No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Tremayne A. Powell — PETITIONER
(Your Name)

VS.

Biscuitville Inc. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis.*

Please check the appropriate boxes:

☑ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

The United States District for the Western District of Virginia
The United States Fourth Circuit Court of Appeals

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☐ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: _____
_____, or

☐ a copy of the order of appointment is appended.

T A. P
(Signature)

AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

I, TREMAYNE A. POWELL, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	**Average monthly amount during the past 12 months**		**Amount expected next month**	
	You	Spouse	You	Spouse
Employment	$	$	$ 0	$
Self-employment	$ 0	$	$ 0	$
Income from real property (such as rental income)	$ 0	$	$ 0	$
Interest and dividends	$ 0	$	$ 0	$
Gifts	$ 0	$	$ 0	$
Alimony	$ 0	$	$ 0	$
Child Support	$ 0	$	$ 0	$
Retirement (such as social security, pensions, annuities, insurance)	$ 0	$	$ 0	$
Disability (such as social security, insurance payments)	$ 0	$	$ 0	$
Unemployment payments	$ 0	$	$ 0	$
Public-assistance (such as welfare)	$ 0	$	$	$
Other (specify):	$ 0	$	$	$
Total monthly income:	$ 0	$	$ 0	$

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Golden Corral	Wards Rd Lynchburg	6/18/20 - 10/15/20	$ 600.00
			$
			$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A			$
			$
			$

4. How much cash do you and your spouse have? $ 0
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
N/A	$	$
	$	$
	$	$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home
Value None

☐ Other real estate
Value 0

☐ Motor Vehicle #1
Year, make & model None
Value

☐ Motor Vehicle #2
Year, make & model None
Value

☐ Other assets
Description None
Value 0

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
0	$ 0	$ 0
	$	$
	$	$

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? ☐ Yes ☑ No Is property insurance included? ☐ Yes ☑ No	$ 0	$
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 0	$
Home maintenance (repairs and upkeep)	$ 0	$
Food	$ 0	$
Clothing	$ 0	$
Laundry and dry-cleaning	$ 0	$
Medical and dental expenses	$ 0	$

	You	Your spouse
Transportation (not including motor vehicle payments)	$ 0	$
Recreation, entertainment, newspapers, magazines, etc.	$ 0	$
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	$ 0	$
Life	$ 0	$
Health	$ 0	$
Motor Vehicle	$ 0	$
Other: _____	$ 0	$
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	$ 0	$
Installment payments		
Motor Vehicle	$ 0	$
Credit card(s)	$ 0	$
Department store(s)	$ 0	$
Other: _____	$ 0	$
Alimony, maintenance, and support paid to others	$ 0	$
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ 0	$
Other (specify): _____	$ 0	$
Total monthly expenses:	$ 0	$

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☑ Yes ☐ No If yes, describe on an attached sheet.

CURRENTLY UNEMPLOYED, SEEKING EMPLOYMENT

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? ☐ Yes ☑ No

If yes, how much? 0

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes ☑ No

If yes, how much? 0

If yes, state the person's name, address, and telephone number:

NONE

12. Provide any other information that will help explain why you cannot pay the costs of this case.

CURRENTLY UNEMPLOYED

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 4/5 April, 5th, 2022

T A. P

(Signature)

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

TREMAYNE A. POWELL — PETITIONER
(Your Name)

VS.

BISCUITVILLE, INC — RESPONDENT(S)

PROOF OF SERVICE

I, TREMAYNE A. POWELL, do swear or declare that on this date, APRIL, 5, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

BETH LANGLEY, JESSICA-THALLER MORAN -
BROOKS, PIERCE, MCLENDON, HUMPHREY & LEONARD
P.O. BOX 26000 GREENSBORO, NC 27420

I declare under penalty of perjury that the foregoing is true and correct.

Executed on APRIL, 5, 2022

T. A. P.
(Signature)

N0.

In The

Supreme Court Of The United States

Tremayne A. Powell ..... Petitioner

Vs.

Biscuitville Inc..... Respondent

Proof of Service

I Tremayne A. Powell do swear or declare that on this

date... April 5 ....., 2022, as required by Supreme Court rule 29. I have served the enclosed Motion For Leave To Proceed In Forma Pauperis and petition For A Writ Of Certiorari on each party to the above proceedings or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly

addressed to each of them and with first class postage pre-paid, or by delivery to a third party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows.

Beth Langley, Counsel for Respondent-

Jessica Thaller Moran, counsel for respondent

Brooks, Pierce, McLendon, Humphrey, & Leonard—P.O. Box 26000, Greensboro, Nc 27420

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 5, 2022

(Signature)

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

TREMAYNE A. POWELL — PETITIONER
(Your Name)

vs.

TREMAYNE A. POWELL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TREMAYNE A. POWELL
(Your Name)

1908 WARDS FERRY Rd
(Address)

LYNCHBURG, VA 24502
(City, State, Zip Code)

434-291-3157
(Phone Number)

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

NO. _____

TREMAYNE A. POWELL,

Petitioner,

V.

BISCUITVILLE, Inc.

Respondent,

◊◊

On Petition For Writ of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Tremayne A. Powell

Pro' Se Counsel of Record

1908 Wardsferry Rd.

Lynchburg, Va. 24502

434-291-3751

tremaynearteze@gmail.com

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Reasons for granting the Writ

I. The petitioner (Tremayne Powell) right to a fair review was denied by the EEOC when the commission failed to abide by an act of congress detailed within the EEOC compliance manual. The petitioner right to a fair review was also undermined when the lower courts incorrectly ruled that he was required to prove the retaliatory motive was "the but-for cause" of his termination – which a reasonable jury could interpret to require an impossible sole-cause standard or an incorrect and heightened predominant cause standard.

II. This case presents an opportunity for the court to clarify the currently confusing state of federal employment law regarding the meaning of "but-for" causation, and thereby clarify the meaning of the various other confusing standards of causation more generally.

Question Presented

Whether to effectuate the remedial purposes of Title VII and the anti-deterrence purpose of the retaliation provision, as both the Opposition and the Participation Clauses should be construed to protect a complainant from retaliation based on his initial complaint of discrimination and hostile work environment to, both his employers human resource or upper management capacity and their individual restaurant establishment #151 management capacity.?

Question Presented

The plaintiff in a Title VII case must "establish that his or her protected activity was a but-for cause of the alleged adverse action by the employer." Univ, Of Texas sw. Med. Ctr v. Nassar, 570 U.S. 338,362 (2013). Does a court err by deciding a plaintiff has failed to prove that retaliation is the " but-for cause of the adverse action which implies a sole-cause standard, rather than "a" but-for cause, as this court's precedents clearly state?

Question Presented

In Price *Waterhouse v. Hopkins*, 490 U.S. 228, 258, 268-69 (1989) a plurality of this court held that the discrimination provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C.§2000e-2(a), requires a plaintiff to prove only that discrimination was "a motivating factor" for an adverse employment action. In contrast, *Gross v. FBL Financial Services, Inc.*, 557 U.S.167,179-80 (2009), held that the Age Discrimination in Employment Act of 1967 (ADEA), Pub.L.90-202,81 Stat.602,requires proof that age was "the but-for cause" of an adverse employment action, such that a defendant is *not* liable if it would have taken the same action for other, non-discriminatory reasons. The courts of appeals have since divided 3-2 on whether *Gross or Price Waterhouse* establishes the general rule for other federal employment statutes, such as Title VII's retaliation provision, that do not specifically authorize mix motive claims.

The Question Presented is:

Whether Title VII's retaliation provision and similarly worded statues require a plaintiff to prove but-for causation (i.e, that an employer would not have taken an adverse employment action but for an improper motive), or instead require only

proof that the employer had a mixed motive (i.e, that an improper motive was one of multiple reasons for the employment action).?

Question Presented

In *Burrage v. United States*, 571 U.S. 204 (2014), this court explained that a "but-for "cause is merely one cause, perhaps among several, which is "the straw that broke the camel's back" and this court reiterated in *Bostock v. Clayton County, 140 S. Ct. 1731 (2020),* "but-for" cause is not sole cause and may be one of many causes for an adverse employment action.

> *Here the question presented to the court is:* whether the lower court erred in adopting what is, in essence, a "sole cause" standard, in direct conflict with the court's holding in *Burrage and Bostock?.*

Although the Fourth Circuit court purported to apply a "but-for" causation standard to petitioners' retaliation claim, there is clear disarray among circuit courts regarding the correct standard. Because of confusion within the circuits, deepened by the Department of Labor's adoption of a "negative factor" regulation.

> *The question presented is* whether the correct causation standard is but-for, motivating factor, or negative factor?

Question Presented

Whether the principle enunciated by the courts commission "one trial on the merits and one appeal on the law" is prejudicial to an American citizens constitutional right to a Supreme Court review if so does the doctrine of stare decisis allow the Supreme Court to "as of right" uphold laws that violate the constitution and invalidate laws that don't " as of right"

Parties To The Proceedings

Petitioner Tremayne A. Powell is the plaintiff in the proceedings below. Respondent Biscuitville Inc. is the defendant in the proceedings below. Respondent prevailed on motion for summary judgement in the United States District Court for the Western District of Virginia.

The defendant Biscuitville is represented by Brooks, Pierce., counsel is Jessica-Thaller Moran and D. Beth Langley.

The petitioner appealed the United States District court for the Western District of Virginia opinion 6:19-cv-00080-NKM-RSB to the U.S. Fourth circuit court of appeals, case no. 20-2378.

Table of Authorities

Miscellaneous

Statues and Rules

Civil Rights Act 0f 1964, Title VII

v.

Petition for Writ Of Certiorari

Petitioner Tremayne A. Powell respectfully petitions this court to issue a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth circuit.

Opinions Bellow

The opinion of the United States Fourth Circuit Court of Appeals appears at..... Appendix A.... to the petition and is unpublished

The opinion of the United States Fourth Circuit court of Appeals denying petitioners motion pursuant to Local Rule 40 (c) appears at Appendix B

The petitioner's memorandum to the United States Fourth Circuit court of Appeals pursuant to Local Rule 40 (c) appears at Appendix C

The opinion of the United States District court for the Western District of Virginia appears at Appendix D ..... to the petition and is Unpublished

Jurisdiction

This case arises from an employer's alleged retaliation against an employee because the employee reported his reasonably good faith belief, discriminatory action was occurring against him within the workplace.

The employee engaged in protected activity. The United States District Court for the Western District of Virginia had jurisdiction over this action under 28 U.S.C. 1391,1331, 28 U.S.C., 1343, Section 1985, 42 U.S.C. 2000e-2, 2000e-3. The District Court entered its order on December 2,2020 granting Biscuitville's motion for summary judgement. The United States Court of Appeals for the Fourth Circuit affirmed the Districts Court's decision in favor of Biscuitville's motion for summary judgement on June 15, 2021. The United States court of Appeals decided the petitioner petition for rehearing en banc was untimely filed... The United States Court of Appeals denied the petitioners motion filed pursuant to Local Rule 40(c) regarding time limits for filing petition on January 12, 2022. The court has jurisdiction over this action under. 28 U.S.C 1291, 28 U.S.C. 1295. Federal Question jurisdiction under 28 U.S.C. 1331. Under article III of the constitution, Federal courts can hear all cases in law and equity arising under this constitution and the laws of the united states ;(U.S. Art III. Sec 2). The supreme court has interpreted this clause broadly, finding that it allows federal courts to hear any cases in which there is a federal ingredient Osborn v. Bank of the United States, 9 wheat (22 U.S.) 738 (1824)

Constitutional and Statutory Provisions

Congress enacted Title VII of the Civil Rights Act of 1964 to "assure equality of employment opportunities and to eliminate discriminatory practices and devices in the workplace, McDonnell Douglas Corp v. Green,411 U.S. 792, 800 (1973). That is because the purpose of the McDonnell Douglas burden-shifting framework is to analyze discrimination claims supported by primarily circumstantial, as opposed to direct evidence see ,e.g .,Geraci v. Moody -Tottrup, Int'l Inc., 82 F.3d 578, 581 (3d cir.1996) ("The McDonnell Douglas-Burdine burden- shifting framework was created because only rarely will a plaintiff have direct evidence of discrimination.

