STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0410

LaFayette Temple,
Appellant,

vs.

Metropolitan Council,
Respondent.

Filed December 11, 2017
Affirmed
Hooten, Judge

Hennepin County District Court
File No. 27-CV-16-4143

Leslie L. Lienemann, Celeste E. Culberth, Culberth & Lienemann, LLP, St. Paul, Minnesota (for appellant)

Sydnee N. Woods, Metropolitan Council, St. Paul, Minnesota; and

Kurt J. Erickson, Jessica J. Bradley, Littler Mendelson PC, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Kirk, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Appellant challenges the district court's order for summary judgment dismissing his claims of racial discrimination and reprisal against respondent. He argues that the district

court erred by narrowly construing the Minnesota Human Rights Act (MHRA) and by making inferences in favor of respondent's evidence while disregarding his evidence. We affirm.

FACTS

Appellant LaFayette Temple, an African-American man, worked as a police officer for the Metro Transit Police Department (MTPD), a law enforcement agency established by respondent Metropolitan Council to police, investigate, and make arrests in relation to offenses regarding transit property, equipment, and passengers within the metropolitan area. Minn. Stat. § 473.407, subd. 1 (2016). MTPD hired Temple in July 2013, and he successfully completed both field training and the standard probationary period by July 2014.

After Temple completed training, MTPD assigned him to work on the light-rail train (LRT) lines in Minneapolis and St. Paul. In September 2014, while on patrol in a squad car, Temple responded to a standard radio call for assistance by activating the car's lights and sirens. Passing through an intersection, Temple's squad car was struck by an oncoming vehicle. Both Temple and his partner suffered injuries from the accident. Temple was placed on injured-on-duty medical leave to receive treatment for his injuries.

MTPD conducted an investigation into the accident, and after reviewing the investigator's and the crash review board's recommendations that Temple could have prevented the accident, Chief John Harrington determined that Temple's actions warranted discipline of 16 hours of unpaid leave and eight hours of paid driver's training. Chief

Harrington later conducted a *Loudermill* hearing and reduced Temple's discipline to driver's training and a written reprimand for failing to listen to his radio.[1]

While Temple was still on medical leave, MTPD conducted its biannual shift bidding process, which enables its police officers to bid for shift slots based on seniority. The bid sheet's posting stated that "[o]fficers bid only the hours of the shift. . . . [Assignments] are listed but [s]upervisors may change those assignments due to [d]epartmental needs." Temple submitted a bid for a patrol shift but was assigned to a LRT shift. In December, Temple emailed Captain James Franklin regarding his assignment to a LRT shift:

> Captain,
>
> Good morning Sir. I am sending this email in response to the Jan 2015 Officers Schedule.
>
> It appears that I have been placed on the B side Mid LRT E. Respectfully, I placed my bid for the B side Mid E. I am aware that we're only bidding the hours.
>
> Captain if you are willing to help me with this situation I will be very thankful. As I look at the schedule I notice there are many other officers on the schedule with less seniority than I that are on patrol shifts.
>
> Captain to be perfectly honest, I'm just burned out with being on the LRT right now, and I needed the break to recharge my batteries. Every assignment I've had since FTO completion has been the LRT.

[1] A public employee with a constitutionally protected property right under the Fourteenth Amendment's Due Process Clause is entitled to a hearing (commonly referred to as a *Loudermill* hearing) and an opportunity to respond to charges against him in matters of discipline or termination. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541–42, 105 S. Ct. 1487, 1493 (1985); *Pelerin v. Carlton County*, 498 N.W.2d 33, 36 (Minn. App. 1993), *review denied* (Minn. May 18, 1993).

> I wanted to request your help as the commanding officer over the East Division, and see if there was anything that we can do?
>
> Thank you so very much for your immediate [attention] to this matter!

Captain Franklin replied, stating:

> LaFayette,
>
> You are correct in that patrol officers only bid the hours and not the assignment.
> With that being said, yes you have been plugged into the schedule as a rail officer. However, all officers on that 1400 shift are subject to daily assignment changes. In essence, any officer can be assigned anything within the prescribed hours bid.
>
> I will say though that I am somewhat perplexed about you being burned out from an assignment on the LRT? We are the Transit police after all, and therefore, are expected to ride the buses and rails. In fact, if you boil it down, very few officers actually are assigned to patrol cars. As a younger officer with a long career ahead of you as a Metro Transit Police Officer, I suggest perhaps you recalibrate your expectations of assignments.
>
> Upon your return we can discuss further.
>
> I wish you a speedy recovery!

Temple returned to work full-time on his LRT assignment in late January 2015. Temple's immediate supervisor was Sergeant Peter Peterson, who had served as Temple's field training officer for the first month of Temple's training. Sergeant Peterson submitted an MTPD personnel complaint form on January 31, stating that he had counseled Temple on his expectations for working on the LRT, specifically that Temple was "to stay on the LRT and not respond to patrol calls."

