

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

HARRIUS JOHNSON,

Petitioner,

v.

MIAMI-DADE COUNTY,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF APPENDICES

APPENDIX A: 11th Circuit Court of Appeals Order Denying Appeal (March 19, 2026) (**pp. 1a to 18a**)

APPENDIX B: District Court's Order Granting Defendant's Motion for Final Summary Judgment (August 5, 2024) (**pp. 19a to 30a**)

APPENDIX C: 11th Circuit Court of Appeals Order Denying Motion For Panel Rehearing and Rehearing En Banc (May 19, 2026) (**pp. 31a to 33a**)

APPENDIX D: 11th Circuit Court of Appeals Judgment (July 7, 2026) (**pp. 34a to 35a**)

APPENDIX E: Excerpts from the Lower Courts' Records (**pp. 36a to 241a**)

APPENDIX F: Constitutional and statutory provisions (**pp. 242a to 244a**)

APPENDIX A

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12676
Non-Argument Calendar

HARRIUS JOHNSON,

Plaintiff-Appellant,

versus

MIAMI-DADE COUNTY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:16-cv-21658-KMW

Before JORDAN, KIDD, and TJOFLAT, Circuit Judges.

TJOFLAT, Circuit Judge:

Harrius Johnson, an African American male police officer, was disciplined and eventually terminated by the Miami-Dade County Police Department ("MDPD"). He sued Miami-Dade

County (“the County”), claiming that the real reasons for his discipline and termination were racial discrimination and retaliation. The District Court granted summary judgment in favor of the County, and Johnson appealed to this Court. We reviewed his appeal and remanded to the District Court to reconsider Johnson’s argument in light of our decision in *Lewis v. City of Union City*, 918 F.3d 1213, 1224 (11th Cir. 2019) (en banc). The District Court applied *Lewis* and affirmed its original grant of summary judgment for the County. Johnson now appeals that decision. We affirm.

I. BACKGROUND

This matter comes before us a second time after a remand to the District Court. Since we have already set out the factual background underlying this appeal, we do not reproduce it here. See *Johnson v. Miami-Dade Cnty.*, 948 F.3d 1318, 1323–25 (11th Cir. 2020). Instead, we offer a summary of the procedural history of this case.

In July of 2016, Johnson, represented by counsel, filed an Amended Complaint against the County alleging, among other things, discrimination and retaliation in violation of 42 U.S.C. § 1983, Title VII of the Civil Rights Act of 1964 (“Title VII”), and the Florida Civil Rights Act of 1992 (“FCRA”).¹ After discovery, Johnson and the County filed cross motions for summary judgment. The District Court granted the County’s motion and denied Johnson’s. It analyzed both the discrimination and retaliation claims under the framework set forth in *McDonnell Douglas Corp. v.*

¹ Johnson also alleged violations of the Fair Labor Standards Act (“FLSA”). The FLSA claims were resolved prior to the initial grant of summary judgment.

24-12676

Opinion of the Court

3

Green, 411 U.S. 792, 802–03 (1973), noting that the same analysis applies for § 1983, Title VII, and FCRA claims.²

In granting summary judgment to the County, the District Court began by assuming that Johnson could make the requisite *prima facie* cases. It then listed the County's proffered legitimate, nondiscriminatory reasons for Johnson's termination. According to the County, Johnson was "terminated because of his disrespectful, insubordinate, unprofessional, discourteous, and unbecoming conduct towards co-workers and superiors, coupled with his disciplinary history." *See* Doc. 98 at 11. The Court reasoned that because the County proffered legitimate reasons for its actions, the viability of Johnson's discrimination and retaliation claims depended on whether he could raise a genuine dispute of material fact that the County's proffered reasons were pretextual.

² We affirmed that conclusion in the original appeal:

[W]hen, as here, a plaintiff attempts to use Title VII and 42 U.S.C. § 1983 as parallel remedies for the same allegedly unlawful employment discrimination, the elements of the two causes of action are identical, *Cross v. Alabama*, 49 F.3d 1490, 1508 (11th Cir. 1995), and identical methods of proof, such as the *McDonnell Douglas* framework, are used for both causes of action, *Richardson*, 71 F.3d at 805. And because the FCRA is based on Title VII, decisions construing Title VII apply to the analysis of FCRA claims. *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1387, 1389–90 (11th Cir. 1998). Therefore, all of Johnson's claims are governed by the *McDonnell Douglas* framework.

Johnson, 948 F.3d at 1325.

Johnson made two arguments to establish pretext. First, he argued that he was treated worse than similarly situated, non-African American employees. Second, he argued that his complaints of discrimination were not seriously investigated. But, the District Court found that Johnson failed to show pretext because neither argument was supported by the record. Thus, the Court concluded that “even if [it] accept[ed] that [Johnson] ha[d] satisfied the first step of the *McDonnell Douglas* framework, summary judgment in favor of [the County] was still appropriate” because “[Johnson] ha[d] not presented sufficient evidence to create a genuine issue of material fact regarding whether the City’s proffered non-discriminatory reasons for [his] suspension and termination were pretextual.” Doc. 98 at 11.

