

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 18, 2026

Lyle W. Cayce
Clerk

No. 25-10887

NATHAN CRAWFORD,

Plaintiff—Appellant,

versus

WEST TEXAS A&M UNIVERSITY,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:23-CV-152

Before STEWART, GRAVES, and WILSON, *Circuit Judges*.

JAMES E. GRAVES, JR., *Circuit Judge*:

Nathan Crawford was a police officer with the West Texas A&M University (“WTAMU”) Police Department. A fellow officer confided in him that she was the victim of sexual misconduct by another officer. Crawford encouraged her to report it, which she did, but did not report it himself. In the subsequent investigation, which drew the ire of department chief Shawn Burns, he corroborated her complaints but was disciplined for failing to report the conduct himself.

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After a series of incidents which Crawford believed were retaliation for providing corroborating testimony in the sexual misconduct investigation, he overheard Burns having a conversation with his assistant chief, Robert Byrd. Burns' office door was open, and he had the phone on speaker. Crawford began recording the conversation, believing it to be proof of retaliation, and walked towards the area near Burns' office. He then reported this conversation and the recording.

Burns suspended Crawford for recording the conversation and initiated an investigation conducted by police chiefs from other system schools. They recommended Crawford be fired and dishonorably discharged from his peace officer's license. Burns agreed and issued the dishonorable discharge, but Crawford quit before he could be fired. He then filed a complaint with the Equal Employment Opportunity Commission (EEOC) which issued him a right to sue letter.

Crawford sued for retaliation under Title VII. The district court concluded that he could not establish a prima facie case and granted WTAMU summary judgment. Crawford appealed. We REVERSE.

I. Background

Crawford began working as a WTAMU police officer in 2015. He was generally considered a good officer. In August 2021, officer Allison Munsell told Crawford that sergeant Aaron Price had engaged in sexual misconduct, and he told her that he had to report it to the Title IX office. However, she initiated a Title IX complaint against Price herself in which several female officers filed complaints against him. Crawford thus believed he had no independent reporting responsibility but participated in the initial investigation and corroborated the allegations. However, he was concerned about possible retaliation because Price was perceived to be close to Burns. In response to earlier workplace concerns, Burns told officers that if they

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continued to make complaints, “careers and bodies would be left in the wake.”

As the Price investigation continued, Burns vented his frustration with the number of complainants and the amount of time it was costing him. He told officers that he “was ready to start stacking bodies,” and clarified that he meant “firing people that need to be fired.” In the same recording, he complained that Crawford failed to report Title IX violations and said that all the officers that failed to do so initially, but took part in the investigation, should be punished. He also told lieutenant Barbara Ferrara that he would have fired her if he thought she had made a complaint.

In the aftermath of Crawford participating in the Price investigation, he was accused of violating quarantine procedures, which he believed to be retaliatory. Also, lieutenant Kyle Hawbaker and sergeant Brandon Johnson “made sweeping changes to [his] daily work routine” at the behest of Burns. Crawford later spoke with Hawbaker about a possible promotion to sergeant, but Hawbaker told him that after speaking with Burns, he “had no chance of making sergeant because [he] was ‘lumped in with the others’ from the Aaron Price TIX investigation.” The Title IX investigator, Georganna Ecker, was fired shortly after the Price investigation and testified that Burns had significant influence over WTAMU leadership.

In the aftermath of the Price investigation, Burns filed an internal complaint against Crawford for failing to report the sexual harassment against Munsell. Crawford then filed an internal complaint against Burns, alleging that Burns’ complaint was only in retaliation for Crawford taking part in the initial investigation. Crawford was disciplined for failure to report.

The new Title IX director, Jeremie Middleton, had a meeting with Crawford that Crawford recorded. He shared his concerns about retaliation

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and advised Crawford to find another job if possible. Shortly thereafter, Middleton was also fired.

One day, Crawford was sitting at his desk when he heard Burns in his office on the phone with Byrd discussing his failure to report. The office door was open, and Burns had the call on speakerphone. Crawford heard the conversation from his desk and went to stand outside Burns' door to record the conversation. He emailed the recording to the System Ethics and Compliance Office stating that he made the recording from his desk.