The courts have rejected the proposition that evidence of close temporal proximity or retaliatory animus is required to create an inference of causation. Farrell v. Planters Lifesavers Co., 206 F.3d 271,281 (3d cir. 2000) (evidence probative of a causal link "is not limited to timing and demonstrative proof, such as actual antagonistic conduct or animus. Rather, it can be other evidence gleaned from the record from which causation can be inferred.") Instead, this court considers "a broad array of evidence" in its analysis of causation for the purpose of a retaliation claim. See Daniels v. Sch Dist of Phila, N0. 14-1503, 2015 WL 252428, at *10 (3d cir. Jan. 20, 2015) (quoting Leboon v. Lancaster Jewish Cmty Ctr. Ass'n. 503 F.3d 217,232 (3d Cir. 2007). Section 706 (f) (1) of Title VII requires an agggreieved individual to file a charge with the EEOC before filing suit. 42 U.S.C.§2000e-5 (f) (1) this

A. Legal Argument

THE LOWER COURTS DECISION TO GRANT BISCUITVILLE INC. MOTION FOR SUMMARY JUDGMENT SHOULD BE REVERSED, Tremayne A. Powell's Title VII "Retaliation" Lawsuit alleges plausible violations of sections 703(a),2000e-2,704(a),2000e-3, 706(a),(b),(e),(i),(j)(k),2000e-5,708,2000e-7,709,2000e-8, Each of which would entitle him to relief under section 708 of the Civil Rights Act OF 1964

Mr. Powell alleges a plausible disparate – treatment and retaliation claim. The District Court, and The Fourth Circuit Court assumed Mr. Powell adequately established a Prima Facie Case of discrimination, however, misconstrues Mr. Powell's direct evidence of disparate treatment and inadequate internal investigation within Biscuitville's workplace, improperly. And regarding his subsequent retaliation charge made with the EEOC. The investigation by the EEOC was similarly inadequate.

At a minimum the District Court and The Fourth Circuit Courts erred in their similar decisions; that "assuming Powell establishes a prima facie case he failed to establish pretext and failed to raise a material issue of fact in that regard.

TO EFFECUATE THE REMEDIAL PURPOSES OF TITLE VII AND THE ANTI-DETERRENCE PURPOSE OF THE RETALIATION PROVISION BOTH THE OPPOSITION AND THE PARTICIPATION CLAUSES SHOULD BE CONSTRUED TO PROTECT TREMAYNE POWELL FROM RETALIATION BASED ON HIS INITIAL COMPLAINT OF DISCRIMINATION AND HOSTILE WORK.

ENVIRONMENT TO BOTH HIS EMPLOYERS HUMAN RESOURCE OR UPPERMANAGMENT CAPACITY AND THEIR INDIVIDUAL ESTABLISHMENT #151 CAPACITY. The Opposition Clause of Title VII's Anti- Retaliation Provision Prohibits Retaliation against an Employee Who has made an explicit or implicit communication to his Employer that he has a reasonably good faith belief its actions are discriminatory and in violation of the Discrimination Statues. An employee who reports discrimination, hostile work environment and retaliation through the employers accepted channels has engaged in protected opposition under Title VII. An employee who tells his employers human resource or upper management he believes his immediate supervisors is mishandling his notice of complaint has engaged in protected activity under Title VII. The Participation clause of Title VII Ant-Retaliation Provision prohibits an employer from retaliating against an employee who makes an initial complaint to his employers human resource or upper management, when he has a reasonable belief he is being discriminated upon and he informs the employer that he has taken action with the EEOC under Title VII, whether or not the EEOC had filed an actual charge at the time the employee gave his employer the report or notice in complaint of discrimination.. *In the participation clause context, the EEOC expressly includes the involvement in internal investigations of alleged discrimination as protected activity under the participation clause.* This court confronted with this case should construe the language of the participation clause broadly and give deference to the EEOC's interpretation of the ant-retaliation provision, as well presentation to the

opposition clause. Does an employer violate the opposition clause of Title VII's anti-retaliation provision when it admits to collecting employee statements inappropriately, to policy, while failing to maintain policy of confidentiality and or isolation, designed to detour adverse actions against an employee who makes a complaint, to his employer, as well if the employer fails to maintain policy of keeping employees completely free from coercion in making complaints or given written statements. Does an employer violate the participation clause of title VII anti-retaliation provision when it terminates an employee, after an alleged internal investigation by the employer, which included the collecting of other employees statements, the same other employees or co-workers that the complaining employee was in complaint of when he the complaining employee made his initial report to his employers human resource or upper management, moreover the employer denies the complaining employee participation in its internal investigation, and the right to dispute any statements made against him, as well if the employer fails to provide the complaining employee any plausible explanation as to , why the employer did not allow his participation in the alleged internal investigation.

B. Facts and Procedural Background

The defendant Biscuitville Inc. was founded by Maurice Jennings of Burlington NC. In 1975 Maurice Jennings opens the first Biscuitville in Danville Va. Biscuitville employs more than 750 employees. The petitioner was hired as a cook on January 18, 2019. He begins working on January 31, 2019. He was fired on February 21,2019. On February 6, 2019 around 3:30pm the petitioner Tremayne A. Powell contacted Biscuitville's human resource or upper management headquarters in North Carolina. In his report the petitioner expressed a reasonably good faith belief that discrimination was occurring against his person within Biscuitville's establishment #151. The petitioner complained of un-fair treatment, improper training and a hostile work environment, that was causing him unwanted stress, anxiety and grief. Specifically, the petitioner complained about his two immediate white female supervisors perpetuating the hostile work environment, by allowing other white male and female, other black male and female to have privileges he was denied. The day of February 7,2019 the petitioner continued to feel uncomfortable being supervised by the two white female supervisors. The two white female supervisors were perpetuating the increasing discrimination from the petitioner's co-workers or otherwise employees who were sympathetic with the two white female supervisors. At approximately 6:25am on February 7, 2019, the petitioner (Tremayne Powell), reported to Biscuitville's restaurant establishment#151, to work his scheduled shift. When he arrived to Biscuitville's establishment #151 he gave the two white female supervisors a copy of his initial notice of complaint he had

reported by computer transmission the previous day of February 6, 2019 to Biscuitville's human resource or upper management in North Carolina. The petitioner was scheduled off from work the day of February 6, 2019, and at no time on February 6, 2019 did he enter the premises of Biscuitville Inc. The morning of February 7, 2019 the petitioner was denied by his immediate two white female supervisors from working his scheduled shift after the two supervisors briefly reviewed his notice. Later the day of February 7, 2019 the petitioner again contacted Biscuitville human resource or upper management by email. The petitioner stated in his email to Biscuitville's human resource or upper management that he was denied from working his shift because he had made a report of discrimination and also, that he would be adding retaliation to his EEOC charge, although the petitioner assumed incorrectly that he had an actual charge filed with the EEOC at that time. The petitioner was not allowed to work at Biscuitville's establishment#151 any time after this denial the morning of February 7, 2019. Also, on February 7,2019 at 8:54am, Biscuitville's human resource or upper management in North Carolina received the first documentation of any sort alleging the petitioners (Tremayne Powell) alleged employee misconduct. The documentation was created by Biscuitville Inc. white female supervisor Jessica Scott at 8:54 am. two hours after she reviewed the petitioners notice of complaint at 6:30am the morning of February 7,2019. The morning of February 8, 2019, Biscuitville Inc. human resource or upper management received two more declarations alleging the petitioner (Tremayne Powell) employee misconduct. The

afternoon of February 8, 2019 the petitioner was contacted by Nakesha Tharp a human resource or upper management representative of Biscuitville Inc. Nakesha Tharp told the petitioner by telephone that she "had" received his complaint, she then informed the petitioner, that she had received documentations the morning of February 7, and February 8, 2019 alleging workplace misconduct. Nakesha Tharp asked the petitioner several questions regarding the misconduct allegations she received. She specifically asked Powell did he curse his supervisors and threaten to kill everybody and blow the f****** building up. However, Biscuitville's representative never at any time during the conversation asked the petitioner (Tremayne Powell) any questions regarding his complaint of workplace discrimination or his feelings thereof. On February 5, 2019 at approximately 6:30am the petitioner (Tremayne Powell) begin his work shift at Biscuitville Inc. establishment #151. During this shift the petitioner was frequently subject to a increasing hostile work environment. After several hours of working within this hostile work environment the petitioner opposed his white female supervisor discriminatory actions by asking her (Carrie Carlson) his immediate supervisor "why was she perpetuating a discriminatory hostile work environment. See (Appendix G.).. The petitioner made known to his immediate white female supervisor's attention that she was specifically allowing the other white, black, male and female employees privileges to use their cell phones and have drinking cups at their workstations within the restaurants kitchen area, however the white female supervisor for Biscuitville's Inc establishment #151 berated the petitioner

(Tremayne Powell) for having a small cup of coffee at his work station. The immediate supervisor responded to the petitioner question with communication in a very hostile manner. The white female supervisor for Biscuitville's establishment #151, stated that "if the petitioner did not like it, he could clock out and go home, the immediate supervisor also stated for the petitioner to not question her authority. The petitioner further tried to communicate with the immediate supervisor, there upon the immediate white female supervisor demanded that the petitioner clock out and leave the workplace. The petitioner was scheduled off from work at Biscuitville Inc. the following day of February 6, 2019. At no time on the day of February 6, 2019 did the petitioner enter Biscuitville's premises. On February 6, 2019, the petitioner contacted Biscuitville's Inc human resource or upper management located in the state of North Carolina. The petitioner made a report of workplace discrimination by computer transmission to Biscuitville's employee support center tellBVI@Biscuitville.com. The petitioner returned to Biscuitville Inc on the morning of February 7, 2019 to work his scheduled shift. Upon arriving for work at approximately 6:25am he gave his two white female supervisors a copy of the report he had made to Biscuitville's human resource or upper management on the previous day of February 6, 2019.....see (appendix J) This was again further notice of the petitioner's good faith belief he was a subject of discrimination under their supervision, at Biscuitville's Inc restaurant establishment #151. Thereafter the petitioner was denied from working his scheduled shift by the two white female supervisors. The petitioner left

Biscuitville's premises on February 7, 2019 at approximately 6:30am. Subsequently at 8:54am on February 7, 2019 Biscuitville's human resource or upper management received the absolute first documentation of any sort, regarding Biscuitville's allegations of Mr. Powell's misconduct. Biscuitville has a specific policy and procedure regarding employee disciplinary issues. Biscuitville's policy clearly indicates that if an employee has any disciplinary issues within the workplace the immediate supervisor or manager should follow proper procedure by documenting such issues in the form of an Employee Warning Report, the employee must sign as well be informed of such report and given a copy, thereafter the Employee Warning Report should be placed into that employee's *personnel file*. Biscuitville's policy and procedure regarding an employee's disciplinary issues if followed correctly also allows an employee to inform any dispute to the allegations regarding his or her informed disciplinary issues. On February 8, 2019 Biscuitville human resource or upper management received two more declarations from Biscuitville's supervisors of their establishment #151. The Declarations of (CARRIE CARLSON... .see..appendix G) <> (NATALIE SHELTON... see appendix H) were transmitted on February 8, 2019 and were as well contrary to Biscuitville's policy and procedure, regarding any documentation of an employee of Biscuitville's disciplinary issues.

Biscuitville has a 14-day investigative process as their policy to their employees. Biscuitville never at any time during the 14 days from February 6, 2019 – February 20, 2019 spoke to Mr. Powell regarding his discrimination complaint reported on

February 6, 2019. Mr. Powell was terminated from Biscuitville effective February 21, 2019.

Mr. Powell was an employee of Biscuitville on February 5, 2019 when he complained to his immediate white female supervisor with reasonable belief he was being discriminated against. Mr. Powell was also an employee of Biscuitville February 6, 2019 when he reported to Biscuitville's human resource or upper management located within the state of North Carolina, his reasonably good faith belief that he was being discriminated against. As well-known at that time of Mr. Powell's report Biscuitville was aware that Mr. Powell was male, Black and over the age of 40 years.

C. Legal Background

The United States Court of Appeals for the Fourth Circuit held In Laughlin v. Metro Washington Airports Auth., 149 F.3d 253,259 that------ 'one cannot be covered under the participation clause if there is no ongoing investigation under Title VII.

The Fourth Circuit Court of appeals has misconceived Mr. Powell's statement in his previous court filing that ['he did speak to his employer's human resource or upper management representative Nakesha Tharp on February 8, 2019'], however at no time during the phone conversation did Nakesha Tharp ask Mr. Powell any questions regarding his complaint of workplace discrimination he had reported to Biscuitville's human resource or upper management on February 6, 2019. Biscuitville's human resource or upper management representative Nakesha Tharp

only stated during the February 8, 2019 phone conversation that she had received Mr. Powell's complaint of discrimination on February 6, 2019. *Although during the phone conversation Biscuitville's human resource or upper management representative Nakesha Tharp did inform Mr. Powell that Biscuitville's human resource or upper management had received on February 7, 2019 and the morning of February 8, 2019 complaints of Biscuitville's alleged workplace misconduct allegations against Mr. Powell.* Biscuitville's representative Nakesha Tharp did asked Mr. Powell during the February 8, phone conversation questions regarding those complaints Biscuitville human resource or upper management had received regarding his alleged misconduct. Specifically, Nakesha Tharp asked Mr. Powell, (1) did he curse his supervisors? (2) did he threaten to kill everybody in the building and blow the building up? Mr. Powell was in error on February 6, 2019 when he typed and transmitted his initial report of workplace discrimination to his employers (Biscuitville) human resource or upper management office. Mr. Powell stated, "This is notice that a charge of employment discrimination has been filed with the EEOC, under TITLE VII of the Civil Rights Act of 1964, the Age Discrimination in Employment act, as well the Equal Employment Opportunity act of 1972". Mr. Powell assumed incorrectly that his initial inquiry February 6, 2019 to the EEOC online website was an actual complaint made or charge filed against his employer....see (appendix I) The EEOC did not file an actual charge on behalf of Mr. Powell until February 20, 2019. Biscuitville alleges that on February 6, 2019 Mr. Powell had a meeting with Biscuitville's operator supervisor Jessica Scott

regarding Biscuitville's allegations of Mr. Powell's workplace misconduct, and after the alleged meeting Biscuitville debarred Mr. Powell from their premises pending a 14- day investigation effectively from February 6,2019. See (appendix E). On February 7, 2019 Mr. Powell arrived to Biscuitville's establishment #151 at approximately 6:25am to work his scheduled shift that was to begin at 6:30am, upon arriving he gave his two immediate white female supervisors a copy of the notice in complaint he had reported to Biscuitville's human resource or upper management the previous day.