Johnson, still represented by counsel, appealed to this Court, arguing that he had presented sufficient evidence of pretext to satisfy *McDonnell Douglas* and that he had presented a convincing mosaic from which a reasonable jury could infer intentional discrimination and retaliation.

After full briefing and oral argument, this Court rendered its decision affirming in part, vacating in part, and remanding for reconsideration by the District Court. *Johnson*, 948 F.3d at 1330. Specifically, we agreed with the District Court that Johnson failed to provide evidence of pretext for retaliation based on MDPD’s refusal to investigate his complaints. Therefore, we concluded that Johnson’s only viable pretext argument rested with his comparator evidence. *Id* at 1327–29. However, in the time between the District Court’s summary judgment decision and Johnson’s first appeal, our

24-12676

Opinion of the Court

5

Court clarified the standard for evaluating whether a plaintiff's proposed comparators satisfy the "similarly situated" element of the prima facie case for discrimination. *See Lewis v. City of Union City*, 918 F.3d 1213 (11th Cir. 2019) (en banc).³ We remanded to the District Court to reconsider Johnson's comparator evidence in light of the new standard. *Id.* at 1326.

On remand, the District Court considered supplemental briefing on the comparator issue and individually evaluated each of Johnson's proposed comparators under the *Lewis* standard. It ultimately concluded that "even under the clarified standard set forth in *Lewis*, Mr. Johnson still cannot establish that the County's proffered reasons for taking various adverse actions against him were mere pretext for unlawful discrimination and retaliation." Doc. 126 at 4. It therefore affirmed its original grant of summary judgment in favor of the County. Johnson, who is now proceeding pro se, filed this timely appeal.⁴

³ In *Lewis*, 913 F.3d at 1224, we clarified that employment discrimination plaintiffs need not show that their comparators are "nearly identical" or the "same or similar" to them. Rather, they need only show that their comparators are "similarly situated in all material respects." *Id.*

⁴ Shortly after the District Court's grant of summary judgment on remand, Johnson's attorney moved to withdraw as counsel, citing "irreconcilable differences" and noting that Johnson did not object to his withdrawal. The District Court granted the motion.

II. DISCUSSION

We review the District Court's grant of summary judgment de novo. *Anthony v. Georgia*, 69 F.4th 796, 804 (11th Cir. 2023). Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine issue of material fact exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1235 (11th Cir. 2016). All reasonable inferences must be drawn in favor of the nonmoving party, but a "mere scintilla of evidence . . . will not suffice to overcome a motion for summary judgment." *Young v. City of Palm Bay*, 358 F.3d 859, 860 (11th Cir. 2004).

After the District Court granted summary judgment the second time, we issued our decision in *Ismael v. Roundtree*, 161 F.4th 752, 755 (11th Cir. 2025). There, we clarified that a § 1983 or Title VII plaintiff's failure to demonstrate pretext does not automatically entitle the defendant to summary judgment. *See id.* at 761–63. It appears that the District Court erroneously believed that Johnson's failure to evince pretext doomed his discrimination and retaliation claims. Though the Court's analysis was incomplete, the County is entitled to summary judgment nonetheless. Since we review the

24-12676

Opinion of the Court

7

District Court's decision de novo, we now model the analysis as our circuit has come to understand it.

A. Discrimination

We begin with Johnson's discrimination claim. Because Johnson does not argue that there is direct evidence of discrimination, we proceed to analyze his claim under the *McDonnell Douglas* framework.⁵

The first step under that framework is to consider whether the plaintiff can establish a prima facie case for discrimination. *See Ismael*, 161 F.4th at 764. The term "prima facie case" can be misleading in this context because it is not a "substantive standard of liability." *See Tynes v. Fla. Dep't of Juv. Just.*, 88 F.4th 939, 944–45 (11th Cir. 2023). Rather, the plaintiff's establishment of the prima facie case under *McDonnell Douglas* entitles her to a "legally mandatory, rebuttable presumption" of illicit intent. *Id.* at 945 (internal quotation marks and citation omitted). But the failure to make the prima

⁵ "Direct evidence is evidence that, if believed, proves the existence of discriminatory intent without inference or presumption." *Jefferson v. Sewon Am., Inc.*, 891 F.3d 911, 921 (11th Cir. 2018) (internal quotation marks and brackets omitted). We have held that "[w]hen a plaintiff proves a case of discrimination by direct evidence, application of *McDonnell Douglas* is inappropriate, and the district court may not grant summary judgment . . . even where the movant presents conflicting evidence[.]" *Id.* at 922 (internal quotation marks and citations omitted).

facie case does not automatically entitle the defendant to summary judgment. *See Ismael*, 161 F.4th at 765.

A plaintiff establishes the prima facie case “by showing (1) that she belongs to a protected class, (2) that she was subjected to an adverse employment action, (3) that she was qualified to perform the job in question, and (4) that her employer treated ‘similarly situated’ employees outside her class more favorably.” *Lewis*, 918 F.3d at 1220–21.

