IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ARIANE D GRANT, Plaintiff, v. BLUES CITY BREWERY, LLC, a Domestic Corporation, Defendant.	))))))))))	No. 2:20-cv-02305-TLP-atc JURY DEMAND

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IN PART AND GRANTING IT IN PART

Plaintiff, Ariane Grant, sued Defendant, Blues City Brewery, LLC, her former employer, for sex discrimination and retaliation under Title VII of the Civil Rights Act of 1964. (ECF No. 1.) Plaintiff alleges that Defendant unlawfully discriminated and retaliated against her when it first suspended, then terminated her after she accused a co-worker of inappropriate behavior during her shift and another of smoking marijuana and being high at work. (*See id.*) Defendant counters that it took these adverse employment actions against Plaintiff because she twice provided false information about a co-worker to human resources. (*See* ECF No. 36-1.)

After reviewing the parties' filings (ECF Nos. 36-1, 43 & 46), the record, and for the reasons discussed below, the Court **DENIES** Defendant's motion as to Plaintiff's discrimination claim and **GRANTS** Defendant's motion as to her retaliation claim.

BACKGROUND

I. Undisputed Facts

The parties each submitted statements of undisputed facts. Defendant first filed its statement of undisputed material facts (ECF No. 36-2), to which Plaintiff responded (ECF No. 43-1). And Plaintiff then submitted her statement of other undisputed material facts (ECF No. 43-2), to which Defendant responded (ECF No. 47). The Court recounts the undisputed material facts from these filings below.

Defendant Blues City is an Equal Opportunity Employer that "produces beer, flavored malt beverages, teas, and energy drinks[.]" (ECF No. 43-1 at PageID 914.) And as an Equal Opportunity Employer, Defendant "prohibits discrimination based on age, race, color, creed, religion, sex/gender . . . or any other prohibited basis" under law and also "prohibits retaliation[.]" (*Id.* at PageID 914–15.)

Plaintiff worked for Defendant twice over the years. (*Id.* at PageID 915.) She first worked for Defendant in either 2011 or 2012, but voluntarily resigned about a year later. (*Id.*; ECF No 40-1 at PageID 612–13.) And two or three years after that, Plaintiff began working for Defendant again. (ECF No. 43-1 at PageID 915; ECF No. 40-1 at PageID 614–15.) She worked for Defendant until it terminated her in late 2019. (*Id.*) The events for this suit occurred during Plaintiff's second stint of employment. (*See* ECF No. 43-1 at PageID 919.)

Defendant assigned Plaintiff to work first shift in the Packaging Department when it hired her the second time.[1] (ECF No 43-1 at PageID 915; ECF No. 40-1 at PageID 615–16.) And as part of the hiring process, Plaintiff attended an employee orientation that summarized

[1] Plaintiff later requested to be "placed on third shift," where she remained until Defendant terminated her in 2019. (ECF No. 43-1 at PageID 916.)

many workplace policies, the employee handbook, and the ways that employees could voice their concerns to supervisors. (ECF No 43-1 at PageID 916; ECF No. 614–16.) And based on the information from her orientation, Plaintiff voiced "various concerns throughout her employment with [Defendant.]" (ECF No. 43-1 at PageID 916.) For example, Plaintiff once approached Defendant's human resources manager, Carl Parnell ("Parnell"), "with an issue regarding an attendance point she believed was erroneously added to her record, and he removed the point." (*Id.*) At another point, Plaintiff emailed Defendant's vice president of human resources, Connie Michaels ("Michaels"), to express "concern . . . about the Company's decision to temporarily take away the employees' off days" because she thought the decision was unfair.[2] (*Id.* at PageID 917.)

About six months after the email to Michaels about off days, "Plaintiff was involved in a heated exchange with co-worker, Pierre Davis ("Davis") in the breakroom before the start of the shift." (*Id.*) The dispute started when Plaintiff "was signing up for overtime during the pre-shift meeting" and Davis allegedly "snatched the overtime clipboard from Plaintiff." (*Id.* at PageID 918.) Plaintiff grabbed the clipboard back, Davis took it again, and Plaintiff pulled it away from Davis one last time. (*Id.*) Plaintiff then said she was "'over it'" before she and Davis walked out of the room and exchanged words. (*Id.*) Plaintiff complained about Davis' conduct to a shift supervisor, Ellis Oliver, "who told Plaintiff to prepare a statement." (*Id.*) Plaintiff then prepared a written statement and her supervisor forwarded it to the human resources department. (*Id.*)

Shortly afterward, Parnell reviewed Plaintiff's statement about the incident. (*Id.*) In that document, Plaintiff described the clipboard episode with Davis "and stated that as Davis was

[2] Plaintiff, however, did not argue that the decision "was based upon unlawful sex discrimination or any other protected category." (*Id.*) And Defendant "reinstated the schedule with the days off within days of Plaintiff's" email. (*Id.*)

walking out the door he said 'bitch you need to stay in your fucking place.'" (*Id.*) Davis also provided a written statement to Parnell. (*Id.* at PageID 919.) In it, Davis described "the exchange of words on the way out of the room" as: "wow that was totally disrespectful, I never disrespected you in any type of way. She responded she didn't care and that she was signing her friends names, I responded that wasn't your place to snatch anything from me, and that the energy she's giving would be returned." (*Id.*) Parnell then investigated the incident by interviewing witnesses. (*Id.*)

