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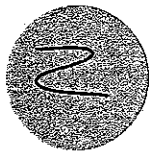

A09-81

STATE OF MINNESOTA
In the Court of Appeals

Minneapolis Police Department,

Appellant,

vs.

Phillip Kelly,

Respondent,

City of Minneapolis,
Commission on Civil Rights,

Respondent.

ON APPEAL FROM CITY OF MINNEAPOLIS,
COMMISSION ON CIVIL RIGHTS

BRIEF, ADDENDUM AND APPENDIX OF APPELLANT

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF LEGAL ISSUES

I. Did the actions of Appellant in arresting the Respondent constitute discrimination?

The Commission on Civil Rights ruled that arresting the Respondent rather than issuing him a citation constituted discrimination.

Apposite Authority:

McDonnell Douglas v. *Green* 411 U.S. 792 (1973).

Sigurdson v. *Isanti County*, 386 N.W.2d 715 (Minn. *1986)*.

Minneapolis Police Dept. v. *Minneapolis Comm'n on Civil Rights,* 402 N.W.2d 125 (Minn. App. 1987), *af'd,* 425 N.W.2d 235 (Minn. 1988).

II. Was taking the Respondent into custody so at variance with what would reasonably be anticipated absent discrimination that discrimination was the probable explanation?

The Commission on Civil Rights ruled that taking Respondent Kelly into custody was so at variance with what would reasonably be anticipated that discrimination was the probably explanation.

Apposite Authority:

City of Minneapolis v. Richardson, 239 N.W.2d 197 (Minn. 1976).

State by Beaulieu v. City of Moundsview, 518 N.W.2d 567 (Minn. 1994).

III. Did legitimate non-discriminatory reasons exist for taking Respondent Kelly into custody?

The Commission on Civil Rights ruled that no legitimate non-discriminatory reasons existed.

Apposite Authority:

City of Minneapolis v. Richardson, 239 N.W.2d 197 (Minn. 1976).

State by Beaulieu v. City of Moundsview, 518 N.W.2d 567 (Minn. 1994).

IV. Were the damages and penalties awarded supported by the facts?

The Commission on Civil Rights awarded $5,382.50 in damages to Respondent, $8,500.00 in punitive damages and an $8,500.00 civil penalty.

Apposite Authority:

Bougie v. Sibley Manor, Inc., 504 N.W.2d 493 (Minn. App. 1993).

Minneapolis, Minn., Code of Ordinances § 141.50(m).

STATEMENT OF THE CASE

Trial Court: City of Minneapolis, Commission on Civil Rights.

Presiding Commissioner: Frances Li

On March 30, 2004, Phillip Kelly filed a *Charge of Discrimination* alleging race discrimination with the Minneapolis Department of Civil Rights against the Minneapolis Police Department.

On May 4, 2004, the Minneapolis Police Department filed a *Response to the Charge of Discrimination* denying that discrimination had occurred.

On June 6, 2006, the Minneapolis Department of Civil Rights ("MDCR") issued a *Determination* that there was probable cause with regard to the charge of race discrimination in public services.

The matter came on for hearing before the Commission on Civil Rights ("Commission") on June 17, 18 and 19, 2008. The hearing committee members were Commissioners Anita Urvina-Davis, Louisa Hext, and Frances Li, who also served as the presiding commissioner. William L. Walker appeared on behalf on Philip Kelly and Timothy S. Skarda represented the Minneapolis Police Department. The record closed on June 19, 2008.

On December 17, 2008, the Commission issued *Findings of Fact, Conclusions of Law and Order for Judgment* holding that Minneapolis police officers had not used excessive force against Kelly, but that the decision to take

Kelly into custody rather than issue a citation to him "was so at variance with what would reasonably be anticipated absent discrimination, that discrimination is the probable explanation." (Addendum 8[1]). The hearing committee awarded $5,000 in mental anguish, stipulated actual damages of $382.50; punitive damages of 8,500.00; and a civil penalty of $8,500.00.

An appeal is authorized by Minneapolis Code of Ordinances § 141.60(b) incorporating review in accordance with the provision of Minn. Stat. Chapter 14.

On January 12, 2009, the Minneapolis Police Department petitioned this Court for a Writ of Certiorari.

On January 15, 2009, the Court issued a Writ of Certiorari.

[1] References to Appellant's Addendum are hereafter cited as "Ad."

