NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued May 18, 2023
Decided April 26, 2024

Before

DIANE P. WOOD, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 21-3376

MICHAEL SHREFFLER,
Plaintiff-Appellant,

v.

CITY OF KANKAKEE, ILLINOIS and PRICE DUMAS,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of Illinois.

No. 2:19-cv-02170

Colin S. Bruce,
Judge.

O R D E R

Michael Shreffler, a white patrol officer with the Kankakee Police Department (KPD), was terminated after another officer accused him of threatening to kill the Chief of Police, Price Dumas, and referring to Dumas with the “n-word.” After his termination, Shreffler sued Dumas and the City of Kankakee, alleging racial discrimination, retaliation, and due process violations. The district court granted summary judgment in favor of the defendants on all claims, precipitating this appeal. We affirm.

I. Factual Background

A. Pre-2018 Discipline

Shreffler began working for the KPD in 2009. From 2013 until 2016, the then-Chief of Police Larry Regnier issued Shreffler several written reprimands and one-day suspensions for various rule violations. One of these instances occurred in early February 2016, when Shreffler received a written reprimand for making Facebook comments that, among other things, called another poster a "bitch," a "liberal nutcase," and a "dumb motherfucker." Shreffler believed that Willie Hunt, a Black lieutenant within the KPD, had reported his posts to Chief Regnier. In response, Shreffler reported several of Hunt's own Facebook posts, believing that the posts exhibited racism against white people. Shortly afterwards, Chief Regnier issued Hunt a written reprimand as well.

In April 2017, Chastity Wells-Armstrong was elected as mayor of Kankakee, the first Black mayor in the City's history. Within a few months, Mayor Wells-Armstrong appointed several Black individuals to leadership positions in the KPD: Dumas was appointed to be the new interim Chief of Police, and Hunt was promoted to Deputy Chief.

After these personnel changes, Shreffler continued to run into disciplinary problems. In September 2017, a handgun was discovered underneath the passenger seat of Shreffler's squad car. A few months later, Dumas issued Shreffler a written reprimand for failing to properly search an arrestee and allowing the arrestee to hide the handgun in his squad car. Shreffler disagreed with this written reprimand and, pursuant to the collective bargaining agreement that governed his employment, filed a grievance.

The collective bargaining agreement included a three-step grievance process. And, if the grievance could not be resolved internally, the parties could submit the dispute to binding arbitration. Here, Shreffler's grievance proceeded through the internal dispute process, and Mayor Wells-Armstrong ultimately denied the grievance. Around the same time, Hunt reassigned an individual Shreffler was training to another shift, which caused Shreffler to lose out on extra pay.

B. Facebook Posts

As Shreffler's frustration with the new administration and police leadership mounted, he took to Facebook to voice his displeasure. In February 2018, Shreffler made several comments about how Mayor Wells-Armstrong and the City handled the auction of a certain building, which was eventually gifted to an alleged relative of the Mayor. This incident sparked significant interest among KPD officers, and a lieutenant named Donnell Austin even reported his concerns to the FBI. Shreffler, however, chose a different route, posting the following comments on Facebook: "Corruption from this Mayor…..weird!!!" and "with this Administration anything is possible!!! Shit show …" Shreffler also commented on the promotion of a Black officer to sergeant. Shreffler, who believed that two white officers were improperly passed over for the promotion, wrote: "Regardless of who was promoted or who was more qualified, the point remains the same. This was racially motivated and a complete hypocrisy."

On February 23, 2018, KPD provided notice to Shreffler that it was investigating his Facebook posts. The notice stated that Shreffler had violated several KPD rules, including making "disparaging" and "false, misleading, or malicious" statements that could harm the department's order, efficiency, morale, or reputation. At the end of the inquiry, Dumas issued Shreffler a five-day suspension. Shreffler filed another grievance, which proceeded to the final step of the internal dispute resolution process on May 2, 2018. After Shreffler's union attorney advised that they would not accept any resolution that included a suspension, the union filed for arbitration.