Byrd began an investigation into whether Crawford had broken the law by recording a private conversation and whether he had lied about it. Crawford also initiated an investigation into whether Byrd's investigation was retaliatory. Byrd subsequently retired and was replaced by Hawbaker. Burns recused himself from the Byrd investigation, assigned that investigation to Hawbaker, and asked the WTAMU System Administrators to appoint an independent panel, which directed Bryan Vaughn and Matt Welch to lead the investigation into Crawford's recording of Burns' call with Byrd.

Vaughn and Welch reviewed the Byrd investigation, conducted an independent inquiry, and then recommended that Crawford be fired and receive a dishonorable discharge. Crawford resigned before he could be fired but still received a dishonorable discharge.¹ The investigation into whether Burns retaliated against Crawford cleared Burns of wrongdoing.

Crawford filed a charge of discrimination with the EEOC, which issued him a right to sue letter. He sued WTAMU, but the district court granted WTAMU's motion for summary judgment. It concluded that he

¹ A Texas Administrative Law Judge later determined that Crawford should have been honorably discharged.

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failed to show that he had suffered an adverse employment action or a causal link and so could not establish a prima facie case.

II. Standard of Review

Courts “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). We review denials of summary judgment de novo. *Solano v. Gulf King* 55, 212 F.3d 902, 905 (5th Cir. 2000). And we view the record in the light most favorable to the non-moving party and draw all reasonable inferences in its favor. *Carmona v. Sw. Airlines Co.*, 604 F.3d 848, 854 (5th Cir. 2010).

III. Analysis

A. Direct Versus Circumstantial Evidence

A plaintiff in an employment retaliation case may prevail by showing either direct or circumstantial evidence. *See Sandstad v. CB Richard Ellis, Inc.*, 309 F.3d 893, 896 (5th Cir. 2002). If a plaintiff relies only on circumstantial evidence, the *McDonnell Douglas* test applies. *See id.*

Direct evidence is “evidence which, if believed, proves the fact in question without inference or presumption.” *Fabela v. Socorro Indep. Sch. Dist.*, 329 F.3d 409, 415 (5th Cir. 2003) (citation modified), *overruled in part on other grounds*, *Smith v. Xerox Corp.*, 602 F.3d 320, 330 (5th Cir. 2010); *see Liedtke v. City of Austin*, -- F.4th --, No. 25-50717, 2026 WL 2225275, at *17 (5th Cir. Aug. 3, 2026). All the evidence that Crawford points to still requires some inference that WTAMU investigators’ retaliatory animus was applied to him or that the adverse employment actions were taken as a result of his protected activity. Thus, he has not succeeded on a direct evidence theory and must proceed under the *McDonnell Douglas* test.

B. Prima Facie Case

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To establish a Title VII retaliation claim, a plaintiff must show that (1) he engaged in a protected activity, (2) the employer took an adverse employment action, and “(3) a causal link exists between the protected activity and the adverse employment action.” *Haire v. Bd. of Supervisors of La. State Univ. Agric. & Mech. Coll.*, 719 F.3d 356, 367 (5th Cir. 2013). If a plaintiff meets this burden, it shifts to the employer to “articulate a legitimate . . . non-retaliatory reason for its employment action.” *Aryain v. Wal-Mart Stores Tex. LP*, 534 F.3d 473, 484 (5th Cir. 2008) (alteration in original) (quoting *McCoy v. City of Shreveport*, 492 F.3d 551, 557 (5th Cir. 2007), *overruled in part on other grounds by Hamilton v. Dallas Cnty.*, 79 F.4th 494 (5th Cir. 2023)). Then, a plaintiff must demonstrate that the reason offered was pretextual. *Id.*

1. Protected Activity

Both parties agree that participating in a sexual misconduct investigation is a protected activity. *Hockman v. Westward Commc’ns, LLC*, 407 F.3d 317, 330 (5th Cir. 2004).