STATEMENT OF THE FACTS

On January 8, 2004, around 12:45 p.m., Park Police Officer Mooney was patrolling in his squad car when he heard from the dispatch that an armed robbery had occurred at *Doug and Tom's Market* located at 1500 Nicollet Avenue. (T. 112). The robbery suspect was described as a black male, wearing a black jacket, black hat, blue jeans and armed with a hand gun. (Ad. 2; T. 113-114, 229). Kelly was walking two blocks south of the robbery location and was wearing a black jacket with a black hood, black hat and blue jeans. (Ad. 2-3; T. 117). At approximately 1:05 p.m. Park Officer Mooney radioed that he would be out of his squad car with a suspect at Grant Street and LaSalle Avenue. (T. 123, 230, 241, 249).

a. Use of Force.

Officer Mooney approached and grabbed Kelly who was uncooperative and resisted being handcuffed. (Ad. 3).

Minneapolis Police Officers Jomar Villamor and Douglas DuBay responded to Mooney's location to assist. (Ad. 3; T. 55, 229-230, 329-30). When Villamor and DuBay arrived they saw Mooney struggling to control Kelly who was uncooperative, belligerent, screaming loudly with profanities and resisting being handcuffed. (Ad. 4; T. 55, 232, 331-332). Officer Mooney was pleading with Kelly to cooperate. (T. 233). Officers were trying to explain to Kelly why he had

been stopped, but Kelly was yelling. (T. 233-234). Officer Villamor approached and used force to control, handcuff and place Kelly into his squad car. (Ad. 4.). Kelly was resisting Park Police Officer Mooney. Officer Villamor assisted by holding Kelly's right arm and attempting to place the arm behind the Kelly's back. (T. 332-333). Officer Villamor was giving verbally commands to Kelly to comply with the officers' orders. (T. 332). Kelly continued to resist. Kelly admitted that he got "excited" and was "a notch louder." (Ad. 4; T. 311). Kelly continued to be uncooperative, belligerent and cursing at the officers. (Ad. 5; T. 235-236, 334).

Officer Villamor pushed Kelly's upper body down on the squad car hood and placed Kelly in a pain compliance wrist lock to maintain control. (T. 333-334). After a short struggle Kelly was placed into handcuffs. (T. 334).

Kelly remained uncooperative and belligerent, yelling profanities at the officers as they attempted to explain to him why he had been stopped. (T. 334-335). Kelly did not allow the officers to explain and repeatedly yelled that they were harassing him because of his race. (T. 80, 235-236). Kelly attempted to incite the crowd that had begun to gather around the group. (T. 236, 336). In Officer Villamor's experience, people being arrested often act out in front of a crowd, but become calm and cooperative when removed from an audience. (T. 87). In order to control of the situation, Officer Villamor placed Kelly in the back seat of the squad car. (T. 336). Kelly refused to get into the squad car and yelled

that he was being brutalized because of his race. (T. 235-236, 336-340). Kelly continued to refuse to get into the squad even when Officer Villamor placed a pain compliance mandibular angle hold on him. (T. 236-237, 336-340). The pain compliance hold was used to attempt to get Kelly into the squad car. (*Id.*) Kelly attempted to push away from the squad car which Officer Villamor managed to prevent. (T. 337). Officer Villamor used several pain compliance knee strikes to the right thigh of Kelly while continuing to order him to get into the squad car. (T. 237-238, 339). Kelly stopped resisting and got into the squad car. (T. 238, 340).

While inside the squad car, Kelly remained belligerent. (T. 341). He demanded to know why he was being stopped. (T. 341). When the officers attempted to explain why he had been detained, Kelly immediately interrupted them. (T. 234, 341). Kelly admits to being angry while in the squad car. (T. 209).

The Commission found that, under the totality of circumstances, Officer Villamor used reasonable force during the arrest. (Ad. 8). The Commission concluded that "Respondent MPD did not use excessive force in the arrest of Complainant at the SuperAmerica parking lot." (Ad. 8).

Kelly has not appealed the determination by the Commission that the use of force was proper and did not constitute discrimination.

b. Arrest of Kelly.

Kelly was driven to the location of the robbery and participated in a show up. (T. 340-341). It was explained to Kelly that witnesses at the robbery scene would determine whether Kelly was the suspect. (T. 341). Kelly asked if he would be free to go, if he was not the suspect. (T. 341). Officer Villamor told Kelly that he was still under arrest for his prior conduct and Kelly immediately became loud and belligerent, again. (T. 341-342). At the market the Mr. Kelly was removed from the squad car so employees could see him from the window. (T. 241, 341). He was cleared of involvement in the robbery. (Ad. 5-6; T. 341-342). Kelly again became upset and refused to get back into the squad car. (T. 242, 342).