If the plaintiff fails to make the prima facie case, then she “must produce enough evidence, on her own and without any helpful evidentiary burdens or presumptions, to demonstrate” that a reasonable jury could conclude that she was subjected to adverse employment action because of her race, color, religion, sex, or national origin. *Ismael*, 161 F.4th at 765. *Accord Smith v. Lockheed-Martin Corp.*, 644 F.3d 1321, 1328 (11th Cir. 2011) (“[T]he plaintiff’s failure to produce a comparator does not necessarily doom [her] case. . . . [T]he plaintiff will always survive summary judgment if [s]he presents circumstantial evidence that creates a triable issue concerning the employer’s discriminatory intent.”).

But if the plaintiff succeeds in making the prima facie case, then she is entitled to “a rebuttable presumption of illicit intent,” *Ismael*, 161 F.4th at 764, and the court proceeds to the second step of the *McDonnell Douglas* framework.

In the second step, the court considers whether the defendant has produced evidence of a legitimate, nondiscriminatory reason for the adverse action. *Id.* at 759. Because the plaintiff’s establishment of the prima facie case creates a rebuttable presumption

24-12676

Opinion of the Court

9

of illicit intent, the defendant's failure to rebut that presumption with a legitimate, nondiscriminatory reason for the adverse employment action would entitle the plaintiff to summary judgment on liability. *Id.* at 764. If, on the other hand, the defendant produces evidence of a legitimate, nondiscriminatory reason for the adverse action, the presumption of illicit intent is rebutted, and the court must proceed to the third step.

Next, the court must determine "whether 'the record, viewed in a light most favorable to the plaintiff, presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination [or retaliation] by the decisionmaker.'" *Id.* (quoting *Smith*, 644 F.3d at 1328). While evidence that the defendant's explanation is pretextual may be sufficient to survive summary judgment, it is not necessary. *Id.* ("A showing of pretext (or lack thereof) would certainly be relevant. But a plaintiff's inability to disprove the defendant's rationale cannot be the sole grounds for summary judgment.").

We begin our analysis of Johnson's discrimination claims by asking whether he established the prima facie case. Since Johnson's failure to establish any of the four elements dooms his prima facie case, we begin with the fourth element, which requires Johnson to show that MDPD treated "similarly situated" employees outside Johnson's class more favorably than him—we call this the comparator analysis. Proposed comparators are "similarly situated" within the meaning of this framework if they are "similarly situated in all material respects." *Lewis*, 918 F.3d at 1229. Although there is no bright-line rule for what constitutes a valid comparator, *Lewis* tells

us that a valid comparator is ordinarily someone who: (1) has engaged in the same basic conduct (or misconduct) as the plaintiff, (2) is subject to the same employment policy, guideline, or rule as the plaintiff, (3) is under the jurisdiction of the same supervisor as the plaintiff, and (4) shares the plaintiff's employment or disciplinary history. *Id.* at 1227–28. This is not a checklist that a valid comparator must satisfy, but rather, a helpful guideline for answering the ultimate question: Are the plaintiff and her comparators similar enough that they “cannot reasonably be distinguished”? *Id.* at 1228 (quoting *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 209, 135 S. Ct. 1338, 1343 (2015)).

Johnson proposed ten individuals as potential comparators.⁶ The District Court individually analyzed each comparator under the *Lewis* standard and found that “the record does not support a finding that any of Mr. Johnson’s proposed comparators were similarly situated in all material respects” because “the proposed com-

⁶ Johnson cites his own declaration in support of his motion for summary judgment as the factual basis for the alleged similarities with these individuals. The District Court noted, and we agree, that many of the statements in Johnson’s declaration would not clear the Rule 56(c)(4) requirement that a “declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.” Fed. R. Civ. P. 56(c)(4). However, we also agree with the District Court’s conclusion that even taking the declaration as true, Johnson cannot show that any of his comparators are similarly situated in all material respects.

24-12676

Opinion of the Court

11

parators did not engage in the same basic misconduct as Mr. Johnson and/or did not share the same disciplinary history as Mr. Johnson.” Doc. 126 at 10–11.

We agree. Johnson was terminated after being subject to five disciplinary actions in two and a half years, resulting in one Record of Counseling (“ROC”) and four Disciplinary Action Reports (“DARs”). The conduct that led to Johnson’s termination involved violating MDPD’s rules for maintaining an accurate home address, insubordination, disrespect, unprofessionalism, and conduct unbecoming a county employee.

Based on Johnson’s own declaration, five of his comparators have no ROCs or DARs. Of the other five, the comparator with the most disciplinary actions on his record has one ROC and two DARs. However, that comparator’s misconduct involved falsifying time records, deactivating his GPS device during shifts, and submitting late reports. There is nothing in Johnson’s declaration that indicates any of his ten comparators engaged in insubordination or disrespect for the chain of command. While some of the comparators appear to have engaged in unprofessionalism and conduct unbecoming a county employee, none shared Johnson’s extensive disciplinary history.

Johnson’s arguments to the contrary are unavailing. He emphasizes that he and his comparators are sufficiently similar because, for example, they were governed by the same rules and procedures and they shared the same director. But at the prima-facie step, the fact that there are some similarities between the plaintiff and the comparator is not enough. They must be similarly situated

“in all material respects.” *Lewis*, 918 F.3d at 1224. Here, the comparators are not so situated because they had materially different disciplinary records from Johnson’s.

