

APPENDIX A

Decision of United States Court of Appeals

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10584

JUNIOR ORLANDO ANDREW,

Plaintiff-Appellant,

versus

WASTE PRO OF FLORIDA, INC.,

WASTE PRO USA INC,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:23-cv-00102-TJC-PRL

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: February 3, 2026

For the Court: DAVID J. SMITH, Clerk of Court

ISSUED AS MANDATE: March 6, 2026

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-10584
Non-Argument Calendar

JUNIOR ORLANDO ANDREW,

Plaintiff-Appellant,

versus

WASTE PRO OF FLORIDA, INC.,

WASTE PRO USA, INC,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 5:23-cv-00102-TJC-PRL

Before LUCK, LAGOA, and ED CARNES, Circuit Judges.

PER CURIAM:

Junior Orlando Andrew, proceeding *pro se*, sued his former employer, asserting Fair Labor Standards Act (FLSA) claims based on failure to pay overtime and retaliation. He also asserted claims of race discrimination, retaliation, and hostile work environment, in violation of Title VII of the Civil Rights Act of 1964 (Title VII):

The court granted summary judgment in favor of the employer on all claims. Andrew challenges that judgment, reiterating the allegations from his complaint and relying on uncorroborated assertions made in his deposition testimony and in his arguments to the district court. We affirm.

I.

Waste Pro of Florida, Inc. (Waste Pro) is a waste collection and disposal services company that is divided into divisions, which serve the different regions of Florida. Waste Pro's Ocala Division hired Junior Andrew in 2018 as a driver, who worked as an at-will employee until 2023. When Andrew began working for Waste Pro, he was paid a fixed daily rate plus overtime compensation for any hours worked over 40 in a workweek. He started at \$140 per day. And over the course of his employment, he received several pay raises and promotions,¹ and by 2021, he was making \$180 per day. In August of 2021, all Ocala Division drivers (including

¹ Andrew had a few work assignment changes over the course of his employment, including becoming a curotto truck driver. A curotto truck is one with an automated arm to lift garbage cans or dumpsters, and being a driver of one is generally more desirable because it is less physically demanding and pays more due to the required skill and training.

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Andrew) were switched to an hourly rate compensation method. Andrew's hourly rate was initially \$19.75 but increased to \$20.15 by the end of 2022.

Back in 2019, Andrew had joined a lawsuit filed in the United States District Court for the District of South Carolina against multiple Waste Pro entities (including Waste Pro of Florida) involving claims of failure to pay or properly calculate overtime. He was dismissed from that suit,² but he alleges that he continued to complain about his lack of overtime compensation. (Waste Pro insists that it never received a complaint from Andrew specifically about lack of overtime compensation or, more generally, that it was otherwise in violation of the FLSA.)

Andrew testified during his deposition that he began noticing safety concerns with his truck after his complaints to management. Starting in 2019, "every time [he] complain[ed]" about his hours "they [would] go and disable [his truck's back-up] camera." He didn't specify who "they" were, but instead used the general terms "they," "employees" or "Waste Pro" every time he discussed the incidents.³ But he believed he saw a pattern — after he made a

² Waste Pro of Florida was dismissed from that suit for lack of personal jurisdiction, and its employees were dismissed because they weren't employees of the remaining defendant companies. See *Hansen v. Waste Pro of S.C., Inc.*, No. 2:17-CV-02654, 2020 WL 1892243, at *2 (D.S.C. Apr. 16, 2020).

³ At times during his deposition, Andrew would mention some names, but he often wouldn't remember the person's last name or the remaining "list" of employees who allegedly sabotaged his truck, stating that he already "explained it" in his paperwork, and the "company already plead[ed] the Fifth for

complaint, he'd see "a habit of mishap[s] to the truck[] [he] was driving." First it was a disabled back-up camera, then he noticed his brakes had been "tampered" with and his hydraulic hose had been cut, objects would be left on the truck's motor (such as an old sponge), and then there were multiple gas leaks. He also testified that Waste Pro had tried to kill him "[b]y cutting [a] line" in his truck so that when he cleaned it, "the blade would go back on [him.]"

While Andrew asserted that Waste Pro does "a lot of evil stuff" and tried to kill him because of his complaints, he also admitted that he had never witnessed anyone sabotaging his truck. He'd simply catch the "mishaps" when he performed his truck's inspections. He also admitted that after he notified someone of a safety concern, it was fixed by him or Waste Pro. And he admitted to having disputes with two different Waste Pro mechanics. One mechanic told him that he was "acting like a bitch" for requesting hydraulics and wanted to fight him. The other mechanic reported Andrew for calling him an "Uncle Tom." Andrew denies calling the mechanic "Uncle Tom" or any other derogatory names.

Finally, after an incident when Andrew refused to drive his truck because he smelled gas, he was instructed to contact Human Resources. When he did so, according to Andrew, HR told him to

them." Regardless, he never specifically saw anyone sabotage his truck, and at least once, he had assumed that his supervisor had been the one to disable the truck's back-up camera only because the supervisor was able to fix the camera after Andrew reported it broken.

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take the rest of the day off and that the incident would be investigated. The next day on January 6, 2023, Andrew's employment was terminated due to misconduct. According to Waste Pro, it terminated him because he continued to create a "disturbance" in the workplace by accusing management of "being Mafia related," accusing fellow employees of trying to kill him by sabotaging his truck, and insinuating that management had killed another employee.