Kelly was not released, but booked into the Hennepin County Adult Detention Center on charges of disorderly conduct and obstructing legal process. (Ad. 6; T. 343).

Kelly was arrested because of his prior failure to cooperate with police officers and his disorderly conduct. (T. 341-342). Kelly admits to using "bad words" while in the squad car. (T. 208). Officer Villamor indicated that Kelly's "language and his demeanor and his attitude was so vulgar -- he was yelling, screaming, carrying on, calling me vulgar names, racist names." (T. 290). Officer Villamor believed that it was within his discretion to make the decision to take

Kelly into custody. (T. 344). Officer Villamor believed that Kelly would not respond to a citation because of his level of uncooperativeness and resistance. (Ad. 6; T. 243, 287, 345). From Officer Villamor's experience he believed it extremely unlikely that Kelly would voluntarily respond to a citation because of his anger and behavior during the incident. (T. 288). Officers Villamor and DuBay reached a joint decision to arrest Kelly. (T. 242). The officers from their past experience believed that Kelly's belligerent actions, his public vulgarity, the fact that Officer Villamor had to use force to subdue Kelly believed Kelly would not have accepted a citation. (T. 242-243).

Officer DuBay indicated: "From my experience, the disorderly way that he [Kelly] was conducting himself in a public place, drawing attention to himself from other people, people gathering around, it is my experience that if issuing someone a citation instead of bringing them to jail, because they're so upset, that a lot of times they won't respond." (T. 300, 313, 345).

The officers were aware that Minn. R. Crim. P. 6.01 required that a misdemeanor suspect be cited and released unless there is probable cause to believe that the suspect would engage in continued criminal behavior or fail to respond to the citation. (T. 284). Minn. R. Crim. P. 6.01 applies that same standard to the detaining authority, here the Hennepin County Sheriff, who also did not issue a citation to Kelly, but booked him into the Adult Detention Facility.

Throughout the drive to the jail, Kelly yelled, swore and used racial epithets toward Officer Villamor, who is Asian-American, calling him a 'white man's slave' and saying that he had been 'brainwashed by [his] white masters.' (T. 243, 343). Kelly was left at the jail by the officers at approximately 1:23 p.m. and was released from the jail at 6:30 p.m., spending approximately five hours at the facility. (Ad. 6-7).

The Commission found that there were no legitimate reasons to continue to detain Kelly once he was determined not to be the suspect. (Ad. 6). The Commission concluded that Kelly "was subjected to adverse action by Respondent MPD in that it was unreasonable for MPD to continue to detain complainant after the robbery victim confirmed that complainant was not the suspect. Complainant was also subjected to adverse action by Respondent MPD when the MPD arrested him and took him to the county jail instead of issuing him citations for two misdemeanor charges." (Ad. 8).

The Commission concluded that Kelly had met his burden to establish that race was a discernible, discriminatory and causative factor in his treatment by showing that his continued detention was so at variance with what would reasonably be anticipated absent discrimination, that discrimination is the probable explanation. (Ad. 8).

c. Damages.

The Commission found that Kelly "established by clear and convincing evidence that Respondent acted with deliberate disregard for complainant's rights under Minneapolis Civil Rights Ordinance §139.40(j) when there was no legitimate reason for Respondent's officers to continue to detain Complainant and to transport him to the county jail." (Ad. 7).

The Commission found that "[a]lthough no evidence was presented on the cost of the investigation incurred by the Minneapolis Department of Civil Rights, the Hearing Committee finds that the officers' flagrant abuse of power and the violation of the public trust warrant the imposition of the maximum penalty allowed." (Ad. 7-8).

ARGUMENT

I. STANDARD OF REVIEW

In an appeal from a decision of a municipal agency, the court applies the same standard of review as it would apply to a decision by a state agency. *City of Minneapolis v. Moe,* 450 N.W.2d 367, 369 (Minn. App. 1990); *see also* Minn. Stat. § 14.69. The court will reverse the department's findings if they are unsupported by substantial evidence on the record, are arbitrary and capricious, or affected by other errors of law. *See* Minn. Stat. § 14.69. Substantial evidence is defined as (1.) Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2.) More than a scintilla of evidence; (3.) More than some evidence; (4.) More than any evidence; and (5.) Evidence considered in its entirety. *Hazelton v. Dep't of Human Servs.,* 612 N.W.2d 468, 471 (Minn. App. 2000).