Mr. Powell was in error the day of February 7, 2019 when he sent an email notice to Biscuitville's human resource or upper management stating "he had been denied his right to work his scheduled work shift the morning of February 7, 2019 and that he would be adding retaliation to his charge with the EEOC.....see (appendix K) Mr. Powell did not have an actual charge with the EEOC until February 20, 2019. Biscuitville's operator supervisor Jessica Scott transmitted a declaration to Biscuitville's human resource or upper management offices on February 7, 2019 at 8:54am see (appendix F).... approximately 2 hours and 24 minutes after she (Jessica Scott) had denied Mr. Powell the right to work his scheduled shift in cause of Mr. Powell giving to his Immediate white female supervisor (Jessica Scott) a copy of his report to Biscuitville's human resource or upper management office of his reasonable good faith belief that he was a subject of discrimination within Biscuitville's workplace.. Mr. Powell was scheduled off from work and at no time did

he enter Biscuitville's premises February 6, 2019 when he reported his reasonably good faith belief that he was a subject of discriminatory actions.

The following day of February 7, 2019 Mr. Powell arrived to Biscuitville's establishment #151 to work his scheduled shift; upon arrival he gave his two white female supervisors a copy of the notice in complaint that he had transmitted to Biscuitville's human resource or upper management office the previous day. See (appendix G)..... .

Effective enforcement of Title VII depends on robust protections against retaliation. Only when employees are free from fear of Retaliation will they avail themselves of the remedial mechanisms provided by their employers, by the EEOC, and by the Courts. The Ant-Retaliation provision prohibits discrimination against any employee who has opposed an unlawful practice or who has participated in any manner in a proceeding under Title VII. The UNITED STATES District court for the Western District of Virginia erred in granting Biscuitville's motion for summary judgment because it read both provisions too narrowly.

Mr. Powell's initial report to Biscuitville's human resource or upper management stating "on February 5, 2019 I was sent off the job after only working two hours of a shift that began at 6am, because I only asked a question why is this type of discrimination going on in this restaurant" constitutes protected opposition. When Mr. Powell conveyed his report in complaint to Biscuitvillle's human resource or upper management the following day of February 6, 2019, there is no dispute that Mr. Powell did not have a reasonable good faith belief that the conduct he described

in his report was unlawful under Title VII. Mr. Powell's employer Biscuitvillle did not provide him any plausible explanation why it did not allow his participation within their alleged internal investigation once he gave Biscuitville's human resource or upper management a report of his belief that discriminatory actions were occurring against him within their workplace. There exists an absolute privilege for the employee that has a reasonably good faith belief that he is a subject of retaliation to therefore make a report in complaint to his employer. Such absolute privilege is required to ensure the policy of non-discrimination under Title VII. Congress specifically prohibited employment discrimination on the basis of race, color, religion, sex, and national origin in section 703 of Title VII, 42 U.S.C. 2000e-2(a) (supp.V,1975) It granted a person claiming to be aggrieved the right to file a charge with the EEOC under section 706(b) 42 U.S.C. 2000e-5(b). A charge is required to initiate the enforcement of Title VII. Therefore, the charge process is the lifeblood of Title VII, just as it is under the National Labor Relations Act (NLRA) on which Title VII was modeled. To insure uninhibited access to Title VII enforcement mechanism, Congress include section 704(a) in the Act prohibiting employer Retaliation in any form against an employee who has made a charge or has participated in any manner in a proceeding or hearing under this Title. The Participation Clause has been limited by the court to apply only to those employees who are involved in formal EEOC proceedings, not those employees whom are denied a formal EEOC investigation, in part cause of either the lack of the employer's cooperation with the agencies request for their information or position

statement, or in cause of the EEOC lack of seeking a subpoena against the employer for noncooperation by not submitting such requested information to the agency (EEOC). Information that is vital for any such EEOC (agency) formal investigation The United States District Court for the Western District of Virginia awarded Biscuitville's motion for summary judgment pursuant to (F.E.D R.civ. P. 56(a)) On appeal the court reviews the facts alleged in the complaint de novo, assuming all well –plead factual allegations true and draws reasonable inferences therefrom. See Aziz v. Alcolac Inc., 658 F.3d 388,391 (4th Cir. 2011) Direct TV Inc. v. Tolson 513 F.3d 119,123 (4th Cir. 2008) the court affirmed the District court's decision on the grounds that Mr. Powell failed to raise a material issue of fact villa v. Cavamezze Grill, LLC, 858 F.3d 896, 905 (4th Cir. 2017). Judgment in favor of Biscuitville's is not warranted if Mr. Powell asserts factual allegations "above the speculative level" and states a claim for relief that is "plausible on its face" Bell Atlantic Corp v. Twombly, 550 U.S. 544,555 (2007). Section 706(f) (1) of Title VII requires an aggrieved individual to file a charge with the EEOC before filing suit. 42 U.S.C §2000e-5(f) (1). This requirement provides the EEOC with an opportunity to investigate and achieve a voluntary resolution of the complaint. See, e.g., Williams v. Little Rock Mun. Water Works, 21 f.3d 218, 222 (8th Cir. 1994). In addition, because the EEOC has a corollary duty to notify the employer of the charge, 42 U.S.C § 2000e-5(b), the charge filing requirement also gives the employer notice of the alleged violation. As this and other courts have recognized, however, "subsequently – filed lawsuits need not mirror the administrative charges." See

Duncan v. Delta Consol. Industries, 371 f.3d at 1025; see also, e.g. Clockedile v. New Hampshire dept. of Corrections, 245F.3d at 4. Rather, a judicial complaint may include claims that are "like or reasonably related to" the allegations in the original charge. See, e.g., Anderson v. Block, 807 F.2d 145, 148 (8th cir.1986). Expressed differently, since the charge is mainly intended to trigger the EEOC's investigatory and conciliatory process, "the swoop of any subsequent judicial complaint may be [only] as broad as the scope of the EEOC investigation which could reasonably be expected to grow out of the charge." Duncan, 371 F.3d at 1025(citations omitted, alteration in *Duncan). However, in the matter of the petitioner (Tremayne Powell) suit, the EEOC failed to serve by law a subpoena upon Biscuitville for their enforced cooperation with the agency's formal investigation into Mr. Powell's complaint. The court has tweaked the contours of this exception over time. See* Wedow v. city of Kansas, 442 f.3d at 672-73. For example, the exception does not normally apply where the charge alleges only retaliation, but the plaintiff's complaint includes a claim for substantive (e.g., race or sex) discrimination. See, e.g., Duncan, 371 F.3d at1025-26, Williams, 21 F.3d at 222. Nor does it normally apply to discrimination or retaliation claims that arose before the charge was filed but were omitted from the charge. See, e.g., Parisi v. Boeing Co., 400 F.3d 583,585-86 (8th cir.2005); Roark v. City of Hazen, 189 F.3d 758,760-61(8th Cir. 1999); Wallin v. Minn. Dept. of corrs. 153 F.3d 681, 688-89(8th Cir. 1998). Nevertheless, this court like most other circuits, has long recognized that an allegation that the defendant retaliated against the plaintiff for filing an EEOC charge may be included in a Title

VII lawsuit even if the plaintiff did not first file an actual EEOC charge with the commission complaining of retaliation when the plaintiff first made a report to his employer of his belief he is being discriminated upon. See, e.g., Wentz, 869 F.2d at 1154(although plaintiff notice to his employer in complaint alleged sex, race, age discrimination, and judicial complaint could include retaliation growing out of the plaintiff's notice because claim was "like or reasonably related to" that charge) see also, e.g., Jones v. Calvert group, 551 F.3d at302-03; Clockedile, 245 F.3d at 4-6 (explaining rule) Malarkey v. Texaco, 983 F.2d, 1204, 1208-09 (2d cir. 1993). Because such retaliatory acts occur after and flow directly from Mr. Powell's notice in report of discrimination to his employer "Biscuitville" they are as here noted "necessarily reasonably related to the underlying allegations in the actual EEOC charge of Retaliation made on behalf of Mr. Powell on February 20, 2019. The commission's firm policy is to "ensure that individuals who assert their rights under the laws enforced by the commission are protected against retaliation". EEOC Compl. Man., Vol.II (Retaliation) § 8-I (a), available at www.eeoc.gov/policy/docs/retal/html. *Because of the inextricable link between Mr. Powell's initial notice in report of discrimination to Biscuitville's human resource or upper management on February 6, 2019 and the resulting Retaliation charged filed by the EEOC on Mr. Powell's behalf February 20, 2019. In this context the commission can ordinarily be expected to uncover the retaliation in a reasonable investigation of the charge considering the employer cooperates with the EEOC request for information or position statement. This should be particularly true*

where here the EEOC failed the Law by not enforcing Mr. Powell's employer (Biscuitvillle) cooperation by serving a subpoena during the agency's investigation of Mr. Powell's retaliation charge. Similarly, the employer will have had notice of the initial report by the employee in complaint and the EEOC retaliation charge resulted directly after that employee notice, the employer will also have enough notice of that alleged violation. See Malarkey, 983 F.2d at 1209. Indeed, in cases such as this one where the alleged retaliation involved an "official," or "company act," "there is no need to worry about notice: the employer should already know." Clockedile, 245 F.3d at 5-6; cf. Burlington Indus v. Ellerth, 524 U.S.524 U.S.742, 762-63 (1998) (holding employer liable for Retaliation culminating in tangible employment action-"company act"- even if victim did not complain internally since such acts are typically reviewed by upper management and human resource and documented in employer's records. The commission and most other circuits that have addressed the issue and continue to adhere to the rule that plaintiff's need not file an actual EEOC charge to challenge retaliation arising from the employee's initial notice in report of discrimination to his employers human resource or upper management. See EEOC Compl. Man. § 2-IV (c) (1) (a) & n.185. Further, as the court recognized, there are sound public policy reasons for the like- or reasonably related to exception. The ant-retaliation provision is designed to prevent an employer" from interfering (through retaliation) With an employee's efforts to secure or advance enforcement of Title VII basic guarantees" by for example, filing a charge. Burlington N. Santa Fe RY. Co. v. white, 548 U.S. 53, 63(2006).

Indeed, the act "depends for its enforcement of the requirement by federal law and the Equal Employment Opportunity Act that an employer must maintain appropriate documentations and records regarding their employees. Specifically, with regards to any disciplinary issues regarding an employee the employer should as well inform and provide the employee with written notice of any disciplinary issues and the form should be placed into the employees personnel file.The disciplinary issues Biscuitvillle alleges against Mr. Powell must first have been appropriately documented and informed to Mr. Powell. As well the appropriate process would have allowed Mr. Powell to appropriately dispute any allegations made by Biscuitvillle or any other employee who are willing to act as witnesses on behalf of Biscuitvillle. However, "an employee that has already been a victim of retaliation because of a report of discrimination to his employer's human resource or upper management will naturally be reluctant to file an actual charge with the EEOC, possibly bringing about further retaliation". Jones, 551 F.3d at 302.. Rather than do so the employee might well choose not to pursue an actual EEOC undermining enforcement of the statute. See Richardson v. Comm'n on Human Rights & Opportunities, 532 F.3d 114,121 n.6 (2d Cir. 2008) (noting that the more effective an employer was at using retaliatory means to scare an employee into not filing a EEOC complaint or to occlude the investigation thereof by the EEOC with coercion to other employees whom are willing to act as alleged witnesses for the employer against the complaining employee) the less likely the employee would be able to hold the employer liable for that retaliation. At the same time because the

administrative process is designed for laypeople like Mr. Powell proceeding without counsel, Fed. Exp. Corp. v. Holowecki, 552 U.S. 389, 402-03 (2008), courts should be "reluctant to erect a needless procedural barrier to the Pro Se' claimant.' Gupta, 654 F.2d at 414; see also Malarkey, 983 F.2d at 208-09 Mr. Powell's employer (Biscuitvillle's) failure for more than 180 days to cooperate with the EEOC request for information or their position statement ("which is vital for any efforts of possible conciliation by the EEOC") created a procedural barrier for Mr. Powell contrary to the remedial purpose of the Anti – Discrimination law.