We conclude that Johnson was unable to point to a comparator with whom he was similarly situated in all material respects. Therefore, Johnson cannot make a *prima facie* case for discrimination. The result of that failure is that Johnson does not enjoy the benefit of a presumption of intentional discrimination. *See Ismael*, 161 F.4th at 765. Instead, he must demonstrate a material issue of triable fact by constructing “a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker.” *Smith*, 644 F.3d at 1328.

As the mosaic analogy implies, circumstantial evidence of discrimination comes in many forms—each image of discrimination is composed of irregular tiles, unique in size, shape, and color. To provide some guidance to District Courts,

we have identified three nonexclusive categories of circumstantial evidence that can raise a reasonable inference of unlawful conduct: evidence of suspicious timing, ambiguous statements, or other information from which unlawful intent may be inferred; evidence of systematically better treatment of similarly situated employees; or evidence that the employer’s justification for its action is pretextual.

Berry v. Crestwood Healthcare LP, 84 F.4th 1300, 1311 (11th Cir. 2023).

Johnson states that his evidence supporting an inference of discrimination includes “internal affairs reports, deposition testimonies, and comparator evidence.” Appellant’s Br. at 14. But, upon

review of his brief, it is clear that Johnson's discrimination claim rests squarely on his argument that similarly situated employees systematically received better treatment than him.

Here, we highlight a subtle yet crucial point. The requirement that comparators be "similarly situated in all material respects," *Lewis*, 918 F.3d at 1218, only applies at step one of the *McDonnell Douglas* framework—when the plaintiff is attempting to establish a presumption of illicit intent. *See id.* at 1221–24 (holding that the qualitative assessment of comparator evidence must be conducted at the prima facie stage of the *McDonnell Douglas* framework). After the plaintiff has failed to establish the presumption, or the defendant has successfully rebutted the presumption, the sole question is whether the record, viewed in the light most favorable to the plaintiff, would allow a jury to infer discriminatory or retaliatory intent. To answer that question, a district court should consider the record as a whole, including all evidence of disparate treatment, even if there are material differences between the plaintiff and the comparators. At this stage in the analysis, the extent of the material differences only influences "how much weight the comparator evidence should be given." *See Tynes*, 88 F.4th at 947. The failure to meet the *Lewis* standard does not render comparator evidence irrelevant to the ultimate summary judgment inquiry. *See id.* ("[I]t is possible that [plaintiff's] comparators were insufficient to establish a prima facie case yet still relevant to the ultimate question of intentional discrimination.").

Thus, our conclusion that Johnson's comparators do not meet the *Lewis* standard at step one does not foreclose his argument

that his comparators contribute to a convincing mosaic of discrimination. However, Johnson's convincing mosaic argument fails because his comparators are the *only* evidence of discrimination he points to. In this case, Johnson's distinguishable comparators, standing alone, do not raise a reasonable inference of unlawful conduct. Thus, Johnson has not presented evidence that would allow a jury to infer intentional discrimination, and summary judgment for the County is appropriate.

B. Retaliation

Next, we turn to Johnson's retaliation claims. The burden-shifting framework for summary judgment on a retaliation claim is the same as for a discrimination claim, with the caveat that the prima facie case for retaliation is different than that for discrimination. To make a prima facie case for retaliation, a plaintiff must show "[(1)] that she engaged in a protected activity, like filing a complaint for discrimination; [(2)] that she suffered a material adverse action; and [(3)] that there was a causal connection between the protected activity and the adverse action." *Ismael*, 161 F.4th at 759.

For the sake of brevity, we assume Johnson has made a prima facie case for retaliation on at least one set of allegations. Based on that assumption, we presume retaliatory intent and consider whether the County rebutted that presumption. Given Johnson's disciplinary history, the County has provided a legitimate, nonretaliatory reason for his suspensions and termination.

24-12676

Opinion of the Court

15

So, because the County has rebutted the presumption of retaliatory intent, Johnson's only chance to prevail on his retaliation claim is to either cast doubt on the County's legitimate, nonretaliatory reason, or otherwise present a record of evidence from which a reasonable jury could infer a retaliatory motive. To that end, Johnson points to evidence falling into two general categories: suspicious timing and inconsistent explanations for adverse actions by the County.

First, Johnson argues that his "protected activities, including filing multiple EEOC complaints . . . directly triggered a series of adverse employment actions culminating in his termination." Appellant's Br. at 58. The record shows that the shortest gap between any EEOC complaints and disciplinary actions was about two months.

This evidence, standing alone, fails to support a reasonable inference of retaliatory intent because two months between an EEOC complaint and discipline is too long to call the County's explanations for the discipline into question. *See Hurlbert v. St. Mary's Health Care Sys., Inc.*, 439 F.3d 1286, 1298 (11th Cir. 2006) (reasoning that a less than two-week gap between the protected activity and adverse employment action was "probably insufficient to establish pretext by itself").

