NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted November 4, 2025*
Decided November 5, 2025

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 23-2436

MARK COTTON, *Plaintiff-Appellant*,	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
v.	No. 1:22-cv-00113-JMS-MKK
STELLANTIS, d/b/a FCA US LLC, *Defendant-Appellee*.	Jane Magnus-Stinson, *Judge*.

O R D E R

Mark Cotton sued his employer Stellantis, doing business as FCA US LLC (FCA), alleging that FCA discriminated against him because of his race and color in violation of

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Title VII of the Civil Rights Act of 1964, *see* 42 U.S.C. § 2000e-2, and 42 U.S.C. § 1981. The district court granted FCA's motion for summary judgment, concluding that Cotton did not provide sufficient evidence of discrimination. We affirm.

Cotton, who is Black, worked for FCA in various departments for over 20 years. He was a member of a union and subject to a collective bargaining agreement. The agreement included a six-step progressive discipline procedure, which addressed conduct violations through escalating steps and culminated in dismissal at step six. But, as the procedure acknowledges, the circumstances of a violation may require deviation from the standard six-step progression.

In October 2021, Cotton and his direct supervisor had a verbal altercation. The supervisor emailed Christy Shepherd, the labor supervisor, and reported that Cotton had threatened him. Shepherd stated that she investigated the incident and concluded that Cotton violated FCA's standard of conduct prohibiting employees from making threats. As a result, FCA fired Cotton. The union challenged the termination, and FCA agreed to reinstate him. When Cotton asked Shepherd why he had been assigned to a different work area, she replied that he would not be at FCA long and that he was escalated to step five. When he asked Shepherd why he was at step five, she said it was because FCA wanted him gone.

In January 2022, Cotton was assigned to operate a machine for which he had minimal training. When he arrived for his afternoon shift, the machine was not working, so he looked for someone to help him. The supervisor determined that the machine's emergency stop button had been engaged. Cotton denied engaging the button, and a later review of the machine's history showed that the button had been engaged that morning, before Cotton's shift started. Nevertheless, FCA concluded that Cotton failed to exert normal effort on the job, moved him to step six, and fired him the next day.

Cotton sued FCA after filing a charge of discrimination with the Equal Employment Opportunity Commission and receiving a right-to-sue letter. He later amended his complaint after pursuing a second charge and receiving another right-to-sue letter. Cotton alleged that FCA's decisions to fire him in October 2021, reinstate him at step five, and fire him in January 2022 were racially motivated. (Cotton also alleged that FCA failed to promote him four times because of his race and retaliated against him for pursuing the first EEOC charge. Because he does not make any arguments on appeal about these allegations, we do not discuss them further.) FCA moved for summary judgment and included two declarations from Shepherd in support.

The district court granted FCA's motion. It concluded that Cotton failed to provide evidence from which a reasonable jury could conclude that FCA discriminated against him because of his race under either the burden-shifting framework of *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 802–03 (1973), or the holistic approach of *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765–66 (7th Cir. 2016).

Cotton appealed and, a week after filing his brief, asked the district court to reconsider the judgment against him. He explained that the union had appealed his termination and that the Union Appeal Board had ruled in his favor by concluding that Shepherd had misapplied the progressive discipline procedure. The district court denied Cotton's motion as, among other reasons, untimely under both Federal Rules of Civil Procedure 59(e) and 60(b) because it was filed nearly two years after the entry of final judgment. Cotton did not separately appeal the denial of this motion and did not amend his notice of appeal, so we cannot review the district court's refusal to reconsider its judgment in light of this new evidence. FED. R. APP. P. 4(a)(4)(B)(ii).

On appeal, Cotton urges us to reverse the judgment based on the new Union Appeal Board decision. But we will not consider factual arguments or evidence that were not before the district court when it rendered its decision. *See Packer v. Trs. of Ind. Univ. Sch. of Med.*, 800 F.3d 843, 848–49 (7th Cir. 2015). Regardless, the Board's decision did not address whether FCA disciplined and terminated Cotton because of his race.

Cotton next contends that Shepherd's declarations contained false information relied on by the district court. He says that photos taken after he was fired were used to retroactively justify FCA's decision to dismiss him. But Shepherd's declarations do not reference or include any photographs and so the district court could not have based its decision on them. Cotton also asserts that Shepherd's declaration misrepresents his work assignment on the day he was fired in January 2022. But neither of Shepherd's declarations refer to Cotton's assignment on that day, and Cotton does not develop an argument about how his assignment is relevant to his claims.

Cotton next maintains that a reasonable jury could conclude that his reinstatement at step five of the discipline procedure was pretext for racial discrimination. Cotton could demonstrate pretext by presenting some "evidence (1) that the employer's explanation has no basis in fact; (2) of 'ambiguous or suggestive comments or conduct;' or (3) of 'better treatment of similarly situated people but for the protected characteristic.'" *Paterakos v. City of Chicago*, 147 F.4th 787, 797 (7th Cir. 2025) (quoting *Purtue v. Wis. Dep't of Corr.*, 963 F.3d 598, 602 (7th Cir. 2020)).

But the district court correctly determined that Cotton had not provided any such evidence. The action occurred after a conflict between Cotton and his supervisor, and FCA's policy permits corrective actions that may not follow the six-step progression. To the extent that Cotton argues that Shepherd misapplied the discipline policy, we are not a "super-personnel department" determining whether an employer's "legal reason for its action … was wise, fair, or even correct." *Boss v. Castro*, 816 F.3d 910, 917 (7th Cir. 2016). Moreover, Shepherd's statements following Cotton's reinstatement that FCA wanted Cotton gone, without more, do not permit an inference that the disciplinary decision was pretext for race discrimination. *See Vassileva v. City of Chicago*, 118 F.4th 869, 874 (7th Cir. 2024) (showing of pretext requires "some circumstances to support an inference that there was an improper motivation proscribed by law," not just an allegation that "employer's stated reasons are inaccurate" (quoting *Tyburski v. City of Chicago*, 964 F.3d 590, 599 (7th Cir. 2020)).

Finally, Cotton alleges, for the first time on appeal, that an unidentified FCA supervisor sent threatening messages to him. Although Cotton provides a screenshot of text messages, he does not tell us when the threats were made, who made them, or how the alleged threats are relevant to the final judgment in FCA's favor. Further, as we have already explained, Cotton cannot present new evidence or make arguments for the first time on appeal. *See Packer*, 800 F.3d at 848–49.

AFFIRMED