This is particularly Important where, as here Mr. Powell a Pro Se' plaintiff subsequently brought the retaliation to the EEOC attention, albeit apparently to no avail. The courts have cited countervailing policy considerations. Exempting retaliation claims from the administrative framework established by Congress could frustrate the conciliation process, which the Courts have called central to Title VII's statutory scheme. In the commission view, however this concern is overstated. The rule does not '" exempt"' all retaliation claims '" from the administrative process"' it exempts retaliation claims arising out of the filing of a charge. In addition, where, as here, the alleged retaliation occurs shortly after Mr. Powell made his initial report on February 6, 2019 of his reasonably good faith belief that he was a subject of discrimination within Biscuitvillle's workplace. Furthermore, while conciliation is an important feature of EEOC enforcement, only a small percentage of charges actually are conciliated. It does not appear, for example that the Commission attempted to conciliate Mr. Powell's Retaliation claim. Title VII requires the

commission to conciliate only when it determines, after an investigation, that there is reasonable cause to believe that the charge is true. 42 U.S.C. § 2000e-5(b). In this matter the EEOC investigation was obviously inadequate Mr. Powell's employer never for more than 180 days cooperated with the EEOC request for information. Therefore, the EEOC has no way to lead an investigation without enforcing Biscuitvillle's cooperation through subpoena. The EEOC failed to comply by law and serve a subpoena upon Mr. Powell's employer (Biscuitvillle). See EEOc Enforcement & Litig stats, all statues FY97-FY11 (3.8% overall: 4.1% of retaliation charges) available at www.eeoc.gov/eeocstatistics/enforcement/all.cfm. The statue also allows charging parties to opt out of the administrative process by requesting a notice of right to sue after 180 days, even if the investigation is not complete. 42 U.S.C § 2000e-5(f)(1); Clockedile, 245 f.3d at 5 (suggesting that , due to early right to sue notice The EEOC did not investigate the plaintiffs charge)Accordingly here the non-cooperation by Mr. Powell's employer (Biscuitvillle)with the EEOC request for information or position statement, this non- cooperation from the administrative process enacted by congress clearly frustrated the Commissions conciliation efforts in a material way. In any event, notice of the employer and conciliation are duties of the commission, not Mr. Powell. See 42 U.S.C. § 2000e-5(b). Particularly where, as here Mr. Powell in fact attempted to call the EEOC's attention to the alleged retaliation, he should not be penalized if the EEOc failed to follow up and thus missed the opportunity to conciliate the claim. The scope of the complaint that may be filed is determined not "by the scope of the actual investigation pursued" but

"what EEOC investigation could reasonably be expected to grow from the original complaint." Powers v. Grinnell Corp., 915 F.2d 34, 39 n.4 (1st cir.1990) (citations omitted); see also Babrocky v. Jewel Food Co., 773 F.2d 857, 864 n.2 (7th Cir. 1985)(where "the EEOC investigation was overly narrow, the proper inquiry would be into what EEOC investigation could reasonably be expected to grow from the original complaint"). Whether conditioning a plaintiff's right to recover on the omissions of other parties would undermine the remedial purpose of Title VII.? This Court like or reasonably related to rule has long provided appropriate and important protection to charging parties who experience retaliation as a result of their efforts to enforce their rights without prejudicing the remedial purposes of Title VII. Title VII expressly prohibits employers from retaliating against employees who report or complain about unlawful discrimination in the workplace. Title VII ant-retaliation provision states," It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment... or to discriminate against any individual... because he has opposed any practice made an unlawful employment practice by this subchapter [the "Opposition Clause"}, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter[the "Participation Clause"]," 42 U.S.C.§ 2000e-3(a).Because of the importance of "unfettered access" to Title VII's remedial mechanisms, Robinson v. Shell Oil Co.,. 519 U.S. 337,346 (1997), the Supreme Court construed the scope of the statue's protections broadly by prohibiting any adverse actions likely to deter employee's exercise of their rights,

Burlington N. & Santa Fe Ry v. white 548 U.S. 53, 68(2006), and, of most significance here, by reading the range of protected employee conduct broadly, see, e.g., Crawford v. Metropolitan Government of Nashville and Davidson County, Tennessee, 555 U.S. 271,276 (2009). Both the Opposition and Participation clauses protect an employee's disclosure of discriminatory acts through use of the internal mechanisms specifically created by the employer to address complaints of discrimination, retaliation an ongoing hostile work environment and other violations of federal employment laws.. In part as a response to a series of Supreme Court decisions, internal investigations are increasingly a vital part of Title VII's enforcement mechanisms. Using a combination of common law principles and Title VII policy and precedent, The Supreme Court held that Title VII imposes an affirmative duty on employers to investigate allegations of discrimination and or retaliation to avoid liability under the statue, and a parallel obligation on employees to avail themselves of their employer's internal complaint processes or otherwise mitigate their harm. Faragher v. City of Boca Raton, 524 U. S. 775, 807 (1998); Burlington Industries, Inc. v. ELLERTH, 524 U.S. 742,765(1998). Likewise, in Kolstad v. American Dental Ass'n 527 U.S. 526,545-46(1999), the Supreme Court held that an employer could avoid punitive damages under Title VII by showing that the employee was acting contrary to the employer's good faith efforts to comply with Title VII. The principles undergirding the decisions in Faragher, Ellerth, and Kolstad, to prevent and deter harm from discriminatory employment practices, highlight the importance of the internal investigatory process to Title VII liability.

See Fargher, 524 U.S at 806 (Title VII's Primary objective, like that of any statute meant to influence primary conduct, is not to provide redress but avoid harm.")(quoting Albemarle Paper Co. v. Moody, 422 U.S 422 U.S. 405, 417 (1975) Ellerth U.S at 764 (Title VII is designed to encourage the employer's creation of anti – retaliation policies and effective grievance mechanisms")Kolstad, 527 U.S at 546 (recognizing (Title VII's objective of motivating employer's to detect and deter Title Vii violation's)accord Mckennon v. Nashville Banner Pub'g Co. 513 U.S. 352,358(1995). By allowing employers to obviate liability if they prove that plaintiff's "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer. The Supreme Court has made clear that VII considers employers to act reasonably when they implement effective internal dispute mechanisms and considers employees to act reasonably when they take advantage of them. See Faragher, 524 U.S. at 807. Thus, employer procedures designed to root out discrimination are fundamental and indispensable components of good faith efforts to comply with Title VII. To permit an employer to fire an employee for merely conveying his complaint through the employer's established channels to report such harm runs directly counter to the principles and logic to the court's approach to harm prevention in Ellerth and Faragher. Vigorous internal investigations necessary to effectuate Title VII policies would be significantly chilled if an employer was free to retaliate against an employee whom effectively notifies his employer human resource or upper management that he has a good

faith belief he is being subjected to discrimination ,and he believes his immediate supervisors are mishandling his complaint notice or report.

Mr. Powell's notice in complaint to his employer (Biscuitvillle) on February 6, 2019 are sufficient to articulate a plausible claim of Opposition conduct protected by Title VII from Retaliation.

(a). an employee who reports a good faith belief he is being subjected to discrimination, retaliation and or hostile work environment through the employer's accepted channels has engaged in protected Opposition under Title VII. In determining Mr. Powell's reasonable belief that his white female supervisors were allowing other white, black, male and female employees, to use their cell phones, and have drinking cups at their work stations, however the white female supervisors denied Mr. Powell the same privilege. See Mr. Powell's notice in complaint. The allegations in Mr. Powell's initial report in complaint setting forth the communication to him by his white female supervisors and Mr. Powell's own observations regarding other employee's being allowed privileges, he was denied with hostility, are sufficient at the complaint stage, to demonstrate that it is plausible that Mr. Powell had a good faith belief that the underlying treatment and hostile work environment were unlawful. In accordance with Biscuitvillle's internal policies, once Mr. Powell reported to Biscuitvillle's human resource or upper management on February 6, 2019 it is plausible, based on these allegations that Mr. Powell had a

reasonable belief that the conduct he described being perpetuated by his immediate white female supervisors within his report to Biscuitvillle's human resource or upper management was unwelcomed and unlawful. The real question in the case is whether Mr. Powell's statements to Biscuitvillle's human resource or upper management expressed Opposition to the conduct he described. The ordinary meaning of the word "oppose" is to be hostile or adverse to." Crawford 555 U.S. at (2009) (quoting Random House Dictionary of the English Language) 1359 2d ed. 1987).When an employee communicates to his employer a belief that the employer has engaged in activity that constitutes a form of discrimination, that communication constitutes the employee's opposition to that activity. See 2 EEOC Compl. Man. (BNA) § 8-II (B) (1), at 614.0003 (Mar. 2003)(opposition clause "applies if an individual explicitly or implicitly communicate to his or her employer or other covered entity a belief that its activity constitutes a form of employment discrimination");id § 8-II(B)(2) at 614.0003(protected opposition occurs when a "complaint would reasonably [be] interpreted as opposition to employment discrimination") Indeed, this court has made clear that protected opposition activity includes "informal expressions of one's views... or alternate forms of protest" so long as they are not unduly disruptive. Armstrong v. Index Journal Co.647 F2d 441,448(4th Cir. 1981) And as the Supreme Court noted in Crawford, an employee's

communication of a belief that he employer has engaged in a form of discrimination or retaliation " virtually always" constitutes the employee's *Opposition to the activity." 555 U.S at 851. Thus, when employee uses the employer's mechanism to inform the employer that his immediate supervisors engaged in, for example workplace discrimination or retaliation the employee has opposed the activity within the meaning of the statue. The Supreme Court in* Crawford thought Crawford's ostensibly disapproving account of discriminatory behavior was opposition conduct, particularly where her answer to the investigator's question" antagonized her employer to the point of dismissing her on a false pretense" id at 850-51. Similarly, in this case Mr. Powell was perceived by his employer (Biscuitvillle) as harming the company interest when he misstated within his initial report in complaint on February, 6, 2019 that he had filed an actual Title VII charge with the EEOC, as well within his email message sent to Biscuitvillle's human resource or upper management on February 7, 2019, stating that " he would be adding Retaliation to the EEOC charge although Mr. Powell did not have an actual filed charge with the EEOC until February 20, 2019

(b). An Employee who tells his employer's human resource or upper management that he believes his immediate supervisors are mishandling his notice in complaint of workplace discrimination and retaliation, by not

allowing him to work his scheduled shift has engaged in participation in proceedings under Title VII.

Mr. Powell had a belief that retaliation was occurring against him because he was opposing workplace discrimination

The nature of the underlying treatment Mr. Powell described in his initial complaint report sufficed to register Mr. Powell's opposition to the conduct. Certainly, Biscuitvillle could have perceived it as such. Indeed, according to the initial complaint report. Biscuitville stated in its document terminating Mr. Powell that he (Mr. Powell) on February 6, 2019 had a meeting with Biscuitvillle's store operator (Jess)... Jessica Scott regarding the alleged misconduct, the termination document indicated that during the alleged meeting (Jess)... Jessica Scott reviewed the complaints and then told Mr. Powell he was debarred from Biscuitvillle's premises effectively February 6, 2019. See terminating document. Mr. Powell's testimony is clear that he never at any time on February 6, 2019 entered Biscuitvillle's premises. Furthermore, Biscuitville has never presented any such documentations of any sort in complaint of Mr. Powell's alleged misconduct that was created appropriately before Mr. Powell made his initial report in complaint to Biscuitvillle's human resource or upper management on February 6, 2019. If in fact this court could assume Biscuitvillle's statements were true. Mr. Powell clearly convey that he could not have truthfully been expelled from

Biscuitvillle's premises effective February 6, 2019, if in fact he arrived to Biscuitvillle's premises the morning of February 7, 2019 to work his scheduled shift and upon arrival he gave his two white female supervisors a copy of his report made to Biscuitvillle's human resource or upper management the previous day. See declaration Carrie Carlson. Title VII unambiguously protects "any employee" who opposes unlawful discrimination, 42 U.S.C. § 2000e-3(a). The Supreme Court in CRAWFORD, interpreting Title VII opposition clause broadly, explained that a person can "oppose" something by given written notice or by attempting verbal communication. CRAWFORD, 555 U.S. at 277-78, nowhere did the court find it necessary to discuss whether the employee stepped outside his protected activity or whether, on remand, the trial court should consider such a limitation on the opposition clause. See Schanfield v. Sojitz Corp, 663 F. Supp.2d 305,342 (S.D.N.Y. 2009) (Crawford did not suggest that activity is not "oppositional" if it was as in this case Mr. Powell protected right under Title VII and obligation to himself to complain to Biscuitvillle regarding his reasonable belief he was a subject of workplace discrimination and retaliation. And it would be utterly "inconsistent" with the sweeping language of the alleged decision made by Biscuitvillle to collect employee's statements after Mr. Powell has made a report to Biscuitvillle's human resource or upper management in complaint of the same employees and hostile work environment which

included those same employees that was willing to give Biscuitvillle statements against Mr. Powell after he reported his reasonable good faith belief he was being subjected to discrimination. As the courts has said "the only qualification that is placed upon an employee's invocation of protection from retaliation under Title VII's Opposition Clause is that the manner of his opposition be reasonable." Moreover, section 704(a) cannot function as intended, to protect efforts to end Title VII violations, if the employees best situated to call attention to and oppose an employer's discriminatory practices are outside its protective ambit. By depriving these employees' protections under the statute, courts create a disincentive for these employees to carry out their duty to ensure compliance with anti-discrimination laws. Thus, the plain language of the opposition clause, which the Supreme Court held should be read broadly, and the principles emanating from it, makes clear that Title VII's protective ambit covers all employees.Title VII protects from retaliation person's participating in title VII investigations, both internal and external. Title VII prohibits an employer from retaliating against "any of his employees" because he has participated in any manner in an investigation... ..under Title VII." 42 U.S.C. § 2000e-3(a) this prohibition should equally extend to an employee that is denied participation in any manner in his employers internal or external investigation, regarding that employee's initial report in complaint of workplace discrimination.

