

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

CARLA MOORE,

*Plaintiff,*

v.

STATE OF CONNECTICUT DEPARTMENT OF  
CORRECTION,

*Defendant.*

No. 3:19-CV-01063 (MPS)

**MEMORANDUM OF DECISION**

Plaintiff Carla Moore, a former employee of the Connecticut Department of Correction (the “DOC”), alleges that the DOC violated her rights under Title VII of the Civil Rights Act of 1964 by subjecting her to a hostile work environment based on her race.<sup>1</sup> Moore claims that a fellow DOC employee’s display of a Confederate flag license plate in the window of his truck while it was parked at the entrance to the facility where she worked created a hostile work environment, and that the DOC is liable because it was aware of the plate but failed to take appropriate remedial action. The Court held a bench trial on May 23, 2022, and now sets forth its findings of fact and conclusions of law, Fed. R. Civ. P. 52(a)(1), which can be summarized as follows: without deciding whether the display of the plate created a hostile work environment, the Court concludes that Moore failed to meet her burden of proving by a preponderance of the evidence that the DOC failed to take appropriate remedial action. Accordingly, the Court enters judgment in favor of the DOC.

**I. FINDINGS OF FACT**

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<sup>1</sup> Moore earlier asserted a Title VII retaliation claim and various state law claims, but those claims have all been dismissed in earlier rulings. See ECF Nos. 26 and 32.

The Court makes the following findings of fact based on witness testimony, trial exhibits, and proposed findings of fact submitted with the parties' joint trial memorandum (ECF No. 64).<sup>2</sup>

Moore is an African-American woman who was employed by the DOC from approximately 1993 until March 31, 2022. (Moore Test.; ECF No. 64 at 8 (Plaintiff's proposed findings) and 11 (Defendant's proposed findings).) At the time of the events at issue in this suit, she worked as a records specialist at the Corrigan-Radgowski Correctional Center, in the Radgowski building. (*Id.*)

At some point, perhaps as early as the beginning of 2017,<sup>3</sup> Moore saw a Confederate flag vanity plate displayed in the rear window of a pick-up truck that was parked next to the entrance of the Radgowski building with the back of the truck facing the building, such that a person exiting the building could see the plate. (Moore Test.; *see also* Exs 1-4 (photos of truck with plate).) Moore found the plate's presence "horrifying," but she did not make a complaint about it at the time she first saw it. (Moore Test.)

Moore first complained about the plate on November 13, 2018, when she made a verbal complaint to her supervisor, Justin Oles. (Ex. 502 at 2; *see also* Oles Test.) Oles had seen the plate before, but he had not reported it because he didn't know enough about the First Amendment to know whether the truck owner had the right to display it. (*Id.*) Once Moore raised the issue, however, Oles felt it was right to report the plate to his superiors, and he did so. (*Id.*) The DOC had received no other complaints regarding the plate before Moore's, nor had it

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<sup>2</sup> To the extent that any Finding of Fact reflects a legal conclusion, it shall to that extent be deemed a Conclusion of Law, and vice-versa.

<sup>3</sup> Moore testified that she first saw the plate in the beginning of 2017. (Moore Test.) Her incident report indicates that she had been seeing the flag for "approximately 1 year" as of November 13, 2018. (*See, e.g.*, Ex. 504.)

previously received any complaints about displays of any sort in personal vehicles parked in DOC parking lots. (Darin Test. at 65-66.)

On November 30, Moore submitted a written complaint stating:

On 11/27/2018 and dozens of times during this year, I was offended by a staff member[']s pickup truck backed in the parking space right next to the flag pole in the front of the Radgowski building. When exiting the building both staff and the public have a direct view of a confederate flag vanity plate in the back window of the pickup truck which is highly offensive to people of color.

Ex. 5. The captain to whom Moore emailed the written complaint informed her on December 3 that Oles had already filed a written incident report and asked Moore to transfer what she had written to a supplemental incident report, which Moore did on December 6. (*Id.*; Ex. 504.)

