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A Single "Heil Hitler" Not Hostile Enough, Says The Fifth Circuit

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No reasonable employee could believe that a single "Heil Hitler" creates a hostile work environment. Or at least that's what the Fifth Circuit Court of Appeals recently determined in its March 3, 2015, decision *Satterwhite v. City of Houston*. In *Satterwhite*, Courtney Satterwhite, an employee for the City of Houston, reported his co-worker Harry Singh for allegedly using the phrase "Heil Hitler" during a meeting. After later becoming Satterwhite's supervisor, Singh recommended that Satterwhite be demoted and the City ultimately agreed. Following his demotion, Satterwhite brought an unlawful retaliation claim under both Title VII of the Civil Rights Act of 1964 and under the Texas Commission on Human Rights Act. Satterwhite alleged that he was demoted in retaliation for reporting Singh. The district court granted summary judgment for the City, finding that Satterwhite had failed to show a causal connection between his reporting of Singh and his subsequent termination. The Fifth Circuit Court of Appeals affirmed this decision, but not because it found a lack of causal connection. Instead, the Fifth Circuit determined that Satterwhite's reporting of Singh did not even rise to the level "protected activity." For employees to be protected from retaliation, they must "reasonably believe" that the conduct they report violates Title VII. As a result, for Satterwhite's report of Singh to have constituted protected activity, Satterwhite had to reasonably believe that a single "Heil Hitler" created a hostile work environment. The Fifth Circuit determined that no reasonable employee could have held such a belief, and therefore Title VII's anti-retaliation provisions did not protect Satterwhite. The court accordingly affirmed summary judgment for the City. The Fifth Circuit's conclusion that a single "Heil Hitler" does not create a hostile work environment is not the most interesting thing about *Satterwhite*. Indeed, in all likelihood, the Fifth Circuit is correct on this point. What is interesting about *Satterwhite* is that the Fifth Circuit went so far as to find that no reasonable employee could have *even believed* that one "Heil Hitler" created a hostile work environment. Keep in mind: the so-called "reasonable employee" is presumably a non-lawyer who, for the most part, is unfamiliar with the nuances of Title VII. Because of this, the possibility exists that a different court would reach a different conclusion than did the Fifth Circuit. Employers accordingly should proceed with caution in relying on the *Satterwhite* decision.

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