The Minneapolis, Minn., Code of Ordinances § 141.60(b) provides that judicial review of a final decision in a contested case is available in accordance with Chapter 14 of Minnesota Statutes, the Administrative Procedure Act. Under the Act, a reviewing court may reverse an agency decision if the agency's findings, conclusions, or decisions are: (1) in violation of constitutional provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) legally erroneous; (5) unsupported by substantial evidence; or (6) arbitrary and capricious. Minn. Stat. § 14.69.

This Court independently reviews all agency decisions on questions of law or statutory interpretation. *In re Dougherty,* 482 N.W.2d 485, 488 (Minn. App. 1992), *review denied* (Minn. June 10, 1992).

II. THE DECISION BY THE COMMISSION ON CIVIL RIGHTS IS ARBITRARY, CAPRICIOUS AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

a. The actions in arresting Kelly rather than issuing a citation did not constitute discrimination.

The framework established by *McDonnell Douglas* v. *Green*, 411 U.S. 792 (1973) is used the Minneapolis Commission on Civil Rights to evaluate the evidence. *Minneapolis Police Dept.* v. *Minneapolis Comm'n on Civil Rights,* 402 N.W.2d 125,130 (Minn. App. 1987), *af'd,* 425 N.W.2d 235,239 (Minn. 1988).

The courts apply a three part analysis, consisting of a prima facie case, an answer and a rebuttal. *Hasnudeen* v. *Onan Corp.,* 552 N.W.2d 555 (Minn. 1996); *Sigurdson* v. *Isanti County*, 386 N.W.2d 715, 720 (Minn. *1986)*. To prevail in a complainant has the initial burden of proving a prima facie case of discrimination. A complainant must prove that they are:

1. A member of a protected class;
2. Subjected to adverse and unreasonable treatment by the respondent; and
3. That race was a discernible, discriminatory and causative factor in the respondent's adverse unreasonable treatment of the complainant.

See McDonnell Douglas, 411 U.S. at 802; *see also Sigurdson v. Isanti County,* 386 N.W.2d 715, 720 (Minn. 1986).

Proof that the complainant's race was a factor in the treatment of a complainant can be established by direct evidence or by indirect evidence. Direct evidence consists of obvious, objective statements of a discriminatory motive by a person in charge of the decision making process resulting in the adverse action. Indirect or circumstantial evidence of a discriminatory motive may be proven by an inference of unlawful discrimination from:

1. Proof of the differences in treatment of individuals similarly situated who are of a different race origin that the complainant; or

2. Proof that the treatment of the complainant was so at variance with what would reasonable be anticipated absent discrimination that discrimination is the probable explanation. *City of Minneapolis v. Richardson,* 239 N.W.2d 197, 202 (Minn. 1976); *State by Beaulieu v. City of Moundsview,* 518 N.W.2d 567, 571 (Minn. 1994).

Kelly introduced no evidence that he was treated differently that similarly situated individuals and the findings by the Commission did not rely on such a theory.

The Commission found that the act of arresting Kelly, rather than releasing him, was so at variance with what could reasonably be expected that discrimination was the probably explanation.

The facts in *Richardson* and *Beaulieu* provided guidance regarding the type of conduct necessary to meet the 'so at variance' standard. In *Richardson*, the complainant was a 12-year-old African American youth who was walking down Hennepin Avenue to catch a bus. He joined a crowd that had formed to watch police arrest two men. The police told the crowd that it had five seconds to clear the sidewalk and began using police dogs to disperse the crowd. A dog jumped on the complainant and knocked him to the ground. The complainant was grabbed by the feet and dragged face down 24-32 feet to a squad car. The police officers then used racial epithets directed to the complainant and used derogatory statements while driving him to the police station. At the police station the complainant was threatened with the police dog. The complainant was not charged with an offense and was released to his parents. In *Richardson*, the respondent did not present any rebuttal testimony at the hearing. Since the evidence presented by Richardson was uncontroverted, the Supreme Court held that racially derogatory terms combined with the excessive use of force showed conduct "so at variance with what would reasonable be anticipated absent discrimination that discrimination is the probable explanation." *Id.* at 202-03.

In the instant case, the Commission found that excessive force had not been used. The conduct at variance with what could reasonably be anticipated was limited to the discretionary decision to take Kelly into custody for this prior actions and failure to cooperate. No underlying constitutional violation existed related to the police officers' prior actions toward Kelly.

