

Crawford v. Nashville and Davidson Cty., TN

--- U.S. --- (2009)

Decided January 26, 2009

FACTS: In 2002, the Metro government of Nashville and Davidson County, TN, were investigating rumors of sexual harassment by a school district supervisor (Hughes). Crawford, a long-time employee, was asked by a human resources investigator if she had ever “witnessed ‘inappropriate behavior’” by that employee. She replied with several instances of when she had been sexual harassed by that employee, in the form of sexual comments and overt behavior. Despite the fact that two others had accused him, as well, Metro took no action against Hughes. They did, however, fire both Crawford and the other two accusers shortly after ending the investigation. (With respect to Crawford, they claimed it was for embezzlement.)

Crawford filed a complaint with the EEOC, and followed that with a lawsuit in the U.S. District Court. The trial court granted summary judgment for Metro, and the U.S. Court of Appeals, Sixth Circuit, affirmed that decision. Crawford requested certiorari, and the U.S. Supreme Court accepted the case.

ISSUE: Does Title VII of the 1964 Civil Rights act protect a worker from being dismissed because they cooperate (by answering questions) with an employer’s internal investigation of sexual harassment?

HOLDING: Yes

DISCUSSION: The Court began:

The Title VII antiretaliation provision has two clauses, making it “an unlawful employment practice for an employer to discriminate against any of his employees ... [1] because he has opposed any practice made an unlawful employment practice ..., or [2] because he has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing ...¹

The first clause is known as the “opposition clause,” the second is called the “participation clause.” Crawford accused Metro of violating both. Both the District Court and the Court of Appeals ruled that the opposition clause did not apply because “she had not ‘instigated or initiated any complaint,’ but had ‘merely answered questions by investigators in an already-pending internal investigation initiated by someone else.’” Both courts agreed it failed under the second because the participation clause confines such protections to instances where “an employee’s participation in an employer’s internal investigation ... occurs pursuant to a pending EEOC charge.” (The investigation was internal, but there was no EEOC action pending at the time.)

The Court, however, found that Crawford’s statement is “covered by the opposition clause,” because her response was certainly “resistant or antagonistic” towards Hughes’ behavior. The Court found it odd to protect “an employee who reports discrimination on her own initiative but not one who reports the same discrimination in the same words when her boss asks a question.”

¹ 42 U.S.C. §2000e-2(a).

Further, in response to the assertion that this would reduce the incentive for employers not to investigate allegations of discrimination; the Court noted that under both *Burlington Industries, Inc. v. Ellerth*² and *Faragher v. Boca Raton*³, employers have a “strong inducement to ferret out and put a stop to any discriminatory activity in their operations as a way to break the circuit of imputed liability.”

The Court stated:

The appeals court’s rule would thus create a real dilemma for any knowledgeable employee in a hostile work environment if the boss took steps to assure a defense under our cases. If the employee reported discrimination in response to the inquiries the employer might well be free to penalize her for speaking up. But if she kept quiet about the discrimination and later filed a Title VII claim, the employer might well escape liability, arguing that it “exercised reasonable care to prevent and correct [any discrimination] promptly” but “the plaintiff employee unreasonably failed to take advantage of ... preventative or corrective opportunities provided by the employer.” Nothing in the statute’s text or our precedent supports this catch-22.

Because the Court ruled that Crawford was protected under the opposition clause, it did not explore her argument under the participation clause. The Court remanded the case for further proceedings.

FULL TEXT OF OPINION: <http://www.supremecourtus.gov/opinions/08pdf/06-1595.pdf>

² 524 U.S. 742 (1998).

³ 524 U.S. 775 (1998).