2. Adverse Employment Action

Crawford complains of multiple instances of retaliation, but can only recover based on acts that happened within 300 days of filing a charge of discrimination with the EEOC. *Ikossi-Anastasiou v. Bd. of Supervisors of La. State Univ.*, 579 F.3d 546, 549 (5th Cir. 2009).

Crawford points to three adverse employment actions that occurred within 300 days of his EEOC charge: his placement on paid administrative leave, the investigation into his recording of Burns’ conversation with Byrd, and his dishonorable discharge. The dishonorable discharge was certainly an

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adverse employment action though the parties dispute whether it is properly before the court. We assume, without deciding, that it is.²

An employment action is adverse if “it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006) (quotation omitted) (quoting *Rochon v. Gonzales*, 438 F.3d 1211, 1219 (D.C. Cir. 2006)). In that case, the Court explicitly rejected the “ultimate decision test” employed by the Fifth Circuit. *Id.* at 67.

The district court failed to apply the *Burlington* test and instead cited cases that applied the since-overruled standard. For example, it cited *Breaux v. City of Garland*, which embraced this court’s prior rule.³ 205 F.3d 150, 157 (5th Cir. 2000) (“Adverse employment actions are discharges, demotions, refusals to hire, refusals to promote, and reprimands.” (citation modified)). Thus, the district court’s analysis was flawed.

Whether the phone recording investigation and suspension are adverse employment actions is a closer call. After all, “[t]he purpose of this objective standard is to separate significant from trivial harms and filter out complaints attacking the ordinary tribulations of the workplace,” including mere “petty slights.” *Stewart v. Miss. Transp. Comm’n*, 586 F.3d 321, 331–32 (5th Cir. 2009) (citation modified).

² As discussed below, Crawford cannot show a causal link between the discharge and his protected activity.

³ There have been some recent cases in this circuit that have generally embraced this outdated view of adverse employment actions. *See, e.g., Lowery v. Mills*, 157 F.4th 729, 743 (5th Cir. 2025). Still, as discussed, this standard has been overruled by the Supreme Court and conflicts with other decisions of this court. *See also Hamilton v. Dallas County*, 79 F.4th 494, 500–02 (5th Cir. 2023) (en banc) (overruling circuit precedent and rejecting the ultimate decision test for Title VII discrimination cases); *Liedtke*, 2026 WL 2225275, at *9 n.61 (contrasting the approach between *Hamilton* and *Breaux*).

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But our precedents make clear that “[p]lacing an employee on paid administrative leave, however, cannot be said to be a ‘petty slight.’ Indeed, depending on the circumstances, it may range from a completely benign measure to one that stigmatizes an employee and causes significant emotional distress.” *Id.* at 332. “Forced leave may even affect an employee’s opportunities for future advancement.” *Id.* Critically, a court must consider the context of the forced leave. *Id.* (citing *Burlington N. & Santa Fe Ry. Co.*, 548 U.S. at 69).

Whether being placed on leave pending investigation is adverse is ultimately a context-specific question. But since Crawford was undoubtedly put on leave for disciplinary reasons, a jury could conclude that he suffered an adverse employment action.

In *Stewart*, the court determined that the plaintiff did not suffer an adverse employment action because she was not placed on leave pending an investigation and there was no disciplinary dimension to the leave. *See id.* Here, the opposite is true. And being put on administrative leave pending an investigation would “effect[] a ‘diminution in prestige or change in standing among . . . co-workers.’” *Hudson v. Lincare, Inc.*, 58 F.4th 222, 231 (5th Cir. 2023) (alteration in original) (quoting *Stewart*, 586 F.3d at 332). Thus, the suspension along with the phone recording investigation is a sufficiently adverse employment action to satisfy a prima facie case. *Cf. id.* at 231–32 (finding no adverse employment action when plaintiff was only put on a “formal action plan” to improve performance).