Similarly, in *Beaulieu* the complainants were a mother and her thirteen year old son both of whom were African American. The complainants were stopped when police received a report that an armed robbery had just occurred. The suspect was an African American male wearing black clothes who had left the scene on foot. The complainants were in a light colored car near the robbery scene. Police officers stopped the complainants at gun point. Police told the complainants that the suspect was seen leaving in a grey car. The complainants were detained for 15 minutes. The Supreme Court concluded that because the police had no reason to believe that the robbery suspect was a thirteen year old with a female accomplice and that the thirteen year old was not wearing the color of clothes worn by the suspect there was sufficient reason to believe that the detention was so unreasonable it was the product of racial discrimination. *Beaulieu,* 518 N.W.2d at 573.

Again, in the instant case, both the Minneapolis Department of Civil Rights and the Commission found the initial detention of Kelly to be reasonable and

proper. The Commission indicated that probable cause existed to charge Kelly with disorderly conduct and failure to obey a lawful order. Issue was taken only with the decision to take Kelly into custody.

The Commission found that the "officers testified that they took Kelly to jail because they felt Kelly would not respond to a citation since he was angry, belligerent, spoke profanities and was generally uncooperative." (Ad. 6). The Commission found that "there were no legitimate reasons to continue to detain Kelly once he was determined not to be the suspect." (*Id.*). And that the "reasons for taking Kelly to jail instead of releasing him are merely pretextual and have no basis in fact." (*Id.*). "There was no evidence of a substantial likelihood that the accused will fail to respond to a citation." (Ad. 7).

There is no evidence in the record to support the findings and conclusions made by the Commission. Kelly did not testify that he had every received or responded to a citation. Kelly did not testify that he would have accepted or responded to a citation. No records were introduced that Kelly had ever responded to a citation. Kelly and the Commission relied solely on the supposition that there was no reason to take Kelly into custody by disregarding the uncontroverted testimony of the officers. The officers testified about their background and experience in similar situations. The officers testified that individuals who were upset and angry were less likely to respond to citations. The officers testified

about the specific behavior exhibited by Kelly that led them to believe that he would not respond to a citation.

Minn. R. Crim. P. 6.01 places discretion with the arresting officers to evaluate the arrestee and use their best profession judgment in reaching a decision regarding taking a party into custody. While one may take issue with the decision and judgment of the officers, there is a lack of evidence in the record to support any finding other than one that the decision by the officers was a legitimate exercise of discretion supported by the totality of the facts, circumstances and behavior exhibited by Kelly.

Additionally, while Kelly's egregious conduct mitigated during the show up process, his conduct resumed when he was told that he was still under arrest for disorderly conduct and obstructing legal process. It was reasonable for the officers to assume that if they had handed Kelly a citation it would at least have been ignored and at worst resulted in continued negative conduct on his part escalating the incident. There is no evidence in the record Kelly would have responded to a citation or that his conduct would have been any different had the officers indicated that they were going to write a citation and release him.

In the instant case, Kelly was clearly an appropriate focus of the initial detention. The use of force by the police was clearly appropriate. The officers articulated valid and legal reasons for taking Kelly into custody. The only conduct

upon which the Commission rests its analysis that the conduct was at variance with what could be reasonably be expected is the decision to arrest. A multitude of reasons for the decision exist that point to a reason other than race. Essentially, the Commission found the booking of a valid detained and arrested suspect who struggled with police and whose detention required the use of reasonable force could only be explained as discrimination. The Commission disregarded the conduct of Kelly prior to the show up and his conduct after being told that he was being arrested. It is reasonable to believe that any individual who escalated a situation, as did Kelly, would be more likely than not to be taken into custody, regardless of race.

The alleged discriminatory conduct must be examined in light of the totality of the circumstances. *Beaulieu,* 518 N.W.2d at 572. The sufficiency of the evidence should be considered in its entirety. *Hazelton*, 612 N.W. 2d at 471. The decision to take Kelly into custody does not amount to discrimination.

III. THE DAMAGES AND PENALTIES AWARDED WERE NOT SUPPORTED BY THE FACTS.

The Commission awarded Kelly $5,000.00 in mental anguish for his detention after being eliminated as a robbery suspect, $382.50 in actual damages, an amount stipulated to between the parties, and punitive damages of $8,500.00. The Commission also awarded a civil penalty in the amount of $8,500.00, payable to the City of Minneapolis.