C. Termination

At the same time Shreffler was challenging his suspension, he was also facing another disciplinary matter. On March 29, 2018, Shreffler had participated in an active shooter training at a local school. Later that day, an officer named Erik Villagomez contacted Hunt about something he had heard Shreffler say during the training. According to Villagomez, Shreffler had gotten angry after finding out that Dumas had approached Shreffler's wife at her workplace. Shreffler then said, "I ought to kill that [n-word]." After hearing this, Hunt walked Villagomez over to Dumas's office, where Villagomez repeated his story.

Dumas promptly initiated an investigation into Villagomez's accusations against Shreffler. This investigation was headed by City Inspector Ron Bartlett, who proceeded to interview and review written statements from other officers who were at the active shooter training. Austin was also involved in the investigation, though his role was

limited to attending the officer interviews so that he could order the interviewees to answer Bartlett's questions, if they refused.

As part of his investigation, Bartlett also interviewed Shreffler, who was accompanied by a union attorney and a union representative. At the beginning of the interview, Bartlett read aloud the "notice of allegations," which advised Shreffler that an investigation was being conducted into his remarks at the active shooter training, where he allegedly "used racial epithets to describe the chief and threatened violence against him." Bartlett asked Shreffler to recount in his own words what had happened on March 29. He also advised Shreffler that other officers had confirmed that Shreffler had used the "n-word."

Once he finished the interviews, Bartlett prepared an "investigation summary," which he presented to Dumas. In it, Bartlett concluded that "a disparaging statement that included … [the n-word] was made and directed against the Chief of Police," but the "exact context of the statement cannot be confirmed." On May 23, 2018, Dumas served Shreffler with notice that KPD would be conducting a formal inquiry. This notice stated that Shreffler "used racial epithets" and "threatened violence" against Dumas at the March 29 training and that these actions violated several KPD policies.

The inquiry occurred on May 29, 2018, and was attended by Shreffler, his union attorney, Dumas, Hunt, and the union president. There, Dumas handed Shreffler two documents—a last chance discipline agreement and a notice of termination—and reviewed them with Shreffler. Dumas told Shreffler that, if he agreed to the last chance agreement, he could continue his employment with the KPD with certain stipulations. On the other hand, if Shreffler refused the agreement, Dumas would recommend his termination to the Board of Fire and Police Commissioners.[1] The notice of termination, meanwhile, explained the basis for the inquiry. It stated that Shreffler's actions on March 29—using "racially-charged language" and "threatening to kill" Dumas—were "considered gross misconduct" given "Shreffler's [other] progressive disciplinary actions" in the past two years. Although Shreffler was not specifically told that he could dispute the statements in the notice of termination, Dumas handed him the document during the inquiry and waited for him to respond. Shreffler testified that he could have disputed the document then, "but [he had] already said that at the other meetings."

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1 To terminate a patrol officer, the Chief of Police must seek approval from the Board of Fire and Police Commissioners. If the Board approves the recommendation, the officer will be terminated. *See* 65 Ill. Comp. Stat. 5/10-2.1-17.

After the inquiry, Shreffler understood that he had about a week to accept the last chance agreement or risk termination. He decided to reject the agreement.

True to his word, Dumas went to a Board meeting on June 12, 2018, to recommend Shreffler's termination. At the meeting, Dumas submitted the notice of termination along with some other documents and discussed the investigation with the Board. In the end, the Board voted 3-0 to terminate Shreffler's employment. Shreffler did not attend this meeting. According to Shreffler, he was never told that he could attend this meeting and was not given the date or time of the meeting. Shortly after Shreffler's termination, the union filed a grievance and later referred the matter to arbitration.

II. Procedural History

While his arbitration was pending, Shreffler filed this lawsuit against Dumas and the City. The complaint alleged that his termination constituted racial discrimination and retaliation for protected conduct in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* The complaint also brought claims under 42 U.S.C. § 1983, alleging retaliation under the First Amendment, as well as violations of the Due Process Clause of the Fourteenth Amendment.[2]

The district court granted summary judgment in favor of the defendants on all claims. As for the discrimination and retaliation claims, the district court concluded that Shreffler had not presented evidence that his termination was caused by anything other than the belief that he had used threatening language and a racial slur against Dumas at the active shooter training. The district court also rejected Shreffler's due process claim, concluding that the grievance and arbitration procedures provided by his collective bargaining agreement provided adequate process. *See Shreffler v. City of Kankakee*, No. 19-CV-2170, 2021 WL 6200764 (C.D. Ill. Sept. 28, 2021). Shreffler then moved for reconsideration, which the district court denied. *Shreffler v. City of Kankakee*, No. 19-CV-2170, 2021 WL 6200763 (C.D. Ill. Nov. 29, 2021).