Nothing in this prohibition limit's the term "investigation" to one conducted by the EEOC and this compliance should equally extend to the EEOC's obligation to a complainant employee.When Congress meant to limit investigations to those conducted by the EEOC, it did so expressly. Elsewhere in Title VII, Congress made clear its intent to address only investigations conducted by the EEOC. See 42 U.S.C § 2000e-5(b) ("the commission..... shall make an investigation" of a charge); § 2000e-9(referring to "hearings and investigations conducted by the Commission or its duly authorized agents or agencies") the fact that Congress did not use such Commission specific language in section 704(a) suggest that employer- initiated investigations into conduct proscribed by Title VII should be viewed as investigations under that section. See Burlington N. 548 U.S at 63 ("We normally presume that, where words differ as they differ here, 'Congress acts intentionally and purposely in the disparate inclusion or exclusion'") (quoting Russello v. United States, 464 U.S. 16, 23(1983). Moreover, to arrive at the conclusion that internal investigations are outside Title VII's protections, The United States District court for the Western District of Virginia necessarily read the term "under" in a manner more constrained than its everyday meaning. The ordinary connotation of the word "under" in the context of a statue is "subject to" or "governed by the "statue in question. Ardestani v. INS, 502 U.S. 129,135 (1991); see The New Shorter Oxford English Dictionary.

3469(1993) (Subject to the authority, control, direction, or guidance of.") Webster's third New International Dictionary, 2487(1986) (required by; in accordance with: bound by"); In re Hechinger Inv Co. Of Del., 335 F.3d 243, 252(3d Cir. 2003) (Alito, J.)(When an action is said to be taken 'under' a provision of Law.").The Supremes' Court precedents interpreting Title VII make clear that an employer's internal investigations occur "under" Title VII because such investigations are subject to or governed by Title VII. See Ardestani, 502 U.S at 135, but see Hatmaker v. Memorial Medical Center., 619 F.3d 741,746-47 (7th Cir.2010) (participation clause does not cover internal investigations before the filing of a charge with the EEOC; not addressing Supreme Court's precedents). which is understood to hold that" under this "subchapter'" refers only to conduct occurring after a Title VII charge is filed. However, this court ruled that the conduct in that case could not be considered "under this subchapter" because there was no ongoing internal investigation or external proceeding at the time of the protected activity. By contrast, in this case, the internal proceedings regarding Mr. Powell's report in complaint on February 6, 2019 to Biscuitvillle human resource or upper management, were ongoing at the time of the absolute first reports made by Biscuitville on February 7, 2019 and February 8, 2019 alleging Mr. Powell's misconduct. Allegations of misconduct that were the exact causation of Mr. Powell being fired from his employment with Biscuitville Inc.. Mr. Powell's claim is cognizable as

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denied participation. Therefore Mr. Powell was denied his right to protected participation within Biscuitville's internal investigation into his complaint, but see Mcnair v. Computer Data Sys, Inc., 172 F.3d 863(table), 1999 WL30959 at *5(4th Cir.1999) (unpublished) (citing) Laughlin and reading it broadly to preclude a participation claim where McNair alleged retaliation for actions taken "before she filed her EEOC charge"). The D.C. circuit has held that, in federal sector employment, an employer-initiated investigation to detect or root out discrimination prohibited by Title VII is an investigation "under" the statue. See Smith v. Secretary of the Navy. 659 F.2d 1113, 1122 (D.C. Cir. 1981) In Smith the court held Title VII protects an employee who suffered an adverse action because of his work as a federal EEO counselor. According to the court, participation in an employer's EEO activities is participation in protected activities. 659 F.2d at 1121, n.63 "It is true that taking advantage of, and the participation therein an Equal Opportunity Employer's internal investigation processes constitutes a mandatory pre-condition to a Title VII lawsuit and, by contrast taking advantage of a private employer's internal processes is voluntary, however the difference is not as stark as it first appears. Although a private sector employee can stage a cognizable claim without first using the employer's internal machinery, if it does not use the internal processes, he may not be able to state a cognizable claim for relief. See Barrett v. Applied Radiant Energy Corp., 240 F.3d 262,267

(4th Cir. 2001) ("evidence that the plaintiff failed to utilize the company's complaint procedure will normally suffice to satisfy [the company's] burden under the second element of the defense") (internal quotation marks omitted). Moreover, the federal and private sector pre-suit process share a common purpose. As the D.C. Circuit held in the federal sector context, early reporting requirements fully support Title VII's overarching purposes by" encouraging private efforts to enforce the law." Smith, 659 F.2d at 1121-22. As in Smith Mr. Powell is entitled to protection from retaliation. Mr. Powell lodged his complaint with Biscuitville's human resource or upper management on February 6, 2019, although Mr. Powell stated within that report in complaint that he had an actual filed charge with the EEOC under title VII. Mr. Powell did not have an actual charge with the EEOC until February 20, 2019, fourteen days after Biscuitville alleges their investigation begin. Mr. Powell was denied participation in Biscuitville's alleged internal investigation in cause of on February 7, 2019, he arrived to Biscuitville's premises to work his scheduled shift. Upon arrival Mr. Powell gave his two white female supervisors a copy of his report in complaint. (See decl. Carrie Carlson) Mr. Powell was denied working his scheduled shift the morning of February 7, 2019. Two hours later after Mr. Powell was denied from working his shift because of his report in complaint, Biscuitville's human resource or upper management received the first documentation of any sort alleging Mr. Powell's

misconduct. As the Supreme Court noted, Title VII's anti – retaliation provision is intended "to prevent employer interference with 'unfettered access' to Title VII's remedial mechanisms,by prohibiting employer actions that are likely 'to deter victims of discrimination from complaining to the EEOC,' the courts, and their employer's." Burlington N., 548 U.S., at 68(citations omitted). If an employee like Mr. Powell knows that he will be fired for reporting his good faith belief to his employer's human resource or upper management, that he is a subject of discrimination, retaliation and hostile work environment, as well for stating within that report to his employer's human resource or upper management that he had made an actual charge with the EEOC under Title VII, he would think twice about making such report. Nonetheless afterwards Biscuitville terminates Mr. Powell fifteen days later for allegations of his misconduct that began in absolute creation on February 7, 2019 at 8:54 am. *BISCITVILLE' S Investigation of Mr. Powell's report Of workplace Discrimination, retaliation and hostile work environment was obviously inadequate. The EEOC Investigation was Obviously Inadequate*

After the EEOC would have received Biscuitville's position statement and attachments, the agency compliance law requires the EEOC to release the position statement and information to Mr. Powell for his "rebuttal". Mr. Powell did not request a right to sue letter from the EEOC until more than 180 days after the EEOC's investigation began on February 20, 2019. Mr. Powell was

unconstitutionally forced into a Federal lawsuit as a Pro Se' counsel due to the aforementioned failures by the EEOC and his employer (Biscuitville). Consequently, the United States District Court for the Western District of Virginia and the United States Court of Appeal for the Fourth Circuit opinions that Mr. Powell failed to produce evidence that his employer (Biscuitville) actions were pretextual is improper in this regard. If a '[victim]' knows that seeking an EEOC investigation would be useless because the individual or individuals charged with assisting [him] is unwilling to act, he will be less likely to avail himself of internal complaint procedures and in so doing, jeopardizes his legal rights. This '[Chilling Effect]' would impede a victim's "unfettered access to Title VII's remedial mechanisms," id., and undermine the Supreme Courts oft repeated edict that employers should be allowed to self –correct, see, eg. Faragher, 524 U.S. at 805-06.The internal compliance mechanisms on which Title VII depends could not function effectively if employees that have a reasonable good faith belief they are being subjected to violations of the statue can be fired without recourse when the employer as in this case, [Biscuitville] is at odds with the recited statements in Mr. Powell's initial report in complaint made to Biscuitville's human resource or upper management on February 6, 2019, stating that he [Mr. Powell] had filed an actual Title VII charge with the EEOC, which makes clear that {Biscuitville] could have made an informed guess based on reasonable evidence that Mr. Powell had taken action adverse to Biscuitville's interest. Furthermore the following day of February 7, 2019 [Biscuitville's] human resource or upper management received the first

created documentation of any sort alleging Mr. Powell's misconduct, approximately two hours after Mr. Powell had arrived to Biscuitville's premises two work his scheduled shift, and upon arrival he [Mr. Powell] gave his two white female supervisors a copy of his report in complaint.

The District Court and The Fourth Circuit Courts erred in holding that assuming Mr. Powell has stated a Prima facie case, he fails to establish that Biscuitville's actions were Pretextual. The Courts has rejected the proposition that evidence of close temporal proximity or retaliatory animus is required to create an inference of causation. Farrell v. Planters Lifesavers Co., 206 F.3d 271,281 (3rd Cir.2000) (evidence probative of a causal link "is not limited to timing and demonstrative proof, such as actual antagonistic conduct or animus. Rather, it can be other evidence gleaned from the record from which causation can be inferred") Instead the Courts considers a broad array of evidence in its analysis of causation for the purpose of Retaliation claim. See Daniels v. Sch. Dist. Of Phila. No.14-1503, 2015WL252428, at*10(3d Cir. Jan.20 2015) (quoting Leboon v. Lancaster Jewish Cmty. Ctr. Ass'n, 503 F.3d 217,232(3d Cir. 2007). Though the District Court" accepted that Mr. Powell had satisfied elements one, two and three" of the Prima facie elements as to a Retaliation claim, it held that the complaint, with respect to the fourth element, failed to plead facts sufficient to raise an Inference of Retaliation or Discrimination. More specifically the court concluded that Mr. Powell had "not pled any plausible causal connection between his protected characteristics and Biscuitville's decision to Fire him. Under this court's precedent, the fourth

element may be established, at the summary judgement stage, by no further evidence beyond that showing Mr. Powell was subject to less favorable treatment than a similarly situated employees outside Mr. Powell's protected employee category, Doe v. C.A.R.S protection plus, Inc., 527 F.3d 358,366(3d Cir.2008)(observing that the most often used means for establishing a casual nexus between a plaintiff's protected characteristics and adverse action is "that of disparate treatment, whereby a plaintiff shows that he was treated less favorably than similarly situated employees who are not in plaintiffs protected class. Disagreeing with the District Courts conclusion that Mr. Powell failed to show an inference of discrimination to establish fourth element of Prima Facie case. Mr. Powell's clear opposition to the less favorable treatment he described within his initial report to Biscuitville's human resource or upper management on February 6, 2019, and furthermore Biscuitville's obviously inadequate investigation of Mr. Powell's report in complaint should be enough. Here Mr. Powell's initial report in complaint precisely contains such allegations of disparate treatment, Mr. Powell's initial report contains that Biscuitville's supervisors of their establishment #151 treated Mr. Powell less favorably than other employees by allowing them privileges he was denied. Such factual content is more than sufficient "to raise a reasonable expectation that an adequate investigation by Biscuitville could have revealed evidence of the "the necessary element" that Mr. Powell was treated less favorably than his black, white, male and female co-workers and specifically, at least two white female supervisors.