Andrew sued Waste Pro for failure to pay overtime and retaliation under the FLSA and for race discrimination, retaliation, and a hostile work environment under Title VII.⁴ He also included in his complaint⁵ and asserted in his deposition testimony allegations that: someone had drawn an inappropriate graphic picture on his personal car; he was denied a \$10,000 "safety bonus," which is awarded to drivers who are accident free for three years (a requirement Andrew admitted he did not meet); and Waste Pro in some

⁴ Andrew filed a charge with the EEOC in May of 2022, alleging race discrimination and retaliation. The EEOC issued a right to sue letter on January 11, 2023, after which Andrew timely filed this lawsuit in the district court. Liberally construing Andrew's pleadings, both Waste Pro and the district court addressed claims that it appeared Andrew intended to raise even if they were unclear or not specified in a separate count. See generally *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014) (explaining "a *pro se* complaint [is held] to less stringent standards" and is "construe[d] . . . liberally").

⁵ We use the term "complaint" to refer both to Andrew's original and amended complaint, and we read them as one in order to construe his pleadings liberally, just as the district court and Waste Pro did. See *id.*

unspecified way interfered with his daughter's education, causing her to fail the fourth grade.

In addition to those allegations and claims, Andrew testified in his deposition that he thought Waste Pro provided negative references to prospective employers, though he had no evidence of that. He also asserted that after his employment ended, Waste Pro was somehow responsible for a racial slur that he saw written in ~~the~~ graffiti near where he walks his dog by a railroad track. But he did not identify, or even speculate, about who associated with the company was responsible for that graffiti.

Waste Pro submitted all of Andrew's paystubs and timecards, which showed that he had received overtime compensation anytime he worked more than 40 hours in a workweek. It also presented evidence showing that Andrew, who is black, was paid the same as white and Hispanic employees.

Waste Pro moved for summary judgment on all of Andrew's claims. Concluding that no reasonable factfinder could find in favor of Andrew on any of his claims, the district court granted summary judgment in favor of Waste Pro on all of them. Andrew timely appealed.

II.

We review *de novo* a district court's grant of summary judgment. *Seamon v. Remington Arms Co.*, 813 F.3d 983, 987 (11th Cir. 2016). Summary judgment is appropriate only when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). At this stage,

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we view the “record in the light most favorable to the [nonmoving] party, and we draw all reasonable inferences” in that party’s favor. *Stanley v. City of Sanford*, 83 F.4th 1333, 1337 (11th Cir. 2023). But unsupported “[s]peculation does not create a *genuine* issue of fact.” *Cordoba v. Dillard’s, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005). And a “mere scintilla of evidence” in support of the nonmoving party’s position does not suffice either. *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997) (quotation marks omitted); *see also Earley v. Champion Int’l Corp.*, 907 F.2d 1077, 1080–81 (11th Cir. 1990) (discussing how a party’s conclusory, uncorroborated allegations do not constitute the necessary “concrete evidence in the form of specific facts” to defeat a well-supported summary judgment motion). “[T]here must be enough of a showing that the jury could reasonably find for [the nonmoving] party.” *Allen*, 121 F.3d at 646.

III.

Andrew contends that Waste Pro violated the FLSA by failing to pay him overtime compensation and that the district court erred in finding there was no genuine issue of material fact about that. Under the FLSA, absent specific circumstances, employees are entitled to overtime compensation of at least one-and-a-half times their regular wage for any hours worked beyond the 40-hour workweek. 29 U.S.C. § 207(a)(1). An employer will be liable for damages for failure to pay overtime in violation of the FLSA if the employee can show that he didn’t receive overtime pay where “the employer knew or should have known of the overtime work[ed].” *Bailey v. TitleMax of Ga., Inc.*, 776 F.3d 797, 801 (11th Cir. 2015); *see* 29 U.S.C. § 216(b).

Despite his allegations that he never received overtime compensation, Andrew's paystubs and timecard records show that he received overtime pay for the hours he worked in excess of the 40-hour workweek. When shown at his deposition the time records and pay stubs contradicting his allegations, he testified that he thought the Waste Pro secretary had falsified his hours. But he presented no evidence to back up that thought. Further, the timecards in the record track the times of day that Andrew testified that he generally would clock in and out every day. Viewing the "record in the light most favorable" to Andrew and "draw[ing] all reasonable inferences" in his favor, *Stanley*, 83 F.4th at 1337, nothing in the record shows a genuine dispute about the hours that Andrew worked or about whether he received overtime pay when required. The district court correctly granted summary judgment to Waste Pro on the failure-to-pay-overtime claim. *See* Fed. R. Civ. P. 56(a).

IV.

Construing Andrew's brief liberally, he contends that the district court erred in concluding that he failed to present evidence of a similarly situated comparator and thus failed to establish a prima facie case of race discrimination under Title VII. Andrew specifically calls our attention to the time in which Waste Pro paid him a daily rate instead of an hourly rate and argues that he has pointed out an employee who was paid more than he was and on an hourly rate instead of a daily rate.

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Under Title VII, it is unlawful for an employer “to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race.” 42 U.S.C. § 2000e-2(a)(1). When a case of discrimination is supported only by circumstantial evidence, as it is here, we ask “whether a reasonable jury could infer illegal discrimination” from that circumstantial evidence. *McCreight v. Auburn Bank*, 117 F.4th 1322, 1335 (11th Cir. 2024).