On March 31, Temple met with Sergeant Peterson to discuss his LRT assignment. Temple surreptitiously recorded the meeting using his cellphone. Sergeant Peterson explained to Temple that his assignment requires him to ride the LRT and that he is not to patrol in a squad car. Temple stated, "I'll be on the train, but I'm not going to ride the train all day. I'm not going to do it. I'm going to get back in the car, and I'm going to drive the Green Line." Temple also stated,

> [Y]ou guys aren't being fair in this department with me. You're not being – you guys are casting me on the outside, and you're picking on me. . . . I'm tired of coming to work in a hostile environment. . . . I feel like I'm being harassed in this department. It needs to stop.

Sergeant Peterson prepared a second complaint form, documenting that Temple "feels he's being harassed" and that MTPD is treating him unfairly. There is no indication that Temple's claim of harassment was investigated.

Sergeant Peterson submitted another complaint form on April 12. The complaint noted that four officers had approached Sergeant Peterson with requests to not be partnered with Temple due to his dislike for working on the LRT. The complaint also provided that Temple had appeared in a picture of a newspaper article in which he was on a LRT platform without a ticket validator. Peterson also documented that he had reviewed some of Temple's patrol logs, which noted "high mileage" in patrol cars even though Temple was assigned to the LRT.

On April 13, Temple met with Captain Franklin, Sergeant Peterson, and Lieutenant Michael Johnson to discuss Temple's work performance and his complaint about the shift

bidding process. Temple also surreptitiously recorded this meeting. During the conversation, Temple and Captain Franklin engaged in the following exchange:

> CAPTAIN FRANKLIN: Did you actually tell Sergeant Peterson that you were not going to ride rail after he told you that you are going to ride rail?
> TEMPLE: I told him I wouldn't stay on the train all day. Yes, I did.
> CAPTAIN FRANKLIN: You did.
> TEMPLE: Yes, sir.
> CAPTAIN FRANKLIN: What is that to you?
> TEMPLE: Would be clearly what you guys would describe it as insubordination.
>
> . . . .
>
> CAPTAIN FRANKLIN: We are here because of your performance deficiency. And that is, you are not obeying orders. You are not obeying the Sergeant. You are not doing your job. You bid the hours. We pick the assignment. That's where you're assigned. And I expect, I expect, improvement.
>
> . . . .
>
> TEMPLE: I feel like I'm being harassed like that. I told [Sergeant Peterson] that.
>
> . . . .
>
> TEMPLE: All I am asking is that, if you guys are going to do the things you do, include me in them. Don't exile me out of here. I don't feel like I'm part of this team when I come in.
>
> . . . .
>
> TEMPLE: And, yes, I did tell him I wasn't going to be on the train all day.
>
> . . . .
>
> CAPTAIN FRANKLIN: Truthfully, if I wanted to, if I really wanted to pick on you, that right there is enough for an Internal Affairs investigation of insubordination. Not ready to go there yet. I'm willing to say this is serving as your wake-up call, and I pray you accept it as that.

On April 22, MTPD documented another personnel complaint form after being contacted by a citizen complaining about Temple's conduct during a traffic stop. The

citizen, who admitted that he was uncooperative and argumentative with Temple, alleged that he felt disrespected and threatened by his interaction with Temple.

On the day after the citizen complaint was received, Captain Franklin met with Chief Harrington to discuss Temple's work performance, particularly the citizen complaint and Temple's difficulty with working on the LRT. Chief Harrington subsequently authorized an internal affairs (IA) investigation. Sergeant Mario Ruberto notified Temple that MTPD's IA unit would be investigating into allegations regarding "multiple performance issues including [his] refusal to follow lawful orders given by a supervisor, and failure to properly carry out [his] work assignments." The letter also noted that the investigation would review the citizen's complaint that Temple threatened him with violence and used profanity during the traffic stop. On April 27, Temple met with Captain Franklin, Lieutenant Johnson, and Sergeant Peterson a second time. Temple again surreptitiously recorded the meeting. Captain Franklin reiterated that "[w]e still feel that you're still having trouble staying on the train," and informed Temple that he would be transported to and from the LRT during his shift.

MTPD circulated another biannual shift-bid posting in late May. The posting provided that "[o]fficers bid only the hours of the shift." Temple submitted a bid for a downtown beat assignment, but was later assigned to the LRT.

In June, Temple and his partner, Noah LaBathe, responded to a call from the St. Paul Police Department involving a high speed vehicle pursuit. Temple and LaBathe, who shared a patrol car, engaged in the pursuit without notifying or requesting permission from MTPD's dispatch or their supervisor, Sergeant Peterson. Later that day, neither Temple

nor LaBathe reported the pursuit on their daily log sheet. Instead, LaBathe reported on the log sheet that they were at a gas station during that same time period. Both Temple and LaBathe signed the log sheet at the end of the shift to confirm its accuracy. Sergeant Ruberto notified Temple a few days later that Chief Harrington had ordered another IA investigation to review Temple's conduct during the vehicle pursuit and his failure to report the pursuit in the daily log sheet and to determine whether his conduct violated any of MTPD's policies.

Sergeant Ruberto completed the IA investigation commenced in April and recommended to Chief Harrington that the allegations from Captain Franklin and the citizen that Temple violated MTPD's policies be sustained. Chief Harrington sustained the violations and imposed preliminary discipline against Temple, which included: (1) a written reprimand for unsatisfactory work performance; (2) a written reprimand for use of profane language while on duty; (3) a one-day suspension for disobedience or insubordination; and (4) a two-days suspension for threatening to inflict unlawful bodily injury. Chief Harrington imposed 24 hours of unpaid leave for the sustained violations and informed Temple that he could schedule a meeting to discuss the preliminarily planned discipline. Chief Harrington then conducted a *Loudermill* hearing and subsequently reduced Temple's discipline to 16 hours of unpaid leave.

