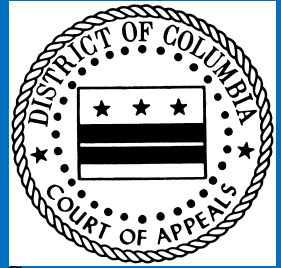


22-CV-19



IN THE DISTRICT OF COLUMBIA COURT OF APPEALS Clerk of the Court
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DAMIAN STEVENSON

Appellant,

v.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

and

GEORGE SPEARS

Appellees.

ON APPEAL FROM JUDGMENT OF THE
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
2020 CA 001324 B

APPELLANT'S OPENING BRIEF

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JURISDICTIONAL STATEMENT

Appellant Damian Stevenson (hereinafter “Appellant,” “Appellant Stevenson” or “Mr. Stevenson”) timely filed his Notice of Appeal on January 11, 2022 from the December 28, 2021 Order denying his August 9, 2021 Motion for Reconsideration and July 12, 2021 Order Granting Summary Judgment entering judgment in favor of Appellees District of Columbia Water and Sewer Authority and George Spears (hereinafter collectively “Appellees” or “DC Water”). JA395-396, January 11, 2022 Notice of Appeal. This is an appeal from Orders of Judge Jose M. Lopez of the Superior Court of the District of Columbia (hereinafter “Superior Court” or “Trial Court”).

STATEMENT OF THE ISSUES

I. Whether the Superior Court erred in granting summary judgment to Appellees in finding that Appellant did not file a Statement of Material Facts in Dispute.

II. Whether the Superior Court erred in granting summary judgment and finding that Appellees' facts were undisputed.

III. Whether the Superior Court erred in granting summary judgment on Appellant's race discrimination claim.

IV. Whether the Superior Court erred in granting summary judgment on Appellant's retaliation claim.

V. Whether the Superior Court erred in denying Appellant's motion for reconsideration.

STATEMENT OF THE CASE

Appellant Damian Stevenson (hereinafter “Appellant,” “Appellant Stevenson” or “Mr. Stevenson”), a former water services employee of the District of Columbia Water and Sewer Authority (“DC Water”), filed a two count complaint against Appellees DC Water and George Spears (hereinafter collectively “Appellees” or “DC Water”), including racial discrimination and retaliation (Count I) in violation of the District of Columbia Human Rights Act (“DCHRA”), D.C. Code § 2-1401, *et seq.*, and wrongful termination (Count II) in violation of District of Columbia law and public policy. JA008-15. Appellees filed a partial motion to dismiss which was denied and later filed a motion for summary judgment. JA017-23; JA024-205. Appellant filed an opposition to the motion for summary judgment refuting Appellees legal arguments for the claims of discrimination and retaliation and wrongful discharge. JA026-JA326. The Opposition included thirteen exhibits, including a Statement of Material Facts in Dispute and an affidavit from Appellant. JA0224-326. The trial court apparently did not review the complete Opposition and exhibits and adopted as true false allegations that Appellant followed an African American foreman into a bathroom, called him a “nigga” and threatened him by telling him he knew where he lived. The trial court held that Appellant did not respond to Appellees Statement of Material Facts Not in Dispute, and he was terminated because he threatened the supervisor. JA345-356. Appellant, in fact,

disputed the absurd claims that he called his supervisor a racial epithet or threatened him. After the trial court granted summary judgment, Appellant filed a motion for reconsideration, pointing out to the court that Appellant had filed a Statement of Material Facts in dispute and specifically disputed the many of the facts which the court claimed were undisputed. JA357-384. Even after Appellant pointed out to the judge that many of the facts the court concluded were undisputed, were in fact disputed, the trial court judge still denied the motion for reconsideration, again concluding that Appellant did not dispute material facts. JA0391-394.

STATEMENT OF FACTS

Appellant Damian Stevenson is an African American man. JA323, Declaration of Damian Stevenson. On April 6, 2015, DC Water hired Mr. Stevenson as a Sewer Services Worker. At all times relevant, Jayson Poland, a White DC Water Foreman, was Mr. Stevenson's supervisor for project management and work site responsibilities. JA087 Stevenson Deposition; JA323. However, for employment and disciplinary issues, Mr. Stevenson's supervisor was the same as Mr. Poland's: Director of Sewer Services Dunbar Regis. *Compare* JA318-319, March 18, 2019 Notice of Final Decision *with* JA321, December 23, 2014 Poland Notice of Suspension; JA323.

Early in his employment, there was an incident where Mr. Stevenson's co-workers dumped trash all over his car. JA323. In response to this incident, Mr. Stevenson placed his hands behind his back and, while standing near a co-worker, Terrence Hunter, announced in a loud voice: "I apologize that my work habits make you all feel some type of way. I apologize again that the way that I work is making you all dislike me." *Id.* Mr. Stevenson did not "yell directly into [Mr. Hunter's] ears." *Id.* DC Water disciplined Mr. Stevenson for this incident despite the fact that he did not do anything wrong. *Id.*

Mr. Stevenson held numerous conversations with Jayson Poland and Dunbar Regis regarding harassment and violence in DC Water Sewer Services. JA324. DC

Water did not discipline Mr. Stevenson for these conversations, however during the conversations, suggested that he attribute the undesirable behaviors towards him as simply the culture of DC Water. *Id.*

In February 2018, Mr. Stevenson was verbally assaulted at a union meeting. *Id.* DC Water investigated the incident and did not discipline Mr. Stevenson for this incident. *Id.*

On January 10, 2019, at approximately 3:45 p.m. at the end of his shift, Mr. Stevenson went into F Building to change clothes. JA324. DC Water employee Alan Whitaker was in the locker room, and he and Mr. Stevenson bantered about their day. *Id.* The bathroom was located directly behind the workers' lockers. *Id.* While Mr. Stevenson was at his locker, Kevin Jhingory walked in and went into the bathroom, and he was on his cellular telephone. *Id.* The door to the bathroom was wedged open. *Id.* Mr. Stevenson went into the bathroom and used a urinal. *Id.* Kevin Jhingory remained on his cell phone the entire time Mr. Stevenson was in the bathroom. *Id.* DC Water employee Wilbert Ramos came out of a stall, washed his hands, and left the bathroom. *Id.* Mr. Stevenson finished using the urinal and quickly left the locker room. *Id.* Mr. Stevenson never said a single word to Kevin Jhingory. *Id.* Mr. Jhingory later filed a complaint Mr. Stevenson with false allegations against him. *Id.*

