

APPENDIX A

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5146

September Term, 2017

1:13-cv-00959-RJL

Filed On: April 12, 2018

Leonard E. Dunning,

Appellant

v.

Nancy M. Ware, Director, Court Services and
Offender Supervision Agency,

Appellee

BEFORE: Srinivasan, Pillard, and Wilkins, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, styled as a motion for reconsideration, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Scott H. Atchue
Deputy Clerk

APPENDIX B

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5146

September Term, 2017

1:13-cv-00959-RJL

Filed On: April 20, 2018 [1727520]

Leonard E. Dunning,

Appellant

v.

Nancy M. Ware, Director, Court Services
and Offender Supervision Agency,

Appellee

MANDATE

In accordance with the order of February 1, 2018, and pursuant to Federal Rule of Appellate Procedure 41, this constitutes the formal mandate of this court.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken R. Meadows
Deputy Clerk

[Link to the order filed February 1, 2018](#)

APPENDIX C

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5146**September Term, 2017****1:13-cv-00959-RJL****Filed On: February 1, 2018**

Leonard E. Dunning,

Appellant

v.

Nancy M. Ware, Director, Court Services and
Offender Supervision Agency,

Appellee

BEFORE: Srinivasan, Pillard, and Wilkins, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance; the court's order to show cause filed October 13, 2017; and the response to the motion, which includes a request for remand to the district court, it is

ORDERED that the order to show cause be discharged. It is

FURTHER ORDERED that the motion for summary affirmance be granted and the request for remand be denied. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). Appellant has forfeited any argument that the district court improperly denied his request for additional discovery under Fed. R. Civ. P. 56(d). See U.S. ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004) ("Ordinarily, arguments that parties do not make on appeal are deemed to have been waived."). And to the extent appellant's mere mention of his retaliation claim challenges the district court's dismissal of that claim, the court declines to address this "asserted but unanalyzed" argument. S.E.C. v. Banner Fund Int'l, 211 F.3d 602, 613 (D.C. Cir. 2000) (citation omitted). As to the grant of summary judgment on appellant's claim of age discrimination, though appellee argues it had a "legitimate, non-discriminatory reason" for its employment decision, Brady v. Office of Sergeant at Arms, 520 F.3d 490, 493 (D.C. Cir. 2008), appellant has presented uncontested evidence of pre-selection sufficient for a jury to "reasonably disbelieve" appellee's proffered reason, Giles v.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5146**September Term, 2017**

Transit Employees Fed. Credit Union, 794 F.3d 1, 9 (D.C. Cir. 2015). Nevertheless, appellant did not present evidence sufficient to “permit an inference that” appellee’s employment decision was based on age. Id. at 10; Jones v. Bernanke, 557 F.3d 670, 679 (D.C. Cir. 2009) (“evidence of pretext is not *per se* sufficient to permit an inference of discrimination”); see also Ford v. Mabus, 629 F.3d 198, 207 (D.C. Cir. 2010) (federal employees “can make use of the McDonnell Douglas evidentiary framework to establish that age was the but-for cause of the challenged personnel action” or “may establish liability by showing that age was a factor in the challenged personnel action”).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam