

A09-115

STATE OF MINNESOTA

In Court of Appeals

JAMES F. CANNON,

Respondent,

v.

MINNEAPOLIS POLICE DEPARTMENT,

Appellant,

CITY OF MINNEAPOLIS, COMMISSION ON CIVIL RIGHTS,

Respondent

BRIEF OF RESPONDENT CANNON

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ISSUES

I. Did the Commission have the authority to decide a charge of discrimination against the Minneapolis Police Department?

- a. The Commission, without objection from the Police Department to its authority, decided the charge of discrimination.

MCRO § 139

II. Is the decision of the Commission that the Police Department engaged in an unlawful reprisal against Mr. Cannon supported by substantial evidence?

- a. The Commission held that the evidence established that the Police Department engaged in an unlawful reprisal against Mr. Cannon in violation of MCRO § 139.40(m).

MCRO § 139

Hubbard v. United Press Int'l, 330 N.W.2d 428 (Minn. 1983)
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III. Did Mr. Cannon's service on the Commission over ten years ago require the Commission to recuse itself from hearing his charge of discrimination?

- a. The Commission held that it did not have to recuse itself because there was no reasonable appearance of impropriety.

IV. Has the Police Department shown actual bias by the Commission?

- a. The Police Department never raised this issue before the Commission, so it was not decided by the Commission.

V. Does the MCRO prohibit multiplying damages for emotional distress?

- a. The Commission doubled the damages for emotional distress.

MCRO § 141.50

VI. Does the MCRO cap damages for emotional distress at \$8,500?

- a. The Commission awarded in excess of \$8,500 in damages for emotional distress.

MCRO § 141.50

VII. Does substantial evidence support the Commission's award of \$15,000 in damages for past and future emotional distress?

- a. The Commission awarded \$10,000 in damages for past emotional distress and \$5,000 for future emotional distress.

MCRO § 141.50

STATEMENT OF THE CASE AND FACTS

a. Nature of the Case and Proceedings Below

On September 5, 2006, two City of Minneapolis Police Officers discriminated against Respondent James F. Cannon on the basis of his race, African American, and retaliated against him for complaining of that discrimination. One of the Officers threatened Mr. Cannon and his family with arrest, yelled at them, demeaned them, and intimidated them, all on account of their race and without justification. After Mr. Cannon stated that he was going to make a complaint of discrimination, one of the Officers publicly mocked him and his family, while the other Officer followed Mr. Cannon out of a business, wrote down his license plate number, ran a license check on him, and temporarily prevented him and his family from leaving the business in their vehicle.

On October 30, 2006, Mr. Cannon filed with the City of Minneapolis Department of Civil Rights a Charge of Discrimination, alleging that the City's Police Department had discriminated and retaliated against him during the September 5th incident. (Appellant's Appendix ("A-App."), 1.) The Charge of Discrimination identified as the Respondent the "Minneapolis Police Department." (Id.)

On December 21, 2006, the Minneapolis Police Department, through its counsel, filed with the Department of Civil Rights its response to Mr. Cannon's Charge of Discrimination. (A-App., 2-9.) In its response, the Police Department admitted that the Department of Civil Rights had "jurisdictional authority" over the matter and did not raise any issues concerning the identity of the respondent named in the Charge. (A-App., 3.)

On January 7, 2008, after conducting an investigation of the facts, the Department of Civil Rights found probable cause to believe that the Minneapolis Police Department had violated Minneapolis Civil Rights Ordinance (“MCRO”) § 139.40(j)(1), which prohibits discrimination in public services, and § 139.40(m)(3), which prohibits reprisals against persons who oppose violations of the MCRO, during the September 5, 2006 incident. (A-App., 10-24.)

On October 30, 2008, the Police Department brought a motion to have the Minneapolis Commission on Civil Rights recuse itself from presiding over a contested hearing of Mr. Cannon’s allegations of discrimination. (A-App., 26-38.) The Police Department’s motion was based on Mr. Cannon’s service as a Commissioner on the Commission from 1988 to 1998. (A-App., 26.) Mr. Cannon did not serve at the same time as any of the current Commissioners nor does he personally know any of the current Commissioners. (A-App., 31.)

On November 7, 2008, the Police Department brought a motion for summary judgment. (Respondent’s Appendix (“R-App.”), 1- 9.) In its motion, the Police Department did not assert as a grounds for judgment that it was not a proper party to the matter or that the Commission lacked authority to preside over this matter. (Id.)