Using the traditional *McDonnell Douglas* burden-shifting framework to establish a prima facie case of unlawful discrimination, the plaintiff must show that he (1) “belongs to a protected class,” (2) “was subjected to an adverse employment action,” (3) “was qualified to perform the job in question,” and (4) his “employer treated similarly situated employees outside [his] class more favorably.” *Tynes v. Fla. Dep’t of Juv. Just.*, 88 F.4th 939, 944 (11th Cir. 2023) (quotation marks omitted) (quoting *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)). A plaintiff establishes that a similarly situated employee outside of his protected class was treated differently when he presents evidence of a comparator, or someone who is “similarly situated in all material respects.” *Lewis v. City of Union City*, 918 F.3d 1213, 1231 (11th Cir. 2019) (en banc). Usually, a similarly situated comparator will have (1) “engaged in the same basic conduct (or misconduct) as the plaintiff”; (2) “been subject to the same employment policy, guideline, or rule as the plaintiff”; (3) “been under the jurisdiction of the same supervisor as the plaintiff”; and (4) shared “the plaintiff’s employment or disciplinary history.” *Id.* at 1227–28.

Andrew did not present evidence of a similarly situated comparator.⁶ He pointed to a Hispanic employee, Carlos Rivera, who Andrew claims was classified as “a commercial driver” and received an hourly rate during the time period that Andrew was paid a daily rate. According to Andrew, he and Rivera drove the same sized truck and should have been classified the same way and received the same pay rate. But that’s the *only* similarity that Andrew contends existed. While a plaintiff may not always have to present a valid comparator by showing the two “engaged in the same basic conduct,” were “subject[ed] to the same employment polic[ies], guideline[s], or rule[s],” had the same supervisor, and had similar “employment or disciplinary history,” *id.*, Andrew had to show more than the fact that he and Rivera both drove big trucks.

Not only that, but Waste Pro offered evidence that Rivera in fact was *not* paid more than Andrew. And it offered evidence that any pay discrepancies between Andrew and other employees were due to experience, not race. Therefore, even if Rivera were similarly situated to Andrew or if some employees of other races received higher pay, Waste Pro provided an offer of justification to off-road Andrew’s claim of race discrimination, and he failed to rebut those justifications. See *Chapman v. AI Transp.*, 229 F.3d 1012,

⁶ Before the district court, Andrew alleged other possible discriminatory actions, but before this Court, Andrew argues only that Waste Pro discriminated against him by paying him a daily rate instead of an hourly rate. Therefore, his other theories of race discrimination are deemed abandoned. See *Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005) (“When an appellant fails to offer argument on an issue, that issue is abandoned.”).

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1037 (11th Cir. 2000) (en banc) (“In order to avoid summary judgment, a plaintiff must produce sufficient evidence for a reasonable factfinder to conclude that each of the employer’s proffered non-discriminatory reasons is pretextual.”).

Andrew also didn’t piece together a “convincing mosaic” of allegations supported by evidence from which a reasonable jury could infer that Waste Pro intentionally discriminated against him based on his race. *See McCreight*, 117 F.4th at 1335; *see also Berry v. Crestwood Healthcare LP*, 84 F.4th 1300, 1311 (11th Cir. 2023) (explaining that a “convincing mosaic” is “a metaphor, not a legal test and not a framework,” for the summary judgment standard itself). And we need not waste time in examining Andrew’s lack of evidence twice. The district court did not err in concluding that Andrew failed to present sufficient circumstantial evidence to support his claim of race discrimination based on a difference in pay rate.

V.

Liberally construing his brief, Andrew appears to contend that he presented sufficient evidence for his FLSA-retaliation claim to survive summary judgment.⁷

Under the FLSA, it is unlawful for an employer to “discriminate against any employee because such employee has filed any

⁷ Andrew does not challenge the grant of summary judgment on his Title VII retaliation claim, only the grant of it on his FLSA-retaliation claim. And on that claim he doesn’t contend Waste Pro’s termination of him was a retaliatory adverse action but that some of its other conduct was.

complaint.” 29 U.S.C. § 215(a)(3). To prove an FLSA-retaliation claim, a plaintiff must show that 1) he “engaged in” an FLSA-protected activity; 2) he “subsequently suffered adverse action by the employer”; and 3) “a causal connection existed between [his] activity and the adverse action.” *Smith v. Haynes & Haynes P.C.*, 940 F.3d 635, 648 (11th Cir. 2019) (quotation marks omitted). To satisfy the adverse action element, the employee must show that the employer’s action was material. *Id.* (relying on *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 57 (2006)). And to meet the causation element, “the plaintiff must prove that the adverse action would not have been taken ‘but for’ the assertion of FLSA rights.” *Wolf v. Coca-Cola Co.*, 200 F.3d 1337, 1343 (11th Cir. 2000)

Andrew reiterates his allegations that his truck was sabotaged in retaliation for his FLSA complaints, but he offers no evidence to show that any of the problems with his truck were casually connected to those complaints. Although he asserts that he recognizes a pattern, he does not share it with us by pointing to dates of his complaints that correlate to the problems with his truck. Nor does he provide any evidence that anyone associated with Waste Pro ever tampered with his truck. Instead, he testified at his deposition that he never witnessed anyone tampering with his truck and that the problems with the truck were fixed when he reported them.

And, apart from his speculation, Andrew failed to tie Waste Pro to the other alleged incidents: the slur graffitied near where he walks his dog and the fact that his daughter did poorly in school.