On June 30, Temple emailed Chief Harrington, stating that he has "been heavily scrutinized, harassed, discriminated against, and expected to work in a hostile work environment created by [his] superiors since [his] return to work following [his] injuries resulting from last year's crash on 9/19/14." Temple further stated in the email:

> My efforts to bring my concerns to light on both occasions warranted a very unfavorable response starting with Sgt. Peterson on 3/31, and then Capt. Franklin, on 4/13. I know there is a policy in place for the Metro Transit Police that is to be followed in the event an employee addresses an issue of harassment, or form of mistreatment to his/her superiors!
>
> I thought I took the appropriate channels to address the issues; and following those meetings, where I disclosed my feelings of harassment [I] was shortly thereafter notified via email by our [department's] Internal Affairs Division that I was being investigated referring to our meeting on the 6th.

Temple met with Chief Harrington in early July and surreptitiously recorded a portion of the meeting. Temple stated that he had told Sergeant Peterson during their March meeting that he felt harassed because he was the only officer directed to stay on the LRT and that nobody explained to him why he was assigned to the LRT instead of patrol.

Sergeant Ruberto then finished the IA investigation concerning Temple's involvement in, and his failure to report, the June vehicle pursuit. Upon completion of his investigation, Sergeant Ruberto recommended that Chief Harrington sustain the policy violations by Temple in conjunction with the June vehicle pursuit.

In August, while Temple was on medical leave for an off-duty injury, Chief Harrington sent him a letter terminating his employment for the following policy violations: (1) failure to properly perform duties, (2) surreptitious use of an audio recorder, (3) disobedience or insubordination for refusing or deliberately failing to carry out lawful directives, (4) failure to notify dispatch of involvement in a vehicle pursuit, and (5) falsification of work-related records. Chief Harrington conducted a *Loudermill* hearing with Temple the following day to address the allegations in the termination letter. At the

hearing, Temple and Chief Harrington discussed Temple's June 30 email. The termination of Temple's employment took effect on September 1.

In May 2016, Temple sued Metropolitan Council, alleging claims of racial discrimination and reprisal in violation of the MHRA. Metropolitan Council moved for summary judgment on both claims. The district court granted the motion and entered judgment in favor of Metropolitan Council. This appeal follows.

D E C I S I O N

Temple challenges the district court's order dismissing his racial discrimination and reprisal claims. A district court may grant summary judgment if the record reflects "no genuine issue as to any material fact" and the moving party "is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. "A genuine issue of material fact arises when there is sufficient evidence regarding an essential element . . . to permit reasonable persons to draw different conclusions." *Kelly v. Kraemer Constr., Inc.*, 896 N.W.2d 504, 508 (Minn. 2017) (quotation omitted).

In addressing an appeal from a district court's grant of summary judgment, we review de novo whether any genuine issue of material fact exists and whether the district court erred in applying the law to the facts. *Commerce Bank v. W. Bend Mut. Ins.*, 870 N.W.2d 770, 773 (Minn. 2015). Appellate courts "view the evidence in the light most favorable to the party against whom summary judgment was granted." *Lee v. Fresenius Med. Care, Inc.*, 741 N.W.2d 117, 122 (Minn. 2007) (quotation omitted).

I.

Temple contends that the district court erred by determining that he did not establish a prima facie case of racial discrimination. The MHRA makes it "an unfair employment practice for an employer, because of race . . . to . . . discharge an employee; or . . . discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment." Minn. Stat. § 363A.08, subd. 2 (2016). In evaluating issues concerning the MHRA, we may analyze and apply law developed by federal courts in Title VII cases due to the similarities between the two statutes. *See, e.g.*, *Anderson v. Hunter, Keith, Marshall & Co.*, 417 N.W.2d 619, 623 (Minn. 1988).

Racial discrimination under the MHRA may be established under a theory of disparate treatment. *Goins v. W. Grp.*, 635 N.W.2d 717, 722 (Minn. 2001). "Proof of discriminatory motive is critical in a disparate treatment claim." *Id.* Discriminatory motive may be proven by direct evidence or by circumstantial evidence in accordance with the three-part burden-shifting test set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 1824 (1973). *Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 542 (Minn. 2001).

A. Direct Evidence of Adverse Employment Actions

Temple argues on appeal that he provided sufficient direct evidence of racial discrimination to avoid summary judgment. "[D]irect evidence is evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion

actually motivated the adverse employment action." *Griffith v. City of Des Moines*, 387 F.3d 733, 736 (8th Cir. 2004) (quotation omitted). Stated otherwise, Temple may prove his racial discrimination claim if he establishes that his race "actually motivated" MTPD's actions. *See LaPoint v. Family Orthodontics, P.A.*, 892 N.W.2d 506, 514 (Minn. 2017). While racial animus may be relevant to proving motivation, it is not required, and Temple may prove motivation by showing that his race was a "substantial causative factor" in MTPD's decisions. *See id.* at 514, 517.