On March 16, 2009, the Minneapolis Commission on Civil Rights, Commissioner Sonja Dunnwald Peterson presiding, denied the Police Department’s motion for recusal and its motion for summary judgment on the merits. (A-App., 41-53.) In so holding, Commissioner Peterson found that Mr. Cannon’s “previous service on the Commission more than ten years ago does not create a reasonable appearance of impropriety.” (A-

App., 53.) In addition, “[n]one of the Commission panel assigned to this charge sat on the Commission prior to 2002.” (Id.) To ensure the absence of any potential bias, Commissioner Peterson stated in her order that she would “inquire prior to the hearing whether any of the panel members have had any contact with or knowledge of [Mr. Cannon] or the other witnesses to this matter.” (Id.) Commissioner Peterson also “instruct[ed] the witnesses and counsel to refrain from making any reference to [Mr. Cannon’s] prior service on the Commission.” (Id.)

On April 25, 2009, the Commission conducted an evidentiary hearing to determine whether the Police Department had violated MCRO §§ 139.40(j) and (m) in its treatment of Mr. Cannon, and if so, the amount of damages to which he was entitled. (Appellant’s Addendum (“A-Add.”), 1.) Commissioners Kenneth Brown, John Oberreuter, and Sonja Dunnwald Peterson presided. (Id.) At the hearing, Mr. Cannon, his wife Lois Cannon, his son James, Jr., and the two Minneapolis police officers involved in the incident, Michael Meath and Julie Hagen, all testified and exhibits were received. (See Hearing Transcript (“Tr.”).)

On May 27, 2009, the Commission issued its Findings of Fact, Conclusions of Law & Order for Judgment. (A-Add., 1-33.) The Commission held, inter alia, as follows:

- (1) That the Police Department “is a local governmental agency that provides services to the public within the City of Minneapolis, as defined in Minneapolis Ordinance § 139.20 as a ‘public service.’” (A-Add., 10.)

- (2) That Mr. Cannon opposed Officer Hagen's conduct, which he believed to be discriminatory, when he stated, "I think this is discrimination. I'm going to file a complaint." (A-Add., 11.)
- (3) That Officers Hagen and Meath retaliated against Mr. Cannon in violation of MCRO § 139.40(m) when Officer Hagen spoke to Mr. Cannon's wife in his presence in a "disrespectful, demeaning, humiliating, embarrassing, and frightening manner" and when Officer Meath followed Mr. Cannon and his family "out of the office, stood in front of their car as he wrote their license number on his hand, and temporarily blocked their exit." (A-Add., 11-13.)
- (4) That Officer Meath's stated reasons for following the Cannon family out of the business and for running a license check on their vehicle were not credible. (A-Add., 7-8.)
- (5) That Mr. Cannon suffered past emotional harm in the amount of \$10,000 and future emotional harm that is reasonably certain to occur in the amount of \$5,000. (A-Add., 9.)
- (6) That Mr. Cannon's actual damages shall be doubled. (A-Add., 9.)
- (7) That Mr. Cannon is entitled to his reasonable attorney's fees and costs.¹ (A-Add., 14.)
- (8) That the Police Department "shall pay a civil penalty to the General Fund of the City of Minneapolis for violation of the Minneapolis Civil Rights Ordinance, in the amount of \$7,500." (A-Add., 14.)

¹ On appeal, the Police Department is not contesting the amount of attorney's fees awarded by the Commission. (See Informal Memo. of City re: July 6, 2009 Order.)

The Commission found for the Police Department on Mr. Cannon's claim that it had discriminated against him on the basis of race in violation of MCRO § 139.40(j). (A-Add., 10-11.) This appeal by the Police Department followed.

b. Facts

Respondent James Cannon is African American, 57 years old, and a resident of the City of Minneapolis. (Tr., 21.) Mr. Cannon is employed as a Judge with the Office of Administrative Hearings, Workers' Compensation Division. (Tr. 22.) Mr. Cannon is married to Lois Cannon, age 54, and they have two children, one of whom is James Cannon, Jr., age 24. (Tr., 22-23, 53.) Mrs. Cannon and James Jr. are also African American. (Tr., 53, 72.)

On the evening of September 5, 2006, Mr. and Mrs. Cannon and James Jr. went to retrieve James Jr.'s vehicle from the Wrecker Services towing company, located at 200 East Lyndale Ave. N., Suite 100, Minneapolis, Minnesota. (Tr., 23.) The Cannon family went to Wrecker Services in Mrs. Cannon's vehicle. (Id.)

Once at Wrecker Services, the Cannon family paid to have the vehicle released. (Tr., 24.) The Wrecker Services employee on duty, a white male, informed the Cannons that they would have to wait for the vehicle to be released because there was no employee available to release it. (Tr., 24, 50.) The Cannon family waited quietly in the waiting area, which was approximately ten by fifteen feet in size. (Tr., 24.)