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2 Additionally, Shreffler's complaint brought several Illinois state law claims relating to his termination. At summary judgment, the district court concluded that Shreffler had waived these claims. Because Shreffler does not challenge this conclusion or otherwise discuss his state law claims on appeal, we need not discuss them. *Sauk Prairie Conserv. All. v. U.S. Dep't of Interior*, 944 F.3d 664, 674 (7th Cir. 2019) ("A party waives any argument that it does not raise before the district court or, if raised in the district court, it fails to develop on appeal.") (citation omitted).

When the district court made its rulings, Shreffler's grievance and arbitration concerning his termination remained unresolved, for reasons that are unclear from the record. After we requested further information about this arbitration at oral argument, the parties provided a joint statement, stating that the arbitrator had denied the grievance on July 18, 2023, finding just cause for his termination. Neither party has argued that this arbitration decision or Shreffler's other grievance impacts our decision in this case. We therefore continue to the merits of Shreffler's appeal.

III. Analysis

We review the district court's grant of summary judgment *de novo*, viewing the facts in the light most favorable to Shreffler and making all reasonable inferences in his favor. *Bless v. Cook Cnty. Sheriff's Off.*, 9 F.4th 565, 571 (7th Cir. 2021). "Summary judgment is appropriate when the admissible evidence shows that there is no genuine dispute as to any material fact such that the moving party is entitled to judgment as a matter of law." *Id.* (quoting *Monroe v. Ind. Dep't of Transp.*, 871 F.3d 495, 503 (7th Cir. 2017)).

A. Due Process

We start with Shreffler's claim that the defendants violated his procedural due process rights when terminating him. "In analyzing a procedural due process claim, we follow a two-step process. First, we determine if the plaintiff has been deprived of a liberty or property interest. Second, we determine if the plaintiff was provided constitutionally sufficient process." *Knutson v. Vill. of Lakemoor*, 932 F.3d 572, 576 (7th Cir. 2019). Because the parties agree that Shreffler's employment is constitutionally protected, the only question is how much process Shreffler was due.

An employee with a constitutionally protected property interest in his employment has a right to a pre-termination hearing. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985). But the scope of this right is "dependent upon the adequacy of post-termination remedies." *Michalowicz v. Vill. of Bedford Park*, 528 F.3d 530, 536 (7th Cir. 2008). "[W]hen adequate post-termination proceedings exist, a pre-termination hearing need only provide 'an initial check against mistaken decisions—essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.'" *Id.* (quoting *Loudermill*, 470 U.S. at 545–46). This "truncated" pre-termination hearing "does not require an employer to provide full trial-type rights such as the right to present or cross-examine witnesses." *Baird v. Bd. of Educ. for Warren Cmty. Unit Sch. Dist. No. 205*,

389 F.3d 685, 690–91 (7th Cir. 2004) (internal quotation marks omitted). Rather, the minimum requirements are: "(1) oral or written notice of the charges; (2) an explanation of the employer's evidence; and (3) an opportunity for the employee to tell his or her side of the story." *Head v. Chi. Sch. Reform Bd. of Trs.*, 225 F.3d 794, 804 (7th Cir. 2000) (citing *Loudermill*, 470 U.S. at 546); *see also Carmody v. Bd. of Trs. of Univ. of Ill.*, 747 F.3d 470, 474–75 (7th Cir. 2014).

