

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 16-41605
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 5, 2017

Lyle W. Cayce
Clerk

GEORGE W. DAVIS, IV,

Plaintiff - Appellant

v.

MOTIVA ENTERPRISES, L.L.C.; MOTIVA COMPANY,

Defendants - Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:14-CV-480

Before JONES, WIENER, and CLEMENT, Circuit Judges.

PER CURIAM:*

George W. Davis, IV brought suit pursuant to Title VII of the Civil Rights Act of 1964 against Motiva Enterprises, LLC and Motiva Company (collectively, “Motiva”), alleging that Motiva terminated his employment on the basis of his race. Motiva moved for summary judgment, arguing that Davis failed to establish a *prima facie* case of racial discrimination and that it

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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terminated Davis for using his cell phone in a restricted area without a valid permit.

The district court granted summary judgment to Motiva, analyzing Davis's claim under the familiar framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The district court held that Davis failed to establish a *prima facie* case because he was “unable to identify a similarly situated, non-black employee who was not discharged in nearly identical circumstances.” The district court alternatively held that Motiva provided a legitimate non-discriminatory reason for Davis's termination—his use of a cell phone in a restricted area—and that Davis failed to establish that this reason was pretext for racial discrimination.

We AFFIRM for the reasons essentially given by the district court.