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No reasonable jury could find that his FLSA complaints were the cause of those alleged incidents. *See id.* The district court did not err in granting summary judgment to Waste Pro on them.

VI.

Andrew's last contention seemingly is that he presented enough factual allegations to establish a claim for hostile work environment based on racial discrimination under Title VII. To establish a hostile-work-environment claim, Andrew needed to have established that he "suffered unwelcome harassment [and] that it was based on a protected characteristic." *Harris v. Pub. Health Tr. of Miami-Dade Cnty.*, 82 F.4th 1296, 1302 (11th Cir. 2023) (citation omitted); *see id.* at 1304 ("[F]ederal law doesn't prohibit hostility in the workplace — only hostility caused by impermissible discrimination."); *see also Tonkyro v. Sec'y, Dep't of Veterans Affs.*, 995 F.3d 828, 836 (11th Cir. 2021) (explaining that hostile-work-environment claims require that the protected characteristic to have been a "motivating factor" in the employment action).

In his brief, Andrew merely recites a list of actions that he alleges occurred, but even if all of them did, he has not presented any evidence that those actions were motivated by his race. Andrew asserts that the employees who vandalized his personal vehicle are white and that the mechanic he had a disagreement with is white. But just because those employees are white does not mean their alleged actions were motivated by race. The remainder of his list is comprised of alleged actions that he has not connected to his

race, and therefore he has failed to show that any harassment was based on a protected characteristic.⁸ The district court did not err.

AFFIRMED.⁹

⁸ Andrew also lists the fact that he didn't receive a safety bonus as evidence of a hostile work environment. He states for the first time that white employees received this bonus despite also having accidents on their records. But there is no evidence in the record showing whether those white employees had accidents. As we have already explained, Andrew failed to rebut Waste Pro's evidence showing that he was ineligible for the accident-free safety bonus.

⁹ Andrew does not argue that the district court erred in granting summary judgment in favor of Waste Pro USA based on its finding that he was never an employee of Waste Pro USA. It would have done him no good if he had challenged that part of the district court's summary judgment order. *See Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299, 1309 (11th Cir. 2013) (explaining that "employer" under the FLSA means the "employer for whom the employee directly works," "any person acting directly or indirectly in the interests of an employer in relation to an employee," or a "corporate officer with operational control of a corporation's covered enterprise") (quotation marks and citations omitted); *Dearth v. Collins*, 441 F.3d 931, 933 (11th Cir. 2006) ("[R]elief under Title VII is available against only the employer . . .").

APPENDIX B

Decision of United States District Court

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JUNIOR ORLANDO ANDREW,

Plaintiff,

Case No. 5:23-cv-102-TJC-PRL

v.

WASTE PRO OF FLORIDA, INC.,
and WASTE PRO USA INC,

Defendants.

ORDER

THIS CASE is before the Court on Defendants' Motion for Summary Judgment on All Claims Asserted by Plaintiff Junior Orlando Andrew. Doc. 33. Andrew has sued his former employer, Waste Pro of Florida, Inc. Doc. 26. The claims include failure to pay overtime (in violation of the Fair Labor Standards Act), race discrimination (under Title VII), retaliation (under the FLSA and Title VII); and a hostile work environment (under Title VII).¹ Andrew has opposed summary judgment.² Doc. 37.

¹ Waste Pro has addressed claims it considered raised by Andrew's testimony or filings, even if unclear or not identified by separate count, and the Court will do the same. Doc. 33 at 1 n.1.

² Andrew's pro se opposition offers limited admissible evidence and suggests evidence should be subpoenaed by the Court, but this is not the Court's role. Compare Doc. 37 at 2, with Doc. 2 (identifying pro se resources including "The Court's Guide for Proceeding Without a Lawyer" which states "You are responsible for doing everything necessary for the action to move forward,"

I. FACTS

Waste Pro³ provides solid waste collection and disposal services in Florida. Doc. 33-1 ¶2. Waste Pro hired Andrew as a driver in October 2018. See Doc. 32-1 at 14. Andrew was initially paid a day rate of \$140, a fixed amount for all hours worked that day. See Doc. 33-1 ¶¶5, 9. Andrew received multiple raises, including a promotion and raise in March 2021 to \$180 per day, from recycle driver to curotto driver.⁴ See Doc. 33-1 at 9, 23, 42, 61, 73, and 238. On August 15, 2021, Andrew, along with all other drivers paid a day rate, was switched to an hourly rate. Docs. 32-1 at 26; 33-1 at 84. Andrew's initial hourly rate was \$19.75, and it increased to \$20.15 on December 25, 2022. Doc. 33-1 at 84, 122.

including needing to gather evidence and prepare discovery requests.)

³ References to Waste Pro are to Waste Pro of Florida, Inc., because it is undisputed Andrew was employed by Waste Pro of Florida, Inc., and was not employed by its parent, Waste Pro USA, Inc. Doc. 33-1 ¶4.

⁴ Andrew testified driving the curotto truck (which has an automated arm to lift the garbage or dumpster) is more desirable because it is less physically demanding and pays more. Doc. 32-1 at 19–20. Even so, Andrew argued this was not a promotion because he was not given a choice about the change. See Doc. 32-1 at 39. Andrew had other work assignment changes, which are either not relevant or not part of a viable claim. For instance, Andrew mentions he was not given a promotion, but it is not part of his EEOC charge and therefore cannot proceed because of failure to exhaust administrative remedies. Compare Doc. 1 at 4, with Doc. 1 at 20–22; see Gregory v. Ga. Dep't of Hum. Res., 355 F.3d 1277, 1278–80 (11th Cir. 2004); Batson v. Salvation Army, 897 F.3d 1320, 1327 (11th Cir. 2018). Similarly, any claim about being replaced as a front-end driver in 2019 is out of time. Id.

