Warden Knight made the ultimate decision to demote Upchurch. We therefore reject Upchurch's argument that the district court premised its substitution decision on a legal error about his employer under Title VII.

B.

We review the district court's grant of summary judgment to the Department de novo. *Vassileva v. City of Chi.*, 118 F.4th 869, 873 (7th Cir. 2024). Summary judgment is proper if "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). In applying this standard, we construe all facts and draw all reasonable inferences in favor of the non-movant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Even so, a movant may prevail at summary judgment by showing an absence of evidence to support the non-movant's claims. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *see, e.g.*, *Vassileva*, 118 F.4th at 873–75.

1.

Before we reach the merits of the district court's decision, we resolve an evidentiary challenge Upchurch raised. This challenge concerns two exhibits he submitted in opposition to

the Department's motion. The district court observed that these exhibits, which listed purported comparators and summarized events, contained facts and arguments not raised in Upchurch's briefing, and that he had not sought leave from the court to supplement his briefing or file an oversized brief. The district court declined to consider facts and arguments raised in the two exhibits but not the briefing. Through its ruling, the district court enforced local rules in the Southern District of Indiana, which provide that "[t]he court has no duty to search or consider any part of the record not specifically cited" in support of a factual assertion in a brief. Local Rule 56-1(e), (h); *see also* Local Rule 7-1(e) (limiting supporting and response briefs to 30 pages absent leave of the court).

To prove that he is entitled to relief because of this ruling, Upchurch must show that the district court abused its discretion and that any error prejudiced his substantial rights. *See McCurry v. Kenco Logistics Servs., LLC*, 942 F.3d 783, 787 n.2 (7th Cir. 2019) (we review a district court's decision to enforce local summary-judgment rules for an abuse of discretion); *Rogers v. City of Chi.*, 320 F.3d 748, 751 (7th Cir. 2003), *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013) (a party asserting an evidentiary error on appeal bears the burden of showing not only that the court erred, but also that the error prejudiced his "substantial rights").

Upchurch has made neither showing. "[W]e have repeatedly held that district [courts] may strictly enforce local summary-judgment rules," *McCurry*, 942 F.3d at 787, and the district court reasonably did so in this case. Furthermore, Upchurch has not attempted to show that the court's ruling prejudiced him. The only comparators and events Upchurch discussed on appeal are ones the district court considered, so we

are unsure what evidence the court declined to consider because of its ruling, and what difference that evidence might have made to its summary judgment decision.

2.

Turning to the merits, Upchurch claims that race discrimination and retaliation motivated his January 2019 demotion to Correctional Officer; his February 2019, March 2019, and July 2020 written reprimands in lieu of suspensions; his February 2021 suspension; and his non-promotions.

For Upchurch to survive summary judgment on his race discrimination claims, the record must contain sufficient evidence to permit a reasonable jury to conclude that his race caused the adverse employment actions at issue in this case. *See Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016) (identifying the summary judgment inquiry as "whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action"). Likewise, to reach a jury on his retaliation claims, the evidence must permit a reasonable jury to draw a causal link between Upchurch's complaints of race discrimination and the adverse actions underlying his claims. *See Rozumalski v. W.F. Baird & Assocs., Ltd.*, 937 F.3d 919, 924 (7th Cir. 2019) ("The key question is whether a reasonable juror could conclude that there was a causal link between the protected activity or status and the adverse action.").

If the employer has offered a nondiscriminatory explanation for its action, a Title VII claim turns on whether there is sufficient evidence for a reasonable jury to conclude that the explanation is pretext for illegal discrimination or retaliation.

See Vassileva, 118 F.4th at 874. "Pretext is '[a] lie, specifically a phony reason for some action,' not 'just faulty reasoning or mistaken judgment on the part of the employer….'" *Napier v. Orchard Sch. Found.*, 137 F.4th 884, 892 (7th Cir. 2025) (alterations in original) (quoting *Barnes v. Bd. of Trustees of Univ. of Ill.*, 946 F.3d 384, 389–90 (7th Cir. 2020)).

a.

In this case, the Department has offered nondiscriminatory explanations for its disciplinary actions, its non-promotions within twelve months of Upchurch's disciplinary actions, and its two June 2020 non-promotions at CIF. In response, Upchurch attempts to show that the Department's explanations are pretextual through assertions that its explanations are inaccurate or its decisions unfair, and by pointing to employees allegedly treated better than him and the temporal proximity between his complaints about racial discrimination and certain adverse employment actions.