Because the scope of pre-termination process depends on Shreffler's post-termination process, we start with the latter. The collective bargaining agreement that governed Shreffler's employment included grievance and arbitration procedures for contesting disciplinary decisions. As we have explained, these types of procedures "can (and typically do) satisfy the requirements of post-deprivation due process." *Calderone v. City of Chi.*, 979 F.3d 1156, 1166 (7th Cir. 2020) (quoting *Chaney v. Suburban Bus Div. of Reg'l Transp. Auth.*, 52 F.3d 623, 630 (7th Cir. 1995)).

In his opening brief, Shreffler argues that the grievance and arbitration procedures were inadequate because they were no longer pending or, alternatively, that these procedures did not apply to him at all. Since then, however, his dispute has proceeded to arbitration, with the arbitrator denying his grievance. Thus, it is quite clear that the grievance and arbitration procedures in the collective bargaining agreement applied to Shreffler. To the extent Shreffler claims that the delay in these proceedings means they are inadequate, he has offered no evidence that this delay was attributable to the City, as opposed to his own preference to litigate his termination in federal court. *Cf. Carmody*, 747 F.3d at 479 ("[Plaintiff]'s decision to bow out of the post-termination hearing—a decision he made freely—forecloses his due process claim to the extent it is premised on that hearing."). Shreffler also suggests that we ignore his post-termination proceedings because defendants did not raise this as an affirmative defense. But the adequacy of post-deprivation process relates to the merits of Shreffler's due process claim and is not an affirmative defense. Because Shreffler raises no other challenge to his post-termination process, we conclude that it was adequate.

That leaves Shreffler's pre-termination proceedings. Shreffler claims that the KPD "violated its procedures" when terminating him and that he was entitled to a "full due process hearing," as well as "written notice" of this hearing and the charges against him. The basis for Shreffler's argument is not entirely clear, but he seems to reference an Illinois law that prohibits discharging a police officer without "cause." 65 Ill. Comp. Stat. 5/10-2.1-17. Under this statute, the officer must be provided "written charges," the "opportunity to be heard in his own defense," and a "fair and impartial hearing of the

charges" before the Board of Fire and Police Commissioners. *Id.* There is some evidence the police department did not comply with this requirement—Shreffler testified that, because no one informed him of the June 12, 2018, hearing before the Board, he could not attend.

Even so, a state law violation does not necessarily establish a federal due process claim.[3] *See Bradley v. Vill. of Univ. Park*, 929 F.3d 875, 883 (7th Cir. 2019) ("[s]tate and local governments are free to provide more robust protections and detailed procedures for firing and disciplining public employees", but these "should not be confused with the minimal federal constitutional requirements of predeprivation notice and an opportunity to be heard"). It is well-established that federal due process does not entitle Shreffler to a full trial-like hearing before the Board. *See id.* at 882 ("Being fired from a job does not require a predeprivation hearing that approximates a full trial."); *Baird*, 389 F.3d at 690–91 ("[W]hen there is an opportunity for a full post-termination hearing, due process does not require an employer to provide full trial-type rights[.]") (internal quotation marks omitted). Rather, as noted above, Shreffler was entitled only to truncated pre-termination proceedings: notice, an explanation of the evidence, and an opportunity to tell his side of the story. *Loudermill*, 470 U.S. at 546; *Head*, 225 F.3d at 804.

Shreffler has not established that the May 29, 2018, formal inquiry failed to meet these minimal due process requirements. Almost a week before this date, Shreffler received written notice of the inquiry, which specified the charges against him. When Shreffler attended the formal inquiry, he was accompanied by a union attorney and the union president. There, Shreffler was also provided a written notice of termination describing the basis for his potential termination recommendation. And Dumas informed Shreffler that the department would undertake termination proceedings if Shreffler did not accept the last chance agreement. While Dumas did not specifically ask Shreffler whether he disputed the contents of the notice of termination, Shreffler was provided an opportunity to respond to the notice; he simply declined to do so. Given this record, no reasonable jury could find that the defendants violated Shreffler's due process rights prior to his termination.

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3 Because we conclude that Shreffler was provided sufficient pre-termination process, we need not address defendants' alternative argument based on *Parratt v. Taylor*, 451 U.S. 527, 540–41 (1981), and *Hudson v. Palmer*, 468 U.S. 517, 532–33 (1984), which hold that, where a state official's deprivation of the plaintiff's protected interest is "random and unauthorized," due process is satisfied by post-deprivation state remedies.