Temple specifically argues that the district court construed the MHRA too narrowly by determining that an adverse employment action must be related to the employee's compensation. To constitute an adverse employment action, the action must have created a materially adverse impact on Temple's employment terms or conditions. *See Coffman v. Tracker Marine, L.P.*, 141 F.3d 1241, 1245 (8th Cir. 1998). Temple asserts that MTPD engaged in a series of adverse employment actions leading up to his termination, including racial hostility, discriminatory assignments, and discriminatory scrutiny.

First, he claims that the district court failed to fully consider Sergeant Peterson's racist remarks and the effect that Sergeant Peterson's conduct had on his discipline. Temple alleges that Sergeant Peterson made several racially hostile comments during Temple's field training, including telling Temple to "kill yourself . . . we don't want you here; I don't like your kind, black people" on his first day of training. Temple also alleges that his training officers encouraged him to be aggressive toward minorities and that he frequently overheard fellow officers boast about using excessive force against black men.

Contrary to Temple's assertions, the district court evaluated Peterson's alleged comments and determined that they were not simply "stray remarks" as compared to the statements from Temple's fellow officers. *See Diez v. Minn. Mining & Mfg.*, 564 N.W.2d 575, 579 (Minn. App. 1997), *review denied* (Minn. Aug. 21, 1997) ("Stray remarks made in the workplace cannot serve as direct evidence of discrimination."). But because Chief Harrington, not Sergeant Peterson, made the decisions to conduct the IA investigations and to impose discipline, the district court determined that Sergeant Peterson's comments were not direct evidence of racial discrimination. *See id.* (explaining that statements from individual who is not decision-maker in employee's discharge are not direct evidence of discrimination). We conclude that Sergeant Peterson's comments during Temple's field training, which occurred numerous months before Temple's discipline and termination, are not on their own sufficient evidence to satisfy the direct evidence method in proving that MTPD's treatment and termination of Temple constituted racial discrimination.

Temple next claims that the evidence, including emails expressing skepticism about his prior injuries and illnesses, reflects MTPD's malicious intent towards him.[2] He also claims that he was the only officer to have his bid changed to a less desirable assignment, his squad car taken away, and his log sheets reviewed. But none of this evidence directly demonstrates a discriminatory animus or that race was a substantial causative factor in

[2] Temple's argument also refers to emails between Captain Franklin and Sergeant Ruberto, which he believes portray the hostility toward him. But these emails were not sent to Temple and none of them amount to direct evidence of racial animus. *See Clearwater v. Indep. Sch. Dist. No. 166*, 231 F.3d 1122, 1127 (8th Cir. 2000) (concluding that superintendent's statements about Native American teacher pitching tent and "scrub Indian ponies" were stray remarks and not direct evidence of discrimination).

MTPD's treatment of him. Moreover, as the district court properly concluded, Temple's assignment to a LRT shift does not constitute an adverse employment action because it does not result in a reduction of pay, benefits, or title when compared to a patrol assignment. *See Jones v. Fitzgerald*, 285 F.3d 705, 714 (8th Cir. 2002) (stating that reassignment involving minor changes in working conditions that does not involve reduction in pay or benefits is not adverse employment action). And, while losing squad car responsibilities may have inconvenienced Temple, a mere inconvenience or alteration of job responsibilities, without a material change in employment, is insufficient to be considered an adverse employment action. *See Harlston v. McDonnell Douglas Corp.*, 37 F.3d 379, 382 (8th Cir. 1994); *see also Tuggle v. Mangan*, 348 F.3d 714, 722 (8th Cir. 2003) ("Undesirable work assignments are not adverse employment actions." (quotation omitted)); *Montandon v. Farmland Indus.*, 116 F.3d 355, 359 (8th Cir. 1997) (stating that employee's unhappiness is not actionable adverse action). Indeed, as Captain Franklin advised Temple in his December 2014 email, being an officer of the MTPD comes with the expectation that a significant responsibility of the position would be to monitor metro transit systems such as the LRT.

Temple argues that the district court disregarded much of his evidence as irrelevant and viewed MTPD's actions in isolation. But the undisputed evidence in the record demonstrates that Temple has failed to show a "specific link" between any alleged discriminatory motive on the part of MTPD and an adverse employment action, or that race was a "substantial causative factor" of his termination. *See Griffith*, 387 F.3d at 736; *see also LaPoint*, 892 N.W.2d at 513 (quotation omitted). We conclude that the district court

properly interpreted the MHRA and the pertinent caselaw, and therefore did not err by determining that Temple failed to provide direct evidence of discriminatory motivation causing an adverse employment action.

B. The Prima Facie Case and Similarly-Situated Comparators

Because Temple lacks direct evidence of a discriminatory motive, he must establish the requisite inference of unlawful discrimination through the *McDonnell Douglas* burden-shifting framework in order to evade summary judgment. *See Guimaraes v. SuperValu, Inc.*, 674 F.3d 962, 972–73 (8th Cir. 2012). The first step of this analysis is making a prima facie case of discrimination. *Hoover*, 632 N.W.2d at 542. If Temple sets forth a prima facie case, the burden of production then shifts to MTPD to articulate a legitimate, nondiscriminatory reason for his termination. *See id.* at 545. And if MTPD provides a legitimate nondiscriminatory reason to rebut Temple's prima facie case, then the burden shifts back to Temple to establish that the proffered reason is a pretext for discrimination. *See id.* Throughout this burden-shifting analysis, Temple retains the burden of persuasion that MTPD's adverse actions were based on unlawful discrimination. *See id.* at 546.