Upchurch maintains that he never heard or repeated an inappropriate comment by Officer Palmer about Officer White, contrary to Warden Knight's conclusion, which the Department cites to explain his demotion. Likewise, he maintains that he never brought chewing tobacco into CIF, contrary to Deputy Warden Cole's conclusion, which the Department cites to explain his ten-day suspension.

While Upchurch concedes that he refused the mandatory overtime and took the unauthorized leave the Department cites to explain his three written reprimands in lieu of suspensions, Upchurch asserts that the reprimands were nonetheless unfair for various reasons. First, Knight did not provide him seven days' notice of the shift change following his demotion,

so he was unable to rearrange childcare duties, which, he explains, caused him to refuse the mandatory overtime. Second, Upchurch requested that Cole retroactively authorize one of the unauthorized leaves, but Cole refused to do so. Third, Upchurch had submitted a request for time off because of harassment and stress prior to his other unauthorized leaves, but the State Personnel Department had failed to respond.

"If the [employer] honestly believed it made the correct employment decision—even if its decision was inaccurate, unfair, foolish, trivial, or baseless—[the plaintiff's] claims cannot succeed." *Barnes-Staples v. Carnahan*, 88 F.4th 712, 716 (7th Cir. 2023) (citation modified). Inaccuracy or unfairness might support an inference of pretext if the evidence shows that no reasonable person, in the exercise of impartial judgment, could have made the challenged employment decision. *Cf. Cunningham v. Austin*, 125 F.4th 783, 790 (7th Cir. 2025) (explaining that when an employer offers superior qualifications as an explanation for a decision to a hire another candidate over the plaintiff, a comparison of the candidates' credentials can only support an inference of pretext if the plaintiff's credentials are "so superior to the credentials of the person selected for the job that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question" (quoting *Millbrook v. IBP, Inc.*, 280 F.3d 1169, 1180–81 (7th Cir. 2002)).

Upchurch has failed to meet this evidentiary bar with respect to any of the decisions he challenges. Warden Knight concluded that Upchurch heard and repeated an inappropriate comment after receiving the report summarizing the State Personnel Department's findings from its investigation of the November 2018 incident. That report described conflicting

accounts of the incident by Palmer and Upchurch. A reasonable person could have credited Palmer's account over Upchurch's. Deputy Warden Cole, for his part, concluded that Upchurch possessed and used chewing tobacco at CIF after reviewing surveillance footage. Upchurch failed to introduce any evidence about that footage into the record. In addition, he has failed to show that the mitigating circumstances surrounding his mandatory overtime refusals and unauthorized leaves were so compelling that no reasonable, impartial person could have reprimanded him. Furthermore, there is no evidence in the record that Cole, who made the reprimand decisions, knew about some of these circumstances.

Next, we turn to the employees Upchurch offers as comparators. For a reasonable jury to draw an inference of pretext from evidence that the employer treated another employee differently, the comparator must be "directly comparable to the plaintiff in all material respects." *Id.* at 895 (quoting *Coleman v. Donahoe*, 667 F.3d 835, 846 (7th Cir. 2012)). At summary judgment, "a plaintiff must usually 'show that the comparators (1) "dealt with the same supervisor," (2) "were subject to the same standards," and (3) "engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer's treatment of them."'" *Id.* at 894 (quoting *Coleman*, 667 F.3d at 846).

Upchurch has failed to make the requisite showing with respect to any of the comparators he identifies on appeal. Regarding his demotion claim, the Department explains that Upchurch's conduct warranted demotion because he failed to report peer-to-peer harassment among employees whom he supervised. The employees Upchurch offers as comparators did not engage in this type of conduct. Furthermore, for some

of them, there is no evidence in the record that they dealt with the same supervisor as him (i.e., Warden Knight).

Upchurch compares himself to Officer Palmer and Captain Parrow, who were in the shift supervisor's office on November 18, 2018, and who did not report Myers's harassment of White, but neither of whom Warden Knight demoted. Palmer, however, did not supervise Myers and White. And while Parrow held a supervisory position, like Upchurch, the record contains no evidence that Parrow heard Myers's inappropriate comment (either when Myers made it to Upchurch, or when Upchurch repeated it to Palmer, or otherwise).

Upchurch also compares his demotion to informal reprimands other employees at CIF received for cursing over the radio and for slapping a male officer on the buttocks. This conduct does not involve a supervisor's failure to report peer-to-peer harassment. In addition, the record contains no evidence about who made these disciplinary decisions.