On January 11, 2019, DC Water Investigator Miller informed Mr. Stevenson that she was removed from the Jhingory investigation because Mr. Jhingory stated that she was showing Mr. Stevenson favoritism. *Id.* Appellee George Spears took over the investigation at that time. *Id.* DC Water disciplined Mr. Stevenson for the “incident” with Mr. Jhingory, despite the fact that he did not do anything wrong. *Id.*

On February 5, 2019, Mr. Stevenson was assaulted by DC Water employee James Herbert, which was captured on camera. JA324. Mr. Herbert approached Mr. Stevenson with two fingers extended like a handgun and pointed them at Mr. Stevenson’s head. JA324-325. Mr. Stevenson pointed to a camera capturing the images, and Mr. Herbert returned and repeated the threat again on camera. JA325. No action was taken against Mr. Herbert. *Id.*

On February 22, 2019, Mr. Stevenson attended a Road Show meeting conducted by D.C. Water Executive Manager David Gaddis. JA325. During a Q&A, Mr. Stevenson asked Mr. Gaddis about workplace safety and harassment. *Id.* Mr. Gaddis stated that workplace harassment would not be tolerated at DC Water. *Id.* While Mr. Gaddis was attempting to answer the question, Mr. Spears scampered across the room and intervened before Mr. Gaddis could finish his answer and before Mr. Stevenson could ask a follow up question. *Id.*

The following Monday, February 25, 2019, Mr. Stevenson was issued a Notice of Proposed Disciplinary Action. *Id.*; JA318.

DC Water suspended Mr. Stevenson until April 29, 2019. JA325; JA318. When he arrived back to work on April 30, 2019, Mr. Stevenson saw Kevin Poge, the Union Shop Steward and asked him why DC Water was sending him back in the “F” Building since he reported an assault there, instead of the 3rd Floor at Blue Plains. JA325. Mr. Poge told Mr. Stevenson that he had to take up the issue with Mr. Stevenson’s attorney. *Id.* Mr. Stevenson reminded him that the Union was still taking his dues and should represent him. *Id.* Mr. Poge became upset and cursed at Mr. Stevenson. *Id.* The entire incident was recorded on video camera. *Id.* Mr. Poge then falsely accused Mr. Stevenson of threatening him and Mr. Stevenson was subsequently placed on administrative leave and was later terminated on June 11, 2019. *Id.*

DC Water treated Mr. Stevenson differently because he is an African American and because he reported workplace violence and tried to speak with Executive Managers about the problems in Sewer Services. JA325. At the time of his termination, Mr. Stevenson reported to Jayson Poland. JA323.

In 2014, DC Water management received credible allegations that Jayson Poland physically attacked a colleague. JA249-252, November 21, 2014, Report from Senior Investigator Eric Gainey. After a thorough investigation, DC Water

management concluded that Jayson Poland had in fact violently assaulted a co-worker. *Id.* Inexplicably, despite this workplace violence, in 2015, DC Water retained Mr. Poland and allowed him to resume supervisory control over the employee that he physically assaulted. JA254-259, December 2, 2015, EEO Investigation by Christal Mims Williams.

Mr. Poland soon began to retaliate against his victim. *Id.* When it was brought to management's attention, it started an investigation. *Id.* During this investigation, employees bluntly told the Investigator:

The union maintains that Poland feels that there is nothing they can do to him. . . ." Jayson [Poland] 'sets up' his overtime. He creates jobs. Some jobs are not in [DC Water's database] Maximo. He is doing work that does not necessarily need to be done on overtime. No one complains [because] they all want the overtime. They report to Dunbar Regis and he does not make an issue of it.

JA264, JA267, November 19, 2015, Investigator notes.

The DC Water Investigator felt strongly enough about the assertion that she quoted DC Water General Foreman Anthony Richards (Poland's supervisor), who explained the roots of the problem to DC Water (which then ignored its own Foreman to avoid tangling with Poland):

Mr. Richards stated the consensus in Sewer Services is that Mr. Poland can do whatever he wants and will not suffer any repercussions. Both Mr. Sims and Mr. Young maintains that the union feels that there are a 'different set of rules' for Mr. Poland.

JA257.

DC Water has lost control of the Sewer Services.

In discovery documents provided by DC Water in earlier litigation, it was learned that in 2002, the Fairfax County Public Works terminated Poland due to an altercation with a colleague. *See Montgomery v. D.C. Water*, 2015 CA 008635 B (D.C. Superior Court 2015). In 2004, Poland was arrested and convicted for using profanity against his own family. *Id.* Poland disclosed his conviction in his DC Water application in 2005, which hired him anyway. *Id.*

Within three years of Poland's employment, he was in significant trouble. On September 9, 2008, during a routine union meeting, Poland yelled at and grabbed an African American coworker, Jonathan Wiley, requiring coworkers to physically intervene to stop Poland from hurting Mr. Wiley. JA272-274, September 21, 2008, Incident Report. During this meeting Poland "step[ped] up in Jonathan [Wiley's] face... [and] pushes Jonathan into the wall..." JA274. In order to stop Poland, Rickie Banks, an African American coworker, pulled "Mr. Poland forcefully by coming from behind Mr. Poland and wrapping his arms underneath Mr. Poland's arms and bracing him in in a Full-Nelson behind his neck." JA272. But Poland fought free and "took a swing at Mr. Jonathan Wiley and knocked his hat of[f] his head." JA274.