Johnson also asserts that "there is no factual basis" for the DARs issued by Captain White, and "a reasonable jury could infer that the reason White falsified the disciplinary report[s] against [him] was retaliation for the EEOC complaints." Appellant's Br. at 25. But Johnson points to no evidence from which a jury could infer

that the DARs were falsified. He argues that MDPD procedures require a complete investigation, which did not occur, and White's allegations were uncorroborated because MDPD failed to interview two Lieutenants. But even if those assertions are true, they do not suggest that the DARs were falsified. In this lawsuit, the burden is on Johnson to come forward with evidence—not speculation or conjecture—from which a jury could conclude that the County retaliated against him for engaging in protected activity. He has not identified any such evidence.

Next, Johnson points to “inconsistencies in the [County’s] explanations for the adverse actions taken against [him]” as evidence of MDPD’s retaliatory motives. Appellant’s Br. at 59. His argument goes as follows. The two DARs issued by White were the last two Johnson received before his termination. In deciding to terminate Johnson in 2016, Director Patterson considered the DARs issued by White and Johnson’s prior disciplinary record. But Patterson testified in a deposition that “as of . . . March 8, 2019,” he did not trust White, who was later terminated himself. Doc. 143-1 at 11. To Johnson, this shows that Patterson “knowingly relied on false testimony from Captain White.” Appellant’s Br. at 13. That, too, is unsupported conjecture. A reasonable jury could not infer from the fact that Patterson did not trust White in 2019 that he knew White falsified a report in 2016. And to reiterate, there is no evidence that White falsified anything.

Considered cumulatively and in a favorable light, Johnson’s shards of evidence do not come together to produce an image of retaliation. Thus, he has failed to raise a genuine issue as to the fact

24-12676

Opinion of the Court

17

of illicit intent, and summary judgment in favor of the County is appropriate.

C. Other Claims on Appeal

Finally, in this appeal Johnson argues that the District Court “erred in its evidentiary rulings, . . . and denied [his] due process rights by limiting discovery and denying reconsideration.” Appellant’s Br. at 17. Johnson had the opportunity to challenge the District Court’s evidentiary and discovery decisions in his first appeal. Thus, any challenges Johnson now raises regarding the District Court’s discovery and evidentiary orders have either already been decided or waived as a consequence of the law-of-the-case doctrine. *See United States v. Jordan*, 429 F.3d 1032, 1035 (11th Cir. 2005) (“The law of the case doctrine bars relitigation of issues that were decided, either explicitly or by necessary implication, in an earlier appeal of the same case.”); *United States v. Escobar-Urrego*, 110 F.3d 1556, 1560 (11th Cir. 1997) (“[A] legal decision made at one stage of the litigation, unchallenged in a subsequent appeal when the opportunity existed, becomes the law of the case for future stages of the same litigation, and the parties are deemed to have waived the right to challenge that decision at a later time.” (internal quotation marks omitted)). We will not review the District Court’s pre-remand decisions, which we have already reviewed, or which Johnson now challenges for the first time.

18

Opinion of the Court

24-12676

III. CONCLUSION

Given the foregoing analysis, we affirm the District Court's grant of summary judgment in favor of the County.⁷

AFFIRMED.

⁷ Johnson's Emergency Motion to Supplement the Record, Emergency Motion for Reinstatement and Resumption of Duty, Motion for Sanctions and Criminal Referral, Motion to Vacate Prior and Present Judgments, and Motion to Take Judicial Notice are denied.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-21658-CV-WILLIAMS

HARRIUS JOHNSON,

Plaintiff,

v.

MIAMI-DADE COUNTY,

Defendant.

_____ /

ORDER

THIS MATTER is before the Court on partial remand from the Eleventh Circuit Court of Appeals for reevaluation of Plaintiff Harrius Johnson's ("**Mr. Johnson**") comparator evidence. The Court has reviewed the Parties' supplemental briefing (DE 120; DE 121), the record, and the applicable law. For the reasons set forth below, the Court affirms its prior ruling and Defendant Miami-Dade County's Motion for Summary Judgment (DE 66) is **GRANTED**.

I. BACKGROUND

The Court adopts the factual background as set forth in its prior order granting Defendant Miami-Dade County (the "**County**") summary judgment. (DE 98 at 1–7.) The Court granted the County summary judgment, concluding that Mr. Johnson could not show that the County's nondiscriminatory, nonretaliatory reasons for terminating him were pretextual under the *McDonnell Douglas* framework. (*Id.* at 1.) Mr. Johnson appealed the Court's order to the Eleventh Circuit. (DE 100.) While Mr. Johnson's appeal

was pending, the Eleventh Circuit, in *Lewis v. City of Union City*, clarified the standard for evaluating comparators in discrimination actions. 918 F.3d 1213 (11th Cir. 2019). Following the *Lewis* decision, the Eleventh Circuit affirmed in part and vacated in part the Court's order. (DE 114.) Specifically, the Eleventh Circuit remanded this case for the Court to reevaluate the limited issue of whether Mr. Johnson's comparator evidence can establish pretext for any of the adverse employment actions taken against him under the *Lewis* standard. (*Id.* at 2–3.)