With respect to his post-demotion claims, the record is devoid of evidence to support reasonable comparisons. In his affidavit, Upchurch states that someone at CIF retroactively authorized leave for Officer White, who had "a lot of" unauthorized leave. By contrast, Upchurch states that when he asked Deputy Warden Cole to retroactively authorize a thirty-minute leave, Cole refused and instead issued the March 2019 written reprimand. But the record leaves many unanswered questions about the circumstances surrounding White's leave, including the supervisor who authorized the leave and the amount and purpose of the leave, so Upchurch has failed to show that White is similarly situated.

Joshua Mills, another purported comparator, transferred from Pendleton Correctional Facility to CIF with a promotion to Sergeant one month after he received a three-shift suspension. Mills and Upchurch resemble each other in that they both received suspensions. A key question for purposes of drawing a reasonable comparison between Mills and Upchurch, however, is whether Warden Knight decided to promote Mills (but not Upchurch) within twelve months of their suspensions. The record contains no evidence about when Mills applied for the Sergeant position at CIF, the content of his job application, or when Warden Knight decided to hire Mills. In the absence of any such evidence, and given the short (one-month) gap between Mills's suspension at Pendleton and his promotion to Sergeant at CIF, Upchurch has failed to show that Mills is an appropriate comparator.

Upchurch also attempts to show pretext for retaliation with evidence of suspicious timing. "Suspicious timing alone … is generally insufficient to establish a retaliatory motivation." *Jokich v. Rush Univ. Med. Ctr.*, 42 F.4th 626, 634 (7th Cir. 2022) "Occasionally, … an adverse action comes so close on the heels of a protected act that an inference of causation is sensible." *Loudermilk v. Best Pallet Co., LLC*, 636 F.3d 312, 315 (7th Cir. 2011). That is not the case here.

Upchurch points to several occasions prior to his January 2019 demotion when he complained of race discrimination. In June 2012, after a Deputy Warden issued Upchurch an informal letter of reprimand for failing to correct a subordinate who exhibited unprofessional conduct, Upchurch "complained to him that [Upchurch] thought he was being a racist." Then, in April 2018, in a meeting where Deputy Warden Cole and a Major informed Upchurch that Warden Knight

had selected Paul Parrow over him for a Captain position at CIF, Upchurch complained that CIF was not hiring or promoting enough Black employees. Six years later and nine months later, respectively, Knight demoted him.

The decisionmaker for the relevant adverse action must know about the earlier protected activity for an inference of retaliation to attach. *See Vassileva*, 118 F.4th at 875; *Tyburski v. City of Chi.*, 964 F.3d 590, 603 (7th Cir. 2020). Upchurch has not presented evidence that Warden Knight knew about his earlier discrimination complaints when she made the decision to demote him. He points to her statement in February 2019, after he asked her to explain his demotion, that he "had been a hindrance since she arrived at CIF in about 2011" (as he relates the statement in his affidavit). Upchurch links this statement to his complaints of race discrimination in June 2012. But he offers no evidence except the statement itself to support this link, and the statement is too vague.

More convincingly, Upchurch points to suspicious timing between his complaints of discrimination and the February 2019 reprimand. In a meeting with Deputy Warden Cole and a Major on February 20, 2019, Upchurch expressed concerns that he and other Black employees were experiencing unfair treatment. Later that day, Cole issued him a written reprimand in lieu of a one-day suspension for refusing mandatory overtime assigned on January 24 and 29, 2019.

Upchurch does not contest, however, that he refused mandatory overtime on January 24 and 29. Furthermore, Cole stated in his affidavit that he first found out about those mandatory overtime refusals on the morning of February 20, before the meeting with Upchurch. The record contains no evidence about a supervisor's disciplinary discretion when faced

with reported mandatory overtime refusals. In this context, suspicious timing is not enough to show retaliation.

The ultimate question here is whether "all evidence," "evaluated as a whole" supports an inference of illegal discrimination or retaliation. *Ortiz*, 834 F.3d at 766. Given the weaknesses in the evidence discussed above, we conclude that no reasonable jury could find that race discrimination or retaliation motivated the demotion, written reprimands in lieu of suspensions, non-promotions within twelve months of formal discipline, or June 2020 non-promotions at CIF.

b.

We owe a final word to Upchurch's three non-promotions at IWP, his non-promotions at Miami Correctional Facility, and his unsuccessful applications for Parole Officer positions. Upchurch has failed to come forward with any evidence that race discrimination or retaliation motivated these employment actions. So like his other Title VII claims, his claims based on these actions fail for lack of proof.

* * *

The judgment of the district court is

AFFIRMED.