On December 5, Deputy Warden Ronald Cotta reviewed the incident report prepared by Oles and forwarded it to the Warden, Stephen Faucher, for “further review.” (Ex. 501 at 3.) A staff attorney within the DOC’s Legal Affairs Unit recommended to Faucher that the complaint be referred to the DOC’s Affirmative Action Unit (“Affirmative Action”). (Ex. 506.) She also noted that she had “consulted with Lori Kolakowski regarding removing the flag from view while on state property” and that Kolakowski was “going to run the question by OLR [the Office of Labor Relations] and advise.” (*Id.*)

On December 7, Faucher forwarded the “incident report” containing all paperwork regarding Moore’s complaint (including Oles’s report and Moore’s supplemental report) to District Administrator Edward Maldonado, recommending that the matter be reviewed by Affirmative Action. (Ex. 505.) “[A]round December 7th,” Holly Darin, who supervises Affirmative Action, “heard from Legal or HR that there was an incident report coming up.” (Darin Test. at 57.) Darin began discussing the complaint with HR and Legal Affairs because it was a “case of first impression” and “[t]here w[ere] some First Amendment rights at play.” (*Id.*)

On December 13, Cotta spoke to the owner of the vehicle with the Confederate flag plate, Correctional Officer Eric Walls. (Ex. 503; *see also* Darin Test. at 60.) Cotta told Walls that another staff member found the plate offensive and asked if he would voluntarily remove the plate while his car was on state property. (*Id.*) Walls refused to do so. (*Id.*) Walls stated that he had displayed the plate in his vehicle for years and that “it was not meant to be offensive, but part of his heritage . . . .” (*Id.*)

On December 20, Maldonado referred Moore’s complaint to Deputy Commissioner Monica Rinaldi, recommending that the incident be reviewed by Human Resources and Affirmative Action. (Ex. 508.) Affirmative Action formally received the referral on that date, and it reached out to both Legal Affairs and the OLR for guidance on how to handle the complaint. (Darin Test. at 59-60; Ex. 507 at 2.) Affirmative Action decided to reach out to the OLR because that office handles all employee grievances and disciplinary issues and so could advise on whether DOC could discipline Walls for the plate and on whether it could order him to remove it. (Darin Test. at 59.)

A few weeks later, on January 9, 2019 Darin reported to the Deputy Commissioner’s office that she had not yet made a determination regarding Moore’s complaint because she had had to reach out to Legal Affairs and the Attorney General’s Office. (Ex. 507 at 1-2; *see also* Darin Test. at 61.) Darin also indicated that she “hope[d] to have a better idea on how best to proceed shortly.” (*Id.*)

On January 15, the Deputy Commissioner’s office sent an email checking on the status of the investigation, and Nicole Anker, the director of Legal Affairs, responded, “[s]till waiting on AGs office to chime in. They’re working on it.” (Ex. 507 at 1.) As of that date, Affirmative

Action had not taken any action regarding the complaint “because [the unit] was still waiting to hear back from the AG’s office and legal.” (Darin Test. at 62.)

On February 19, the Deputy Commissioner’s office followed up again regarding the status of the investigation. (Ex. 509 at 2.) Darin responded: “I heard back from legal last week and need to write a memo.” (*Id.*) Although Darin indicated in her response that she hoped to get the Deputy Commissioner an answer regarding the complaint by the end of the week (*id.*), she realized, upon further review of Moore’s complaint, that “it wasn’t exactly clear whether [Moore] was alleging a hostile work environment or harassment based upon protected class” because Moore indicated in her complaint that “she was offended by the [C]onfederate flag and that the [DOC] had a duty to do something when someone was offended.” (Darin Test. at 63). While Darin “d[idn’t] disagree” that the DOC has “an obligation to take a serious proactive stance against issues that offend all state employees,” the Affirmative Action Unit has “jurisdiction . . . [only] over complaints of harassment or discrimination based upon a protected class.” (*Id.* at 64.) Darin decided to have one of the investigators working under her supervision take a statement from Moore to clarify the basis for her complaint to ensure that it fell within Affirmative Action’s jurisdiction. (*Id.* at 64-65; *see also* Ex. 509 at 1 (March 6, 2019 email from Darin to the Deputy Commissioner’s office stating that Darin “ha[d] determined . . . that Affirmative Action w[ould] retain [Moore’s complaint] for the purposes of taking the statement of . . . Moore” and that Affirmative Action would “be in a better position to decide how best to move forward” after doing so).)

The investigator interviewed Moore on March 15. (*See* Ex. 510 (email from investigator stating that he would be interviewing Moore on March 15 in the Radgowski building); Ex. 511 (documentation of interview).) During that interview, in response to questions from the

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