In September 2012, DC Water again had to investigate Poland. JA276-289, September 5, 2012, Report of Investigation by C. Mustaafa Dozier and Christal

Mims Williams. Nicole Parker, an office assistant, alleged that Poland spread rumors about her sleeping with coworkers for money and told people that everyone she has sexual relations with “dies.” *Id.* Several coworkers confirmed that Poland has a reputation for gossiping, and Mr. Wiley stated that he heard Poland describe Ms. Parker as a prostitute. JA279. Additionally, Mr. Wiley confirmed that Poland stated, “everyone she deals with dies.” *Id.*

Ms. Parker became depressed by Poland’s comments and contemplated suicide. JA288-289. Ms. Parker also feared for her safety due to Poland’s “anger issues.” *Id.* She was afraid that defendant Poland would “follow [her] home and cause bodily harm”, *Id.*, because she reported him to Human Resources and attempted to obtain a temporary restraining order against him. *Parker v. Poland*, 2012 CA 005957 B (D.C. Superior Court 2012). Ms. Newsome, who felt obliged to report Poland’s behavior to labor relations, shared Ms. Parker’s fear of Poland’s reaction when he learned that she filed a complaint against him. JA282-283. Further, Mr. Richards stated that Poland “has been known to engage in outbursts[,]... that in his opinion Mr. Poland sometimes takes things too personally which leads to conflict.” JA279. Kevin Jhingory, a Foreman, stated that Poland had a “reputation for having a temper based on several altercations... [and] that Mr. Poland was known as the type to talk a lot and gossip.” JA281. Security Specialist

Carroll Highsmith declared that based on his knowledge of Poland he believes “allegations that he [Poland] has an explosive temper.” JA284.

Despite the many witness statements addressing Poland’s treatment of Ms. Parker and his history of abusive behavior, DC Water Labor Relations Manager Clifford Mustafa Dozier ruled – unsurprisingly – that “no further action is recommended.” JA287. Despite Ms. Parker’s victim statement and the many corroborating accounts of what happened, Mr. Dozier discounted this evidence for the platitudes offered by the employees Poland rewarded with overtime. JA284. Mr. Dozier did not address Ms. Parker and Ms. Newsome’s safety concerns. JA284-289.

Poland filed a complaint with the U.S. Equal Employment Opportunity Commission (“EEOC”) alleging that DC Water discriminated against him based on his race (White). JA291-296, October 27, 2015, DC Water EEOC Position Statement. In its Position Statement, DC Water laid out the problems created by Poland:

On November 9, 2014, a Washington, DC community member called in a complaint about a DC Water work crew supervised by Mr. Poland.

On November 10, 2014, Mr. Poland aggressively confronted Donald Montgomery, a subordinate on Mr. Poland’s work crew, and accused Mr. Montgomery of encouraging the community member’s complaint. Other work crew members interceded to prevent a physical altercation. Mr. Montgomery reported the incident to DC Metro police.

On November 21, 2014, DC Water's Security Department issued a report of its investigation, finding Mr. Poland violated the Workplace Violence Policy.

From December 5 - December 23, 2014, Mr. Poland repeatedly publicized Mr. Montgomery's alleged [but false] criminal history information and other negative personal information with co-workers despite being instructed by his supervisors to cease and desist. A subsequent investigation confirmed Mr. Poland targeted Mr. Montgomery by releasing personal information about prior criminal and traffic offenses (Attachment E).

On December 17, 2014, Mr. Poland emailed C. Mustaafa Dozier, DC Water's Chief of Staff, claiming Mr. Montgomery has an extensive violent criminal history" and lacks a valid driver's license. (Attachment F).

On December 19, 2014, Charles Kiely, DC Water's Assistant General Manager, received a tape of Mr. Poland speaking in the workplace to his subordinates about Mr. Kiely and others in DC Water's leadership in highly derogatory and profane terms.

On December 22, 2014, Mr. Poland sent another email to Mr. Dozier claiming discrepancies in residency information provided by Mr. Montgomery.

On December 22, 2014, Mr. Poland emailed Mr. Ronald White in DC Water's Human Capital Management Department claiming Mr. Montgomery did not have a valid driver's license, which was not true. (Attachment H).

On December 23, 2014, Mr. Poland emailed numerous DC Water administrators again claiming Mr. Montgomery did not have a valid driver's license, which was not true.

On April 27, 2015, Mr. Poland was issued a "Notice of Results of Follow-up Investigation and FINAL WRITTEN WARNING" that concluded:

'Your behavior has negatively impacted the Authority's business operations, hurt staff morale, and severely damaged the image and reputation of management It will not be tolerated in the future.

This Is a FINAL WRITTEN WARNING that if you engage in any similar conduct in the future, or any violation of any D. C. Water policies or procedures, you will be subject to further disciplinary action, up to and including immediate termination without additional warning or notice.’

JA292-293. DC Water’s then-lawyers continued:

Note that Mr. Poland’s appeal included incendiary allegations regarding ‘Donald Montgomery’s Prior Criminal History’. This personal information included alleged prior criminal history information and other personal information that is derogatory and may constitute retaliation against Mr. Montgomery for filing the Workplace Violence complaint. Retaliation is prohibited by Section 10.0 (“Retaliation Prohibited”) of DC Water’s Workplace Violence Policy. (Attachments A, L). Amazingly, Mr. Poland still doesn't get it: he includes this same irrelevant and purposefully demeaning diatribe about ‘Donald Montgomery’s Prior Misconduct as an Employee of WASA’ and ‘Donald Montgomery’s Prior Criminal History’ in the attachment to his EEOC Charge (pp. 8-11).

Again, Mr. Poland plays fast and loose with the facts.

JA294-295.

After conducting a thorough investigation of Poland, DC Water Senior Investigator Eric Gainey concluded that: Poland tried “to discredit, intimidate and retaliate against Donald Montgomery . . . [and, i]n my opinion, Mr. Poland [tried] . . . to intimidate and cause harm to the image of DC Water.” JA298-305, January 12, 2015, Department of Security Report, JA304.

