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# Beyond Pretext: Why the Whole Picture Matters in Eleventh Circuit Employment Cases

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The Eleventh Circuit has further downplayed the importance of the lock-step *McDonnell Douglas* framework for evaluating summary judgment in employment discrimination and retaliation claims, in its latest decision in *Ismael v. Augusta Richmond County Commission*. This decision serves as a timely reminder for employers that courts will not simply apply a rigid, formulaic analysis or focus solely upon whether the employer’s legitimate, non-discriminatory reasons are pretextual. Instead, judges are directed to examine the entire “mosaic” or

consider all the evidence in context, rather than focusing solely on individual pieces of the puzzle. While a “convincing mosaic” is a metaphor, and not a legal test or framework, the concept behind it carries practical implications for employers defending discrimination and retaliation claims.

### **Key takeaways for employers:**

- **“Convincing mosaic” is a metaphor, not a rigid test.** Courts will not impose a formal “mosaic” checklist. Instead, they will view the entire record to determine whether a reasonable jury could infer discriminatory or retaliatory intent.
- **The focus is the totality of the evidence.** An employee’s case is not confined to disproving the employer’s stated reason. Evidence that does not directly attack the proffered rationale can still raise an inference of unlawful motive when viewed in context.
- **Pretext alone is not the gatekeeper in summary judgment.** Summary judgment may not be granted merely because the employee has not fully disproved the employer’s reason; the question is whether the whole record would allow a jury to find discrimination or retaliation.
- **Burden-shifting is not the endpoint.** After an employer articulates a legitimate reason, the formal burden-shifting framework recedes, and courts evaluate the entire evidentiary picture. That broader lens can include comparators, procedural irregularities, shifting explanations, temporal proximity, decision-maker remarks, statistical patterns, and deviations from policy.

### **Practical steps for HR and legal teams:**

1. **Document, contemporaneously and consistently.** Tie decisions to specific, verifiable performance, conduct, or business criteria. Avoid improvised rationales.

2. **Apply policies uniformly.** Track discipline, promotions, pay, and RIF criteria to ensure comparability and consistency across similarly situated employees.
3. **Train decision-makers.** Reinforce documentation quality, lawful interview/discipline practices, and the risks of stray remarks or unplanned deviations from established procedures.
4. **Audit processes.** Periodically review adverse-action files for gaps, inconsistencies, or timeline issues that could create an inference of bias.
5. **Prepare for the “whole record” story.** When seeking summary judgment, marshal not just the legitimate reason but also the broader context showing fair process, even-handed treatment, and non-discriminatory intent.

**Bottom line:** In the Eleventh Circuit, employers should expect courts to look beyond a narrow pretext analysis and evaluate the overall narrative. Build that narrative proactively — through clear records, consistent practices, and disciplined decision-making.

Pretext is “an avenue to demonstrate the defendant’s illicit motive” but is not the “end-all be-all,” the panel said, reinstating Ismael’s case to be reevaluated under a convincing mosaic lens.

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