The damages awarded by the Commission are not supported by the evidence and the Commission erred in the award of damages.

a. Mental anguish.

Regarding the damages awarded for mental anguish, there is no evidence in the record regarding mental anguish or injury related to the conduct of the officers after the 'show up.' Kelly testified extensively regarding the use of force and how it affected him, but was silent regarding any distinguishable injury related to being arrested and booked. There is no evidence in the record that Kelly required any psychological care, treatment or counseling related to the decision to take him into custody.

b. Punitive damages.

The Commission erred by awarding punitive damages. Punitive damages are authorized up to $8,500.00. Minneapolis, Minn., Code of Ordinances § 141.50(m). The Commission awarded Kelly the maximum amount allowed. The ordinance specifies that any punitive-damage award must be made pursuant to Minn. Stat. § 549.20. Minneapolis, Minn., Code of Ordinances § 141.50(m). To receive punitive damages, a plaintiff must show by clear and convincing evidence that the defendant acted with "deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subd. 1(a). When determining whether a party deserves such an award, a court must consider the factors set forth in Minn. Stat. §

549.20, subd. 3. These factors include the seriousness of hazard to the public arising from the defendant's misconduct, the profitability of the misconduct to the defendant, the duration of the misconduct and any concealment of it, the degree of the defendant's awareness of the hazard and of its excessiveness, the attitude and conduct of the defendant upon discovery of the misconduct, the number and level of employees involved in causing or concealing the misconduct, the financial condition of the defendant, and the total effect of other punishment likely to be imposed upon the defendant as a result of the misconduct, including compensatory and punitive damage awards to the plaintiff and other similarly situated persons, and the severity of any criminal penalty to which the defendant may be subject. Failing to "make findings addressing the factors" is grounds for reversal. *Bougie v Sibley Manor, Inc.,* 504 N.W.2d 493, 500 (Minn. App. 1993).

The Commission failed to make any findings discussing the statutory factors for punitive damages, although the Commission did discuss some of the factors in the attached Memorandum. (Ad. 7).

c. Civil penalty.

Minneapolis, Minn., Code of Ordinances § 141.50(m) provides for a civil penalty

> This penalty is in addition to compensatory and punitive damages to be paid to an aggrieved party. The hearing committee shall determine the amount of the civil penalty to be paid, taking into account the seriousness and extent

> of the violation, the public harm occasioned by the violation, whether the violation was intentional, the cost of investigation incurred by the City of Minneapolis, and the financial resources of the respondent.

The civil penalty in the amount of $8,500.00 is not supported by the evidence and moot. The Commission appears to have combined the punitive damages and civil penalty analysis. (Ad. 7). The Commission found that "Although no evidence was presented on the cost of the investigation incurred by the Minneapolis Department of Civil Rights, the Hearing Committee finds that the officers' flagrant abuse of power and the violation of the public trust warrant the imposition of the maximum penalty allowed." (*Id.*)

The civil penalty is moot in that the City of Minneapolis is ordered to pay the City of Minneapolis $8,500.00. The *Charge of Discrimination* has been asserted against the Minneapolis Police Department. However, the Minneapolis Police Department is not an independent entity subject to suit, but a subdivision of the City of Minneapolis. See, Minneapolis, Minn., Charter, Ch. 6 (A. 22-24) and Minneapolis, Minn., Code of Ordinances Ch. 171. (A. 25-26). In the situation presented the civil penalty serves no purpose because the City of Minneapolis is ordered to pay the City of Minneapolis the penalty amount.

CONCLUSION

For the reasons stated herein the decision of the Minneapolis Civil Rights Commission should be reversed and judgment entered for the Appellant.

Dated: 5/4/09

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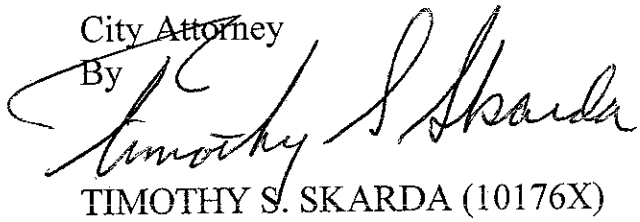
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CERTIFICATE OF COMPLIANCE

Timothy S. Skarda, Attorney for Respondent, certifies that this brief complies with the type-volume limitation contained in Rule 132 of the Rules of Civil Appellate Procedure as follows:

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