Prior to being suspended for his attack against Mr. Montgomery (described above), Poland continued his illegal, dangerous, retaliatory behavior. JA307-309, April 27, 2015, DC Water Follow-up Investigation of Poland. In addition to the matters discussed above, DC Water found that Poland “displayed and read out loud

in the workplace from a confidential [DC Water] Authority personnel document that contained names, employee ID numbers and total overtime hours worked for Sewer Service employees.” *Id.* DC Water concluded that Poland’s behavior “served no other purpose than to disrupt operations.” *Id.* The Investigator was blunt: “It is my conclusion based on the aforementioned statements, facts and information, Mr. Jayson Poland has *continued* to conduct himself in a reckless and wanton manner in an effort to systematically disrupt the normal business of DC Water.” JA311-316, March 27, 2015, Department of Security Report, JA316 (emphasis added).

Still, despite repeated illegal, violent, and disruptive behaviors, Mr. Dozier only gave Poland a written warning, demonstrating that the “Poland-magic” continued undiminished. *Id.* Worst yet, Mr. Dozier placed Poland back in charge of supervising his victim, Paul Montgomery.

But Poland was not done with Montgomery. As described briefly above, in May 2015, Poland refused to offer Mr. Montgomery overtime opportunities. JA254-259. According to DC Water policy, the compensation agreement, and the union agreement, night-shift lateral workers are the first employees called for overtime opportunities, which give these workers the chance to earn time and a half for overtime hours. JA257-258. The DC Water Investigator found: “Jayson Poland retaliated against Paul Montgomery when he failed to provide him with

overtime opportunities after Mr. Montgomery filed a workplace violence action against him.” JA257.

In a most troubling finding, the Investigator determined that Sewer Services Manager Dunbar Regis was told multiple times that Poland was violating the union contract by retaliating against Mr. Montgomery and “that something needed to be done.” JA255-256. The DC Water Investigator concluded that Paul Montgomery stopped receiving overtime opportunities “when Jayson Poland returned from his temporary assignment. [Poland’s supervisor] Mr. Richards stated that he personally spoke to Mr. Poland and advised him to follow the [union] contract. [But] Mr. Poland admitted that he did not call Mr. Montgomery... There are additional allegations against Mr. Poland regarding abusing the overtime system that require further investigation.” JA258. But Poland had no reason to worry, as Mr. Regis took no disciplinary action against him or expanded the investigation into Poland, despite the Investigator’s findings and conclusions.

Appellees’ Motion to Partially Dismiss and Motion for Summary Judgment

Appellees initially filed a partial motion to dismiss Count II of the Complaint. JA018, August 19, 2020 Order Denying Motion to Partially Dismiss.

The trial court denied the motion and commented:

“Mr. Stevenson’s Count II is more akin to the wrongful termination claim in *Perkins v. WCS Constr., Inc.*, 2020 U.S. Dist. LEXIS 103548, *3. In *Perkins*, the plaintiff reported an incident of assault to human resources, and subsequently to the police, and was terminated following her report. *Id.* at

*2-6. The plaintiff's coworker divulged that he would use a weapon to possibly hurt himself and one of the employer's clients. *Id.* Following her termination, the plaintiff filed a wrongful termination suit based on the criminal assault statute, D.C. Code. § 22-404. The Court in *Perkins* accepted the D.C. criminal assault statute as a basis for the plaintiff's wrongful termination claim reasoning that 'under Carl and its progeny, an employer should not be permitted to fire an employee for reporting or complaining about a threat of violence.' *Id.* at * 16. *See also Carl*, 702 A.2d at 164 (extending the public policy exception to the at-will doctrine in *Adams* to additional clearly mandated policy grounds). * * * Like *Perkins*, Mr. Stevenson's wrongful termination claim is premised on the public policy mandated in D.C. Code § 22-404. Mr. Stevenson alleges that he was wrongfully terminated for filing complaints about incidents on January 9, 2019 and February 5, 2019 involving threats to his personal safety by his coworkers. More specifically, the Complaint alleges that Mr. Stevenson was suspended, then terminated, in retaliation for reporting incidents of assault and asking questions about DC Water's policies on workplace safety and harassment. Compl. at ¶¶ 12-14. Based on these allegations, the Court may reasonably infer that Mr. Stevenson acted in furtherance of the policy articulated in D.C. Code § 22-404, which prohibits assaultive behavior including threats of violence, and that he was consequently terminated for reporting this illegal activity. As such, the Court is satisfied that Mr. Stevenson has (1) identified an actionable public policy, D.C. Code § 22-404, and (2) alleged a sufficient causal connection to withstand dismissal of his wrongful termination claim under Rule 12(b)(6)".

JA022.

After the conclusion of discovery, Appellees filed a motion for summary judgment which Mr. Stevenson opposed. JA024-205, March 10, 2021 Motion for Summary Judgment; JA206-326, April 22, 2021 Opposition to Motion for Summary Judgment.

On July 12, 2021, the trial court entered an order granting summary judgment. JA344-356, July 12, 2021 Judgment Order and Order Granting Motion

for Summary Judgment. In the Background section of the Order, the trial court repeated Appellees' Statement of Material Facts as to Which There is No Genuine Issue. JA346-347. Specifically, the court repeated Appellees' statement that Mr. Stevenson was supervised by Foreman Jayson Poland and that in January 2019, Kevin Jhingory filed a complaint with DC Water alleging that Mr. Stevenson raised his middle finger toward him several times and told him that he knew where Mr. Jhingory lived, which Mr. Jhingory interpreted as a threat; and that on January 10, 2019, Mr. Stevenson followed him into a restroom, shut the door, and said, "What's up nigga?" JA346. The court also accepted as an undisputed fact that Mr. Stevenson said to Mr. Jhingory, "You lucky we got witness" and left the restroom. *Id.* The court continued, noting that "DC Water investigated the allegations and placed Mr. Stevenson on paid administrative leave starting on February 25, 2019" and "[a]fter completing the investigation on March 18, 2019, DC Water placed Mr. Stevenson on a thirty work-day suspension for his conduct." *Id.* Finally, the court stated "Following Mr. Stevenson's return to work, he had altercations with two other employees, Kevin Poge and Kenneth Morgan. Both Mr. Poge and Mr. Morgan filed complaints against Mr. Stevenson for making threatening statements to them. DC Water again placed Mr. Stevenson on paid administrative leave and, after a full investigation, terminated his employment effective June 11, 2019." *Id.*

The court thereafter stated, “In his Opposition brief, Mr. Stevenson did not file a statement of the material acts that he contends are genuinely disputed. *See* Super. Ct. Civ. R. 56(e). Instead of disputing DC Water’s SMF, Mr. Stevenson added additional information regarding his positive performance evaluations and Jayson Poland, his former supervisor for project management and work side responsibilities.” JA346-347.