A prima facie case of employment discrimination requires Temple to show: (1) that he is a member of a protected class; (2) that he was meeting MTPD's legitimate expectations; (3) that he suffered an adverse employment action; and (4) that similarly situated employees outside the protected class were treated differently. *See Martinez v. W.W. Grainger, Inc.*, 664 F.3d 225, 230 (8th Cir. 2011); *see also Hoover*, 632 N.W.2d at 542 (explaining prima facie case of discriminatory discharge). Temple contends that the district court erred by determining that Temple did not have partners who were similarly

situated for purposes of comparing MTPD's treatment of Temple. In analyzing this comparison for a disparate treatment claim, Temple need not show that one of his partners is a "precise clone" but rather is "similarly situated in all relevant respects." *Ridout v. JBS USA, LLC*, 716 F.3d 1079, 1085 (8th Cir. 2013) (quotation omitted). "Specifically, the individuals used for comparison must have dealt with the same supervisor, have been subject to the same standards, and engaged in the same conduct without any mitigating or distinguishing circumstances." *EEOC v. Kohler Co.*, 335 F.3d 766, 776 (8th Cir. 2003).

Temple claims that his partners are valid comparators because they were also supervised by Sergeant Peterson and were assigned to the LRT. The district court recognized that Temple presented evidence that MTPD treated him differently than other officers to the extent that it monitored his daily logs to observe how much time he spent riding on the LRT. But the district court ultimately determined that Temple could not identify any comparators from non-protected groups who shared his history of discipline but did not experience similar adverse employment actions.[3]

[3] Temple asserts that his discipline history was grounded in discriminatory scrutiny, beginning with his discipline resulting from the September 2014 accident. Temple alleged that he was punished for not listening to dispatch and not turning off his lights and sirens while a white officer in the squad car following him was not disciplined for traveling with lights and sirens. Though Chief Harrington amended the discipline, stating that the policy violation was for failing to properly perform his assigned duties, the fact that Chief Harrington still imposed driver's training as part of the discipline indicates that he evaluated Temple's failure to prevent the accident as part of the failure in performing his duties. Even construing Temple's allegations of differential treatment in the light most favorable to him, the driver's training demonstrates that the discipline was based on Temple's conduct as a whole, not solely on his race.

Temple asserts that the district court interpreted the phrase "similarly situated" too narrowly, and he relies on *City of Minneapolis v. Richardson*, which states that in cases in which a comparison is essentially impossible, "it is reasonable to require a prima facie showing of treatment so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation." 307 Minn. 80, 87, 239 N.W.2d 197, 202 (1976). Before returning to work from medical leave, Temple emailed Captain Franklin expressing his desire to not work the LRT shift, specifically stating, "I'm just burned out with being on the LRT right now." Temple's expressed displeasure with his LRT assignment led both Captain Franklin and Sergeant Peterson to reiterate the expectations that he remain on the LRT and not respond to patrol calls. Despite these expectations, Temple later told Sergeant Peterson, "I'm not going to ride the train all day. I'm not going to do it. I'm going to get back in the car, and I'm going to drive the Green Line." Based on the evidence in the record, it is reasonable to conclude that Temple's insubordination and unwillingness to remain on the LRT, not his race, is the explanation for MTPD's increased monitoring of Temple's work performance.

Temple also implies that his termination was racially motivated because of MTPD's hesitancy to fire LaBathe, a white officer, for the same violations. Temple need only establish that he was treated differently than other employees "whose violations were of comparable seriousness." *See Ridout*, 716 F.3d at 1085 (emphasis omitted). But LaBathe did not share the same history of discipline as Temple. For example, there is no indication that LaBathe directly opposed orders to ride the LRT. And, even if we assume that their conduct was the same, LaBathe was ultimately fired as well. Therefore, no reasonable

argument can be made that MTPD exercised different treatment between Temple and LaBathe.

Temple repeatedly asserts in his appellate brief that he was treated differently than his fellow officers. "But treating an employee differently is not the threshold question. . . ." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 82 (Minn. 2010). The question presented in this summary judgment was whether it is reasonable to believe that MTPD's treatment of Temple is prohibited by the MHRA. *See id.* Temple overlooks that the crux of a disparate treatment claim is that an employee is treated less favorably than others *on the basis of race*. *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 442 (Minn. 1983). In his efforts to make a prima facie case, Temple has failed to satisfy his burden to show that MTPD's actions regarding discipline and termination were grounded in racial discrimination. The district court did not err by concluding that Temple did not establish his prima facie case.