3. Causal Link

Next, Crawford must show a causal link between his protected activity and the adverse employment action. But a plaintiff is not required to show that the protected activity was a but-for cause of the termination at this stage. *Garcia v. Pro. Cont. Servs., Inc.*, 938 F.3d 236, 242 (5th Cir. 2019). When the

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adverse action was taken shortly after protected activity, particularly within three months, that by itself can establish causation. *Id.* at 243.

The parties dispute when Crawford engaged in protected activity. Crawford seems to posit that it happened in August 2022 when Burns first reviewed the Title IX report naming Crawford as a witness. WTAMU argues that it was when he initially provided testimony in August 2021. As a general rule, “[a]n employee has engaged in activity protected by Title VII if she has either (1) ‘opposed any practice made an unlawful employment practice’ by Title VII or (2) ‘made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing’ under Title VII.” *Grimes v. Tex. Dep’t of Mental Health & Mental Retardation*, 102 F.3d 137, 140 (5th Cir. 1996) (quoting 42 U.S.C. § 2000e-3(a)).

The record indicates that Burns knew that Crawford had given testimony months earlier than August 2022. Crawford alleges various acts of retaliation that took place shortly after his testimony, including being accused of failing to follow quarantine procedures and receiving “sweeping changes to [his] daily work routine that . . . were coming from Shawn Burns.” Hawbaker even told him in July 2022 that, after speaking to Burns, Crawford “had no chance of making sergeant because [he] was ‘lumped in with the others’ from the Aaron Price TIX investigation.” So, timing alone is not enough to establish causation.

“But this court has also held that an employee can establish a causal link at the prima facie stage when evidence demonstrates that the adverse action was based in part on knowledge of the employee’s protected activity.” *Saketkoo v. Adm’rs of Tulane Educ. Fund*, 31 F.4th 990, 1001 (5th Cir. 2022) (citation modified). Thus, when a manager takes an adverse employment action but “ha[s] knowledge about his protected activity,” the causal link requirement is met “because the evidence demonstrate[s] that the manager’s

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knowledge” is at least partially related to the adverse action. *Id.* (citing *Medina v. Ramsey Steel Co.*, 238 F.3d 674, 684 (5th Cir. 2001)).

There is ample evidence to satisfy the causation element regarding the suspension and investigation. *See id.* at 1001–02 (noting that plaintiff had met causation element to make a prima facie case but concluding that plaintiff failed to create a genuine dispute of material fact at the pretext stage). Burns knew about Crawford’s involvement in the Title IX investigation and resented it. And a jury could conclude that he admitted that he would try to get rid of those involved in it. Though WTAMU argues that the independent panel made the disciplinary decisions and so Burns did not cause any adverse employment action, it was *Burns* who made the decision to suspend Crawford and launch the investigation. So, this likely clears the bar for the causal link in a prima facie case as to the suspension and investigation.

However, Crawford cannot show causation for the dishonorable discharge because the recommendation was made by the independent investigative panel who, in sworn statements, stated that they did not know about his involvement in the Title IX investigation. Crawford has offered no evidence to rebut this.

Ordinarily, a plaintiff can show a causal link when the ultimate decision was made by a supervisor with no retaliatory motive if the process was tainted by an intermediate supervisor with a retaliatory motive. *Long v. Eastfield Coll.*, 88 F.3d 300, 307 (5th Cir. 1996). Conversely, the causal chain is broken when the ultimate decisionmaker was also the independent investigator. *Id.* This case, where Burns was the ultimate decisionmaker and had a retaliatory motive, but he relied and acted on the results of an independent investigation, presents a new scenario.

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While this is slightly different than cases in the past, we conclude that it breaks the causal chain. The ultimate decision was made by Burns but he followed the recommendations of an independent board. Crawford argues at length that the decision was flawed because Burns called for the investigation, the involvement of Hawbaker, and that the investigation only focused on Crawford's actions, not on Burns' alleged retaliation. The involvement of Hawbaker is potentially problematic because he knew about the protected activity, but Crawford generally offers no evidence, merely accusations, that the panel members were biased against him. And the investigation was opened into his recording of Burns, not into Burns himself, so it is unreasonable to expect the panel to investigate beyond their remit.