In its Analysis, the court further held that Mr. Stevenson’s allegations contained in Paragraphs ¶¶ 7-8 and ¶¶ 11-13 of the Complaint were time-barred. JA350.

The court concluded that Appellees were entitled to summary judgment on Mr. Stevenson’s disparate treatment and wrongful termination claims. JA351-356. Accepting Appellees’ version of the facts, the court held that “[t]he undisputed facts of this case show that Mr. Stevenson consistently engaged in inappropriate, disruptive, and threatening conduct that resulted in his suspension and termination. * * * Mr. Stevenson has not shown any evidence that Defendants’ actions were a mere pretext for underlying discrimination.” JA353.

With respect to the DCHRA retaliation claim, the court ruled that “Mr. Stevenson does not specifically address DC Water’s retaliation argument and does not establish what the alleged protected activity is or how DC Water’s decisions to suspend and termination [sic] his employment are connected to any protected

activity. As such, Mr. Stevenson has failed to establish a claim for retaliation under the DCHRA.” JA354.

Finally, in addressing the wrongful discharge claim, the court concluded that Mr. Stevenson was a unionized, public employee. JA355. The court cited *Sun v. D.C. Gov’t*, 686 F. App’x 5, 6 (D.C. Cir. 2017), and included the parenthetical, “because appellant not an at-will employee, ‘the common law claim of wrongful termination in violation of public policy in unavailable, and the District of Columbia Comprehensive Merit Personnel Act provides her sole remedy.’” JA355. The court commented that “... the D.C. Court of Appeals has found that there could be no claim for wrongful termination in violation of public policy where a cause of action for alleged discrimination was provided by the DCHRA.” JA355.

Mr. Stevenson filed a Motion to Reconsider the Order Granting Appellees’ Motion for Summary Judgment, and specifically argued that the court erred in concluding that Mr. Stevenson did not file a statement of material facts that he contends are genuinely disputed. JA357-384, August 9, 2021 Motion to Reconsider. The court acknowledged its error in stating that Mr. Stevenson did file a statement of material facts. JA393. The court commented, “Plaintiff’s Opposition to Defendants’ Motion for Summary Judge does indeed include what is entitled a ‘Statement of Material Facts for Which There is a Genuine Dispute;’ however, this statement neither corresponds with the paragraphs in Defendants’ statement nor

addresses any of Defendants' supported facts." *Id.* The court concluded that "[t]he Court therefore did no fail to review Plaintiff's statement, misapprehend the facts, or err in considering the legal issues." *Id.*

SUMMARY OF THE ARGUMENT

The Superior Court erred in granting summary judgment and denying the Motion to Reconsider. The court apparently did not review the complete Opposition and exhibits and adopted as true false allegations that Appellant called his supervisor a “nigga” and threatened him by telling him he knew where he lived and held that Appellant did not respond to Appellees Statement of Material Facts Not in Dispute and was terminated because he threatened the supervisor. Appellant, in fact, disputed the claims that he called his supervisor a racial slur or threatened him. Appellant established his claims for retaliation and wrongful discharge. After the court granted summary judgment, Appellant filed a Motion for Reconsideration pointing out to the court that Appellant had filed a Statement of Material Facts in dispute and specifically disputed many of the facts which the court claimed were undisputed. Even after Appellant pointed out to the judge that many of the facts the court concluded were undisputed, the trial court judge still denied the motion for reconsideration, again concluding that Appellant did not dispute material facts.

ARGUMENT

I. Standard of Review

A court shall grant summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. SCR-Civil 56. There is a genuine issue as to a material fact “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986). If factual issues can “reasonably be resolved in favor of either party,” there is a need for a trial. *Id.* at 250. The court, therefore, “should review all of the evidence in the record,” *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000), viewing the evidence in the light most favorable to the non-moving party and according that party the benefit of all reasonable inferences. *Anderson*, 477 U.S. at 255.

At summary judgment, the court is not to make credibility determinations or weigh the evidence. *Reeves*, 530 U.S. at 150. Only if, after examining the evidence, the court finds that a party has failed “to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial,” is summary judgment appropriate. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). On a motion for summary judgment, “the inferences to be drawn from the underlying facts contained in such

materials [affidavits, depositions, and exhibits] must be viewed in the light most favorable to the party opposing the motion.” *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). If the evidence presented on a dispositive issue is subject to conflicting interpretations or reasonable persons might differ as to its significance, summary judgment is improper. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 450 (1976).

Overwhelming authority acknowledges that questions of intent are for the jury, not the court. *Beckman v. Farmer*, 579 A.2d 618, 630 (D.C. 1990) (“summary judgment is likely to be inappropriate and should be used sparingly in cases where motive or intent are material”); *Lively v. Flexible Packaging Ass’n*, 765 A.2d 954, 960 (D.C. 2001) (“It is the responsibility of the jury (and not the judge)... to pass upon the credibility of the witnesses.”); *Hunt v. Cromartie*, 526 U.S. 541 (1999) (“Outright admissions of impermissible racial motivation are infrequent and plaintiffs often must rely on other evidence.”). Finally, “[a]lthough summary judgment... should be sparingly granted in cases involving motive or intent... *Courts are justifiably hesitant to throw out employment discrimination claims on summary judgment*, since they almost always involve issues concerning the employer’s (or supervisor’s) motive or intent.” *Hollins v. Fannie Mae*, 760 A.2d 563, 570-571 (D.C. 2000) (emphasis added).

