

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-3430

Gloria Counter,

Appellant,

v.

Arkansas Department of Finance and
Administration, et al.,

Appellees.

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Appeal from the United States
District Court for the
Western District of Arkansas.

[UNPUBLISHED]

Submitted: July 5, 2001

Filed: July 9, 2001

Before BOWMAN, BEAM, and LOKEN, Circuit Judges.

PER CURIAM.

Gloria Counter, who has worked as a revenue office cashier in Magnolia, Arkansas, since 1991, filed this action against the Arkansas Department of Finance and Administration and two supervisory employees, claiming defendants singled her out for harsher discipline and punishment than her coworkers on the basis of her race, and in retaliation for her pursuit of her rights. The district court¹ granted defendants summary

¹The HONORABLE HARRY F. BARNES, United States District Judge for the Western District of Arkansas.

judgment as to Counter's retaliation claim, finding no evidence of a causal connection between any alleged adverse employment action and Counter's protected activity. Following a jury trial on the race discrimination claim, the district court granted defendants judgment in accordance with the jury's verdict. Counter appeals, and we affirm.

Having carefully reviewed the record and Counter's arguments on appeal, we conclude (1) the grant of summary judgment on Counter's retaliation claim was proper because there was no evidence that the supervisors who perpetrated the alleged adverse employment actions were aware of Counter's EEOC claims, see Barge v. Anheuser-Busch, Inc., 87 F.3d 256, 259-60 (8th Cir. 1996); (2) Counter failed to preserve her claim of instructional error, and there was no plain error, see Kehoe v. Anheuser-Busch, Inc., 96 F.3d 1095, 1104 (8th Cir. 1996); (3) there was sufficient evidence to support the jury's verdict on the issue of race discrimination, see Smith, 151 F.3d at 818 (standard of review); and (4) Counter was not entitled to declaratory or injunctive relief absent undisputed evidence, or a jury finding, that race was a motivating factor in defendants' actions. See 42 U.S.C. § 2000e-5(g); Browning v. President Riverboat Casino-Missouri, 139 F.3d 631, 634 (8th Cir. 1998).

Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.