II. LEGAL STANDARD

Summary judgment is appropriate when “the pleadings . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986); *HCA Health Servs. of Ga., Inc. v. Employers Health Ins. Co.*, 240 F.3d 982, 991 (11th Cir. 2001). Once the moving party demonstrates the absence of a genuine issue of material fact, the non-moving party must “come forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). The Court must view the record and all factual inferences in the light most favorable to the non-moving party and decide whether “the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Allen v. Tyson Foods, Inc.*, 121 F.3d 642, 646 (11th Cir. 1997) (quoting *Anderson*, 477 U.S. at 251–52)).

In opposing a motion for summary judgment, the non-moving party may not rely

solely on the pleadings, but must show by affidavits, depositions, answers to interrogatories, and admissions that specific facts exist demonstrating a genuine issue for trial. See Fed. R. Civ. P. 56(c), (e); see also *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). A mere “scintilla” of evidence supporting the opposing party's position will not suffice; instead, there must be a sufficient showing that the jury could reasonably find for that party. *Anderson*, 477 U.S. at 252; see also *Walker v. Darby*, 911 F.2d 1573, 1577 (11th Cir. 1990).

At the summary judgment stage, “a plaintiff alleging intentional discrimination must present sufficient facts to permit a jury to rule in [his] favor. One way that [h]e can do so is by satisfying the burden-shifting framework set out in *McDonnell Douglas*.” *Lewis*, 918 F.3d at 1220. “[U]nder *McDonnell Douglas*, the plaintiff bears the initial burden of establishing a *prima facie* case of discrimination by showing (1) that [h]e belongs to a protected class, (2) that [h]e was subjected to an adverse employment action, (3) that [h]e was qualified to perform the job in question, and (4) that [his] employer treated ‘similarly situated’ employees outside [his] class more favorably.” *Id.* at 1220–21. Once the plaintiff establishes a *prima facie* case, the burden shifts to the defendant to offer a legitimate, non-discriminatory reason for its employment decision. *Richardson v. Leeds Police Dep’t*, 71 F.3d 801, 805 (11th Cir. 1995). Finally, if the defendant offers a legitimate, non-discriminatory reason for its employment decision, the burden shifts back to the plaintiff to establish that the reason offered by the defendant “was not the real basis for the decision, but a pretext for discrimination.” *Id.* at 806.

III. DISCUSSION

Following the Eleventh Circuit's remand the Court must only determine whether Mr. Johnson presented evidence of valid comparators under *Lewis*. For the reasons set forth below, the Court finds that even under the clarified standard set forth in *Lewis*, Mr. Johnson still cannot establish that the County's proffered reasons for taking various adverse actions against him were mere pretext for unlawful discrimination and retaliation.

a. *Lewis* Standard

At the time the Court decided summary judgment in this case, the applicable standard required Mr. Johnson to show that the quantity and quality of the proffered comparators' conduct was "nearly identical" to his. *Maniccia v. Brown*, 171 F.3d 1364, 1368 (11th Cir. 1999). However, following the Eleventh Circuit's ruling in *Lewis*, "a plaintiff asserting an intentional-discrimination claim under *McDonnell Douglas* must demonstrate that she and her proffered comparators were 'similarly situated in all material respects.'" *Lewis*, 918 F.3d at 1218. In other words, "a valid comparison will turn not on formal labels, but rather on substantive likenesses . . . a plaintiff and her comparators must be sufficiently similar, in an objective sense, that they 'cannot reasonably be distinguished.'" *Id.* at 1228 (quoting *Young v. United Parcel Service, Inc.*, 575 U.S. 206, 231 (2015)). Notably, in clarifying this standard, the Eleventh Circuit explicitly rejected the Seventh Circuit's "so-long-as-the-comparison-isn't useless test." *Id.* at 1218.

To implement the *Lewis* standard, the Eleventh Circuit provided guideposts for

trial courts to examine comparator evidence. Courts may look to whether the proposed comparator “engaged in the same basic conduct (or misconduct) as the plaintiff”; was “subject to the same employment policy, guideline, or rule as the plaintiff”; would “ordinarily (although not invariably) have been under the jurisdiction of the same supervisor as the plaintiff”; and “share[d] the plaintiff’s employment or disciplinary history.” *Id.* at 1227–28.

b. Mr. Johnson and His Proffered Comparators

At the time of his termination, Mr. Johnson held the rank of Police Sergeant and was supervised by Lieutenant Ricelli. In the two-and-a-half years leading up to his termination, the County brought five disciplinary actions against Mr. Johnson. Of the five incidents, the first resulted in a Record of Counseling (“**ROC**”) and the subsequent four resulted in a Disciplinary Action Report (“**DAR**”). Two culminated in five-day suspensions. The final DAR resulted in Mr. Johnson’s termination and included the following comments:

- This is the second time in less than two months that you have demonstrated insubordinate and unprofessional behavior.
- Throughout your career you have been informed and counseled that insubordinate behavior was against departmental policy and would not be tolerated.
- Your demeanor and behavior demonstrated a disdain for authority and unwillingness to comply with orders/instructions from superiors.

