**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at http://www.ca2.uscourts.gov/). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 20th day of November, two thousand eight.

PRESENT:

JOSÉ A. CABRANES,
CHESTER J. STRAUB,
ROBERT D. SACK,
Circuit Judges.

- -x

EDWARD BILLUE,

Plaintiff-Appellant,

-v.- No. 07-2359-cv

PRAXAIR, INC.,

Defendant-Appellee.

- -x

COUNSEL FOR APPELLANT: JOHN R. WILLIAMS, New Haven, CT

COUNSEL FOR APPELLEE: LORI B. ALEXANDER (Stephen P. Rosenberg, *on the brief*), Littler Mendelson, P.C., North Haven, CT

Appeal from a judgment of the United States District Court for the District of Connecticut (Janet C. Hall, *Judge*).

UPON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the District Court is hereby **AFFIRMED**.

Plaintiff Edward Billue appeals from a judgment of the District Court, entered on April 26, 2007, following a successful motion for summary judgment filed by defendant Praxair, Inc., plaintiff's employer. In his complaint, plaintiff alleged that defendant discriminated against him because of his race and retaliated against him because of previous complaints in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII"). (Plaintiff also alleged violations of other federal and state laws, but does not appeal the District Court's dismissal of those claims.) On appeal, plaintiff argues that the District Court erred in dismissing his Title VII discrimination and retaliation claims because (a) the Court applied an "overly strict standard" in distinguishing allegedly comparable employees as part of plaintiff's discrimination claim, and (b) plaintiff presented sufficient evidence of retaliation for the claim to proceed to a jury trial. We assume the parties' familiarity with the underlying facts and procedural history of the case, which have been thoroughly explained by the District Court.

"We review the District Court's grant of summary judgment *de novo*." *Jeffreys v. City of New York*, 426 F.3d 549, 553 (2d Cir. 2005). Summary judgment is appropriate if "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c).

Upon review of the record, we find no basis to disagree with the findings or conclusions of the District Court, which properly applied the burden-shifting analysis set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973) (outlining "burden shifting" in a workplace discrimination claim brought under Title VII). We agree with the District Court that plaintiff has not adequately established disparate treatment because his proposed "similarly situated" employee was materially distinct from plaintiff. *See Graham v. Long Island R.R.*, 230 F.3d 34, 39 (2d Cir. 2000) (holding that, to establish an "inference of discrimination" in a *prima facie* case of discrimination, "[a] plaintiff may . . . show[ ] that the employer subjected him to disparate treatment, that is, treated him less favorably than a similarly situated employee outside his protected group," and that a comparable employee must be "similarly situated in all material respects" (internal quotation marks omitted)). This employee, who is white, left his delivery truck unattended for five minutes, with the rear trailer doors locked, within 100 yards of the defendant's property, and under the surveillance of defendant's security cameras. By contrast, plaintiff, who is African-American, urinated in a public parking lot along a highway, temporarily abandoned his truck for roughly 20 minutes while he shopped in a sporting goods store, and did not secure the truck pursuant to defendant's protocols. Accordingly, we conclude that defendant's conduct was materially different from the conduct of his proposed "similarly situated" employee.

We further agree with the District Court that—assuming *arguendo* that plaintiff has established a *prima facie* case of discrimination—defendant has satisfied its burden of articulating a legitimate, non-discriminatory reason for plaintiff's suspension. However, plaintiff has not responded with evidence suggesting that defendant's explanations are pretextual, as required by *McDonnell Douglas Corp.*, 411 U.S. at 802-04 (requiring that plaintiff show that defendant's "stated reason for [adverse action against plaintiff] was in fact pretext").

Regarding plaintiff's retaliation claim, the strongest basis for establishing causation is the 15-months between the alleged adverse action (plaintiff's suspension in July 2003) and the protected activity (a complaint filed with the Connecticut Commission on Human Rights and Opportunities in April 2002). We agree with the District Court that, lacking additional evidence of retaliation, the 15-month span is insufficient to sustain a retaliation claim in light of defendant's legitimate business reasons for suspending plaintiff. Plaintiff's alternative attempts to establish causation—based on (1) statements by unnamed employees that one of plaintiff's supervisors "wanted to get rid of him," and (2) statements directed at plaintiff that were made in 2001 and that contained racial epithets—are unavailing. We agree with the District Court that these statements, which are vague or which pre-date the protected activity in this case, cannot establish causation. We also agree with the District Court that plaintiff's allegations of being subjected to close scrutiny are not supported by competent evidence.

We therefore **AFFIRM** the judgment of the District Court.

FOR THE COURT,
Catherine O'Hagan Wolfe, Clerk

By ______________________________