II. The Trial Court Erred in Granting Summary Judgment on Appellant's Race Discrimination Claims

The trial court initially concluded that Mr. Stevenson did not file a statement of material facts which were in dispute. "In his Opposition brief, Mr. Stevenson did not file a statement of the material acts that he contends are genuinely disputed. *See* Super. Ct. Civ. R. 56(e). Instead of disputing DC Water's SMF, Mr. Stevenson added additional information regarding his positive performance evaluations and Jayson Poland, his former supervisor for project management and work side responsibilities." JA346-347. This conclusion is false and was clearly in error and it reveals that the court did not review Appellant's opposition to the motion for summary judgment and the exhibits. In reaching its conclusion, the court accepted facts which were disputed. Accepting Defendants' version of the facts, the court held that "[t]he undisputed facts of this case show that Mr. Stevenson consistently engaged in inappropriate, disruptive, and threatening conduct that resulted in his suspension and termination. * * * Mr. Stevenson has not shown any evidence that Defendants' actions were a mere pretext for underlying discrimination." JA353.

Mr. Stevenson, however, disputed the claims that he engaged in "inappropriate, disruptive, and threatening conduct that resulted in his suspension and termination" and presented evidence that Appellees' actions were a pretext for discrimination. JA224-235. In fact, Mr. Stevenson provided a sworn statement that he was suspended and terminated because he reported the threatening work

environment created by his co-workers, and that a white male employee who was found to engage physical assaults of DC Water employees was not disciplined as severely. JA323-326.

Mr. Stevenson provided a Sworn Declaration and “Statement of Material Facts for Which There is a Genuine Dispute,” A224-235; JA323-326 (*See also* JA393: “Plaintiff’s Opposition to Defendants’ Motion for Summary Judgment does indeed include what is entitled a “Statement of Material Facts for Which There is a Genuine Dispute;”...), specifically refuting the claims that he engaged in “inappropriate, disruptive and threatening conduct.” Concerning the incident with Mr. Jhingory in the bathroom, Mr. Stevenson denies that he said as single word to Mr. Jhingory. JA324; JA232. Thus, beyond even acknowledging that the record contained Mr. Stevenson’s version of events which differed from Appellees’ version, material facts concerning the incident were in dispute.

III. Appellant Established his Claims of DC Water’s Racial Discrimination and Retaliation (Count I)

Appellant’s suit included a Count asserting Appellees violated the DCHRA, D.C. Code § 2-1401, *et seq.* Appellant alleged that Appellees knowingly and intentionally engaged in unlawful race discrimination and retaliation for filing a complaint about this discrimination. Appellees argued in their summary judgment argument is that there is no evidence of discrimination or retaliation.

A. Appellant’s Discrimination Allegations are Not Time-Barred

In its Motion for Summary Judgment, Appellees proclaimed that all of Appellant’s disparate treatment claims under the DCHRA that predate “February 28, 2019, are time-barred.” JA032. The statute of limitations for claims filed under the DCHRA is one year “of the unlawful discriminatory act, or the discovery thereof...” D.C. Code § 2-1403.16(a). But the “Supreme Court has held ‘that consideration of the entire scope of a hostile work environment claim, including behavior alleged outside the statutory time period, is permissible... so long as an act contributing to that hostile environment takes place within the statutory time period.’ We [the District of Columbia Court of Appeals] explicitly adopted this approach in *Lively*, 830 A.2d [874] at 890 (D.C. 2003 (en banc).” *Barrett v. Covington & Burling LLP*, 979 A.2d 1239, 1245 (D.C. 2009) (citation omitted).

Here, DC Water took racially discriminatory, adverse personnel action against Appellant on March 18, 2019, and he filed his lawsuit on February 24, 2020. JA002, Trial Court Docket. Thus, Appellant satisfied the statute of limitations. The question is how far back can he reach to bring facts demonstrating DC Water’s discriminatory, illegal behavior. The U.S. Supreme Court has answered that question, so long as Appellant establishes “an act contributing to the hostile environment” within the statute of limitations, he is allowed to include behavior “outside the statutory timeframe.” *Barrett, supra*.

In what constituted a “Hail Mary” pass, Appellees in their Motion for Summary Judgment argued that Appellant was time-barred from raising the facts set forth in paragraphs ¶¶ 7-8 and ¶¶ 11-13 of his Complaint. JA032; JA008-016 February 24, 2020 (Docketed February 25, 2020) Complaint. The trial court accepted Appellees’ arguments. JA350. Appellees’ argument is absurd. In paragraph ¶ 7 of the Complaint, referring back to 2016, Appellant discussed DC Water’s history of ignoring threatening and abusive behaviors. JA009. In paragraphs ¶ 8 and ¶¶ 11-13 of the Complaint, Appellant references actionable behavior that occurred in January and February 2019. In fact, DC Water used these very incidents to justify its first discriminatory, adverse personnel action against him on March 18, 2019. Thus, given this jurisdiction’s long history of allowing a plaintiff to include behavior outside the statute of limitations, so long as at least one incident occurred within the limit, none of Appellant’s allegations are time barred. *Barrett, supra*.

B. Appellant Established a *Prima Facie* Case for Discrimination, Retaliation, and Demonstrated Evidence of Pretext (Count I)

An employee makes out a *prima facie* case of disparate treatment discrimination by establishing that: (1) that he was a member of a protected class; (2) that he was qualified for the job from which he was terminated; (3) that his termination occurred despite his employment qualifications; and (4) that a substantial factor in his termination was his membership in the protected class.

Hollins, 760 A.2d at 572; *Czekalski, v. Peters*, 475 F.3d 360 (D.C. Cir. 2007). The *Hollins* Court further explained that “in order to establish a prima facie case of racial discrimination in the decision to terminate, appellant had to come forward with evidence that he was fired from a job for which he was qualified while white employees, similarly situated to him, were not terminated, but rather treated more leniently.” *Hollins, supra*, at 576 (brackets, quotation marks, and citation omitted).

Appellees did not dispute that: (1) Appellant is a member of a protected class (African American); (2) that he suffered an adverse employment action – termination; or (3) that his termination resulted despite his qualifications (at least the dispute does not appear serious). *Hollins*, 760 A.2d at 572; *Douglas v. Donovan*, 559 F.3d 549, 552 (D.C. Cir. 2009) (quoting *Taylor v. Small*, 350 F.3d 1286, 1293 (D.C. Cir. 2003) and *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998)). Thus, the question before the court was whether Appellant presented evidence that his race was a substantial factor in his termination.

