

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 SUMMARY ORDER

4 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL
5 REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY
6 TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE
7 ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT
8 STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR
9 PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

10 At a stated term of the United States Court of
11 Appeals for the Second Circuit, held at the Thurgood
12 Marshall United States Courthouse, Foley Square, in the
13 City of New York, on the 20th day of July, two thousand
14 five.

15 PRESENT: HON. RALPH K. WINTER,
16 HON. DENNIS JACOBS,
17 Circuit Judges,

18 HON. JOHN GLEESON,*
19 District Judge.

20 - - - - -X
21 JOHN R. GRAZIANO,

22 Plaintiff-Appellant,

23 -v.- 02-7629

24 NEW YORK STATE POLICE,
25 Defendant-Appellee.
26 - - - - -X

27 APPEARING FOR APPELLANT: Michael H. Sussman, Goshen, NY

*The Honorable John Gleeson, United States District Judge for the Eastern District of New York, sitting by designation.

1
2 **APPEARING FOR APPELLEE:** **Patrick J. Walsh**, Assistant
3 Solicitor General, Albany, NY
4 (**Eliot Spitzer**, Attorney
5 General of the State of New
6 York, **Marion Buchbinder**,
7 Assistant Solicitor General,
8 Albany, NY, on the brief)

9 Appeal from the United States District Court for the
10 Southern District of New York (Conner, J.).

11
12 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,**
13 **ADJUDGED AND DECREED** that the judgment of the district
14 court is **AFFIRMED**.

15 John R. Graziano appeals an April 29, 2002 judgment
16 of the United States District Court for the Southern
17 District of New York (Conner, J.), dismissing his
18 complaint against the New York State Police ("NYSP") on
19 summary judgment. See Graziano v. New York State Police,
20 198 F. Supp. 2d 570 (S.D.N.Y. 2002). We assume that the
21 parties are familiar with the facts, the procedural
22 history, and the scope of the issues presented on appeal.

23 "We review a district court's grant of summary
24 judgment de novo, construing the evidence in the light
25 most favorable to the non-moving party." Elec.
26 Inspectors, Inc. v. Vill. of E. Hills, 320 F.3d 110, 117
27 (2d Cir. 2002). "A district court must grant a motion
28 for summary judgment if 'there is no genuine issue as to
29 any material fact and . . . the moving party is entitled
30 to a judgment as a matter of law.'" Id. (quoting Fed. R.
31 Civ. P. 56(c)). "Conclusory allegations, conjecture, and
32 speculation . . . are insufficient to create a genuine
33 issue of fact." Shannon v. New York City Transit
34 Authority, 332 F.3d 95, 99 (2d Cir. 2003) (quoting Kerzer
35 v. Kingly Mfg., 156 F.3d 396, 400 (2d Cir. 1998)).

36
37 "In an employment discrimination case, the plaintiff
38 has the burden at the outset of 'proving by the
39 preponderance of the evidence a prima facie case of
40 discrimination.'" Chambers v. TRM Copy Centers Corp., 43
41 F.3d 29, 37 (2d Cir. 1994) (quoting Texas Department of
42 Community Affairs v. Burdine, 450 U.S. 248, 252-53
43 (1981)). To meet this burden, a gender discrimination

1 plaintiff must--inter alia--enter evidence allowing an
2 inference of discrimination because of his gender.
3 Williams v. R.H. Donnelley, Corp., 368 F.3d 123, 126 (2d
4 Cir. 2004).

5
6 According to Graziano he was subjected to hostility
7 by his female coworkers primarily due to antecedent (and
8 unproven) accusations that he committed acts of sexual
9 harassment; all of the mistreatment Graziano alleges
10 arose from his reputation as a harasser and/or the
11 discomfort experienced by other NYSP employees, both men
12 and women, when subsequently working with Graziano.
13 Graziano's status as a purported harasser is not a
14 gender-specific classification. See Oncale v. Sundowner
15 Offshore Servs., 523 U.S. 75, 79 (1998) ("[N]othing in
16 Title VII necessarily bars a claim of discrimination
17 'because of . . . sex' merely because the plaintiff and
18 the defendant or the person charged with acting on behalf
19 of the defendant are of the same sex."). Graziano argues
20 that the NYSP's ready willingness to credit stories of
21 his sexual harassment constitutes gender stereotyping.
22 However, the overwhelming evidence is that Graziano
23 actually had the personality traits in question, not that
24 they were imagined because of his sex.

25 In short, Graziano has entered no credible evidence
26 allowing the inference that he (or any other man) was
27 subjected to discrimination because of his sex. See
28 Raniola v. Bratton, 243 F.3d 610, 621 (2d Cir. 2001) (a
29 sex discrimination plaintiff "'must always prove that the
30 conduct at issue was not merely tinged with offensive
31 connotations, but actually constituted discrimination
32 because of sex'" (quoting Oncale, 523 U.S. at 80-81)).
33

34 For the reasons set forth above, the judgment of the
35 district court is hereby **AFFIRMED**.

36 FOR THE COURT:
37 ROSEANN B. MACKECHNIE, CLERK
38 By:

39 _____
40 Lucille Carr, Deputy Clerk