After the Cannon family had been waiting approximately 15 minutes, a man and a woman who both appeared to be African arrived, paid their fine, and were also told to wait. (Tr., 24-25.) Next, two African women arrived, paid their fine, and were told to

wait. (Tr., 25.) There were then seven persons, all African American or African, waiting in the Wrecker Services waiting area. (Tr., 26.)

After the Cannon family had been waiting approximately forty-five minutes, the male of African descent banged his hand on the Plexiglas window and yelled that he wanted his car. (Tr., 26.) No one else yelled, screamed, or banged on the Plexiglas window. (Tr., 26.)

In response to the African male's actions, the Wrecker Services employee called 911 and reported a "hostile customer who's pounding on [the] glass." (R-App., 53; Tr., 177.) Several minutes later, Minneapolis Police Officers Julie Hagen² and Michael Meath, both of whom are white, arrived at Wrecker Services. (Tr., 26-27.) When the Officers arrived, none of the persons waiting for their vehicles was acting unruly or being loud. (Tr., 26-27, 57, 78.) Officer Meath had no recollection of the persons waiting being disruptive when the officers arrived. (R-App., 51.) The Officers walked past the persons waiting without addressing them and went into the office behind the Plexiglas to speak with the Wrecker Services employee. (Tr., 27, 57, 123.) While the Officers were with the Wrecker Services employee, none of the persons in the waiting area was raising their voice or banging on the glass. (Tr., 27.) Officer Hagen assumed that the version of the events allegedly given to her by the white Wrecker Services employee was true and that the group of black persons waiting in the lobby had broken the law. (Tr., 151-52.)

At most a few minutes later, Officer Hagen exited the Wrecker Services office, entered the waiting area, and yelled at the top of her lungs, "The next person that touches

² Officer Hagen's last name at the time of the incident was Casper

that glass is going to jail.”, “I want you to shut up and behave yourselves. Shut up and behave yourselves.” (Tr., 27-28, 78, 105, 125.) Officer Hagen also shouted that the group needed to act like adults because in her view, they were acting like children. (Tr., 126-27.) The screaming was directed at all of the persons present in the waiting area, including the Cannon family. (Tr., 29, 125.) Officer Hagen did not attempt to speak to the seven persons in the waiting area before yelling at them. (Tr., 65.) Officer Hagen did not even ask who had banged on the Plexiglas. (Tr., 88, 131.)

The African male then approached Officer Hagen to show her his ticket and to say something. (Tr., 28.) Before he could get a word out, Officer Hagen said, “I said shut up. Shut up.” (Tr., 28, 79.) Officer Hagen also yelled for the group to “shut their mouth.” (A-App., 5.)

Disturbed by Officer Hagen’s conduct, Mrs. Cannon approached and stated to Officer Hagen, “You do not need to use that tone with us, Officer.” (Tr., 28, 80.) Officer Hagen yelled back in a deafening, derogatory tone, “I’ll use any tone I damn well please.” (Tr., 28-29, 81.)

In a calm tone, Mr. Cannon then tried to explain to Officer Hagen that the customers had been waiting 45 minutes. (Tr., 29.) Officer Hagen yelled back, “I don’t care if you’ve been waiting four days.” (Tr., 29, 128-29.) Mr. Cannon believed that Officer Hagen’s conduct was racially motivated because all of the customers present at Wrecker Services were middle-aged, with the exception of James Jr., were acting calmly in her presence, and were African American or of African descent. (Tr., 30-31.) In her service

as a law enforcement officer, Officer Hagen did not yell at, threaten with arrest, or demean compliant, law-abiding citizens who are white. (Tr., 138-39.)

Throughout the encounter with the Officers, the Cannon family and other persons waiting were not being loud or aggressive or engaging in any type of disruptive, defiant, or aggressive behavior. (Tr., 28-30, 58-59, 62.) Officer Hagen even admitted that the two women of African descent were soft-spoken and made no claim that Mr. Cannon was being loud, disobedient, or boisterous. (Tr., 130-31.) To the contrary, Officer Hagen observed Mr. Cannon “quietly watch[ing] and observing.” (A-App., 4.) Officer Hagen addressed the persons present as a group, without regard for what any individual was doing. (Tr., 130-31.) Officer Meath testified that he had no specific knowledge that any of the Cannon family was acting in a disorderly manner. (Tr., 181.) Not surprisingly, Officer Hagen admitted that her and Officer Meath’s safety was not in jeopardy during the incident. (Tr., 136.)