C. Pretext and the Cat's Paw Theory

As discussed previously, if Temple presented a prima facie case, the burden would shift to MTPD to demonstrate that it had a legitimate, nondiscriminatory reason for Temple's discipline and discharge. *See Hoover*, 632 N.W.2d at 545. Here, the district court found that this burden was met for purposes of imposing discipline because evidence in the record indicates that Temple ignored direct orders, repeatedly violated MTPD's policies, admitted to insubordination, and admitted to the facts regarding the citizen complaint in April 2015. And, the district court determined that MTPD fulfilled the burden for imposing termination because it produced evidence that Temple admitted to failing to

notify dispatch regarding the vehicle pursuit in June 2015, surreptitiously recording other officers, and committing a possible *Brady* violation.[4] On appeal, Temple does not challenge the district court's findings regarding this second step of the *McDonnell Douglas* test but contends that the district court erred in determining that he was unable to prove that MTPD's reasons for discipline and termination were pretext for discrimination.

Temple argues that the district court erred by disregarding evidence that race was a motivating factor in his discipline and discharge. He claims that, although Chief Harrington made the ultimate decisions to discipline Temple and terminate his employment, the officers who actively discriminated against Temple directly influenced the IA investigations that led to his discipline and discharge. Temple's argument advances what is known as the "cat's paw" theory of liability.

"In the employment discrimination context, 'cat's paw' refers to a situation in which a biased subordinate, who lacks decisionmaking power, uses the formal decisionmaker as a dupe in a deliberate scheme to trigger a discriminatory employment action." *Qamhiyah v. Iowa State Univ. of Sci. & Tech.*, 566 F.3d 733, 742 (8th Cir. 2009) (quotation omitted). Under this theory, the employer may be liable for an unbiased, final decision maker's adverse employment action because the decision maker's subordinates are motivated by

[4] The *Brady* violation was for Temple's failure to enter the pursuit on his activity log, which Chief Harrington deemed to constitute a falsification of a work-related record. *See, e.g.*, *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–97 (1963) (holding that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.").

discriminatory animus and intentionally and proximately cause the adverse action. *Bennett v. Riceland Foods, Inc.*, 721 F.3d 546, 551 (8th Cir. 2013).

Temple asserts that Chief Harrington is the "cat's paw" because he based his decisions on investigations by Sergeant Ruberto, who in turn relied on information provided by Captain Franklin and Sergeant Peterson. But, as the district court noted, Chief Harrington conducted his own independent *Loudermill* hearings prior to imposing any discipline. Although Sergeant Peterson may have acted with racial animus toward Temple during his field training, Sergeant Peterson had little influence or involvement in Temple's discipline or termination. Chief Harrington ordered Sergeant Ruberto to conduct the IA investigations and requested that Captain Franklin prepare a review of Temple's file. And, Temple fails to produce any evidence that either Captain Franklin or Sergeant Ruberto were motivated by racial animus with the specific intent of causing his discipline and termination.

Moreover, the district court correctly reasoned that because Chief Harrington, an African-American, both hired and fired Temple, a strong inference exists that discrimination was not a motivating factor in the firing. *See Arraleh v. County of Ramsey*, 461 F.3d 967, 976 (8th Cir. 2006). We conclude that Temple did not provide sufficient evidence for a reasonable jury to find that the reasons for his discipline and discharge were pretext for racial discrimination.

In summary, we conclude that the district court did not err by entering summary judgment against Temple on his racial discrimination claim.

II.

Temple also contends that the district court erred by dismissing his reprisal claim. The MHRA reprisal provision states in relevant part:

> It is an unfair discriminatory practice for any individual who participated in the alleged discrimination as a[n] . . . employer . . . to intentionally engage in any reprisal against any person because that person: . . . opposed a practice forbidden under this chapter or has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. . . .

Minn. Stat. § 363A.15 (2016). "A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment." *Id.* Similar to MHRA discrimination claims, we may also look to federal caselaw to review a reprisal claim. *See, e.g.*, *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

A. Direct Evidence of Retaliation

Temple alleges that he presented direct evidence that retaliation motivated MTPD's decision to discipline him and terminate his employment. As with a discrimination claim, a MHRA reprisal claim can be proven by direct evidence. *See Twymon v. Wells Fargo & Co.*, 462 F.3d 925, 936 (8th Cir. 2006). "Direct evidence of retaliation is evidence that demonstrates a specific link between a materially adverse action and the protected conduct, sufficient to support a finding by a reasonable fact finder that the harmful adverse-action was in retaliation for the protected conduct." *Lors v. Dean*, 746 F.3d 857, 865 (8th Cir. 2014) (quotation omitted).

Temple points to Captain Franklin's comments during the meeting in April 2015 as direct evidence of retaliation. At this meeting, Temple said, "And, yes, I did tell [Sergeant Peterson] I wasn't going to be on the train all day." Captain Franklin responded to Temple,

> Truthfully, if I wanted to, if I really wanted to pick on you, that right there is enough for an Internal Affairs investigation of insubordination. Not ready to go there yet. I'm willing to say this is serving as your wake-up call, and I pray you accept it as that.

The district court determined that this is not direct evidence of retaliation and that Temple presented this evidence out of context by suggesting that it was this conversation that led to the IA investigation in April 2015. We agree with the district court. Captain Franklin's statement indicates that he could have initiated an investigation based on Temple's own admitted insubordinate conduct, not based on Temple's allegations of harassment. And, as the district court noted, the IA investigation was initiated in late April due, at least in part, to a citizen's complaint regarding Temple's conduct at a traffic stop. We conclude that the district court properly determined that, as a matter of law, Temple failed to provide direct evidence of retaliation.