On March 11, 2019, Andrew joined another lawsuit alleging Waste Pro (the Florida entity and other related Waste Pro entities) failed to properly pay or calculate overtime, but Waste Pro was ultimately dismissed from the case.⁵ See Doc. 26 at 6. Andrew testified he repeatedly complained about working long hours and his pay.⁶ See e.g., Doc. 32-1 at 25, 31, 35, 42, 52, and 63. Whether paid daily or hourly, Andrew was paid overtime whenever he worked more than forty hours in a single work week, although overtime was calculated differently based on being paid daily or hourly.⁷ See Docs. 33 at 24; 33-1 at 84–122; 37 passim.

⁵ The case was Hansen v. Waste Pro USA, Inc., 2:17-cv-2654, United States District Court, District of South Carolina, Charleston Division. Waste Pro of Florida, Inc., was dismissed for lack of personal jurisdiction and plaintiffs who joined based on an employment relationship with Waste Pro of Florida, Inc., such as Andrew, were also dismissed. Doc. 170 (Hansen, July 25, 2019).

⁶ It appears Andrew was complaining that his hourly rate decreased, which could have happened even though the day rate went up, if his hours also increased. See Doc. 32-1 at 25, 43.

⁷ While paid an hourly rate, Andrew was paid overtime at time and a half. Doc. 33-1 at 84–122. While paid a daily rate, overtime was an additional half time premium, calculated in accordance with 29 C.F.R. §778.109. Andrew claimed he was paid less (or differently) due to his race, and there was evidence at least two coworkers, Carlos Rivera and Doug Jollimore, were paid higher hourly rates. See Doc. 33-1 ¶24, at 244. Andrew failed, however, to provide any evidence rebutting Waste Pro's argument that pay differences were due to differences in experience. See id. ¶26. In addition, Andrew relied on hearsay evidence that Carlos Rivera, who replaced Andrew in 2019, was paid \$25 an hour; while Waste Pro provided undisputed evidence Rivera was paid \$18.75 hourly in December 2019. Compare Doc. 32-1 at 103, with Doc. 33-1 at 250–51.

Some of Andrew's other complaints during his employment included: (1) not being paid a safety bonus due to an accident;⁸ (2) issues with his work truck,⁹ (3) issues with his personal vehicle and Waste Pro's failure to investigate,¹⁰ and (4) not being sent home during a hurricane.¹¹

⁸ The Parties dispute whether Andrew's accident disqualified him from the safety bonus, but this fact dispute is not material. Failure to pay the safety bonus is not part of the FLSA overtime claim. Andrew admitted to the accident but disputes the damage. Doc. 32-1 at 85–87. If considered as evidence of discrimination or retaliation claims, the accident would be a legitimate reason for disqualification that Andrew has not rebutted. There is no record evidence of others with similar accidents who received the safety bonus even though Andrew alleges similarly situated Caucasian coworkers were treated differently. See Doc.37 at 2, 10.

⁹ Andrew alleged Waste Pro was trying to kill him by sabotaging his work truck because of problems with his truck after he complained. Doc. 32-1 at 62–63, 69. Problems include the backup camera not working multiple times, multiple gas leaks, issues with the hydraulic line, a route sheet being placed on the muffler (creating a fire risk), and a sponge on the motor. Doc. 32-1 at 47-49, 70–71, 81–82, 84. Issues with the backup camera started in 2019, and there were issues with hydraulic lines for over four years, including in late 2022 and January 2023. Doc. 32-1 at 51–61, 75–76, 79. Andrew never witnessed any sabotage, and understood some problems could be normal wear and tear. See Doc. 32-1 at 70, 81. Andrew did a vehicle inspection each morning before driving. See Docs. 32-1 at 56–57, 72–73; 33-1 ¶¶17-19. Problems he reported were generally fixed or Andrew did not have to drive the truck. Doc. 32-1 at 5, 75–76, 78. The only inspection report in the record is from October 13, 2022, about a gas leak that was fixed. Doc. 33-1 at 240–41.

¹⁰ These include having male genitalia drawn in dust on the vehicle hood, tobacco juice/spit on hood, and having tires and valve stem cut, while parked at Waste Pro. Doc. 32-1 at 85, 88–92; Doc. 37 at 8. Andrew complained Waste Pro could have checked video footage to investigate but did not. Doc. 32-1 at 92.

¹¹ Andrew testified he had to work during a hurricane in November 2022, while coworkers were sent home. Doc. 32-1 at 93–95 (presumably Nicole, which made landfall as a Category 1 storm in Daytona Beach on November 10, 2022).

33-1
Rebuttal

Waste Pro terminated Andrew on January 6, 2023. Doc. 33 ¶22. Andrew alleged his termination occurred after he reported another gas leak and Human Resources got involved. Doc. 32-1 at 79. Andrew testified HR sent him home, saying there would be an investigation. Id. When Andrew reported to work the next day, as requested, he was terminated for misconduct. Id. Andrew was told the misconduct was calling a coworker “Uncle Tom,” which Andrew denies, but he admitted having a verbal altercation with a coworker.¹² Id. at 66–67, 79.