B. Discrimination

Shreffler also claims that the defendants terminated him because he is white, not because of his actions on March 29. This alleges a "reverse discrimination" claim under Title VII, 42 U.S.C. § 2000e-2(a)(1). *See Runkel v. City of Springfield*, 51 F.4th 736, 742 (7th Cir. 2022). To succeed, Shreffler must present evidence that his race was a "motivating factor" in the termination decision.[4] *Id.* at 743 (quoting *Lewis v. Ind. Wesleyan Univ.*, 36 F.4th 755, 759 (7th Cir. 2022)).

There are two ways for Shreffler to meet his burden. First, he may rely on "all available evidence" to show that "a reasonable jury could find that the relevant decision was motivated in part by an unlawful criterion." *Id.* at 742 (citing *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 765 (7th Cir. 2016)). This evidence may include similarly situated non-white employees outside the protected group who were treated differently, ambiguous statements or behavior toward other white officers, or evidence that the department's proffered reason for terminating him was pretextual. *Downing v. Abbott Lab'ys*, 48 F.4th 793, 804 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 1012 (2023).

Alternatively, Shreffler may rely on the well-established framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), although it is modified slightly in reverse discrimination cases. *See Mlynczak v. Bodman*, 442 F.3d 1050, 1057 (7th Cir. 2006). In any event, Shreffler must establish that he was treated less favorably than similarly situated non-white employees. *Bless*, 9 F.4th at 574.

Shreffler fails under either approach. On appeal, he tries to avail himself of the *McDonnell-Douglas* method, identifying a Black officer, Lieutenant Austin, as a similarly situated comparator. The problem is that Shreffler did not make this argument when opposing summary judgment before the district court. Because Shreffler "did not preserve the argument that [Austin] was an appropriate comparator," he has waived any burden-shifting argument on appeal. *See Poullard v. McDonald*, 829 F.3d 844, 855 (7th Cir. 2016).

Putting waiver to the side, Shreffler's evidence concerning Austin fails to create a triable issue on discriminatory intent. As a threshold matter, Shreffler has made no

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4 In his reply brief, Shreffler suggests that his discrimination claim is based not only on his termination, but other adverse employment actions—namely, his discipline for his 2016 and 2018 Facebook posts. Because he did not raise this argument in his opening brief, we consider it waived. *See Wonsey v. City of Chi.*, 940 F.3d 394, 398 (7th Cir. 2019).

effort to show that he was "similarly situated" to Austin. *See Downing*, 48 F.4th at 805 ("To prevail by showing a similarly situated employee was treated differently, a plaintiff must show the purported comparator was 'directly comparable to her in all material respects' so as to 'eliminate other possible explanatory variables.'" (quoting *Williams v. Off. of Chief Judge of Cook Cnty.*, 839 F.3d 617, 626 (7th Cir. 2016)). Rather, Shreffler simply focuses on his 2018 Facebook posts, for which he received a multi-day suspension, and claims that Austin was not disciplined for "similar" conduct. But their conduct was not comparable: Shreffler's posts called the Mayor's administration a "shitshow" for how it handled the auction of a City building, whereas Austin reported his concerns regarding this auction to the FBI. We cannot fault a police department for punishing a profane, public Facebook post, but not an official complaint to a government agency.

Because Shreffler cannot rely on the *McDonnell Douglas* framework, we ask whether Shreffler's evidence, taken together, would permit a reasonable jury to conclude that his termination was at least partially motivated by his race. *Ortiz*, 834 F.3d at 765. Shreffler utilizes a rather scattershot approach based on various sporadic comments, assertions, and instances of purported discrimination. According to him, this evidence demonstrates that several Black individuals with leadership positions in the City and the KPD—namely, Mayor Wells-Armstrong, Chief Dumas, Deputy Chief Hunt, and Lieutenant Austin—harbored animus against white people.

