



evidence of retaliatory discharge because Precision had valid, nonpretextual reasons for discharging plaintiffs. Plaintiffs appeal once again; and we reverse and remand once again.

¶ 3 The evidence presented at trial established that Precision is an agricultural company in the business of raising, conditioning, packaging, and distributing seeds for commercial agricultural use. As part of this business, Precision packs soybeans into 2,000-pound bags. To get the correct weight of beans into the bags, beans are put into a hopper with a set-point. When the set-point is reached, an operator opens a gate releasing the beans into a bag which is then weighed. The State requires that every bag labeled 2,000 pounds contain at least 2,000 pounds of beans. Precision contended that it implemented strict protocols to ensure that each bag was properly filled and that it customarily filled the bags with more than the labeled weight in order to compensate for normal seed shrinkage after bagging.

¶ 4 Plaintiffs each worked for Precision at the same facility from sometime in 1998 to March or April of 2003. Hohman worked on the bagging line ensuring that soybean bags contained the proper weight. Kluemke started in the bagging room and then worked in the warehouse. Michael worked in the warehouse and shipping department. Hohman was fired on March 18, 2003, and Michael and Kluemke were fired on April 11, 2003.

¶ 5 In the fall of 2002, a new individual, allegedly a relative of the general manager, was put in charge of bagging, according to plaintiffs, "to try a new direction." Hohman noticed that the set-point, which normally operated at 2,007 to 2,010 pounds, was lowered by 5 or 6 pounds. Soon thereafter, drivers started noticing that their loaded trucks were lighter than expected. Precision instructed some of the employees to weigh bags from designated lots. In one of the checks, the majority of the bags weighed between 1,993 and 1,997 pounds. Some, however, were light by as much as 20 pounds. One of the employees testified that the underweight bags were segregated and not shipped, while another stated that they were put back in the lot. Conflicting testimony again was presented as to who decided not to test

additional bags to determine the extent of the weight problem. According to one of the employees, Precision was not really concerned about the weight differences because it was not that big of an issue.

¶ 6 With the help of Hohman, Kluemke and Michael began weighing bags regularly without Precision's instruction or knowledge. All three found the bags to be light. In early February 2003, a former Precision employee reported to the Illinois Department of Agriculture, Bureau of Agricultural Products Inspection (hereinafter the State), that Precision knew it was shipping underweight bags of soybeans. Kluemke, Michael and Hohman gave the former employee lot numbers and locations of underweight bags to aid the State in its investigation of Precision. Precision noted that none of the employees bothered to fix the underweight bags or report their existence to management, despite their training and the existence of a company policy to maintain proper bag weight. Plaintiffs countered that they initially tried reporting shortages to management but were told that the problem was being addressed.

¶ 7 On February 10, 2003, State inspectors descended on Precision, allegedly because of a customer complaint, to inspect bag weights. On the first day of inspections, the State, after finding underweight seed bags, issued five stop-sale orders covering multiple lots of soybeans. Precision stopped production for 10 days while all employees, working 12-hour shifts around the clock, weighed all bags in the warehouse and brought them up to the proper weight. Approximately half of the bags were light. After the initial weighing was completed, bags shipped prior to the State inspection were also returned so that those bags could be brought back up to weight as well. The refilling of returned bags continued until March 2003. As a result of Precision's efforts, the State lifted the stop-sale orders and ended its investigation without issuing any penalties or fines.

¶ 8 During the inspection process, after the inspectors identified the lots they wanted to

see, the assistant plant manager began his own investigation to learn which customer complained. He soon realized that one of the lot numbers the inspectors identified was still at Precision, thereby precluding the possibility of a customer complaint. Deducing that the complaint had to have been made by an employee or former employee, he continued to search for the source of the complaint. At trial, he explained that he was only trying to determine why the bags were short. He testified that he concluded the bags were underweight because of a shrinkage problem. He also believed the former employee had sabotaged Precision's equipment.

¶ 9 On March 18, 2003, Hohman was involved in a forklift collision with another employee. Nobody was injured, and the forklift was not damaged. Precision fired Hohman shortly thereafter. Precision had not previously fired other employees for forklift incidents, and the other employee involved was not disciplined for his role in the accident.