New Hampshire dept. of Corrections, 245F.3d at 4. Rather, a judicial complaint may include claims that are "like or reasonably related to" the allegations in the original charge. See, e.g., Anderson v. Block, 807 F.2d 145, 148 (8th cir.1986). Expressed differently, since the charge is mainly intended to trigger the EEOC's investigatory and conciliatory process, "the swoop of any subsequent judicial complaint may be [only] as broad as the scope of the EEOC investigation which could reasonably be expected to grow out of the charge." Duncan, 371 F.3d at 1025(citations omitted, alteration in *Duncan). However, in the matter of the petitioner (Tremayne Powell) suit, the EEOC failed to serve by law a subpoena upon Biscuitville for their enforced cooperation with the agency's formal investigation into Mr. Powell's complaint. The court has tweaked the contours of this exception over time. See* Wedow v. city of Kansas, 442 f.3d at 672-73. For example, the exception does not normally apply where the charge alleges only retaliation, but the plaintiff's complaint includes a claim for substantive (e.g., race or sex) discrimination. See, e.g., Duncan, 371 F.3d at1025-26, Williams, 21 F.3d at 222. Nor does it normally apply to discrimination or retaliation claims that arose before the charge was filed but were omitted from the charge. See, e.g., Parisi v. Boeing Co., 400 F.3d 583,585-86 (8th cir.2005); Roark v. City of Hazen, 189 F.3d 758,760-61(8th Cir. 1999); Wallin v. Minn. Dept. of corrs. 153 F.3d 681, 688-89(8th Cir. 1998). Nevertheless, this court like most other circuits, has long recognized that an allegation that the defendant retaliated against the plaintiff for filing an EEOC charge may be included in a Title VII lawsuit even if the plaintiff did not first file an actual EEOC charge with the

his employer, as well any information submitted to the EEOC by his employer. The EEOC has the authority to draw inferences against a party failing to comply with its procedures or request for information. See 29.C.F.R. section 1614. 404(c). The respondent employer's position statement is the employer's opportunity to explain the non- discriminatory or non-retaliatory, reasons for taking adverse employment actions against the charging party. In doing so the employer should by law reply to all questions asked by the EEOC, and provide information and documents that are relevant to the allegations in the charge such as an employee handbook or policies, personnel files (including any write-ups of the complainant employee) The EEOC may also request demographic comparator information from the employer regarding employees who were displaced or terminated for similar behavior. Biscuitville failed to comply with the EEOC Investigation for more than 180 days. Biscuitville's cooperation with the EEOC's investigation was vital to the agencies investigation" an employer's position statement and the facts therein must be 100% accurate because any discrepancies or changes in position can later be used in Court to show that the reason for taking action against such employee were merely pretext (i.e. a false motive or excuse given to mask the underlying discriminatory intent). Be that as it may, the EEOC failed to comply by law and seek to issue a subpoena upon Mr. Powell's employer Biscuitville, for such requested information that is vital to any EEOC investigation. Furthermore, the EEOC's failure was unjust and further masked Biscuitville's pretextual reasons. Pretextual reasons that should have been

fleshed out within the EEOC's investigation, an investigation that should have included Mr. Powell's participation

Mr. Powell is a brave man, willing to risk and suffer termination from a job he could have held indefinitely into the future. Mr. Powell expects to be fairly compensated for his damage attributable to Biscuitville's unlawful actions. Mr. Powell seeks an award from this court pursuant to the Title VII Federal Civil rights remedies of the Civil rights Act of 1964. Biscuitville is an employer with more than 500 employees. *See* Sec. 102, "sec. 1977A, [Damages in cases of [Intentional Discrimination in employment] (42.U.S.C.1981a) (a) "Right of Recovery" (1) ("Civil Rights') (3) ("Litigation") (4) ("Construction").

Mr. Powell seeks compensatory and punitive damages under this section against Biscuitville Inc. In the amount of $300,000 compensatory and $300,000 punitive for their discriminatory practice with malice or wreckless indifference to the federal protected rights of Mr. Powell. Mr. also seeks any further equitable relief granted by this court under this section or damages allowed in subsection (b), in addition to any relief authorized by section 706 (g) of the Civil Rights Act of 1964.

Conclusion

For the foregoing reasons, Mr. Powell urges this court to reverse the court's decision and give him relief of Biscuitville summary judgment and, award him stated damages.

Reasons for granting the Writ

In Burrage v. United States, 571 U.S. 204 (2014), this court explained that a " but-for" cause is merely one cause, perhaps among several, which is " the straw that broke the camel's back" , this court reiterated in Bostock v. Clayton County, 140 S. Ct. 1731 (2020), that but-for" cause is not sole cause and may be one of many for an adverse employment action. The petitioners Writ Of Certiorari present to the court a question whether the lower courts erred in adopting what is, in essence, a "sole cause" standard, in direct conflict with the court's holdings in Burrage and Bostock. Although the Fourth Circuit purported to apply a "but-for" causation standard to the petitioners Retaliation claim, there is clear disarray among circuit court's regarding the correct standard. Because of confusion within the circuits, deepened by the Department of labor's adoption of a "negative factor" regulation, therefore is the correct causation standard is but-for, motivating, factor or negative factor. The sufficiency of a complaint does not turn on whether it is comprehensive in its factual detail, but whether the factual allegations state a plausible claim. See Fowler,578 F.3d at 212 (stating that though the plaintiff's complaint was "not as rich with detail as some might prefer, it need only set forth sufficient facts to support plausible claims"). The factual allegations of the petitioner's complaint demonstrate the plausibility of his claim that his employer retaliated against him because he made a complaint of his reasonably good faith belief that he was being subjected to discrimination within his employer's workplace.

Appendix

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2378

TREMAYNE A. POWELL,

Plaintiff - Appellant,

v.

BISCUITVILLE, INC.,

Defendant - Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Lynchburg. Norman K. Moon, Senior District Judge. (6:19-cv-00080-NKM-RSB)

Submitted: June 4, 2021 Decided: June 15, 2021

Before GREGORY, Chief Judge, KING, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Tremayne A. Powell, Appellant Pro Se. Dena Beth Langley, Greensboro, North Carolina, BROOKS, PIERCE, MCLENDON, HUMPHREY & LEONARD, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

Appendix A
Pg 1-5

PER CURIAM:

Tremayne A. Powell appeals from the district court's order granting summary judgment to Biscuitville in Powell's employment discrimination suit alleging retaliation. The district court ruled that Biscuitville provided legitimate, non-retaliatory reasons for Powell's termination and Powell failed to show that these reasons were pretextual. Powell timely appealed.

This court "review[s] de novo the district court's order granting summary judgment." *Jacobs v. N.C. Admin. Off. of the Cts.*, 780 F.3d 562, 565 n.1 (4th Cir. 2015). "A district court 'shall grant summary judgment 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.'" *Id.* at 568 (quoting Fed. R. Civ. P. 56(a)). "A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party." *Id.* (internal quotation marks omitted). In determining whether a genuine issue of material fact exists, this court "view[s] the facts and all justifiable inferences arising therefrom in the light most favorable to . . . the nonmoving party." *Id.* at 565 n.1 (internal quotation marks omitted). However, "the nonmoving party must rely on more than conclusory allegations, mere speculation, the building of one inference upon another, or the mere existence of a scintilla of evidence." *Humphreys & Partners Architects, L.P. v. Lessard Design, Inc.*, 790 F.3d 532, 540 (4th Cir. 2015) (internal quotation marks omitted).

A plaintiff may demonstrate retaliation through either direct evidence of retaliation or through the *McDonnell Douglas* pretext framework. *Laing v. Fed. Exp. Corp.*, 703 F.3d 713, 717 (4th Cir. 2013). Under *McDonnell Douglas*, to establish a prima facie case of

retaliation, a plaintiff is required to "show (1) that []he engaged in protected activity; (2) that h[is] employer took an adverse action against h[im]; and (3) that a causal connection existed between the adverse activity and the protected action." *Jacobs*, 780 F.3d at 578 (brackets and internal quotation marks omitted). If the plaintiff "establish[es] a prima facie case, the burden shifts to the employer to provide a legitimate, nondiscriminatory reason for the adverse employment action." *Haynes v. Waste Connections, Inc.*, 922 F.3d 219, 223 (4th Cir. 2019). The burden then shifts back to the plaintiff to "demonstrate that the [employer's] proffered reason is pretextual." *Id.*

In his informal brief on appeal, Powell continues to deny all allegations of misconduct, and he asserts that he has shown a prima facie case of discrimination.[1] However, the district court assumed that Powell had made a prima facie case of discrimination but concluded that Biscuitville had provided legitimate, nonretaliatory reasons for Powell's termination. Although the district court ruled that these reasons (cursing, insubordination, threats) were uncontroverted, Powell asserted in district court and again on appeal that all the allegations of his misconduct were fabricated as pretext for Biscuitville's retaliatory actions. Powell asserts that any failings in his initial complaints should have been fleshed out by Biscuitville's investigation.

[1] Powell asserts that he was retaliated against on February 1 and 5, 2019, by being yelled at and/or sent home in response to his complaints of discrimination. He also claims that he was retaliated against on February 7 when he was told not to come to work until human resources had investigated the situation. Finally, he argues that his termination was retaliation for his EEOC complaint.

First, the fact that Biscuitville's investigation may not have been as thorough as Powell would have liked does not establish pretext, so long as the investigation was not "obviously inadequate." *Villa v. CavaMezze Grill, LLC,* 858 F.3d 896, 905 (4th Cir. 2017). While Powell asserts that Biscuitville failed to clarify his complaints of workplace discrimination, it is undisputed that Biscuitville spoke to and/or received statements from numerous employees. In addition, Powell admits that human resources spoke with him both about his allegations and the complaints against him. Powell does not assert what Biscuitville should have done that it did not do, and even on appeal, Powell does not provide any details supporting cognizable claims of sex, age, or race discrimination that could be investigated.[2]

Moreover, in determining whether Powell engaged in the misconduct, "[i]t is the perception of the decision maker which is relevant." *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 960-61 (4th Cir. 1996) (internal quotation marks omitted) (noting that "unsubstantiated allegations and bald assertions" fail to show pretext). Here, Biscuitville had to choose between Powell's denials and numerous employees' statements that Powell's behavior was improper. Given the consistency and number of complaints against Powell and Powell's failure to provide Biscuitville with any corroboration of his claims, we find that Biscuitville's decision to terminate Powell does not demonstrate pretext and that

[2] Powell's complaints to Biscuitville alleged that he had been treated differently than other employees but did not allege that he was treated differently based on a protected characteristic. Moreover, Powell did not provide the sex, race, or age of any other employees or any other facts from which Biscuitville could have discerned that he was alleging unlawful discrimination.

Powell has failed to raise a material issue of fact in that regard. *See Villa*, 858 F.3d at 903 ("If [plaintiff] was fired for misconduct []he did not actually engage in, that is unfortunate, but a good-faith factual mistake is not the stuff of which Title VII violations are made."). Finally, Powell has failed to produce evidence that Biscuitville's preliminary actions of sending him home early and cancelling his shifts was pretextual in light of the fact that it is undisputed that other employees complained about him and expressed a fear for their safety. Whether the employees' complaints were true or false, Biscuitville reasonably took preliminary action to protect their employees and their property. Accordingly, we find that the district court did not err in rejecting Powell's retaliation claims.

As such, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

FILED: August 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2378
(6:19-cv-00080-NKM-RSB)

TREMAYNE A. POWELL

Plaintiff - Appellant

v.

BISCUITVILLE, INC.

Defendant - Appellee

ORDER

The court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc in accordance with Local Rule 40(c). The petition in this case is denied as untimely.

For the Court--By Direction

/s/ Patricia S. Connor, Clerk

Appendix B
Pg 1-4

General Docket

United States Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 20-2378

Docketed: 12/30/2020

Nature of Suit: 3440 Other Civil Rights

Termed: 06/15/2021

Tremayne Powell v. Biscuitville, Inc.

Appeal From: United States District Court for the Western District of Virginia at Lynchburg

Fee Status: in forma pauperis

Case Type Information:

1) Civil Private
2) private
3) null

Originating Court Information:

District: 0423-6 : 6:19-cv-00080-NKM-RSB

Presiding Judge: Norman K. Moon, Senior U. S. District Court Judge

Date Filed: 11/15/2019

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
12/02/2020	12/02/2020	12/29/2020	12/29/2020

Prior Cases:

None

Current Cases:

None

TREMAYNE A. POWELL Plaintiff - Appellant	Tremayne A. Powell Direct: 434-333-1791 [NTC Pro Se] 1908 Wards Ferry Road Lynchburg, VA 24502
v.	
BISCUITVILLE, INCORPORATED Defendant - Appellee	Dena Beth Langley, Esq. Direct: 336-271-3190 Email: blangley@brookspierce.com [COR NTC Retained] BROOKS PIERCE, LLP P. O. Box 26000 Greensboro, NC 27420 Jessica Thaller-Moran Direct: 919-573-6227 Email: jthaller-moran@brookspierce.com [COR NTC Retained] BROOKS, PIERCE, MCLENDON, HUMPHREY &

LEONARD
P. O. Box 1800
Raleigh, NC 27602

TREMAYNE A. POWELL

Plaintiff - Appellant

v.

BISCUITVILLE, INC.