Before considering Shreffler's evidence, we must first determine which of these individuals are relevant to his claim. It is "simple common sense" that "the fact that someone who is not involved in the employment decision of which the plaintiff complains expressed discriminatory feelings is not evidence that the *decision* had a discriminatory motivation." *Hunt v. City of Markham*, 219 F.3d 649, 652 (7th Cir. 2000). Rather, the plaintiff must provide evidence of discriminatory animus from "the decision makers themselves, or those who provide input into the decision." *Id.* Where the plaintiff focuses on non-decision makers, he is invoking the so-called "cat's paw theory." Under this theory, the plaintiff must offer evidence that "a non-decision-making employee with discriminatory animus provided factual information or input that may have affected the adverse employment action." *Miller v. Polaris Lab'ys, LLC*, 797 F.3d 486, 490 (7th Cir. 2015) (quoting *Matthews v. Waukesha Cnty.*, 759 F.3d 821, 829 (7th Cir. 2014)). To establish this, the "plaintiff must show that the biased [employee's] actions were a proximate cause of the adverse employment action." *Vesey v. Envoy Air, Inc.*, 999 F.3d 456, 462 (7th Cir. 2021).

It is clear that the Board—who actually voted to terminate Shreffler—was the ultimate decisionmaker here. *See DeGuiseppe v. Vill. of Bellwood*, 68 F.3d 187, 190 (7th Cir. 1995) ("Under Illinois state law, final authority for issuing disciplinary measures against an officer is vested exclusively in the Board of Police and Fire Commissioners, not the police chief[.]") (citing 65 Ill. Comp. Stat. 5/10-2.1-17). And Shreffler makes no argument that the Board acted out of discriminatory animus.

Nor does Shreffler point to any evidence that other individuals—the Mayor, Hunt, and Austin—"proximately caused" his termination. *See Vesey*, 999 F.3d at 462. For example, although Shreffler spends pages accusing Hunt of harboring animus against white people, he provides no evidence that Hunt influenced Dumas or the Board on his termination. Our own review of the record suggests that no such evidence exists, and the same applies to Mayor Wells-Armstrong and Austin.[5]

This leaves Dumas. Shreffler can proceed against him under a cat's paw theory, because the Board accepted his recommendation to terminate Shreffler without performing an independent inquiry. *See Woods v. City of Berwyn*, 803 F.3d 865, 870–71 (7th Cir. 2015) (where the board did not rely on the facts presented by the biased supervisor but instead conducted its own fact-finding proceedings, the causal chain was broken). To show that Dumas bears racial animus, Shreffler first points to Dumas's treatment of other police officers. For example, Shreffler asserts that Dumas "never disciplined anyone besides Shreffler for missing a gun," referring to his 2017 written reprimand. But this proves little, because Shreffler does not identify non-white officers who committed a similar infraction and were not disciplined. *See, e.g.*, *Downing*, 48 F.4th at 804 (the comparator must be "outside the [plaintiff's] protected class" and "receive better treatment").

Shreffler also notes that Dumas promoted Austin to commander and demoted the prior commander, who is white.[6] But Shreffler has provided no facts from which a reasonable jury could conclude that this decision was racially motivated. Lastly,

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5 For example, although the Mayor testified that she had consulted with Dumas about his decision to seek Shreffler's termination, there is no information about what this "consultation" entailed. And even though Austin was involved in the investigation into Shreffler's March 29 comments, Inspector Bartlett was the one who conducted the interviews and prepared the investigation summary; Austin was just there as a ranking officer in case the interviewees required prompting to answer Bartlett's questions.

6 Shreffler elsewhere claims that the Mayor made this promotion and that she "did not deny that race factored into [the] change." This assertion is groundless; not only does the record reveal that Dumas made the personnel decision, but the Mayor never indicated that the change was due to race.

Shreffler claims that Dumas treated Hunt's Facebook posts more leniently than his own. Frankly, this argument is confusing given that it was the prior Chief of Police—not Dumas—who had disciplined Hunt for the posts.

Next, Shreffler suggests that there was a "belief" within the KPD that he was "posting negative comments about black leaders." It is not clear whether Shreffler is referring to his 2016, his 2018, or some other Facebook posts. Regardless, he cites no evidence that Dumas held this belief. And even if he had, we fail to see why this would suggest animus towards white people. Shreffler also asserts that "administrators were affiliated with Black organizations," citing, for example, the Mayor's membership in the NAACP. But, again, we do not understand how membership in a group like the NAACP suggests discriminatory animus.