Parnell interviewed three witnesses—Clinton Sanders, Martaveous Nolan, and William Austin—during his initial investigation.[3] (*Id.* at PageID 920–22.) All three individuals were members of the third shift packing department, and each gave slightly different accounts of the event between Plaintiff and Davis. (*Id.*) Sanders described the clipboard grabbing incident, but referenced nothing else about the encounter. (*Id.* at PageID 920; ECF No. 37-3 at PageID 354.) Nolan said nothing about the clipboard incident but only noted that he "did not hear or witness Mr. Pierre Davis cussing at Ms. Arianae Grant, nor did he treat her disrespectfully." (ECF No. 37-3 at PageID 355; *see also* ECF No. 43-1 at PageID 921.) Austin also said nothing about the clipboard grabbing incident, but mentioned that Davis told Plaintiff to "stay in her place[.]" (ECF No. 37-3 at PageID 356; *see also* ECF No. 43-1 at PageID 922.) After these three interviews, Parnell did not interview Plaintiff about her written claims; instead, he contacted his

[3] Unlike the statements that Plaintiff and Davis provided to Parnell, Parnell met with these witnesses, heard their accounts of the events, summarized the interview into a written statement, and had each witness sign the statement to verify its authenticity. (ECF No. 37-3 at PageID 354–56.) Parnell also interviewed these candidates the day after he received Plaintiff's and Davis' statements but waited another two weeks to have the witnesses sign his written summaries of their interviews. (*Id.*) Defendant terminated Plaintiff about four days before the witnesses signed their statements. (*Id.*)

boss, Michaels, and the two of them agreed to suspend Plaintiff for making a false claim against a co-worker.[4] (ECF No. 43-1 at PageID 922–23.)

A few days later, Parnell and Timothy East ("East"), Defendant's packing manager, met with Plaintiff to inform her of her suspension.[5] (*Id.* at PageID 924.) Parnell and East told Plaintiff that the witnesses they interviewed did not corroborate her story. (*Id.* at PageID 923.) She then requested that Parnell and East speak with Jermandy Blair, who she claims witnessed the incident and heard Davis "curse at her." (*Id.* at PageID 924.) Parnell told Plaintiff that "he would look into it." (*Id.*)

Besides discussing her suspension, Parnell and East also told Plaintiff that another packaging employee, Terrence Fennell, informed them that Plaintiff tried to "get him to corroborate her story as to what Davis had said."[6] (ECF No. 47 at PageID 1018.) In response, Plaintiff questioned whether Fennell was high when he made that remark, noting that he and others often smoked marijuana on the job. (ECF No. 43-1 at PageID 924–25; ECF No. 40-1 at PageID 637.) And after the suspension meeting, and to further her allegation, Plaintiff "emailed Michaels a photo of Fennell that she had pulled from Facebook, and which she believed was

[4] In Defendant's letter to the EEOC, it mentions that Plaintiff met with Parnell to share her story directly. (ECF No. 37-4 at PageID 361.) But neither Plaintiff nor Parnell agrees with that account. (*See* ECF No. 40-1 at PageID 636; *see also* ECF No. 37-1 at PageID 271.)

[5] Plaintiff notes that she did not know that Parnell or East were investigating her complaint. (ECF No. 40-1 at PageID 637.) She claims that she sought to follow-up with Parnell because she did not hear any update, or receive a request for more information, about her complaint after she filed it. (*Id.*)

[6] The record is unclear about when Parnell and East first spoke with Fennell. In Parnell's notes about the incident between Plaintiff and Davis, for example, Parnell wrote that he interviewed Fennell when he interviewed Nolan, Sanders, and Austin. (ECF No. 37-3 at PageID 349.) Yet there is no record of a witness statement from Fennell that fits that timeline. (*See* ECF No. 37-3.) Parnell also included in his notes that Fennell called him about fifteen minutes after their interview to say that "Danille (sic) was not being truthful at all and that she came to the filler where he was working on the following day and tried to recruit him to lie for her about this matter." (*Id.* at PageID 349.)

proof of him smoking weed." (*Id.* at PageID 926.) Plaintiff's comment, and the photo, led Parnell to investigate the allegation and to question Fennell. (*Id.* at PageID 927–29.) Fennell denied the allegation and Parnell and Michaels concluded that Plaintiff made another false statement against an employee. (*Id.* at PageID 929–30.)

Parnell also met with Blair after Plaintiff's suspension meeting. (*Id.* at PageID 926.) And like the other witness interviews, Parnell typed a summary of Blair's statement and allowed him to edit it. (*Id.*) Blair's statement read "'[o]n 9/6/2019, after the incident with the overtime sign-up sheet and as [Davis] and [Plaintiff] were going up the floor, that [Davis] told her to stay in her place,' to which Plaintiff responded 'what is my place.'" (*Id.*) Parnell also wrote that Blair described the conversation as "not 'heated' or 'disrespectful,'" and Blair corrected Parnell, asking him to strike the word "not." (*Id.* at PageID 927.)

About three days after her suspension, "Parnell called Plaintiff to advise [Defendant] was terminating her employment because she lied about the exchange with Davis on September 6, 2019, and because on September 17, 2019, she lied again when she accused Terrence Fennell of smoking weed on [Defendant's] property." (*Id.* at PageID 931.)