Defendant - Appellee

12/30/2020	1	Case docketed. Originating case number: 6:19-cv-00080-NKM-RSB. Case manager: CathyHerb. [20-2378] CT [Entered: 12/30/2020 09:56 AM]
12/30/2020	2	INFORMAL BRIEFING ORDER filed. Mailed to: T. Powell. Informal Opening Brief due 01/25/2021. Informal response brief, if any: 14 days after informal opening brief served. [20-2378] CT [Entered: 12/30/2020 10:07 AM]
12/30/2020	3	ASSEMBLED ELECTRONIC RECORD docketed. Originating case number: 6:19-cv-00080-NKM-RSB. Record in folder? Yes. Record reviewed? Yes. PSR included? N/A. [20-2378] CT [Entered: 12/30/2020 03:53 PM]
01/11/2021	4	NOTICE ISSUED re: document received in error. Document: motion for extension of time to file notice of appeal. Returned to: appellant. Mailed to: T. Powell. [20-2378] CT [Entered: 01/14/2021 10:58 AM]
01/26/2021	5	INFORMAL OPENING BRIEF by Tremayne A. Powell. [20-2378] CT [Entered: 01/28/2021 02:51 PM]
01/28/2021	6	DOCKETING FORMS FOLLOW-UP NOTICE ISSUED to Biscuitville, Incorporated re: filing of disclosure form Disclosure statement due from Biscuitville, Incorporated on 02/01/2021. Mailed to: T. Powell. [20-2378] CT [Entered: 01/28/2021 02:54 PM]
02/01/2021	7	DISCLOSURE STATEMENT by Biscuitville, Incorporated. Was any question on Disclosure Form answered yes? No [1000891313] [20-2378] Jessica Thaller-Moran [Entered: 02/01/2021 11:27 AM]
02/01/2021	8	APPEARANCE OF COUNSEL by D. Beth Langley for Biscuitville, Incorporated. [1000891362] [20-2378] Dena Langley [Entered: 02/01/2021 12:13 PM]
02/01/2021	9	APPEARANCE OF COUNSEL by Jessica Thaller-Moran for Biscuitville, Incorporated. [1000891461] [20-2378] Jessica Thaller-Moran [Entered: 02/01/2021 01:58 PM]
02/04/2021	10	INFORMAL RESPONSE BRIEF by Biscuitville, Incorporated. [20-2378] Jessica Thaller-Moran [Entered: 02/04/2021 10:06 AM]
02/08/2021	11	DISCLOSURE STATEMENT by Tremayne A. Powell. Was any question on Disclosure Form answered yes? No. [1000896495] [20-2378] TW [Entered: 02/09/2021 12:28 PM]
06/15/2021	12	UNPUBLISHED PER CURIAM OPINION filed. Originating case number: 6:19-cv-00080-NKM-RSB. Copies to all parties and the district court/agency. [1000969408]. Mailed to: Tremayne Powell. [20-2378] CT [Entered: 06/15/2021 10:41 AM]
06/15/2021	13	JUDGMENT ORDER filed. Decision: Affirmed. Originating case number: 6:19-cv-

		00080-NKM-RSB. Entered on Docket Date: 06/15/2021 [1000969418] Copies to all parties and the district court/agency. Mailed to: Tremayne Powell. [20-2378] CT [Entered: 06/15/2021 10:45 AM]
07/07/2021	14	Mandate issued. Referencing: [13] Judgment Order, [12] unpublished per curiam Opinion. Originating case number: 6:19-cv-00080-NKM-RSB. Mailed to: Tremayne Powell. [20-2378] CT [Entered: 07/07/2021 09:14 AM]
07/19/2021	15	DOCUMENT (titled notice of appeal) referencing [12] unpublished per curiam Opinion by Tremayne A. Powell. [1000992031] [20-2378] CT [Entered: 07/26/2021 03:56 PM]
07/26/2021	16	NOTICE ISSUED re: document received in error re:[15] notice of appeal. Returned to: appellant. Mailed to: T. Powell. [20-2378] CT [Entered: 07/26/2021 03:59 PM]
08/02/2021	17	PETITION for rehearing en banc by Tremayne A. Powell. [20-2378] CT [Entered: 08/04/2021 09:48 AM]
08/04/2021	18	ORDER filed denying Motion for rehearing en banc [17] Copies to all parties. [1000997398] [20-2378] CT [Entered: 08/04/2021 09:50 AM]

APPRNDIX C

FILED: January 12, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2378
(6:19-cv-00080-NKM-RSB)

TREMAYNE A. POWELL

Plaintiff - Appellant

v.

BISCUITVILLE, INC.

Defendant - Appellee

ORDER

Upon consideration of appellant's motion for reconsideration of the order dismissing rehearing petition as untimely and extension of time for filing rehearing petition, the court denies the motion.

For the Court

/s/ Patricia S. Connor, Clerk

Appendix B
Pg 1-3

United States Court of Appeals for the Fourth Circuit (/home)

Contact

Mail:
Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219

Phone:		
	804-916-2700	Information, Case Management, Counsel, Chief Deputy, Clerk
	804-916-2767	ECF Help Desk eFiling Contacts (/caseinformationefiling/efiling-contacts)
	804-916-2714	Calendaring & Oral Argument Help Desk
	804-916-2703	CJA Help Desk

Email: Use the form below to email questions to the clerk's office.
Do not use for case correspondence or filing.

Your first name: Required

Tremayne

Last name: Required

Powell

Email address: Required

tarteze@gmail.com

Phone number: Required

Media organization and address (if applicable):

Appendix C

1908 wardsferry rd.
Lynchburg, VA. 24502

Select a category below that most closely addresses your issue:

Category:

General

If your question is about a particular case, please indicate:

Case number:

20-2378

Please provide details: Required

Attention: Fourth Circuit Court Clerk, PATRICIA S. CONNOR
Ms. Connor I am sending this message regarding my recent PETITION FOR REHEARING EN BANC. My petition has been acknowledged as Untimely. RULE 40 (c) is clearly comprehensible.
I am Tremayne Powell and I hereby request the FOURTH CIRCUIT COURT'S careful thought pursuant to Local RULE 40 (c). I am a PRO SE' counsel that has made a remarkable effort in the litigation of my case matter. The United States Of America is grappling with the devastating impact of COVID-19. COVID - 19 has been the causation of my ongoing daily struggle's, which are of extraordinary circumstance wholly beyond myself. I am currently a homeless Virginia citizen. I have been homeless since December 2020. I was forced to give my former employer a two - week notice due to the COVID-19 effect. I was evicted from my apartment in December as well. I also filed for Pandemic Unemployment Assistance, however I have not received one single weekly benefit payment since the start of my claim in December 2020. I have contacted the Governor of Virginia , Ralph Northam office twice regarding my issue with the Virginia Employment Commission, however my effort has not availed me at all. I currently do not have a cell phone, and I do not own a computer. I access the local Community College Library to utilize the desktop computers. Although the college library has remained on an adapted schedule for the publics use. With respect to my PETITION FOR REHEARING EN BANC , I made a vigorous attempt to sufficiently and timely create the Petitions documentations. taking into account my circumstances , I finished the documentation of the PETITION FOR REHEARING EN BANC on the 29th day of July and I was able to get the document in the hands of a UNITED STATES courier service "UPS". The document shipped in route to the FOURTH CIRCUIT on July 30, 2021, the 45th day allowed under RULE 40 (c) . 'be that as it may' , I make an emotional appeal to the UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT on the aforementioned grounds to accept my acknowledged untimely PETITION FOR REHEARING EN BANC

Send Now

Appendix C

Circuit Executive

JAMES N. ISHIDA

Lewis F. Powell, Jr

United States courthouse Annex

1000 East Main Street, suite 617

Richmond, Virginia 23219-3517

No. 202378

Mr. ISHIDA;

I am sending this letter regarding my recent *PETITION FOR REHEARING EN BANC*. My Petition has been acknowledged by the FOURTH CIRCUIT COURT Of APPEALS clerk's office as "Untimely". Rule 40(c) is clearly comprehensible. I am Tremayne Powell-*PRO SE'* and I hereby request for the United States Court of Appeals for the Fourth Circuit's careful thought pursuant to local Rule40(c). I am a PRO Se' counsel that has made a remarkable effort in my attempt to find Justice of my case matter. The United States of America is grappling with the Devastating Impact of COVID-19. COVID -19 has been the causation of my ongoing daily struggles, which is an "ETRAORDINARY CIRCUMSTANCE Wholly Beyond Myself". I am currently a Homeless Virginia resident. I have been Homeless since December 2020. I was forced to give my former Employer a two-week notice due to the COVID-19 effect. I was evicted from my apartment in December 2020. I filed for Pandemic Unemployment Assistance, however I have not received one single payment since the start of my claim with the (VEC) Virginia Employment Commission also in December 2020. I have contacted the Governor of Virginia, Ralph Northam office twice, however my effort has not availed me at all. I currently do not have a cell phone and I do not own a personal computer. I access the local Community College Library to utilize the desktop computers. Although the College library has been on an adapted schedule since reopening in June to the public. With respect to my petition I made a vigorous attempt to sufficiently and timely create the document taking into account the "Extraordinary circumstances" and my current Homeless condition. I finished the document on the 29th

day of July and I was able to get the document in the hands of a United States courier service "UPS" the document shipped on July 30, 2021 in route to the Fourth Circuit on the 45th day allowed under Rule 40 (c). 'Be that as it May' I make an emotional appeal to the United States Fourth Circuit Court Of appeals on the aforementioned grounds pursuant to Rule 40(c)

Tremayne A. Powell

1908 wardsferry rd.

Lynchburg, Va. 24502

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

TREMAYNE A. POWELL, *Plaintiff,* v. BISCUITVILLE INC., *Defendant.*	Case No. 6:19-cv-80 MEMORANDUM OPINION JUDGE NORMAN K. MOON

Plaintiff, Tremayne Powell, and Defendant, Biscuitville, both filed motions for summary judgment in this case. Dkts. 27, 37. Powell asserts a retaliation claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. ("Title VII") and seeks statutory damages and damages for loss of income and loss of future income. Dkt. 2. Biscuitville claims that Powell was fired for cause on account of misconduct which preceded any protected activity on the part of Powell. The Court grants Biscuitville's motion and denies Powell's motion because there is no genuine dispute of material fact that would support Powell's claim or preclude the award of summary judgment to Biscuitville.

I. FACTUAL AND PROCEDURAL BACKGROUND

Powell started working at Biscuitville Store #151 in Lynchburg, Virginia on January 31, 2019. Dkt. 38 ¶ 2. Biscuitville is a quick-casual restaurant chain with locations across North Carolina and Virginia. *See* Dkt. 37-7 at 1. Prior to beginning his shift on January 31, 2019, Powell attended an orientation from Biscuitville outlining the behavior expected of employees. Dkt. 48 at 12. The orientation was conducted by Jessica Scott, the store manager. Dkt. 38 ¶ 3. During the

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orientation, Powell electronically signed Biscuitville's "Team Member Expectations" form. Dkt. 37-8. Biscuitville's form clearly outlines that an expectation of employees is to "follow all company policies and procedures" while also "respect[ing] management and adher[ing] to their leadership directions." *Id.* Biscuitville's Employee Handbook provides more detail regarding "unacceptable conduct" that may result in disciplinary action . Dkt. 37-7 at 9–10. Specifically, the Handbook lists "the abuse or inconsiderate treatment of employees or inability to cooperate with coworkers ... the use of profane, abusive or threatening language to coworkers ... [the] causing of false alarm or panic in the work place ... causing or contributing to unsanitary work conditions" as example of unacceptable conduct which could result in termination. *Id.*

Powell returned for his first full working shift on February 1, 2019, where he was assigned to the store's cooking station. Dkt. 38 ¶ 5. Throughout the day Scott checked in on Powell, who seemed to be on edge and frustrated, either with the work, the people, or the restrictions of the job. *See* Dkt. 38 ¶ 6. Team members reported to Scott that Powell was "behaving strangely and cursing." *Id.* After attempting to check in, Powell stated that if she "ke[pt] asking [him] if [he was] okay it's going to be a problem." *Id.* ¶ 7. He was disgruntled over the fact that he was not permitted a drinking cup in the kitchen, which Biscuitville did not allow because of health code reasons. *Id.* ¶ 5. Soon after, Scott asked Powell to take the weekend off and return the following week. *Id.* ¶ 8. Before Scott left work, she requested that coworkers of Powell provide written reports of his behavior that day, in case involvement with Biscuitville's Human Resource Department would be necessary down the line. *Id.* ¶ 8.

On Tuesday, February 5, 2019, Powell returned to Biscuitville for another work shift. *Id.* ¶ 9. Again, he appeared disgruntled and had multiple confrontations with the assistant store manager. *Id.* The main issue was Powell's perception that he was being treated unequally when it

came to cups in the cooking area and the use of a cell phone while he was on the clock. *Id.* In his Complaint, Powell alleges that "there were at least four cups ... in the kitchen area ... [and] he witnessed several employees drink from those exact cups on that same day ... without any reprimand." Dkt. 2 ¶ 15. He also claims that he was "reprimanded for only removing his cell phone from his pocket to glance at the time when [he witnessed] other employees playing music and using their cell phones without any reprimand." *Id.* ¶ 14. That same day, Powell stated in front of multiple co-workers that he would "blow the f-ing building up." Dkt. 37-3. Consistent with Biscuitville's policies surrounding threats of violence, Powell was sent home by the manager on duty due to insubordination and misconduct. Dkt. 38 ¶ 9. Scott determined that Biscuitville's Human Resources, known as "People Excellence," should be involved based on Powell's erratic behavior. Dkt. 37-2.

The next day, after being sent home for threatening the safety of his colleagues, Powell submitted an internal complaint to Biscuitville at TellBVL@Biscuitville.com. Dkts. 38 ¶ 11, 48-1(U). The email complaint stated that he made a filing with the Equal Employment Opportunity Commission ("EEOC") alleging discrimination. Dkt. 48-1(U). It was followed by a second email on the same day updating Biscuitville that a retaliation claim would be filed. Dkt. 48-1(U). On the morning of February 7, 2019, Powell notified Scott and Carlson, in writing, that he submitted a written complaint to Biscuitville. Dkt. 48-1(J). Powell was subsequently told that he could not work until Scott heard from Biscuitville's People Excellence group. Dkt. 48-1 at 5–6. At that time, Powell had not filed any complaint with the EEOC, but did so on February 20, 2019. Dkt. 48-1(T).