1. Appellant Was Treated Less Favorably than Similarly Situated Jayson Poland, a White man with a Long History of Illegal Behavior

A plaintiff can establish a *prima facie* case by raising an inference of discrimination that a “similarly situated” employee who did not share the protected characteristic engaged in the same conduct but was treated differently. *Johnson v. Dist. of Columbia*, 225 A.3d 1269, 1280 (D.C. 2020). The District of Columbia

Court of Appeals has ruled that “in order to establish a *prima facie* case of [racial] discrimination in the decision to terminate, appellant had to come forward with evidence that [he] was fired from a job for which [he] was qualified while [white employees], similarly situated to [him], were not terminated, but rather treated more leniently.” *Hollins*, 760 A.2d at 576. Here, the most glaring example is that of Jayson Poland, a Caucasian man, working in Sewer Services.

As noted, Jayson Poland was Appellant’s supervisor for project management and work site responsibilities. But for employment and disciplinary issues, the supervisor for Poland and Appellant was the same; namely, the Director of Sewer Services. *Compare* JA318-319, March 18, 2019 Notice of Final Decision *with* JA321, December 23, 2014 Poland Notice of Suspension; JA323. Both final decisions of DC Water were signed by the supervisor (decisionmaker) with authority to make adverse personnel decisions: the Director of Sewer Services. Thus, although DC Water contends that Poland, being Appellant’s supervisor for project management and site responsibilities, cannot be a “comparator” with Appellant, DC Water is wrong. *See Furline v. Morrison*, 953 A.2d 344, 354 (D.C. 2008) (in a discrimination case pursuant to the DCHRA, the question is whether the “decisionmaker” acted for “retaliatory or discriminatory reasons”). Here it is uncontested, that at the crucial points in this case, the “decisionmaker” for

personnel matters governing Poland and Appellant was Director of Sewer Services Dunbar Regis.

As noted above, in detail, Poland has an extensive history of violent, aggressive, and dangerous behaviors. From physically attacking and stalking a co-worker to harassing another co-worker with frivolous lawsuits to intentionally disrupting DC Water business, Poland has done it all but never lost his job. Importantly, in direct contradiction of DC Water's claim that there is "no evidence that Mr. Poland's misconduct was a continuing issue like Mr. Stevenson's conduct," Poland's illegal behavior lasted for years – literally years. DC Water's fanciful characterization to the contrary is wrong. JA036 ("there is no allegation or evidence that Mr. Poland's misconduct was a continuing issue like Mr. Stevenson's conduct").

DC Water accused Appellant of (1) raising his middle finger at General Foreman Jhingory and threatening him and (2) making threatening statements to different coworkers (Kevin Poge and Kenneth Morgan). JA030. Appellant's "alleged" behavior occurred over three- and one-half months. Thus, for less dangerous and disruptive behavior occurring over three months, Appellant, an African American, was fired. But for violent, disruptive, and illegal behavior, occurring from at least 2008 through at least 2015, Poland, a White man, remains

employed. But DC Water still claims - like the officer directing traffic around a terrible accident - "Nothing to look at folks, keep moving,"

2. Mr. Stevenson Demonstrated Pretext.

"In general, the focus at this stage is on 'whether the jury could infer [retaliation or] discrimination from the combination of (1) the plaintiff's prima facie case; (2) any evidence the plaintiff presents to attack the employer's proffered explanation for its actions; and (3) any further evidence of discrimination that may be available to the plaintiff (such as independent evidence of discriminatory statements or attitudes on the part of the employer) or any contrary evidence that may be available to the employer (such as evidence of a strong track record in equal opportunity employment).' Usually, a prima facie case plus sufficient evidence to reject the employer's explanation will suffice without more to overcome a motion for summary judgment or judgment as a matter of law." *Furline v. Morrison*, 953 A.2d 344, 353-354 (D.C. 2008).

A claim should proceed to the jury if the plaintiff is able to point to evidence from which a jury could reasonably find that the employer's stated reasons for the challenged employment actions were pretextual. *Aka v. Wash. Hosp. Ctr.*, 156 F.3d 1284, 1298 (D.C. Cir. 1998) (plaintiff demonstrates pretext and survives summary judgment with circumstantial evidence calling into question the defendant's credibility on its asserted non-discriminatory reason). Appellant has demonstrated

pretext and Appellees' purported nondiscriminatory justifications for its acts rely entirely on disputed facts. *See* JA224-234.

IV. Appellant established his Claim for Retaliation.

Appellant alleged that he was assaulted in the workplace and after he reported the assault to DC Water's Human Resources and attempted to report it to DC Water's Executive Manager at a Road Show listening forum, he was suspended for thirty (30) days and was later terminated. JA013-14; JA323-325; JA318-319. An action is materially adverse for purposes of a retaliation claim if it "could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Taylor v. Solis*, 571 F.3d 1313, 1320 (D.C. Cir. 2009) (quoting *Burlington N. & Santa Fe Ry Co. v. White*, 548 U.S. 53, 57 (2006)). Being suspended and terminated easily satisfies the adversity standard. Appellant also established a causal link between his protected activity and Appellees' adverse actions. It is well established that "temporal proximity is one way of proving causation." *Craig v. D.C.*, 881 F.Supp. 2d 26, 35 (D.D.C. 2012); *See also, Casole v. Johanns*, 577 F.Supp. 2d 138, 141 (D.D.C. 2008). Appellant established that he reached out to Human Resources and DC Water's Executive General Manager regarding the workplace violence and threats to him and false accusations of calling a foreman a "Nigga" and within days he was suspended for thirty (30) days and when he returned to work false allegations were made against him and he was

terminated. JA323-325; JA318-319. The mere few days between Appellant's protected activity and the adverse actions created an inference of retaliation.

V. Mr. Stevenson's Termination was Wrongful (Count II)

Appellees, in their Motion for Summary Judgment, maintained that as a unionized, public employee, Appellant's "exclusive remedy for this common law tort claim was through the Office of Employee Appeals (OEA)." JA047. The trial court again adopted this reasoning. JA354-355. DC Water is an independent authority of the District of Columbia is it is well established that that OEA does not have authority over claims filed by DC Water employees.