II. Disputed Facts

Although the undisputed facts give a general timeline of events, the parties disagree over many of the crucial facts here.

For example, the parties disagree on many facts surrounding the clipboard incident—what Davis said to Plaintiff (*see* ECF No. 43-1 at PageID 919; ECF No. 47 at PageID 1014–15), who was around to hear his comment (ECF No. 37-1 at PageID 269; ECF No. 47 at PageID 1014–15), the nature of Davis' tone during the disagreement and whether it was inappropriate (*see* ECF 37-3 at PageID 351–53, 358).

The parties also disagree on several facts related to Defendant's initial investigation of Davis' comment. That is, the parties dispute whether Parnell seriously investigated Plaintiff's allegation (ECF No. 37-1 at PageID 272; ECF No. 40-1 at PageID 637; ECF No. 42 at PageID 839; ECF No. 43-1 at PageID 929), what the witnesses said about the incident (*see* ECF No. 37-3; ECF No 42 at PageID 893–94), why Parnell typed short summaries of the witness statements rather than having them write their own accounts (*id.*), why he waited to interview Plaintiff until after suggesting that Defendant suspend her (ECF No. 36-5 at PageID 245; ECF No. 37-1 at PageID 270–72; ECF No. 40-1 at PageID 637), whether Plaintiff tried to get Fennell to corroborate her story (ECF No. 37-3 at PageID 357; ECF No. 40-1 at PageID 637), and when Fennell brought this allegation to Parnell's and East's attention (*see* ECF No. 40-1 at PageID 637; ECF No. 47 at PageID 1018).

They also dispute what occurred at Plaintiff's suspension meeting. Specifically, they disagree on whether Plaintiff was using slang or really accusing Fennell of being high at work or smoking marijuana on Defendant's property. (ECF No. 36-3 at PageID 195–96; ECF No. 36-5 at PageID 246; ECF No. 40-1 at PageID 637.)

Next, the parties disagree on the facts surrounding Defendant's later investigation. They dispute whether Parnell took Blair's testimony seriously during his interview (ECF No. 36-3 at PageID 196; ECF No. 37-1 at PageID 272; ECF No. 42 at PageID 893–94), whether Parnell investigated Plaintiff's alleged accusation thoroughly (ECF No. 37-1 at PageID 274; ECF No. 47 at PageID 1019–20), why Defendant chose not to drug test Fennell (ECF No. 37-1 at PageID 274; ECF No. 43-1 at PageID 928, and whether Parnell's investigation was enough to find that Plaintiff lied (ECF No. 43-1 at PageID 929; ECF No. 47 at PageID 1019–20).

Lastly, as to Defendant's adverse employment actions, the parties dispute whether Defendant terminated Plaintiff for the reasons it outlined in her termination notice and whether it honestly believed that it terminated her for its stated reasons. (ECF No. 43-1 at PageID 932; ECF No. 47 at PageID 1019–20.)

With all of these facts in mind, the Court will now state the legal standard and address the parties' positions.

LEGAL STANDARD

A party is entitled to 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). "A fact is 'material' for purposes of summary judgment if proof of that fact would establish or refute an essential element of the cause of action or defense." *Bruederle v. Louisville Metro Gov't*, 687 F.3d 771, 776 (6th Cir. 2012) (citing *Kendall v. Hoover Co.*, 751 F.2d 171, 174 (6th Cir. 1984)).

"In considering a motion for summary judgment, [the] court construes all reasonable inferences in favor of the nonmoving party." *Robertson v. Lucas*, 753 F.3d 606, 614 (6th Cir. 2014) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). And "[t]he moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact." *Mosholder v. Barnhardt*, 679 F.3d 443, 448 (6th Cir. 2012) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The moving party may satisfy this burden by showing "that the respondent, having had sufficient opportunity for discovery, has no evidence to support an essential element of his or her case." *Minadeo v. ICI Paints*, 398 F.3d 751, 761 (6th Cir. 2005).

"Once the moving party satisfies its initial burden, the burden shifts to the nonmoving party to set forth specific facts showing a triable issue of material fact." *Id.* at 448–49; *see also* Fed. R. Civ. P. 56(e); *Matsushita*, 475 U.S. at 587. This means that, if "the non-moving party fails to make a sufficient showing of an essential element of his case on which he bears the burden of proof, the moving parties are entitled to judgment as a matter of law and summary judgment is proper." *Martinez v. Cracker Barrel Old Country Store, Inc.*, 703 F.3d 911, 914 (6th Cir. 2013) (quoting *Chapman v. United Auto Workers Loc. 1005*, 670 F.3d 677, 680 (6th Cir. 2012) (en banc)); *see also Kalich v. AT & T Mobility, LLC*, 679 F.3d 464, 469 (6th Cir. 2012).

What is more, "to show that a fact is, or is not, genuinely disputed, both parties are required to either cite to particular parts of materials in the record or show that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *Bruederle*, 687 F.3d at 776 (internal quotations and citations omitted); *see also Mosholder*, 679 F.3d at 448 ("To support its motion, the moving party may show 'that there is an absence of evidence to support the nonmoving party's case.'" (quoting *Celotex*, 477 U.S. at 325)). But "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge[.]" *Martinez*, 703 F.3d at 914 (alteration in original) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). As a result, "[t]he court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3).