Shreffler also points to the fact that his "due process rights were violated" as evidence of race discrimination. Because Shreffler did not raise this argument in the district court, it is waived. *See Nichols v. Mich. City Plant Plan. Dep't*, 755 F.3d 594, 600 (7th Cir. 2014) ("The non-moving party waives any arguments that were not raised in its response to the moving party's motion for summary judgment."). In fact, he arguably waived the issue on appeal as well: his entire "argument" consists of a cursory statement and a citation to sixteen pages from his statement of additional facts. *See United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("A skeletal 'argument', really nothing more than an assertion, does not preserve a claim.").

But, even if not waived, the argument would still fail. A jury can infer discrimination from procedural irregularities only where they are significant enough to suggest that the employer's proffered reason for termination was pretextual. *See Smith v. Chi. Transit Auth.*, 806 F.3d 900, 907 (7th Cir. 2015) ("Significant, unexplained or systematic deviations from established policies or practices can sometimes be probative of unlawful discriminatory intent.") (cleaned up)); *Kidwell v. Eisenhauer*, 679 F.3d 957, 969 (7th Cir. 2012)) ("[W]e do not require that an employer rigidly adhere to procedural guidelines in order to avoid an inference of retaliation", but instead "look for pretext in the form of 'a dishonest explanation, a lie rather than an oddity or an error.'") (quoting *Kulumani v. Blue Cross Blue Shield Ass'n*, 224 F.3d 681, 685 (7th Cir. 2000)).

As far as we can tell, Shreffler again points to the KPD's failure to follow state law when terminating him. These failures, without more, are insufficient to raise a triable issue on intent. *See Smith*, 806 F.3d at 907 (affirming summary judgment where the plaintiff failed to explain why the "supposed [procedural] infirmities … support an inference of discriminatory intent"); *Boumehdi v. Plastag Holdings, LLC*, 489 F.3d 781, 792

(7th Cir. 2007) ("To establish pretext, [the plaintiff] must identify such weaknesses, implausibilities, inconsistencies, or contradictions in [the employer]'s proffered reasons that a reasonable person could find them unworthy of credence ….").

Elsewhere in his brief, Shreffler cursorily notes that the allegations leading to his termination were "improperly expanded." This seems to refer to the notice of termination, which listed Shreffler's "progressive disciplinary history" and some other incidents, in addition to the primary allegation of his "gross misconduct" on March 29. While an employer's "shifting or inconsistent" explanations for an adverse employment action typically suggests pretext, *see Castro v. DeVry Univ., Inc.*, 786 F.3d 559, 577 (7th Cir. 2015), Shreffler has made no attempt to explain why these additional allegations were "improper." Nor has he argued that this supposed "expansion" was significant enough to permit a jury to infer that the reason for his termination—his misconduct on March 29—was pretextual. *See id.* (collecting cases holding that "[w]here an employer relies on multiple reasons for the termination, its failure to address *all* of the reasons in *each* communication about the employee is not enough to show contradictions or shifts in rationales that suggest pretext").

Shreffler has failed to offer any evidence from which a reasonable jury could find that his race was a motivating factor in his termination. As such, his discrimination claim fails.

C. Retaliation

Shreffler also brings retaliation claims under both Title VII and the First Amendment. These claims have the same underlying theory: that defendants terminated him in retaliation for his 2018 Facebook posts, which criticized the Mayor's administration and certain hiring decisions in the police force.[7]

To prove retaliation under Title VII and the First Amendment, Shreffler must provide evidence that: (1) he engaged in protected activity; (2) he suffered an adverse employment action; and (3) there was a causal link between the protected activity and adverse action. *Lesiv v. Ill. Cent. R.R. Co.*, 39 F.4th 903, 911 (7th Cir. 2022); *Manuel v.*

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7 We consider only retaliation claims premised on Shreffler's termination, not the multi-day suspension that he received for the Facebook posts. Shreffler's opening brief discusses only his "firing" as the retaliatory adverse employment action. The district court also believed that Shreffler's retaliation claims were based solely on his termination, *see Shreffler*, 2021 WL 6200764, at *20, 28, a conclusion that Shreffler has not challenged on appeal.