Turning to the investigation itself, both panel members, Welch and Vaughn, testified that they reviewed the Internal Affairs report, watched security camera footage, and investigated the allegations. This demonstrates that they "did not merely 'rubber stamp' the recommendation . . . [from Hawbaker], but conducted an independent investigation into the circumstances surrounding" the complaint. *Sherrod v. Am. Airlines, Inc.*, 132 F.3d 1112, 1122 (5th Cir. 1998). Critically, Crawford does not argue anything in their report was false.

So, since Burns relied on an independent investigation, Crawford has failed to show a prima facie case as to the dishonorable discharge. But he has established a prima facie case as to the suspension and phone recording investigation.

C. Legitimate Non-Retaliatory Reason

After a plaintiff shows a prima facie case, an employer must show a legitimate, non-retaliatory reason for the alleged adverse action. But this is only a burden of production, so WTAMU easily meets it here. *Russell v. McKinney Hosp. Venture*, 235 F.3d 219, 222 (5th Cir. 2000). Crawford at least

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potentially broke the law by secretly recording Burns' conversation and lying about how he recorded it. And while Crawford has a legitimate argument that Burns had no reasonable expectation of privacy because the door was open, we also agree with WTAMU that Crawford at least possibly lied about the recording.⁴ So, WTAMU has met its burden.

D. Pretext

Finally, Crawford must show that WTAMU's non-retaliatory reasoning is pretextual. To meet this standard, Crawford must show a genuine dispute of material fact exists that the protected activity was the but-for cause of the adverse employment action. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013). This "requires a plaintiff to produce substantial evidence indicating that the proffered legitimate nondiscriminatory reason is a pretext." *Smith v. Bd. of Supervisors of S. Univ.*, 656 F. App'x 30, 33 (5th Cir. 2016) (per curiam). This can be done "where an employer has provided inconsistent or conflicting explanations for its conduct," and courts should consider "numerous factors, including the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case." *Alkhaldeh v. Dow Chem. Co.*, 851 F.3d 422, 428 (5th Cir. 2017) (citation modified).

There is a genuine dispute of material fact regarding whether Burns' rationale was pretextual. While we agree with WTAMU that a jury could believe that Burns initiated the investigation and suspension into Crawford

⁴ Crawford argues that a jury could infer that, when he said that he recorded the audio from his desk, he meant he began recording it from his desk and moved closer. However, he stated in his email that he recorded the conversation from his desk which was, at the very least, not the whole truth.

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solely based on his recording the conversation, a jury could also find his justification implausible given the evidence in the record.

There is ample evidence that Burns was upset by the continued investigations into the department and, on several occasions, made statements that seemingly indicate he would retaliate against those he perceived as continuing to perpetuate the investigations. And, though WTAMU disputes those interpretations of his statements, if statements can be construed multiple ways, it is a question of fact for the jury to resolve. *See A.I. Credit Corp. v. Legion Ins. Co.*, 265 F.3d 630, 637 (7th Cir. 2001).

Indeed, these cryptic statements can be especially probative at the pretext stage. *See EEOC v. Rite Way Serv., Inc.*, 819 F.3d 235, 245 (5th Cir. 2016) (collecting cases). In *Rite Way*, the court found a genuine dispute of material fact when a manager told the plaintiff that “you know what they do to people who do stuff like this,” and reminded her that Mississippi was an at-will employment state and that she could lose benefits if she was fired. *Id.* Those threats were more subtle than in this case where Burns admitted to telling officers that he “was ready to start stacking bodies” in the wake of the Title IX investigations.

The jury can also consider the relatively quick sequence of events from when Crawford began participating in the Title IX investigation to when Burns ordered changes to his daily work and indicated that he would have no chance at promotion. *Id.* at 244 (noting temporal proximity is relevant). Even though these actions took place outside the 300-days before the EEOC letter, “these actions serve as relevant background and can provide the basis for a retaliatory act.” *Awe v. Harris Health Sys.*, 163 F.4th 969, 973–74 (5th Cir. 2026) (per curiam). And Crawford received generally positive reviews

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before the investigations began.⁵ *Rite Way Serv. Inc.*, 819 F.3d at 244–45 (noting that plaintiff had an “unimpeached” employment record).