¶ 10 In February of 2003, a senior management team decided to eliminate an undetermined number of jobs, allegedly as part of a reduction in force necessitated by a slowdown in business. According to plaintiffs, no criteria were given for deciding whom to discharge nor were any personnel records reviewed. The team claimed they decided whom to discharge based on employees' strengths, weaknesses, skill sets, and attitudes. Kluemke and Michael were two of the four employees discharged. The employees were not told why they were being discharged, but they were told they could never work for Precision again. Plaintiffs asserted that they were fired as a result of Precision's belief that they had played a role in reporting the underweight bag issue to the State. As support for this view, Hohman testified that, while speaking with one of the managers during the inspection process, he was told if any of the management team ever found out that any of the employees had anything to do with turning Precision in to the State, that employee would be terminated immediately.

¶ 11 The trial court concluded that plaintiffs had established a rebuttable presumption that

Precision had unlawfully discharged them, but Precision also had articulated legitimate reasons for discharging plaintiffs. The trial court therefore entered judgment in favor of Precision.

¶ 12 Illinois common law recognizes a cause of action for retaliatory discharge. *Callahan v. Edgewater Care & Rehabilitation Center, Inc.*, 374 Ill. App. 3d 630, 634, 872 N.E.2d 551, 554 (2007). To maintain an action for retaliatory discharge a plaintiff must prove his employment was terminated, the discharge was in retaliation for the employee's actions, and the discharge violated a clear mandate of public policy. *Michael*, 2011 IL App (5th) 100089, ¶ 15; *Barr v. Kelso-Burnett Co.*, 106 Ill. 2d 520, 529, 478 N.E.2d 1354, 1358 (1985). Consistent with violating a clear mandate of public policy, Illinois recognizes retaliatory discharge for employees reporting illegal activity. See *Mackie v. Vaughan Chapter-Paralyzed Veterans of America, Inc.*, 354 Ill. App. 3d 731, 734, 820 N.E.2d 1042, 1045 (2004). Here, plaintiffs alleged that they participated in and/or Precision believed they participated in activities which led the State to conduct an investigation into Precision's practices of selling or mislabeling underweight seed bags. Clearly enough circumstantial evidence was presented of Precision's knowledge that plaintiffs were involved in the reporting through their relationships, contacts, and conversations with the former employee who actually reported the underweight bags to the State. As the trial court recognized, plaintiffs were discharged within a short time frame after plaintiffs reported underweight bags to the State through the former employee. Being discharged in retaliation for forwarding such information to the State clearly supports plaintiffs' claims of retaliatory discharge, and the trial court properly found a causal nexus between plaintiffs' reporting of the underweight bags and their firing.

¶ 13 The trial court, relying on *Maye v. Human Rights Comm'n*, 224 Ill. App. 3d 353, 586 N.E.2d 550 (1991), correctly determined that plaintiffs needed to prove that they engaged in

a protected activity; that Precision committed adverse acts against plaintiffs; and that a causal nexus existed between plaintiffs' protected activities and the adverse action taken by Precision. The trial court then concluded, however, that, once Precision articulated legitimate nondiscriminatory reasons for its discharge of plaintiffs, the burden remained upon plaintiffs to also prove, by a preponderance of the evidence, that the articulated reasons offered by Precision were not the true reasons but rather pretexts for discharge. By doing so, the trial court erroneously increased plaintiffs' burden, requiring them to prove in addition to causation that the reasons Precision gave for discharging plaintiffs were, in fact, pretexts for discharge. In other words, instead of requiring Precision to prove its defense, the trial court required plaintiffs to both prove causation and disprove Precision's defense, thereby enhancing plaintiffs' burden of proof. See *Siekierka v. United Steel Deck, Inc.*, 373 Ill. App. 3d 214, 221-22, 868 N.E.2d 374, 380 (2007) (mere existence of valid reason does not defeat retaliatory discharge claim). Given that it is a question of law as to whether the trial court applied the correct legal test to the evidence presented, our review is *de novo*. *Reliable Fire Equipment Co. v. Arredondo*, 2011 IL 111871, ¶ 13. Applying this standard, we conclude that the trial court erred in entering judgment in favor of Precision. Furthermore, given that the trial court found a causal nexus between plaintiffs' discharges and their protected activities, we need only remand this cause for further proceedings on the issue of plaintiffs' damages.

¶ 14 For the reasons stated above, we reverse the judgment of the circuit court of Washington County and remand the matter for further proceedings on the issue of damages only.

¶ 15 Reversed and remanded.