Nalley, 966 F.3d 678, 680 (7th Cir. 2020). We assume that the first two elements (which differ across claims) are satisfied—that is, that Shreffler's Facebook posts were protected by both Title VII and the First Amendment and that his termination was an adverse employment action.

We focus here on causation. Title VII requires evidence of "but-for" causation, meaning that "the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013). The burden is lower for a First Amendment retaliation claim, which requires only that the protected activity was a "motivating factor" in the employment decision. *Manuel*, 966 F.3d at 680. For both claims, Shreffler can establish causation by pointing to (among other things) "suspicious timing, ambiguous statements, pretext, and evidence of similarly situated employees who were treated differently." *Huff v. Buttigieg*, 42 F.4th 638, 647 (7th Cir. 2022).

Here, Shreffler fails to create a triable issue as to causation under either standard: he has offered no evidence that the 2018 Facebook posts had anything to do with his termination. Indeed, there is no indication that the Board was even aware of these posts. Although the notice of termination listed Shreffler's prior disciplinary history—including his suspension for the posts—it did not describe the reason for that suspension or otherwise discuss Shreffler's protected conduct.

As for Dumas, Shreffler points to no suspicious comments or behavior suggesting that Dumas's recommendation to terminate Shreffler was retaliatory. Rather, Shreffler relies on the fact that the Mayor asked Dumas to investigate the Facebook posts.[8] We are uncertain as to the veracity of this statement; the cited evidence does not make clear which Facebook posts the Mayor asked Dumas to evaluate. Even assuming this assertion is accurate, however, it is not clear to us why it would suggest that *Dumas* had a retaliatory motive. And, for the reasons discussed, Shreffler has not created a dispute of fact as to whether the reason for his termination was pretextual in any way.

That leaves only suspicious timing. Dumas suspended Shreffler for the Facebook posts in early March 2018 and issued the notice of termination in late May 2018. It is worth noting, however, that suspicious timing—standing alone—creates an inference of causation only when "an adverse employment action follows close on the heels of

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8 Shreffler also asserts that Hunt had a retaliatory motive and similarly investigated these posts. As we have explained, however, Hunt was not involved in the termination decision, so his motives have no impact on our causation analysis.

protected expression." *Kidwell*, 679 F.3d at 966 (quoting *Lalvani v. Cook Cnty.*, 269 F.3d 785, 790 (7th Cir. 2001)). Here, several months passed between Dumas's learning of Shreffler's posts and his decision to recommend termination. *See id.* (explaining that we "typically allow no more than a few days to elapse" in order "[f]or an inference of causation to be drawn solely on the basis of a suspicious-timing argument"). Moreover, there was a significant intervening event between the two actions: the incident on March 29, which triggered the investigation and ultimate termination. In sum, Shreffler has not provided any evidence that his termination was retaliatory.

D. Remaining Arguments

We briefly address Shreffler's remaining arguments, none of which warrant reversal of summary judgment. Shreffler first argues that the district court erred in granting summary judgment to the defendants on the constitutional claims against Dumas in his official capacity. Because we find that Shreffler has not established the necessary elements for his claims, the district court properly granted summary judgment, regardless of whether those claims were asserted against Dumas in his personal or official capacity.

Next, Shreffler contends that the district court ignored his statement of additional facts and his disputes to the defendants' statement of facts. The district court rejected this argument on Shreffler's motion for reconsideration, explaining that it had considered those facts at summary judgment. *Shreffler*, 2021 WL 6200763, at *1. Even a cursory review of the district court's summary judgment opinion confirms this.

In a similar vein, Shreffler contends that the district court abused its discretion in denying Shreffler's motion for reconsideration, because it failed to correct its "error" in ignoring his additional facts. As we have explained, however, no such error occurred. The motion for reconsideration was properly denied.

IV. Conclusion

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment in favor of the defendants on all claims.