(DE 67-4.) Furthermore, Mr. Johnson failed to update his correct address in his personnel file, which the County viewed as an attempt to conceal his whereabouts from his employer. In total, Mr. Johnson had four disciplinary actions in two years stemming from insubordination and unprofessional behavior, resulting in two five-day suspensions.

Ultimately, Mr. Johnson was terminated for violating the County's rules regarding maintaining an accurate home address, insubordination, disrespect, unprofessionalism, conduct unbecoming, and receiving numerous disciplinary actions and counseling over the course of his employment. At this juncture, Mr. Johnson argues that because his proposed comparators violated County policies related to General Conduct, Conduct Unbecoming an Officer, and Personnel Misconduct, they are all similarly situated. As an initial matter, it is not clear from the record that all of Mr. Johnson's proposed comparators were disciplined based on the same rules. However, even assuming everyone's policy violations fell within the three categories Mr. Johnson puts forth, the categories are broad and encompass a wide range of behaviors. Other courts have held that where a comparators "conduct, while processed under the same rules, is meaningfully different[.]" a valid comparison cannot be made. *Edom v. Chronister*, No. 8:20-CV-1624-KKM-AEP, 2022 WL 1291004, at *7 (M.D. Fla. Apr. 29, 2022).

As the Court noted previously, Mr. Johnson primarily relies on his own Declaration (DE 69-1) to support his claims. (DE 98 at 2 n.1.) Although the Declaration states that it is "based upon the best of my knowledge, both direct and indirect," under Federal Rule of Civil Procedure 56(c)(4), a "declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." There is nothing in the Declaration that indicates that Mr. Johnson's testimony regarding many of his allegations would be anything other than hearsay, speculation, or opinion. In its previous order, the Court did not consider any statements in the Declaration unless (1)

it was clear from the Declaration that Mr. Johnson had personal knowledge of the specific facts or (2) the allegations were supported by other parts of the record. Nonetheless, in his briefing following remand, Mr. Johnson continues to rely on allegations about his proffered comparators that are only supported by his own Declaration. At this juncture, the Court finds that even taking the statements in the Declaration as true, Mr. Johnson cannot demonstrate that his proposed comparators are similarly situated in all material respects. The Court reviews each proposed comparator in turn.

- **Officer Meadors:** Officer Meadors was given a written reprimand for failing to properly report a vehicle crash. (DE 69-5.) Office Meadors was given two ROCs, one each after being involved in two separate vehicle crashes. Office Meadors received a five-day suspension from Chief Hernan Organvidez for using racial slurs. None of these incidents involved insubordination or failure to respect the chain-of-command.
- **Officer Espinosa:** Officer Espinosa was given a five-day suspension for lying about the source of his exposure to tuberculosis and making meritless claims about Mr. Johnson failing to perform his duties. (DE 69-17.) Mr. Johnson does not point to any evidence that Officer Espinosa had received previous DARs or had a previous history of insubordination or failure to respect the chain-of-command.
- **Officer Laverde:** Officer Laverde received a twenty-day suspension. (DE 69-31.) In his declaration, Mr. Johnson maintains that the suspension was for a DUI during which Officer Laverde struck someone and then left the scene. (DE 69-1 at ¶ 71.)

Mr. Johnson does not allege that this infraction was any way related to insubordination or failure to respect the chain-of-command, nor does he allege that Officer Laverde had any prior disciplinary history.

- **Officer Lopez:** Mr. Johnson testified that Officer Lopez used a racial slur to refer to African Americans but only received a ROC. (DE 69 ¶ 66.) Mr. Johnson does not allege that Officer Lopez had a previous disciplinary record nor that this disciplinary issue was categorized as insubordination or failure to respect the chain-of-command.
- **Officer McDonough:** Mr. Johnson testified that Officer McDonough was investigated for attacking and beating a civilian and ultimately received a twenty-day suspension. (DE 69 ¶ 69.) Mr. Johnson does not allege that Officer McDonough had a previous disciplinary record nor that this disciplinary issue was categorized as insubordination or failure to respect the chain-of-command.
- **Lieutenant Simonton:** Lieutenant Simonton was investigated for inappropriately touching a minor. (DE 69-32.) A DAR was issued recommending dismissal but, upon review, the findings were not sustained. The record indicates that Lieutenant Simonton was charged with Conduct Unbecoming an Officer, one of the charges levied against Mr. Johnson, but the allegation was ultimately not sustained and there is no evidence that Lieutenant Simonton had any prior disciplinary history. Mr. Johnson does not point to any evidence that Lieutenant Simonton had a prior history of disciplinary issues stemming from insubordination or failure to respect the chain-of-command.