Over 20 years ago, the District of Columbia Court of Appeals ruled that "an employee seeking relief for discrimination must pursue the remedies provided under the District of Columbia Human Rights Act rather than the CMPA." *Robinson v. Dist. of Col.*, 748 A.2d 409, 411 (D.C. 2000). In his Complaint at ¶ 25, Appellant alleged that DC Water "suspended then terminated Mr. Stevenson for reporting a criminal assault and workplace violence in violation of D.C. public policy." JA014. Appellees latched onto that sentence as a basis to argue Count II was "grossly misplaced." But Appellees' argument is what was grossly misplaced.

Appellant's case involved a violation of the DCHRA and wrongful termination. Appellant established that the "successful prosecution of the claim of [wrongful termination]... required proof of the underlying claim of [discrimination

and retaliation]... Because the proof or disproof of the foundational claim was not preempted by the CMPA, neither was the tort claim which flowed [therefrom].” *Robinson*, 748 A.2d at 412. Appellant correctly filed suit for violations of his rights under the DCHRA that resulted in him being fired illegally and the related claim of wrongful termination flows therefrom, which is “a narrow exception to the exclusivity provisions of the CMPA for common-law claims...” *Robinson*, 748 A.2d at 411. Thus, Appellant was authorized to bring his wrongful termination claim before the Superior Court.

VI. The Trial Court Erred in Denying the Motion for Reconsideration

After the trial court granted the Motion for Summary Judgment, Appellant filed a Motion to Reconsider. JA357-384. In the Motion to Reconsider, Appellant argued:

“The Court’s Order should be reversed because Plaintiff did file a Statement of Material Facts for Which There is a Genuine Dispute in Support of Plaintiff’s Memorandum of Points and Authorities to Defendants’ Motion for Summary Judgment, which the Court apparently did not see or review in rendering its decision on the Motion for Summary Judgment. This error caused the Court to misapprehend the facts and accept as undisputed, facts which were actually in dispute. Plaintiff cites to the record and his affidavit in this Statement and details how he was assaulted on February 5, 2019 by a DC Water employee, James Herbert and the assault was captured on video and no action was taken against Mr. Herbert; Plaintiff’s Statement of Material Facts for Which There is a Genuine Dispute in Support of Plaintiff’s Memorandum of Points and Authorities in Opposition to Defendants’ Motion for Summary Judgment (“PSMF”) at ¶ 19, citing to Pl’s Opposition to Motion for Summary Judgment Exhibit 13, Declaration of Damian Stevenson (“Exhibit 13”) at ¶ 8; that Plaintiff later attended a Road Show conducted by the DC Water Executive Manager David Gaddis on

February 22, 2019 and he reported the harassment and the Human Resources Director, Defendant Gaddis, intervened to prevent Plaintiff from further reporting the harassment and three days later he was issued a disciplinary action and suspended for thirty days; *Id.* at ¶ 20, *citing* Exhibit 13 at ¶ 9, and that when he returned to work, he spoke to his Union representative about why the Union was taking his dues but not representing him and the Union representative accused Plaintiff of threatening him, and Plaintiff was placed on administrative leave and terminated; *Id.* at ¶ 21, *citing* Exhibit 13 at ¶ 9. Plaintiff alleged that he was treated differently because he is African American and reported workplace violence. *Id.* at ¶ 22.”

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Appellant pointed out that the Order granting summary judgment accepted, as undisputed, that Appellant followed a Foreman, Mr. Jhingory, into a bathroom, shut the door and said to him “What’s up nigga?” when these facts were vigorously disputed by Appellant, who swore under oath that he did not say a single word to Mr. Jhingory. JA363; JA324. The Order granting summary judgment also cited to facts that Mr. Stevenson was suspended and when he returned to work, he had altercations with two other employees and those employees made complaints and Appellant was terminated. JA346. Appellant swore under oath that he did not threaten anyone and in fact it was the Union representative who cursed him and made a false report about a threat because Appellant asked the Union to represent him since he was paying Union dues. JA363-364, *citing* JA323-236. Appellant referred the court to the evidence in the record that he was treated differently than a white male employee in the same department who repeatedly violated the workplace violence policy and was not terminated. *Id.*

Finally, Appellant argued in the Motion to Reconsider that his termination was wrongful because he reported an assault and battery in the workplace and because DC Water is an independent authority/instrumentality of the District of Columbia and is not bound by the Comprehensive Merit Personnel Policies of the District of Columbia government. JA364. The court did not address this argument in the Order denying the Motion to Reconsider, JA393, but DC Water is “a distinctly independent agency established to engage in proprietary activities” and thus has a separate legal existence from the District of Columbia government. *D.C. Water & Sewer v. Delon Hampton & Assocs.*, 851 A.2d 410, 416 (D.C. 2004); *see also Dingwall v. D.C. Water & Sewer Auth.*, 800 A.2d 686, 687-88 (D.C. 2002) (rejecting the argument that D.C. Water was entitled to the pre-suit notice required to be given to “the District [of Columbia] government” by statute). The trial court’s failure to reconsider the dismissal of the wrongful termination claim and deny summary should be reversed.

CONCLUSION

For the foregoing reasons, Appellant Damian Stevenson respectfully requests that the trial court's Orders granting summary judgment and denying the Motion to Reconsider be reversed and this matter remanded to the trial court.

Date: June 7, 2022

Respectfully submitted,

/s/ David A. Branch

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District of Columbia Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
 - An individual’s social-security number
 - Taxpayer-identification number
 - Driver’s license or non-driver’s’ license identification card number
 - Birth date
 - The name of an individual known to be a minor
 - Financial account numbers, except that a party or nonparty making the filing may include the following:
 - (1) the acronym “SS#” where the individual’s social-security number would have been included;
 - (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
 - (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
 - (4) the year of the individual’s birth;
 - (5) the minor’s initials; and
 - (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ David A. Branch
Signature

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22-CV-19
Case Number(s)

June 7, 2022
Date