B. Protected Conduct

Absent direct evidence, Temple may avoid summary judgment by demonstrating a prima facie case of reprisal. *See Thorn v. Amalgamated Transit Union*, 305 F.3d 826, 830 (8th Cir. 2002). Temple appears to argue that the district court erred by applying the *McDonnell Douglas* analysis to his reprisal claim but later contends that he established an inference of reprisal under the *McDonnell Douglas* framework. Minnesota law has established that much like a discrimination claim, the *McDonnell Douglas* burden-shifting

framework applies to a reprisal claim. *Dietrich v. Canadian Pac. Ltd.*, 536 N.W.2d 319, 327 (Minn. 1995). In order to make a prima facie case of reprisal under the MHRA, Temple must establish (1) that he engaged in statutorily-protected conduct; (2) that MTPD took an adverse employment action against him; and (3) a causal connection exists between the two. *See Bahr*, 788 N.W.2d at 81. The parties dispute the first and third elements in this case.

Temple asserts that the district court inappropriately interpreted the MHRA narrowly by determining that Temple's complaints to Sergeant Peterson and Captain Franklin in March and April 2015 of being "harassed" or "picked on" did not constitute statutorily protected conduct. Temple engaged in statutorily protected conduct if he voiced opposition to MTPD's alleged discriminatory practices. *See* Minn. Stat. § 363A.15(1). The Minnesota Supreme Court has declined to decide whether an actual violation is necessary to establish statutorily-protected reporting. *Bahr*, 788 N.W.2d at 82. Other federal courts tend to apply a good-faith, reasonable belief standard instead of requiring an actual violation. *See, e.g.*, *Helton v. Southland Racing Corp.*, 600 F.3d 954, 960 (8th Cir. 2010); *Tate v. Exec. Mgmt. Servs., Inc.*, 546 F.3d 528, 532 (7th Cir. 2008). To be a good-faith, reasonable belief, the belief must be "connected to the substantive law" and not depend solely on Temple's own reasoning and sense of what is discriminatory. *See Bahr*, 788 N.W.2d at 83–84. Stated otherwise, "if a practice is not unlawful under the plain terms of the MHRA, a party's belief that the practice is unlawful cannot be reasonable." *Id.* at 84.

Here, the district court applied the good-faith, reasonable belief standard and concluded that Temple failed to demonstrate a good-faith belief that he opposed practices forbidden under the MHRA before the IA investigation in April 2015. In his March 2015 meeting with Sergeant Peterson, Temple said:

> [Y]ou guys aren't being fair in this department with me. You're not being – you guys are casting me on the outside, and you're picking on me. . . . I'm tired of coming to work in a hostile environment. . . . I feel like I'm being harassed in this department. It needs to stop.

In the April 2015 meeting, Temple stated, "I feel like I'm being harassed." And in his June email to Chief Harrington, Temple stated that he has "been heavily scrutinized, harassed, discriminated against, and expected to work in a hostile work environment created by [his] superiors since [his] return to work following [his] injuries resulting from last year's crash on 9/19/14."

Because Temple did not mention race or another protected characteristic under the MHRA, the district court concluded that Temple could not link his claim of harassment to a protected activity. *See Hunt v. Neb. Pub. Power Dist.*, 282 F.3d 1021, 1028–29 (8th Cir. 2002) (affirming dismissal of retaliation claim in which plaintiff did not engage in protected conduct because she did not attribute her complaint about employer's failure to give raise or promotion to gender discrimination). Temple claims that he reported the "kind of conduct" that is prohibited by the MHRA and did not have to explicitly claim that the harassment was due to his race. But the MHRA explicitly provides that Temple must "oppose[] a practice forbidden under this chapter." Minn. Stat. § 363A.15(1). This record does not provide evidence from which a fact finder could determine that Temple had a

good-faith, reasonable belief that his assignment to the LRT or his subsequent discipline were unlawful acts that violated the MHRA on the basis of racial discrimination. We conclude that the district court did not err by determining that his complaints were not statutorily protected conduct.

C. Causal Connection

Assuming that Temple establishes the first two elements of the prima facie case, he next contends that the close temporal proximity between his protected conduct and MTPD's increased discipline and eventual discharge raises a presumption of retaliation. *See Hite v. Vermeer Mfg. Co.*, 446 F.3d 858, 866 (8th Cir. 2006). Temple may establish the causal connection between his protected conduct and MTPD's adverse employment action through "the timing of the two events." *Id.* (quotation omitted). For instance, "a pattern of adverse actions that occur just after protected activity can supply the extra quantum of evidence to satisfy the causation requirement." *Id.* (quotation omitted). However, coincidental timing "is rarely sufficient to establish" causation. *Id.* (quotation omitted).

Here, the evidence in the record provides three instances in which Temple could have potentially engaged in statutorily-protected activity: (1) his meeting with Sergeant Peterson on March 31, 2015, (2) his meeting with Captain Franklin, Lieutenant Johnson, and Sergeant Peterson on April 13, 2015, and (3) his email to Captain Harrington on June 30, 2015. And, the evidence demonstrates that MTPD initiated an IA investigation on April 23, 2015 and notified Temple of his termination of employment on August 24, 2015. Based on the relatively close timeframe between the meetings (March 31, 2015 and April

13, 2015) and the IA investigation (April 23, 2015), as well as the email (June 30, 2015) and Temple's discharge (August 24, 2015), the timing of MTPD's adverse employment actions could raise an inference that the actions were causally connected to Temple's alleged protected conduct.