Waste Pro alleged it terminated Andrew because he made multiple disruptive accusations about the workplace, including that management was trying to kill him, management was part of the Mafia, and management caused a coworker to be decapitated. Doc. 33-1 ¶22. Andrew admitted he told coworkers he thought other employees were trying to kill him by sabotaging his truck; he accused management of being in the Mafia and KKK,¹³ and thought Waste Pro had deliberately killed an employee. Doc. 32-1 at 48, 65-67, 78, 83, 101, 104–05.

¹² Andrew argued Waste Pro did not provide record evidence he caused a disturbance, but the Declaration of its Regional Vice President, Erik Sankey, provides admissible evidence of the termination reason. Doc. 33-1 ¶22. Andrew argued he did not admit to misconduct, but this fails to address his deposition testimony describing similar incidents and, in his opposition, Andrew appears to claim his actions are justified as self-defense because he was responding to someone cussing at him. Doc. 37 at 2.

¹³ Andrew testified his coworkers were “good old boys,” that Caucasians ran the show and were treated more favorably, like getting assigned to the curotto truck (which Andrew also drove). Doc. 32-1 at 74, 102.

Andrew also had complaints related to things outside of work or after his employment with Waste Pro ended, including: (1) Andrew believed Waste Pro interfered with his daughter's grades, (2) Andrew believed Waste Pro provided poor references to prospective employers, but he did not have proof, and (3) Andrew believed Waste Pro was responsible for graffiti (racial slur) where he walks his dog. Doc. 32-1 at 9–13, 96–100, 119.

Andrew filed a charge with the Equal Employment Opportunity Commission around May 10, 2022, alleging race discrimination and retaliation. Doc. 1 at 20–22. The EEOC issued a right to sue on January 11, 2023, and this lawsuit was timely filed on February 13, 2023. Doc. 1.

II. ANALYSIS

A. Standard

Under Federal Rule of Civil Procedure 56(a), a “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.” Further, the Court will construe evidence in the light most favorable to Andrew.¹⁴ See Caldwell v. Warden, FCI Talladega, 748 F.3d 1090, 1098 (11th

¹⁴ This does not include, however, accepting facts or arguments that are not supported with evidence. The Court has not detailed all such instances, but examples include assertions by Andrew that pay records and other evidence have been falsified and claims of white coworkers being paid more or receiving the safety bonus despite accidents. See Doc. 37.

Cir. 2014).

B. Alleged Unpaid Overtime (FLSA)

Although Andrew claims he was “never” paid overtime while he was paid a daily rate, his pay records show overtime was consistently paid.¹⁵ Compare Doc. 26 ¶¶3-6, 10-11; with Doc. 33-1 at 44–83. Andrew’s pay stubs show he was paid overtime when he worked more than forty hours in a week, and the overtime hours on his pay stubs match the overtime hours in the time records. Doc. 33-1 at 44–83, 158–197. Andrew’s claim he was not paid overtime claim fails because the undisputed evidence show he was paid overtime.¹⁶

Andrew alleged records were falsified, and that he worked more hours than were reported (resulting in improper overtime payments). Doc. 32-1 at 117.

¹⁵ Andrew admitted he was paid overtime once he was switched from a daily to hourly rate. Doc. 26 ¶15, Doc. 37. Andrew’s amended complaint includes pay records from sixteen different pay dates between 2019 and 2023, all showing both overtime hours and overtime payments. See Doc. 26 at 7–24. Even if Andrew alleged a willful violation, anything before February 13, 2020, would be outside the statute of limitations.

¹⁶ Another interpretation of Andrew’s complaints is that his effective hourly rate decreased. See Doc. 1 at 20. While paid a daily rate, the overtime pay was calculated in accordance with the fluctuating work week method (thus the hourly rate might decrease even if the daily rate increased if hours also increased). The overtime calculation method or a lower hourly rate do not, by themselves, violate the FLSA. In order to establish a FLSA violation, Andrew must show the hourly rate decreased below minimum wage or the overtime calculation was wrong. See 29 C.F.R. §778.109 and 778.112. Andrew has not argued overtime calculations were wrong or that he was paid below minimum wage.

Andrew, however, does not dispute any specific time or pay records and does not provide admissible evidence to dispute them. Rather, he just makes the bare assertion records were falsified. See Doc. 32-1 at 43. In contrast, the time records show start and stop times for each workday and indicate approval by Andrew. See Docs. 33-1 at 124–234, 32-1 at 16–17. Based on this record, there is not plausible evidence to conclude the records were falsified, and summary judgment is properly granted as to the FLSA claim.

C. Race Discrimination (Title VII)

Andrew does not allege direct evidence of race discrimination, so the claim is analyzed under the McDonnell Douglas burden shifting framework. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Under McDonnell Douglas, “[i]f the plaintiff makes out a prima facie case, the burden then shifts to the defendant to articulate a legitimate reason for the adverse action. If the defendant does so, the plaintiff must then show that the defendant’s proffered reason for the adverse action is pretextual.” Hurlbert v. St. Mary’s Health Care Sys., Inc., 439 F.3d 1286, 1297 (11th Cir. 2006) (internal citation omitted).