In the end, the "question is whether 'the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter

of law.'" *Johnson v. Memphis Light Gas & Water Div.*, 777 F.3d 838, 843 (6th Cir. 2015) (quoting *Liberty Lobby*, 477 U.S. at 251–52). "[A] mere 'scintilla' of evidence in support of the non-moving party's position is insufficient to defeat summary judgment; rather, the non-moving party must present evidence upon which a reasonable jury could find in her favor." *Tingle v. Arbors at Hilliard*, 692 F.3d 523, 529 (6th Cir. 2012) (quoting *Liberty Lobby*, 477 U.S. at 251). And statements in affidavits that are "nothing more than rumors, conclusory allegations and subjective beliefs" are insufficient evidence. *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 584–85 (6th Cir. 1992).

ANALYSIS

Defendant moves for summary judgment on Plaintiff's Title VII discrimination and retaliation claims. (ECF No. 36-1.) In particular, Defendant asserts that: (1) Plaintiff cannot establish a prima facie case of sex discrimination or retaliation under Title VII; and (2) even if Plaintiff could establish a prima facie case, it had a legitimate, non-prohibited, non-pretextual reason for terminating her. (*Id.*) Plaintiff disagrees. (ECF No. 43.) That is, she argues that she made a prima facie showing for her sex discrimination and retaliation claims and that Defendant's justification for termination is pretextual. (*Id.*) After reviewing the filings, the record, and the applicable case law, the Court agrees with Plaintiff on her sex discrimination claim but finds that Defendant is right on the retaliation claim. The Court explains its reasoning below.

A plaintiff can prove a discrimination claim under Title VII through direct or circumstantial evidence. *Johnson v. Kroger Co.*, 319 F.3d 858, 864–65 (6th Cir. 2003). And when, as here, a plaintiff proffers only circumstantial evidence in support of their claim, courts

use the *McDonnell Douglas* burden-shifting framework to evaluate said claim. *Loyd v. Saint Joseph Mercy Oakland*, 766 F.3d 580, 589 (6th Cir. 2014).

This framework requires a plaintiff to first make a prima facie case of discrimination or retaliation to survive summary judgment. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). And "once the plaintiff succeeds in making out a prima facie case of [ ] discrimination, the defendant must 'articulate some legitimate, nondiscriminatory reason' for the termination." *Blizzard v. Marion Tech. Coll.*, 698 F.3d 275, 283 (6th Cir. 2012) (quoting *McDonnell Douglas Corp.*, 411 U.S. at 802)). "If the defendant meets this burden, then the burden of production shifts back to the plaintiff to demonstrate that the proffered reason is a pretext." *Id.* (quoting *Sutherland v. Mich. Dep't of Treasury*, 344 F.3d 603, 615 (6th Cir. 2003)).

A. Prima Facie Case

To establish a prima facie case of sex discrimination, a plaintiff has to show "(1) she is a member of a protected class, (2) she suffered an adverse employment action, (3) she was qualified for the position, and (4) she was replaced by someone outside the protected class or treated differently from similarly situated, non-protected employees." *Loyd*, 766 F.3d at 589 (6th Cir. 2014) (citing *Wright v. Murray Guard, Inc.*, 455 F.3d 702, 707 (6th Cir. 2006)). Defendant only contests the final prong here. It argues that Plaintiff cannot establish a prima facie case of sex discrimination because she admits that she was replaced by a female and because she cannot point to a similarly situated, non-protected employee that Defendant treated differently. (ECF No. 36-1 at PageID 72–73.) In response, Plaintiff turns to Defendant's interrogatories to show that Plaintiff was not replaced by any specific individual. (ECF No. 43 at PageID 901.) Plaintiff also claims that Defendant treated Davis and Fennell—similarly situated non-protected

employees—differently than her. (*Id.* at PageID 902–04.) The Court will address each argument in turn.

For starters, the Court agrees with Defendant that Plaintiff failed to show that she was replaced by someone outside of her protected class. Plaintiff gestures towards Defendant's interrogatory response and argues that "if an employee is not replaced by a specific individual, the employee has not been replaced by someone in the protected class." (*Id.* at PageID 901.) But Plaintiff misconstrues her burden. As noted above, Plaintiff has the affirmative duty to prove that she was replaced by someone outside the protected class, not the other way around. *See McDonnell Douglas*, 411 U.S. at 802 ("The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case.")

Defendant argues that Plaintiff was not replaced by a single person and that the employees routinely rotated positions after Plaintiff's termination. (ECF No. 43-3 at PageID 943.) But this statement does not show that Defendant replaced Plaintiff with an individual outside her protected class. As a result, and because Plaintiff offered no other proof, the Court finds that Plaintiff has not met her burden to show that Defendant replaced her with someone outside her protected class.

That said, the Court now looks to see if Plaintiff shows that Defendant treated similarly situated, non-protected employees differently than her. To meet this burden, Plaintiff needs to offer evidence that Defendant treated a comparable non-protected person better than her under similar circumstances. *See Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992); *Ercegovich v. Goodyear Tire & Rubber Co.*, 154 F.3d 344, 352 (6th Cir. 1998). Plaintiff need not compare herself to an identical non-protected employee, only one who is "similarly situated"

in "all of the relevant aspects." *Redlin v. Grosse Pointe Pub. Sch. Sys.*, 921 F.3d 599, 610 (6th Cir. 2019) (quoting *Ercegovich*, 154 F.3d at 352).