However, the district court determined that the citizen complaint, submitted on April 22, 2015, and the vehicle pursuit on June 21, 2015, were intervening events that eroded any causal connection between the meetings and Temple's termination of employment. Intervening events, such as employee complaints or additional misconduct, between protected activity and adverse action may defeat an employee's retaliation claim, either as amounting to breaks in the causal chain or serving as the employer's legitimate reasons for its actions. *See Mervine v. Plant Eng'g Servs., LLC*, 859 F.3d 519, 527 (8th Cir. 2017); *Cheshewalla v. Rand & Son Constr. Co.*, 415 F.3d 847, 852 (8th Cir. 2005) ("Whether we cabin our examination of these intervening events under the third element of the prima facie case or under the subsequent step of the defendant's legitimate, nondiscriminatory reason for its actions, the result is the same." (citation omitted)).

Moreover, MTPD had already begun expressing concerns about Temple's willingness to meet its expectations and perform the duties required by his LRT assignment prior to his complaints of harassment. *See Kasper v. Federated Mut. Ins.*, 425 F.3d 496, 504 (8th Cir. 2005) ("Evidence of an employer's concerns about an employee's performance before the employee's protected activity undercuts a finding of causation."). Therefore, the district court did not err by concluding that Temple failed to establish a

causal connection between the alleged protected conduct and his adverse employment actions.

D. Pretext

Much like Temple's racial discrimination claim, the district court determined that MTPD met its burden of offering legitimate, nondiscriminatory reasons for his discipline and discharge. Temple asserts that the proffered reasons for his escalating discipline and eventual termination is mere pretext because it is so at odds with what is reasonably expected that a retaliatory motive is the only possible explanation. *See Richardson*, 307 Minn. at 87, 239 N.W.2d at 202. Temple may prove pretext by (1) showing that the proffered reason is "unworthy of credence," or (2) persuading the court that a prohibited reason, such as retaliation, more likely motivated MTPD. *Tyler v. Univ. of Ark. Bd. of Trs.*, 628 F.3d 980, 988 (8th Cir. 2011). In other words,

> An employee may prove pretext by demonstrating that the employer's proffered reason has no basis in fact, that the employee received a favorable review shortly before he was terminated, that similarly situated employees who did not engage in the protected activity were treated more leniently, that the employer changed its explanation for why it fired the employee, or that the employer deviated from its policies.

Stallings v. Hussmann Corp., 447 F.3d 1041, 1052 (8th Cir. 2006).

Temple first argues that the district court ignored evidence that the information provided by Captain Franklin, Sergeant Peterson, and Sergeant Ruberto was not credible. However, this argument is unpersuasive. Beyond mere argumentative assertions, Temple does not point to any evidence of intentional untruthfulness. As discussed previously, MTPD provided several legitimate, nondiscriminatory reasons, supported by evidence in

the record, for Temple's discipline and discharge. Therefore, Temple has not shown MTPD's reasons for discipline and discharge to be "unworthy of credence" or have "no basis in fact."

Temple next contends that MTPD intended to terminate Temple before the IA investigation was completed and that Chief Harrington and Sergeant Ruberto initially assured LaBathe that he would not be terminated.[5] He also points to instances in which other officers were accused of committing *Brady* violations but were not discharged.[6] But there is evidence in the record of other officers who committed *Brady* violations being terminated from employment at MTPD. And, although Harrington apparently considered lesser discipline for LaBathe, he ultimately terminated LaBathe's employment as well. Temple does not prove that similarly situated officers, who did not engage in protected conduct, were treated more favorably.

Temple also alleges that MTPD's explanation for his termination has shifted to focusing on his driving speed during the vehicle pursuit. "Evidence of a substantial shift in an employer's explanation for an employment decision may be evidence of pretext, but an elaboration generally is not." *Mervine*, 859 F.3d at 528 (quotation omitted). A reference to "an additional aspect of the same behavior" is not considered a substantial change in the

[5] Temple asserts that the record indicates that Chief Harrington did not intend to make a decision regarding LaBathe's termination until after he discussed the matter with the Metropolitan Council's Equal Opportunity officer.

[6] Temple also alleges that Chief Harrington improperly imposed a level of discipline on Temple for a verbal threat against a citizen that typically equaled the punishment imposed for an excessive use of force. But, this allegation misses the point. Temple does not present any evidence that other officers were disciplined differently for threatening the use of force.

employer's explanation. *Phillips v. Mathews*, 547 F.3d 905, 913 (8th Cir. 2008) (quotation omitted). Here, MTPD has consistently provided that Temple's termination was based on multiple violations of its policies and procedures.

For these reasons, we conclude that the district court did not err by determining that Temple did not demonstrate that MTPD's reasons for his discipline and termination were pretext for retaliation. Therefore, the district court did not err by entering judgment against Temple on his reprisal claim.

Affirmed.