To establish a prima facie case of race discrimination, Andrew must show: (1) he is a member of a protected class; (2) he was qualified for the position; (3) he suffered an adverse employment action; and (4) he was replaced by a person outside his protected class or was treated less favorably than a similarly-situated individual outside his protected class.” Maynard v. Bd. of Regents, 342

F.3d 1281, 1289 (11th Cir. 2003) (citing McDonnell Douglas, 411 U.S. at 802). To satisfy the fourth element, the alleged comparator must be “similarly situated in all material respects.” Lewis v. City of Union City, 918 F.3d 1213, 1224 (11th Cir. 2019). A similarly situated comparator will ordinarily have (1) engaged in the same behavior; (2) been subject to the same employment policy, guideline, or rule; (3) had the same supervisor; and (4) shared a similar employment or disciplinary history. Id. at 1227–28.

To establish pretext, the plaintiff must show “the proffered reason was not the true reason for the employment decision . . . either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.” Jackson v. Ala. State Tenure Comm’n, 405 F.3d 1276, 1289 (11th Cir. 2005) (quoting Tex. Dep’t of Cmty. Affairs v. Burdine, 450 U.S. 248, 256 (1981)). The evidence for pretext must show the employer’s proffered reasons are not worthy of credence by a reasonable fact finder. Vessels v. Atlanta Indep. Sch. Sys., 408 F.3d 763, 771 (11th Cir. 2005) (cleaned up). Even so, a court will “not sit as a super-personnel department that reexamines an entity’s business decisions.” See Chapman v. AI Transp., 229 F.3d 1012, 1030 (11th Cir. 2000) (quoted authority omitted).

Andrew is a member of protected class, qualified for his position, and his termination was an adverse employment action, but he has not presented

evidence of a similarly situated comparator. Even if Andrew established a prima facie case, Waste Pro provided evidence the termination was due to several incidents of disruptive behavior. While Andrew disputed this reason, he admitted to behavior like what Waste Pro described as the termination reason, including unsupported or far-fetched accusations, such as believing Waste Pro management belonged to the KKK and/or the Mafia, Waste Pro had an employee killed, and Waste Pro was trying to kill Andrew. Andrew has not rebutted the legitimate reason for his termination.

To the extent other incidents might be considered an adverse employment action, Andrew either lacks a prima facie case, does not rebut the legitimate reason offered, or fails to present a convincing mosaic of discrimination based on race. See Muldrow v. City of St. Louis, 601 U.S. 346, 350-351 (2024) (noting a “disadvantageous” change in terms and conditions of employment is sufficient for a Title VII discrimination claim). Andrew alleges other employees were treated more favorably, but he either lacks evidence to support the allegation or lacks evidence to establish any difference in treatment was due to race. Andrew thinks Caucasians received better work assignments and cites driving the curotto truck as example, but Andrew also drove the curotto truck. Doc. 32-1 at 102. Andrew complained about having to work during hurricane Nicole in November 2022, but testified while some coworkers were sent home, others had to work. Doc. 32-1 at 93–95. Andrew claims a coworker, Jollimore, was getting

credit for work Andrew did, but does not offer evidence or examples. Doc. 32-1 at 107–08. Andrew complained some employees were paid hourly while he was paid daily, but does not provide a connection to race, because he admitted some white drivers were paid day rates before the consistent change to hourly rates in August 2019. Docs. 32-1 at 109–10; 37 at 12. Andrew alleged a coworker, Carlos Rivera, was paid more but failed to offer evidence to show he and Rivera were similarly situated.¹⁷ Doc. 32-1 at 103. Andrew complained it was race discrimination when Waste Pro did not review video footage of the employee parking lot to determine who drew male genitals in dust on his personal vehicle, but there is no evidence to support Waste Pro acted differently because of race. Doc. 32-1 at 92. Andrew complained in late 2021 he tried to call in sick and was told he needed a doctor's note, while other employees were not required to have doctor's notes, but Andrew did not offer specific details as to who was treated differently (or their race) or any information about the circumstances. See Doc. 37 at 4.

Other examples offered are without sufficient evidence, far-fetched, and/or happened outside of work, such as the allegation that Waste Pro was responsible for having his daughter's grades changed; that some supervisors used an app to disguise their voices and track his phone; or, after he was

¹⁷ See supra, n.7.

terminated from Waste Pro, that Waste Pro was responsible for racial slurs where Andrew walks his dog. Doc. 32-1 at 115–19. Other examples are personal observations (or an explanation of motivations), but are not adverse employment actions, such as Andrew believing someone was part of the Mafia or belonged to the KKK.

brake
The most serious allegation is that Waste Pro was trying to kill Andrew by sabotaging his work truck, but Andrew failed to present evidence to show the vehicle problems were more than typical maintenance needs or racially motivated, much less that the problems were “sabotage” intended to kill him.¹⁸ In general, Andrew either had an opportunity to report issues with his work vehicle and/or they were fixed or addressed. Moreover, Andrew testified he thought the alleged sabotage to his work truck was in retaliation for his complaints, not because of his race. See Doc. 32-1 at 62–63, 69.

Based on this record, there is not plausible evidence to conclude Waste Pro discriminated against Andrew due to his race, and Waste Pro is entitled to summary judgment.

¹⁸ Andrew never witnessed any sabotage to his work truck. Doc. 32-1 at 81. Issues with the backup camera were sometimes fixed (including by Andrew) after he reported them, or he drove the truck without a working back up camera and did not have any accident. Doc. 32-1 at 55, 58. Waste Pro fixed the gas leak, but it happened again. Doc. 32-1 at 78–79. Andrew noted issues on the Driver Vehicle Inspection Report, but issues fixed during his route were not reported on a DVIR. Doc. 32-1 at 73.