Plaintiff points to both Davis and Fennell as similarly situated, non-protected employees whom Defendant treated differently even though they engaged in similar conduct. (ECF No. 43 at PageID 903–04.) To show similarity, she says that all three employees "worked third shift," "reported to the same supervisors daily," "reported to Parnell during the investigation," and "were all held to the same standards and required to follow the employee handbook[.]" (*Id.* at PageID 903.) More importantly, Plaintiff alleges that "Davis and Fennell engaged in conduct similar to Plaintiff's alleged conduct." (*Id.*)

Defendant counters that Davis and Fennell are not similarly situated to Plaintiff. (ECF No. 36-1 at PageID 73–75.) As for Davis, Defendant argues that no other employee "supported [Plaintiff's] claim that Davis cursed at her," leading it to believe that "Plaintiff provided false information, while Davis was truthful[.]" (*Id.*) This discrepancy "distinguish[ed] his conduct." (*Id.*) As for Fennell, Defendant claims that he never "provid[ed] false information regarding a co-worker" and therefore could not have engaged in similar conduct to Plaintiff. (ECF No. 46 at PageID 954.)

Having considered these arguments, the Court finds that Plaintiff, Davis, and Fennell are similarly situated employees who engaged in similar conduct, and that Defendant treated Davis and Fennell differently than Plaintiff. Starting with Davis, both he and Plaintiff submitted a written statement to Parnell about the clipboard incident and the verbal exchange that followed. And in his statement, Davis described the event and alleged that he told Plaintiff: "wow that was totally disrespectful, I never disrespected you in any type of way." (ECF No. 37-3 at PageID 351.) Davis claims that he "didn't do or say anything inappropriate" and that Plaintiff "initiated

the incident[.]" (*Id.*) Defendant claims that it disciplined Plaintiff because no witnesses corroborated her claim that Davis cursed at her. But a careful reading of the witnesses' statements shows that they did not corroborate Davis' description of the verbal exchange either. (*See id.* at PageID 351–58.) That is, no witnesses reported hearing: Davis say (1) "wow that was disrespectful, I never disrespected you in any type of way," (2) Plaintiff answer by saying that she did not care and that she was going to sign her friend's name, or (3) Davis retort that it "wasn't [your] place to snatch anything from me" and that Plaintiff's energy would be returned. (*Id.*)

Instead, two of the four non-party witnesses (Austin and Blair) said that Davis told Plaintiff to "stay in her place," something that Plaintiff mentioned in her written statement, but that Davis omitted from his.[7] (*Id.* at PageID 356, 358.) One non-party witness also stated that Plaintiff responded to Davis' comments with, "what is my place"; which, again, was absent from Davis' statement but included in Plaintiff's. (*Id.* at PageID 358.) The other two non-party witnesses (Sanders and Nolen) did not mention hearing Davis or Plaintiff say anything.[8] (*Id.* at PageID 355–56.)

The only portion of Davis' written statement that any non-party witness corroborated was his contention that he "didn't do or say anything inappropriate to [Plaintiff]." (*Id.* at PageID 352.) That is, Nolen noted that he "did not hear or witness Mr. Pierre Davis cussing at Ms.

[7]The Court notes that in his summary report, Parnell says that Davis reported telling Plaintiff to stay in her place but Davis never wrote those words in his written account. (ECF No. 37-3 at PageID 349–352.)

[8] Nolen's statement mentioned that he "did not hear or witness Mr. Pierre Davis Cussing at Ms. Ariane Grant," but that statement is ambiguous. (*Id.* at PageID 355.) The Court cannot discern from that statement whether Nolen did not hear Davis say anything to Plaintiff, or whether he heard Davis make a comment and that the comment did not contain any cuss words. And Sanders' statement only addressed the clipboard incident and not the following verbal exchange. (*Id.* at PageID 354.)

Ariane Grant, nor did he treat her disrespectfully." (*Id.* at PageID 355.) But Blair's written statement, and his declaration, conflicts with this version of events. (*Id.* at PageID 358; *see also* ECF No. 42.) Blair noted that the conversation was "heated" or "disrespectful" (ECF No. 37-3 at PageID 358), and he also claimed to be the only person within earshot of the verbal exchange (ECF No. 42).

Defendant claims that it disciplined Plaintiff based on the witness statements. (ECF No. 36-5 at PageID 245; ECF No. 36-3 at PageID 195.) But the witness statements together describe an incident closer to Plaintiff's version of events than Davis', even if no witness explicitly mentioned that they heard Davis curse at Plaintiff. And yet Defendant disciplined only Plaintiff. Or, to say it concisely, a reasonable juror could find that Defendant treated Plaintiff differently than Davis, a similarly situated employee engaged in similar conduct, when it chose to punish only Plaintiff after witnesses could not corroborate the entirety of either written statement.