- **Lieutenant Ricelli:** An Internal Affairs document sustained charges that in 2013 Lieutenant Ricelli falsified a Crash Review Panel Memorandum. (DE 69-10.) Despite the Internal Affairs document, Lieutenant Ricelli testified that ultimately the charges were not sustained. (DE 67-7 at 71:3-9.) Even assuming that the charges were sustained, Mr. Johnson has not pointed to any evidence that Lieutenant Ricelli had a previous disciplinary history or had any disciplinary issues related to insubordination or failure to respect the chain-of-command.
- **Sergeant Veloso:** Mr. Johnson testified that Sergeant Veloso failed to update his address and personnel information and received only a ROC despite a history of prior discipline. (DE 69 ¶ 72.) Although failure to maintain an accurate address in his personnel file was one of the bases for Mr. Johnson's termination put forth by the County, the record is clear that it was not the sole reason. Additionally, while Mr. Johnson vaguely references Sergeant Veloso's history of prior discipline, there is nothing in the record to indicate the number of prior disciplinary actions nor that any of the disciplinary actions were related to insubordination or failure to respect the chain-of-command.
- **Sergeant Arugu:** Mr. Johnson testified that Sergeant Arugu was investigated for claiming multiple homes for exemption purposes and was ultimately found guilty of fraud. (DE 69 ¶ 74.) Mr. Johnson further testified that Sergeant Arugu was never disciplined for this conduct but was made to pay a civil fine. Mr. Johnson does not allege that Sergeant Arugu had a previous disciplinary record. The Court further finds that misconduct based on fraud cannot provide a meaningful comparison for

misconduct based on insubordination and failure to respect the chain-of-command.

- **Sergeant Atherley:** In 2015, Sergeant Atherley was issued a DAR for falsifying time records. (DE 69-33.) As a result, dismissal was recommended. However, the County and Sergeant Atherley entered into a Memorandum of Understanding which resulted in his demotion. Previously, in 2011, Sergeant Atherley received a DAR and a ten-day suspension for deactivating his location/GPS device multiple times during his shifts. In 2010, Sergeant Atherley received an ROC for the late submission of eight Daily Activity Reports. Though Sergeant Atherley's disciplinary record is lengthy, nothing in the record indicates that any of his misconduct was tied to insubordination or a failure to respect the chain-of-command.

In sum, the record does not support a finding that any of Mr. Johnson's proposed comparators were similarly situated in all material respects. Most of the comparators had different job roles, different police chiefs, different supervisors, and engaged in different misconduct than Mr. Johnson. Following *Lewis*, in *Anthony v. Georgia*, the Eleventh Circuit has held that two individuals were not similarly situated although both were investigated for the same misconduct because—among other discrepancies—they held different ranks, did not have similar disciplinary backgrounds, and their investigations were conducted by different supervisors. 69 F.4th 796, 805–06 (11th Cir. 2023). Even setting aside the issues of varying ranks and supervisors between Mr. Johnson and many of his comparators, the Court finds that the proposed comparators did not engage in the same basic misconduct as Mr. Johnson and/or did not share the same disciplinary

history as Mr. Johnson. Where the underlying misconduct and disciplinary histories vary as substantially as they do here, “no inference of discriminatory motive can be drawn from [the County’s] different treatment of different situations.” *Steele v. Birmingham Jefferson Civic Ctr. Auth.*, No. 21-11222, 2022 WL 766983, at *4 (11th Cir. Mar. 14, 2022).

To be certain, the alleged misconduct by the proffered comparators is serious and troubling. However, the inquiry before the Court is “whether the other employees’ alleged misconduct was sufficiently similar to [Mr. Johnson’s] so that the different disciplinary actions they received would give rise to an inference of discrimination.” *Blash v. City of Hawkinsville*, 856 F. App’x 259, 265 (11th Cir. 2021). Mr. Johnson’s own arguments in the briefing undercut his position, where he concedes that his comparators are “white officers of various rank [who] committed similar to much more egregiously violations but were not terminated.” (DE 120 at 3.) The Eleventh Circuit has made clear that where a plaintiff argues that his comparators’ “conduct was worse than his[, it] merely highlights the fact that their conduct was different.” *Blash*, 856 F. App’x at 265.

IV. CONCLUSION

For the reasons stated above, the Court finds that even under the clarified *Lewis* standard, Mr. Johnson has failed to put forth sufficient comparator evidence to create a genuine issue of material fact to survive summary judgment. Accordingly, it is **ORDERED AND ADJUDGED** that:

1. Defendant Miami-Dade County’s Motion for Final Summary Judgment (DE 66) is **GRANTED**.

2. This case remains **CLOSED**.

DONE AND ORDERED in Chambers in Miami, Florida, on this 5th day
of August, 2024.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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May 19, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 24-12676-CC
Case Style: Harrius Johnson v. Miami-Dade County
District Court Docket No: 1:16-cv-21658-KMW

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Clerk's Office Phone Numbers

General Information:	404-335-6100	Attorney Admissions:	404-335-6122
Case Administration:	404-335-6135	Capital Cases:	404-335-6200
CM/ECF Help Desk:	404-335-6125	Cases Set for Oral Argument:	404-335-6141

REHG-1 Ltr Order Petition Rehearing

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-12676

HARRIUS JOHNSON,

Plaintiff-Appellant,

versus

MIAMI-DADE COUNTY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:16-cv-21658-KMW

ON PETITION FOR REHEARING AND PETITION FOR
REHEARING EN BANC

Before JORDAN, KIDD, and TJOFLAT, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in
regular active service on the Court having requested that the Court

2

Order of the Court

24-12676

be polled on rehearing en banc. FRAP 40. The Petition for Panel Rehearing also is DENIED. FRAP 40.

33a

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