On this record, Crawford has successfully created a genuine dispute of material fact that Burns’ rationale was pretextual and that he retaliated against Crawford for participating in a Title IX investigation. *See Harris v. FedEx Corp. Servs.*, 92 F.4th 286, 298 (5th Cir. 2024) (noting that a manager complaining about an employee could support a finding of pretext). And here, there are audio recordings of Burns admitting to making statements that a jury could conclude indicated retaliatory motive. So, WTAMU should have been denied summary judgment.

IV. Conclusion

For the foregoing reasons, we REVERSE the district court’s grant of summary judgment and REMAND for further proceedings consistent with this opinion.

⁵ WTAMU devotes significant space in its brief discussing Crawford’s previous “checkered” disciplinary record. But later in the brief, WTAMU states that its non-retaliatory reason was “that Crawford violated university policy and state law by lurking near his superior’s office door, recording a private conversation, and then l[ied] about it.”

Indeed, though Burns discussed complaints against Crawford from 2021 in his Declaration, Crawford was given an “exceeds expectations” rating in 2022. And WTAMU does not point to anywhere in the record that he was suspended or investigated for anything other than the recording incident.

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CORY T. WILSON, *Circuit Judge*, concurring in the judgment:

I agree with the majority that genuine disputes of material fact preclude summary judgment in this case. I write separately because Crawford's dishonorable discharge was not properly preserved as a basis for his retaliation claim. So I would not analyze the *prima facie* elements of his claim through the lens of his discharge, particularly as to the "new scenario" we confront regarding the causal link between Crawford's protected activity and his discharge. *Cf. ante*, at 10–11.

The reason is straightforward: Crawford did not raise his dishonorable discharge as a basis for relief in either his EEOC charge or his complaint in this action. *See Ernst v. Methodist Hosp. Sys.*, 1 F.4th 333, 337 (5th Cir. 2021) ("To satisfy exhaustion, a claim generally must arise out of the plaintiff's EEOC charge."). He belatedly raised his discharge only in opposition to WTAMU's motion for summary judgment. *Cf. Cutrera v. Bd. of Sup'rs of La. State Univ.*, 429 F.3d 108, 113 (5th Cir. 2005) ("A claim which is not raised in the complaint but, rather, is raised only in response to a motion for summary judgment is not properly before the court." (citing *Fisher v. Metro. Life Ins. Co.*, 895 F.2d 1073, 1078 (5th Cir. 1990))). Because Crawford did not properly preserve his discharge as a basis for his claim, the district court correctly declined to consider it. I would do likewise and end the analysis there.

That said, I agree that we should reverse the district court's summary judgment. It is uncontested that Crawford engaged in protected activity. While there is some question whether the investigation into Crawford's actions or his paid suspension would rise to an adverse employment action, considering them in tandem with the record before us, there is at least a material fact dispute regarding that "context-specific" question, as the majority notes. Finally, considering Chief Burns's knowledge that Crawford

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engaged in protected activity and the Chief's statements regarding "stacking bodies," firing people, and leaving "bodies . . . in the wake" of the Price Title IX investigation, there is likewise at least a fact dispute over a causal link between Crawford's protected activity and his suspension and investigation. Accordingly, the district court erred in concluding that Crawford could not establish a prima facie Title VII retaliation claim.

Continuing with the *McDonnell Douglas* analysis, WTAMU satisfied its burden to produce a legitimate non-retaliatory reason for its actions. But the same evidence that substantiates a causal link between Crawford's protected activity and the adverse employment actions he suffered supports, at least at summary judgment, Crawford's assertion that WTAMU's reasons for disciplining and discharging Crawford were pretextual.

I respectfully concur in the judgment, albeit on narrower grounds.