Now consider Fennell. He also engaged in similar conduct to Plaintiff without facing discipline. That is, Fennell accused Plaintiff of trying to get him to corroborate her allegations against Davis, and denied smoking marijuana and being high at work, without Defendant questioning his honesty. (*Id.* at PageID 357.) Defendant took Fennell's statements as true, absent corroborating witnesses or drug tests, and disciplined Plaintiff instead. Fennell also arguably disparaged Plaintiff in his conversation with Parnell, which is prohibited by the employee handbook. (*Id.*) Again, a reasonable juror could find that Defendant treated Plaintiff differently than Fennell, a similarly situated employee engaged in similar conduct, when it chose to punish only Plaintiff.

With these facts in mind, the Court finds that Plaintiff met her burden to show that Defendant treated non-protected, similarly situated employees differently than her. As a result,

Plaintiff has made a prima facie case of sex discrimination against Defendant. The Court next analyzes Defendant's nondiscriminatory justification for Plaintiff's termination and Plaintiff's argument that Defendant's explanation is pretextual.

B. Pretext

When a plaintiff makes a prima facie case of sex discrimination, the burden shifts to the defendant to put forth a legitimate, nondiscriminatory reason for its conduct. *Redlin v. Grosse Pointe Pub. Sch. Sys.*, 921 F.3d 599, 607 (6th Cir. 2019). When the defendant makes that showing, "the plaintiff then must prove by a preponderance of the evidence that the stated reason[ ] [was] a pretext for discrimination." *Id.* (citing *White v. Baxter Healthcare Corp.*, 533 F.3d 381, 391 (6th Cir. 2008)). And a plaintiff can meet this burden "by showing that the proffered reason[ ] (1) had no basis in fact; (2) was insufficient motivation for the employment action; or (3) did not actually motivate the adverse employment action." *Briggs v. Univ. of Cincinnati*, 11 F.4th 498, 515 (6th Cir. 2021) (quoting *Joostberns v. United Parcel Servs., Inc.*, 166 F. App'x 783, 790–91 (6th Cir. 2006)).

Defendant argues here that it had "a legitimate non-discriminatory reason for the adverse action: Plaintiff twice made reports against co-workers which proved to be false." (ECF No. 36-1 at PageID 75.) In response, Plaintiff argues that Defendant's explanation is pretextual because (1) Defendant's reason for termination had no basis in fact, as it based its decision on unreliable and biased witness statements that did not prove she lied; (2) that Plaintiff's action did not motivate Defendant's adverse employment actions; and (3) that Plaintiff's actions were insufficient to warrant said adverse employment actions. (ECF No. 43 at PageID 905–09.) With that in mind, the Sixth Circuit has said the pretext category is not as important as this key inquiry —whether the employer fired the employee for its stated reason or whether "the employer made

up its stated reason to conceal intentional discrimination." *Chen v. Dow Chem. Co.*, 580 F.3d 394, 400 n.4 (6th Cir. 2009). Defendant further suggests that, even if Plaintiff argues that its nondiscriminatory reason were pretextual, she cannot overcome its honest belief defense. (ECF No. 36-1 at PageID 77.) The Court next evaluates Plaintiff's allegations of pretext, and Defendant's honest belief rule argument, below.

For starters, Plaintiff argues that Defendant's adverse employment actions were baseless. (*Id.* at PageID 905–07.) First, as to her suspension, Plaintiff claims that Defendant relied on "brief and unreliable statements" that were written by Parnell and not the witnesses themselves. (*Id.* at 906.) Plaintiff also stresses that Parnell and Michaels made the decision to suspend her before speaking with her or her supporting witness about the incident. (*Id.*) And when Parnell finally did speak to Blair—allegedly the only witness within earshot of Davis's comments to Plaintiff (*see* ECF No. 42)—Parnell recorded Blair's statement incorrectly, chose to ignore the portions of his statement that corroborated Plaintiff's account,[9] and upheld Plaintiff's suspension. (ECF No. 43 at PageID 906; *see* ECF No. 43-1 at PageID 926–27.) Second, related to her termination, Plaintiff contends that Defendant turned her unintentional, off-hand remark about whether Fennell was high into an investigation. And then, Defendant failed to let her elaborate on her statement and refused to exercise its authority to drug test Fennell before determining that she lied. (*Id.*) Plaintiff also notes that Defendant took the word of two male employees who "would have been terminated had they admitted the allegations [Plaintiff] made against them" over hers. (*Id.*)

[9] Blair also submitted a declaration stating that Parnell "acted like" Blair's description of what Davis said to Plaintiff "was not important." (ECF No. 42 at PageID 894.)

Next, Plaintiff argues that Defendant's justification for the adverse employment actions were unwarranted given her conduct because Defendant did not discipline other non-protected employees for engaging in similar behavior. (*Id.* at PageID 909–10.) For example, as to her suspension, Defendant disciplined Plaintiff for "provid[ing] false information" when, "of the five statements collected," Plaintiff's "was the only statement that suggested Mr. Davis cursed at her as the two were walking out of the breakroom." (ECF No. 36-5 at PageID 245; *see also* ECF No. 36-3 at PageID 195.) But as described above, none of the witnesses corroborated what Davis claims he said to Plaintiff during that interaction (*see* ECF No. 37-3 at PageID 354–58)—yet Defendant did not find that Davis provided false information, nor did it discipline him.

