

Summary Judgment Review

Case Name: *Guatemion (Juan) Mosley v. Preston Cycles West, LLC d/b/a Thunder Tower West Harley-Davidson*

Nature of the Order: Final Report and Recommendation

Magistrate Judge: Justin S. Anand

District Judge: Steve C. Jones

Claims & Outcomes:

1. **Claim:** Sexually hostile work environment in violation of Title VII
 - a. **Outcome:** Defendant's MSJ recommended
2. **Claim:** Racial discrimination in violation of Title VII
 - a. **Outcome:** Defendant's MSJ denied
3. **Claim:** Retaliation in violation of Title VII
 - a. **Outcome:** Defendant's MSJ recommended
4. **Claim:** Racial discrimination in violation of § 1981
 - a. **Outcome:** Defendant's MSJ denied
5. **Claim:** Retaliation in violation of § 1981
 - a. **Outcome:** Defendant's MSJ recommended

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: N/A

Long Summary:

Plaintiff worked for a Harley-Davidson dealership, owned by Gene Preston, as a sales associate. Preston offered Plaintiff the job after an interview panel unanimously favored doing so. Six months later, Plaintiff got a new supervisor, the newly hired General Sales Manager Robert Hammers. Preston and Hammers claimed Plaintiff didn't show up on time, follow directions, and failed to contact customers. Plaintiff's previous supervisor testified that Plaintiff wasn't the type to ignore directions or not follow through with customers. Plaintiff had an issue with a female employee who made sexual comments to him, but once he spoke to Preston and Hammers, it finished. Afterwards, Plaintiff got a new supervisor, Jeff Lewis. Lewis made racist comments towards Plaintiff and about the predominantly African American customer base. Ultimately, Plaintiff was terminated because Hammers didn't see an improvement in Plaintiff's performance following an evaluation in which Hammers stated Plaintiff needed to improve in six out of fourteen categories (and according to Plaintiff, Hammers threatened and harassed him).

The Court determined that Plaintiff failed to establish that Defendant should be liable for the female employee's text messages. Thus, Defendant could only be liable for the employee's conduct only if Plaintiff could show that Defendant was negligent in responding to it. However, the Court also determined that Defendant received notice later in the process than Plaintiff alleged and could not act sooner.

Plaintiff's retaliation claims come from being suspended, after failing to let Defendant know of his car trouble (which led to him being almost two hours after he was required to show up to work). The Court held that he was unable to overcome Defendant's legitimate, non-discriminatory reason for suspending him, because Plaintiff conceded that he did indeed wait almost two hours to let Defendant know that he was going to be late and did not offer evidence showing that Defendant's reason was pretext.

Plaintiff's racial discrimination claim, however, survived Defendant's motion because he was able to offer a convincing mosaic of circumstantial evidence from which a factfinder can infer discriminatory motivation. While Plaintiff failed to include the phrase "convincing mosaic" the Court determined that he made at least a general argument that sounded in the totality-of-circumstances. He cited Lewis's statements that clearly showed racial animus, including a comment that he was firing Plaintiff because of the way he dressed within a short amount of time of Plaintiff being terminated. And Plaintiff pointed out shifting and inconsistent explanations for the termination as another factor to be considered. The Court said it wasn't a strong case, and "the question for the Court is not whether Plaintiff will necessarily or even likely win at trial. The question is whether he *could* win, if the jury sees the evidence in the light most favorable to him."