D. Retaliation (Title VII and FLSA)

To establish a retaliation claim, an employee bears the burden of showing (1) he engaged in protected activity, (2) he suffered an adverse action, and (3) a causal connection existed between the protected activity and the adverse employment action. Smith v. Haynes & Haynes P.C., 940 F.3d, 635, 648 (11th Cir. 2019) (for FLSA); Pennington v. City of Huntsville, 261 F.3d 1262, 1266 (11th Cir. 2001) (for Title VII).

Andrew can establish the first and second elements.¹⁹ The termination is an adverse employment action and Andrew engaged in protected activity as early as 2019, either by participating in the other lawsuit, based on his pay complaints, or based on filing his EEOC charge. Even so, summary judgment is proper because Andrew has not shown a causal connection between any protected activity and his termination. When an adverse employment action occurs shortly after protected activity, the closeness in time may support a causal connection. Grant v. Miami-Dade Cnty. Water & Sewer Dep't, 636 F. App'x 462, 468-69 (11th Cir. 2015) (citing Higdon v. Jackson, 393 F.3d 1211, 1220 (11th Cir. 2004)).²⁰ But when an adverse action occurs long after protected

¹⁹ Waste Pro characterizes the complaints as work grievances, that did not amount to protected activity for the FLSA claim. See Doc. 33 at 10–11.

²⁰ The Court does not rely on unpublished opinions as binding precedent, however, they may be cited when the Court finds them persuasive on a particular point. See McNamara v. GEICO, 30 F.4th 1055, 1060-61 (11th Cir.

activity, more is needed to support a causal connection. Id.

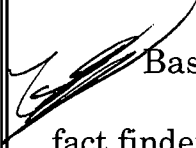
For the FLSA retaliation claim, Andrew joined the other lawsuit almost four years before the termination and started complaining about long hours in 2019. Andrew has not provided any evidence to show his termination, four years later, is causally connected to the alleged protected activity.²¹ For Title VII, Andrew's termination is more than seven months after he filed EEOC charge. There is too much time between the charge and his termination to support a causal connection without other evidence and Andrew has not provided other evidence of a causal connection. See Raspanti v. Four Amigos Travel, Inc., 266 Fed. Appx. 820, 823 (11th Cir. 2008) (citing Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007)) (noting a time gap of three to four months is not sufficient to provide a causal connection).

To the extent other issues could be considered an adverse employment action, the Court reaches the same conclusion: there is no evidence of a causal connection between the alleged protected activity and an alleged adverse employment action. For example, failure to pay Andrew the safety bonus, if owed, could be an adverse employment action, but Waste Pro provided evidence Andrew had an accident that disqualified him from the bonus. Andrew admitted

2022).

²¹ After Andrew started complaining, he received multiple raises and at least one promotion.

to the accident, and merely disagreed it impacted his eligibility for the bonus. Andrew has not provided evidence about the eligibility requirements or sufficient evidence to establish the bonus was owed.

 Based on this record, there is not plausible evidence to allow a reasonable fact finder to conclude that Waste Pro retaliated against Andrew.

E. Hostile Work Environment (Title VII)

To establish a race-based claim for a hostile work environment, Andrew must prove (1) he ~~belongs~~ to a protected class, (2) he was subjected to unwelcome harassment based on race, and (3) the harassment was severe or pervasive enough to alter the terms and conditions of his employment. Adams v. Austal, U.S.A., L.L.C., 754 F.3d 1240, 1248-49 (11th Cir. 2014). Only conduct based on a protected category, such as race, may be considered in a hostile work environment analysis. Jones v. UPS Ground Freight, 683 F.3d 1283, 1297 (11th Cir. 2012). Behavior that is merely unfair or rude, but not tied to a protected characteristic, does not support a hostile work environment. Hunsaker v. Found. Partners Grp., No. 6:18-cv-1996-Orl-22DCI, 2020 WL 10355118, at *11 (11th Cir. 2020) (citing Coutu v. Martin Cnty. Bd. of Cnty. Comm'rs, 47 F.3d 1068, 1074 (11th Cir. 1995)).

Only a few incidents occurred during Andrew's employment that were related to race.²² Andrew described some coworkers as "good old boys," and believes some belonged to the KKK, but does not offer any evidence of KKK membership. See Doc. 32-1 at 74, 101. In short, Andrew has not provided sufficient evidence to allow a fact finder to conclude he suffered a hostile work environment due to his race.

Accordingly, it is hereby

ORDERED:

1. Defendants' Defendants' Motion for Summary Judgment on All Claims Asserted by Plaintiff Junior Orlando Andrew, Doc. 33, is **GRANTED**.
2. The Clerk is directed to enter judgment in favor of Waste Pro of Florida, Inc. and Waste Pro USA, Inc. and against Junior Orlando Andrew and close the file.

²² As discussed supra, Andrew testified many of the problems, especially with his work truck, were retaliation for his complaints and not because of his race. See Docs. 26 ¶¶9, 12; 32-1 at 62–63, 68–69.

DONE AND ORDERED in Jacksonville, Florida the 29th day of
January, 2025.



Timothy J. Corrigan

TIMOTHY J. CORRIGAN

Senior United States District Judge

ddw
Copies:

Counsel of record

Junior Orlando Andrew
79 Dogwood Loop
Ocala, FL 34472

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