

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11227

D.C. Docket No. 5:17-cv-00024-RH-GRJ

JOEY RABON,

Plaintiff - Appellant,

versus

LOUIS S. ROBERTS, III,
IN HIS OFFICIAL CAPACITY AS SHERIFF OF JCSO
JACKSON COUNTY FLORIDA,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Florida

(May 9, 2019)

Before ROSENBAUM, BRANCH, and DUBINA, Circuit Judges.

PER CURIAM:

Joey Rabon, a former captain and now a deputy in the Jackson County Sheriff's Office, sued Sheriff Louis S. Roberts, III, alleging retaliation for various statements he says are protected by the First Amendment and under Florida's Whistle-blower's Act, Fla. Stat. § 112.3187. He appeals the district court's order granting partial summary judgment and its order granting judgment as a matter of law on his remaining claims. After intensive review of the record, and with the benefit of oral argument, we affirm the district court's rulings.

We begin with Rabon's First Amendment claims. Rabon conceded at oral argument that his First Amendment political association claim is foreclosed by *Terry v. Cook*, 866 F.2d 373 (11th Cir. 1989), and its progeny, so we move to Rabon's First Amendment retaliation claim. To proceed past summary judgment on his First Amendment retaliation claims, Rabon must show, among other things, that the speech at issue was not made pursuant to his job duties, that the speech implicated a matter of public concern, and that there was enough evidence for a reasonable jury to find that the speech was a "substantial motivating factor" for any adverse employment action. *See Moss v. City of Pembroke Pines*, 782 F.3d 613, 617-18 (11th Cir. 2015). After examining the record in the light most favorable to Rabon and making all reasonable inferences in his favor, we find that none of the speech that he identified can meet all those elements.

As for Rabon's claims under the Florida Whistle-blower's Act, those claims are unavailing because Rabon cannot show that Sheriff Roberts's stated reasons for his actions were pretextual. Florida applies the burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), in assessing claims brought under its Whistle-blower's Act. *Rustowicz v. N. Broward Hosp. Dist.*, 174 So. 3d 414, 419 (Fla. Dist. Ct. App. 2015). This means that if the employer presents a legitimate reason for its employment action, the burden falls on the plaintiff to show that the given reason was pretext. *Id.* at 419-20.

Sheriff Roberts provided legitimate reasons for why he transferred Rabon to the cold-case department and why he later eliminated Rabon's position in the cold-case department. Rabon did not respond with evidence that would allow a reasonable juror to find that the proffered reasons were pretext, even when we view the record in the light most favorable to Rabon.

For these reasons, we **AFFIRM** the district court's grant of summary judgment and judgment as a matter of law.