Powell was contacted on February 8, 2019 by a People Excellence representative, Nakeisha Thorpe. Dkt. 37-10 at 67–68. Thorpe informed Powell that Biscuitville would investigate the circumstances surrounding the internal complaint. *Id.* People Excellence reviewed the complaint,

First, the fact that Biscuitville's investigation may not have been as thorough as Powell would have liked does not establish pretext, so long as the investigation was not "obviously inadequate." *Villa v. CavaMezze Grill, LLC*, 858 F.3d 896, 905 (4th Cir. 2017). While Powell asserts that Biscuitville failed to clarify his complaints of workplace discrimination, it is undisputed that Biscuitville spoke to and/or received statements from numerous employees. In addition, Powell admits that human resources spoke with him both about his allegations and the complaints against him. Powell does not assert what Biscuitville should have done that it did not do, and even on appeal, Powell does not provide any details supporting cognizable claims of sex, age, or race discrimination that could be investigated.[2]

Moreover, in determining whether Powell engaged in the misconduct, "[i]t is the perception of the decision maker which is relevant." *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 960-61 (4th Cir. 1996) (internal quotation marks omitted) (noting that "unsubstantiated allegations and bald assertions" fail to show pretext). Here, Biscuitville had to choose between Powell's denials and numerous employees' statements that Powell's behavior was improper. Given the consistency and number of complaints against Powell and Powell's failure to provide Biscuitville with any corroboration of his claims, we find that Biscuitville's decision to terminate Powell does not demonstrate pretext and that

[2] Powell's complaints to Biscuitville alleged that he had been treated differently than other employees but did not allege that he was treated differently based on a protected characteristic. Moreover, Powell did not provide the sex, race, or age of any other employees or any other facts from which Biscuitville could have discerned that he was alleging unlawful discrimination.

Rules of Civil Procedure." *Desmond v. PNGI Charles Town Gaming, L.L.C.*, 630 F.3d 351, 354 (4th Cir. 2011). Indeed, cross-motions for summary judgment demand that the Court consider "each motion separately on its own merits to determine whether either of the parties deserves judgment as a matter of law." *Rossignol v. Voorhaar*, 316 F.3d 516, 523 (4th Cir. 2003).

Taking up a defendant's motion for summary judgment first, a plaintiff must show that there is a genuine issue of material fact to prevail — plaintiff must produce enough evidence to rebut the defendant's evidence purporting to show that no genuine dispute of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). Mere allegations, denials, speculation, or conjecture are not adequate to satisfy the burden of production demanded by summary judgment. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 327 (1986); *Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994).

Moreover, when a pro se litigant is before the Court, he is not relieved of his obligation to submit affirmative evidence in opposition to a summary judgment motion. *Hayes v. Lynchburg City Sch. Bd.*, No. 6-13-CV-00008, 2014 WL 901213, at *1–2 (W.D. Va. Mar. 7, 2014), *aff'd*, 583 F. App'x 270 (4th Cir. 2014) ("[E]vidence submitted by a pro se plaintiff may still be . . . disregarded when it is not credible, or when it is largely inadmissible. A party may not rest on speculation, hearsay, or opinion to demonstrate a genuine dispute of material fact. . . . Rather, the party asserting that a fact cannot be or is genuinely disputed must support the assertion by [providing support within the scope of Rule 56(c)].") (citing *Celotex*, 477 U.S. at 33034).

III. DISCUSSION

Powell alleges a Title VII retaliation claim against Biscuitville and asserts that Biscuitville "retaliated against [him] because he engaged in activity protected under Title VII," by presumably filing a discrimination complaint with the EEOC. Dkt. 2. As a preliminary matter, in order to

prevail on this count, Powell must show retaliation through direct evidence or through the *McDonnell Douglas* burden-shifting framework. *Foster v. Univ. Md.-E. Shore*, 787 F.3d 243, 249 (4th Cir. 2015).

Direct evidence requires a direct nexus between the alleged discriminatory conduct and the adverse employment action. *Warch v. Ohio Cas. Ins.*, 435 F.3d 510, 520 (4th Cir. 2006). Circumstantial evidence demands a different inquiry under the *McDonnell-Douglas* analysis. *Foster*, 787 F.3d at 250. Under such a structure, the plaintiff must establish a prima facie case of retaliation by proving (1) that plaintiff "engaged in protected activity," (2) that plaintiff's employer "took adverse action against" him, and (3) "that a causal relationship existed between the protected activity and the adverse employment activity." *Id.* If such a showing is made, the burden then shifts to the defendant to show that the alleged retaliation was "the result of a legitimate non-retaliatory reason." *Id.* Finally, the burden shifts back to the plaintiff who has an opportunity to rebut the employer's evidence by putting forth evidence that the employer's nonretaliatory reasons were pretextual. *Id.* It should be noted that the Fourth Circuit has held that an employee need not show "that [his] protected activities were but-for causes of the adverse action" at the prima facie stage. *Strothers v. City of Laurel*, 895 F.3d 317, 334 (4th Cir. 2018) (citing *Foster*, at 251 (holding that but-for causation in a Title VII retaliation case must be shown only at pretext stage of *McDonnell Douglas* burden-shifting framework)).

In determining whether the defendant employer took the adverse action because the plaintiff employee engaged in a protected activity, courts first look to whether the allegedly retaliatory actor knew that the plaintiff had engaged in the protected activity at the time of the allegedly retaliatory act, and then consider any temporal proximity between the protected activity and the allegedly retaliatory act. *See Baqir v. Principi*, 434 F.3d 733, 748 (4th Cir. 2006) (holding

that a plaintiff had not established a prima facie case of retaliation where he had not shown that the allegedly retaliatory actors were aware of his protected activity); *Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 657 (4th Cir.1998) (determining that a lengthy period of time between the employer becoming aware of the protected activity and the alleged adverse employment action negated any inference that a causal connection existed).

When the alleged adverse action takes place soon after the employer becomes aware of the protected activity, the plaintiff can make out a prima facie causal link. *See Laing v. Fed. Express Corp.*, 703 F.3d 713, 720 (4th Cir. 2013); *Williams v. Cerberonics*, 871 F.2d 452, 457 (4th Cir. 1989).

Powell attempts to put forth a prima facie case of retaliation. He alleges that he engaged in a protected activity when he complained about the discriminatory treatment he faced with respect to unequal treatment in the use of cups in the kitchen and the use of a cell phone while working. Indeed, there is no question that Powell did in fact complain, both to Biscuitville and the EEOC, and that his complaints constituted protected activity. While it is evident that Powell complained of discrimination, nowhere in his Biscuitville complaint did he allege specific discriminatory conduct on account of race, sex, or age. Instead, he relied on conclusory statements without showing unequal treatment based on a protected characteristic. His complaint to Biscuitville states that he was "denied the equal treatment and respect given to *other employees* in the workplace while on the job" when the manager berated him for having his phone out and using cups in the kitchen. Dkt. 48-1(K) (emphasis added).

Powell's EEOC complaint does state a single fact alleging unequal treatment. His claim stated that he was yelled at for having a cup in the kitchen, while "another [female] African American employee (Dark Complexion) was drinking from a cup... and was not yelled at."

Dkt. 48-1(T). His filing indicated a belief that he was treated differently than the female employee on account of his lighter complexion, the fact that he is male, and because he was 41 years' old. *Id.*

Notwithstanding the substance of the complaints, Powell says that Biscuitville took adverse action against him when he was asked to leave work and when he was terminated. The adverse action, he contends, was due to the fact that he made complaints to People Excellence and the EEOC. Supporting his argument, Powell points to the face that he arrived at Biscuitville on February 7, 2019 and was told he could not work until Scott heard from People Excellence. He asks the Court to infer that, because the internal complaint had been filed the day before, he was prevented from working in retaliation to his filing. He also contends that an inference of retaliation also applies to the EEOC complaint because the EEOC complaint was filed on February 20 and he was terminated on February 21. Taken together, Powell asserts that he has stated a prima facie case for retaliation.

Assuming that Powell does state a prima facie case of retaliation, Biscuitville has still put forward enough uncontradicted and material evidence to rebut the claim and prevail as a matter of law. Biscuitville successfully shows that the alleged retaliation was "the result of a legitimate non-retaliatory reason." *Foster*, 787 F.3d at 250. Case law suggests that an honest belief that an employee has violated workplace policies or rules is sufficient to establish a non-pretextual basis for terminating employment. *See Holland v. Washington Homes, Inc.*, 487 F.3d 208, 220 (4th Cir. 2007) ("Title VII endeavors to eliminate workplace discrimination, but the statute was not designed to strip employers of discretion when making legitimate, necessary personnel decisions, such as the decision to terminate an employee when an investigation determines that employee made physical threats against a supervisor."); *Bizzel v. Sprint/United Management Co.*, 2014 WL

1232335 (W.D. Va. Mar. 25, 2014) (finding no pretext where a number of plaintiff's coworkers had complained about her routine use of profanity in the workplace).

As Biscuitville notes, "an employee may not insulate [himself] from termination by covering [himself] with the cloak of Title VII's opposition protections *after* committing non-protected conduct that was the basis for the decision to terminate." *Curay-Cramer v. Ursuline Academy of Wilmington, DE Inc.*, 450 F.3d 130, 137 (3d Cir. 2006) (collecting cases); *see also Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 358 (2013) (finding a that a permissive standard for Title VII claims could contribute to the filing of frivolous claims by an employee who knows he or she is about to be fired).

During his short stint as an employee with Biscuitville, Powell cursed loudly, violated company policy surrounding health code violations, threatened the safety of other employees, and even demanded the names of those who reported him. Uncontroverted evidence establishes each of those facts. Biscuitville clearly had multiple, legitimate, non-discriminatory and non-retaliatory reasons for terminating his employment—constituting threatening and erratic behavior which put the livelihood of his employees at risk. Dkts. 38, 37-2, 37-4, 37-3.

Biscuitville also outlines the investigative steps it took to review all the circumstances of Powell's employment with store #151. Dkt. 38 at 14. People Excellence, as per standard investigation practice, collected statements from the parties who witnessed the event or experienced any alleged events involving discrimination, threats of violence, or any other problematic conduct. Dkt. 37-4 ¶ 6. In addition, People Excellence spoke with restaurant employees and reviewed Powell's workplace misconduct issues. Dkt. 37-5 ¶ 7. Biscuitville concluded that Powell's discrimination allegations lacked merit, and that he should be terminated due to his erratic, threatening, and bizarre behavior. *Id.* at 15; *see* Dkt. 37-4.

Under *McDonnell-Douglas*, Powell may attempt to rebut Biscuitville's rationale with evidence that the employer's nonretaliatory reasons were pretextual. However, Powell failed to present any admissible evidence to rebut Biscuitville's contentions, or to bolster his own. Powell gives no reason to question the credence of the evidence put forward by Biscuitville, showing that he threatened the safety of other employees. *See Hayes*, 2014 WL 901213, at *9–10. Indeed, each statement provided to People Excellence corroborates Scott's telling of the events. There is nothing in the record to suggest that there is a reason why People Excellence should not believe that Powell made the threats.

Stated differently, Powell does not provide evidence that Biscuitville fired him for pretextual reasons. His use of exhibits is illusory at best, often citing to additional evidence only to say that there are statements within the documents that may appear contradictory, or in his view are "incoherent." *See* Dkt. 48 at 7, 8, 9, 10, 11, 12, 15, 17, 18, 19, 20, 21, 22. None of the evidence he relies on rebuts Biscuitville's legitimate reasons for his termination. While there is *some* dispute as to the events, they are not genuine issues of material fact. Instead, Powell's statements are speculation and conjecture. Consequently, as to Biscuitville's motion, the Court finds that no reasonable juror could find for Powell in this case, as there is no genuine dispute of material fact. Powell fails to present evidence to show a prima facie case of retaliation, while Biscuitville offers overwhelming evidence showing that any adverse employment action was warranted and not pretextual.

With respect to Powell's motion, the Court finds that there is no basis for an award of summary judgment. Dkt. 27. Powell's motion argues that as a matter of law, there is sufficient evidence to establish that Biscuitville violated his rights under Title VII. *Id.* Even assuming that Powell's evidence does present a prima facie case of retaliation, Powell does not rebut

Biscuitville's evidence showing that his termination was not retaliatory. Biscuitville demonstrated that Powell was fired for legitimate and non-pretextual reasons. Dkt. 37–4. Because Biscuitville submitted uncontroverted material evidence which Powell did not rebut, this Court finds that no reasonable juror could find for Powell in this case. Therefore, Powell cannot prevail on his motion for summary judgment.

IV. CONCLUSION

Taken in totality, Powell filed a suit for retaliation without sufficient evidence to support his contentions and demonstrate that a genuine dispute of material fact exists. Instead, Powell makes denial after denial without any support. For the foregoing reasons, the Court will award summary judgment to Biscuitville and deny Powell's motion. An accompanying order shall issue.

Entered this 2nd day of December, 2020.

NORMAN K. MOON
SENIOR UNITED STATES DISTRICT JUDGE

Additional material from this filing is available in the Clerk's Office.