As for Defendant's decision to terminate her, Plaintiff argues that Defendant took Fennell's word over hers and chose to find that she lied about Fennell smoking marijuana without conducting a more thorough investigation, including a drug test as permitted under the employee handbook. (ECF No. 43-1 at PageID 927–29; *see* ECF No. 40-1 at PageID 639–40.) In doing so, Plaintiff claims that Defendant's adverse employment action was unreasonable because its investigation did not show that she lied about Fennell's alleged drug use. (ECF No. 43 at PageID 909–10.)

Finally, Plaintiff claims that her actions did not motivate Defendant to terminate her. (*Id.* at PageID 907–09.) Plaintiff contends that even if she did make a false statement against Davis, Defendant would not have fired her but for its inappropriate investigation over her comments about Fennell. (*See* ECF No. 43-1 at PageID 931; ECF No. 36-2 at PageID 197.) She claims when she asked Parnell and East whether Fennell was high that she "was making an off-handed remark because [Fennell's allegation] against her was so unexpected and out of left field." (ECF No. 43 at PageID 908.) Of course, Plaintiff glosses over the fact that she sent a photograph to

Michaels of Fennell allegedly smoking marijuana. Defendant then investigated the claim, but interviewed only Fennell, who had motive to lie; reviewed some security footage to see whether Fennell smoked on company property; and chose not to drug test Fennell despite having the ability to do so. (*Id.* at PageID 908–09.) Plaintiff argues that Defendant did not reasonably investigate Fennell so it could not have reasonably found that she lied. (*Id*.)

Plaintiff claims that each argument shows that Defendant's stated reasons for its adverse employment actions were pretextual, and that Defendant is not entitled to summary judgment as a matter of law. In response, Defendant asserts that it is entitled to summary judgment as a matter of law because it honestly believed in its nondiscriminatory reasons for taking adverse employment actions against Plaintiff. (ECF No. 36-1 at PageID 77–81.)

Courts in the Sixth Circuit apply a "modified honest belief rule," which allows an employer "to avoid a finding that its claimed nondiscriminatory reason was pretextual" if it can "establish its reasonable reliance on the particularized facts that were before it at the time the decision was made." *Clay v. United Parcel Serv., Inc.*, 501 F.3d 695, 713 (6th Cir. 2007); *see also Briggs*, 11 F.4th at 515. If an employer can show reasonable reliance on the particularized facts, "the burden is on the plaintiff to demonstrate that the employer's belief was not honestly held." *Seeger v. Cincinnati Bell Tel. Co., LLC*, 681 F.3d 274, 286 (6th Cir. 2012) (quoting *Joostberns*, 166 F. App'x at 791). At the same time, "[a]n employer's invocation of the honest belief rule does not automatically shield it, because the employee must be afforded the opportunity to produce evidence to the contrary, such as an error on the part of the employer that is 'too obvious to be unintentional.'" *Seeger*, 681 F.3d at 286 (6th Cir. 2012) (quoting *Smith v. Chrysler Corp.*, 155 F.3d 799, 806 (6th Cir. 1998)).

The Court finds that Plaintiff has proffered enough evidence that a reasonable juror may find Defendant's nondiscriminatory justification for its adverse actions was pretextual and that it did not honestly believe in its stated reasons for those adverse actions. And the Court reaches this conclusion for a few different reasons.

First, a reasonable juror could find that Defendant inappropriately suspended Plaintiff. For example, looking at the statements of Plaintiff and Davis along with the three initial witness statements, one could find evidence of corroboration for Plaintiff's allegations. As noted above, none of the three witnesses attest to hearing Davis say what he claims to have said, but William Austin noted that Davis told Plaintiff to "stay in her place[.]" (ECF No. 37-3 at PageID 356.) Even if the witnesses did not hear Davis cuss at Plaintiff, there is at least some evidence in the record that Davis inappropriately addressed Plaintiff.

The evidence corroborating Plaintiff's initial statement only grows when one considers Blair's witness statement and declaration. Like Austin, Blair asserts that Davis told Plaintiff to "stay in her place"; and, like Plaintiff wrote in her statement, that Plaintiff responded by asking "what is my place." (*Id.* at PageID 358.) Blair also noted that the conversation was "'heated' or disrespectful" (*id.*), and now notes that he was the only other employee within earshot of the dispute (ECF No. 42). Blair not only claims that Davis' statement was inappropriate, but also argues Parnell acted as if Blair's version of events "was not important" during their interview. (*Id.* at PageID 894.) Parnell did not revise the decision to suspend Plaintiff after this interview, and Michaels says that she was unaware of the important details of Blair's interview—which may have altered her decision. (*See* ECF No. 38-1 at PageID 389.)

Combining these facts, and viewing the evidence in the light most favorable to Plaintiff, a reasonable juror could find that Defendant inappropriately suspended Plaintiff and that it did not honestly believe in its nondiscriminatory reason for suspending her.

Second, a reasonable juror could find that Defendant inappropriately terminated Plaintiff. After Plaintiff asked whether Fennell was high during her suspension meeting, Defendant alleges that it investigated the allegation. (ECF No. 36-1 at PageID 80; ECF No. 43-1 at PageID 927–28.) And during the investigation, "Fennell denied the accusation; the camera footage reviewed by Parnell did not reveal any evidence of Fennell smoking on Blues City property; and the photo provided by Plaintiff did not reveal it was on Blues City property, nor did it appear to be a 'joint.'" (ECF No. 36-1 at PageID 80; *see also* ECF No. 36-3 at PageID 196; ECF No. 36-5 at PageID 247.)

With that in mind, a reasonable juror could conclude both that Defendant's investigation was improper; and, even if proper, that it was not thorough enough to conclude that Plaintiff made a false statement about Fennell. For starters, Fennell's denial of Plaintiff's allegation is not definitive. Fennell's alleged conduct violated Defendant's handbook policies and the law. Defendant may have terminated Fennell had he admitted to being high at work, so his denial of Plaintiff's allegations is steeped in self-preservation. (*See* ECF No. 37-2 at PageID 296.) The other evidence that Defendant relied on in its determination that Plaintiff lied is also shaky. For example, Plaintiff alleges that she never gave Parnell a particular date that Fennell was high at work, or smoked marijuana on Defendant's property, so Parnell's review of some security footage does not disprove Plaintiff's allegation.

Plaintiff also notes that Defendant no longer has a copy of the footage that Parnell reviewed to confirm Plaintiff's allegations. (ECF No. 43 at PageID 904–05; ECF No. 38-1 at

PageID 392.) Lastly, although Defendant had the ability to drug test Fennell under its employee handbook policy, it failed to do so. (ECF No. 47 at PageID 1019–20.) And rather than take this step to learn whether Plaintiff's information was false, it chose to assume that she lied and terminated her. Plaintiff asserts that Defendant did not conduct an adequate investigation, that its investigation did not reasonably support its findings, and that it decided to terminate her employment for reasons other than finding that she lied about Fennell. The Court finds that a reasonable juror could agree with Plaintiff.

In the end, the Court finds that a reasonable juror could find that Defendant's nondiscriminatory justifications for its adverse actions were pretextual and that it did not honestly believe in its stated reasons for either suspending or terminating Plaintiff. As a result the Court finds that there remain material issues of fact and that Defendant is not entitled to summary judgment as a matter of law.

C. Retaliation

A Plaintiff must show four elements to establish a prima facie case of retaliation under Title VII: "(1) [Plaintiff] engaged in activity protected by Title VII; (2) Defendants knew that Plaintiff engaged in the protected activity; (3) Defendant took an action that was 'materially adverse' to Plaintiff, and (4) a causal connection existed between the protected activity and the materially adverse action." *Weeks v. Michigan, Dep't of Cmty. Health*, 587 F. App'x 850, 858 (6th Cir. 2014). Plaintiff alleges here that Defendant took adverse employment actions against her in retaliation for emailing Michaels her complaints about the days-off policy change several months before Defendant terminated her. (ECF No. 43 at PageID 910–13.) In response, Defendant claims that Plaintiff did not make a prima facie case of retaliation because she failed to show that she engaged in protected conduct or show a causal connection between that conduct

and the adverse employment actions. (ECF No. 36-1 at PageID 81–85; ECF No. 46 at PageID 958–59.) The Court agrees with Defendant.

For starters, Plaintiff's emails to Michael do not establish protected activity under Title VII. Protected activity in the Title VII context "is activity directed against the specific evils made unlawful by Title VII[.]" *Philip v. Wrigley Mfg. Co., LLC*, No. 1:09-CV-144, 2010 WL 4318880, at *11 (E.D. Tenn. Oct. 22, 2010); *Brown v. VHS of Michigan, Inc.*, 545 F. App'x 368, 373 (6th Cir. 2013); *see also* 42 U.S.C. § 2000e3 ("It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has . . . participated in any manner in an investigation . . . under this subchapter."). But here Plaintiff does not allege that her emails to Michaels related to addressing unlawful practices under Title VII. (*See* ECF No. 41-8.) And one cannot glean that information from looking at the emails. (*Id.*) For this reason alone, the Court finds that summary judgment should be granted.

But there is more. Plaintiff's causal connection argument is also thin. She claims that Parnell and East retaliated against her many months after she sent two emails to Michaels because she is "[a] female [who] went over their heads." (ECF No. 40-1 at PageID 658.) This theory ignores the fact that Defendant adjusted its days-off as she requested with no pushback.[10] As a result, the Court finds that Plaintiff failed to meet her burden in establishing a prima facie

[10] Plaintiff's causal connection is also deeply rooted in the timing of her alleged protected activity and the adverse actions. But the adverse actions here occurred at the outer limits of when courts in the Sixth Circuit normally evaluate temporal proximity. *See Nguyen v. City of Cleveland*, 229 F.3d 559, 566–67 (6th Cir. 2000) (quoting *Parnell v. West*, 1997 WL 271751, *2 (6th Cir.1997) ("[P]revious cases that have permitted a prima facie case to be made based on the proximity of time have all been short periods of time, usually less than six months."))

case of retaliation under Title VII. And so, the Court **GRANTS** Defendant's summary judgment motion on this claim.

CONCLUSION

For the reasons explained above, the Court **DENIES** Defendant's motion for summary judgment as to Plaintiff's discrimination claim and **GRANTS** Defendant's motion for summary judgment as to her retaliation claim.

SO ORDERED, this 4th day of August, 2022.

s/Thomas L. Parker
THOMAS L. PARKER
UNITED STATES DISTRICT JUDGE