Recognizing the futility of attempting to communicate with Officer Hagen and to prevent the situation from getting worse, Mr. Cannon decided to leave with his family even though James Jr.’s vehicle had not yet been released. (Tr., 31.) Before he left, Mr. Cannon stated to Officer Hagen and Mrs. Cannon, “I think this is discrimination, we’re going to file a complaint.” (Tr., 31, 50, 82; R-App., 13.) Officer Hagen responded that Mr. Cannon could not do anything to her. (R-App., 55; Tr., 38.) Officer Meath was right behind Officer Hagen during this exchange. (Tr., 51.)

Officer Hagen testified that the people waiting at Wrecker Services accused her of being racist. (Tr., 107.) Officer Hagen also testified that Mrs. Cannon stated that Officer

Hagen was treating them poorly because she is white and they are black. (Tr., 133-34.) Officer Hagen thought it was “extremely inappropriate” for Mrs. Cannon to say that to her. (Tr., 134.) Officer Meath testified that Mrs. Cannon called both him and Officer Hagen racists. (Tr., 169.) Though Mrs. Cannon did not make these statements to the Officers, the testimony of the Officers establishes that they were aware that the Cannon family had voiced its opposition to the Officers’ discriminatory conduct. (Tr., 86.)

After Mr. Cannon had informed Officer Hagen that he would be filing a complaint of discrimination, the Cannon family started to exit the building. (Tr., 31.) Once outside, they realized that they did not have the badge number of Officer Hagen. (Tr., 31, 83.) Mrs. Cannon returned to the waiting area to get the badge number, while Mr. Cannon and James Jr. followed her and watched from behind. (Tr., 31, 83.)

Mrs. Cannon approached Officer Hagen with pen and paper in hand and attempted to read her badge number off the badge itself. (Tr., 31.) Mrs. Cannon did not ask Officer Hagen to state her badge number. When Officer Hagen saw what Mrs. Cannon was attempting to do, she yelled in a mocking manner, “Yeah, you got my badge number! My badge number is 1019, got that?” (Tr., 32.) Officer Hagen then twice slowly and loudly shouted, “1019!” (Tr., 32, 84, 115-16, 130.) Mr. Cannon witnessed Officer Hagen’s yelling. (Tr., 32.) Mrs. Cannon then wrote down the badge number and exited the waiting area.

Officer Hagen’s demeaning actions toward Mrs. Cannon were also humiliating for Mr. Cannon. (Tr., 32.) Eyewitness Ama Sabah characterized Officer Hagen’s demeanor as speaking “to them like they were dogs.” (R-App., 54.)

As a Minneapolis Police Officer, Officer Hagen was required to be courteous, respectful, polite, and professional with the public. (Tr., 136; R-App., 59.) Officer Hagen testified that she was not courteous, respectful, polite, and professional under the circumstances. (Tr., 148.) She did not think it was possible to act that way “when you address a group like that.” (Tr., 148.)

Officer Hagen was supposed to explain the reason for her contact with the public as soon as practical and answer citizen questions about such contact. (Tr., 136-37, R-App., 59.) The Minneapolis Police Department’s Code of Conduct also prohibits officers from using profane or unnecessarily harsh language and from using any derogatory language or taking any actions that are intended to “embarrass, humiliate, or shame a person.” (R-App., 61.)

After the Cannon family left the waiting area, Officer Meath followed them outside. (Tr. 32.) Officer Meath’s primary duty on the call to Wrecker Services was to observe and make sure nobody got behind Officer Hagen or threatened her safety. (R-App., 50.)

Once outside, Officer Meath stood in front of Mrs. Cannon’s vehicle, with the Cannon family inside, and began writing down the license plate number. (Tr., 32, 48, 87.) Mrs. Cannon had to back her vehicle up to get around Officer Meath. (Tr., 48.) Officer Meath’s presence frightened and intimidated Mr. Cannon. (Tr., 33-34.) Because he had not committed any offense, Mr. Cannon could only conclude that Officer Meath was trying to intimidate him on account of his earlier statement that he would be filing a discrimination complaint. (Tr., 33.) Officer Meath admitted that being followed by a police officer and having your background checked by the police could be intimidating.

(Tr., 184-85.) The Cannon family left without even retrieving James Jr.'s vehicle. (Tr., 33.)

Officer Meath testified that he went outside of Wrecker Services after everyone had left the waiting area except for the two African women. (Tr., 182.) Officer Meath testified that he wrote the Cannon vehicle's license plate number on his hand and ran a check on it "to make sure there was a valid driver, there [were] no warrants on the vehicle, [and] the vehicle wasn't stolen." (Tr., 171.) Officer Meath testified that he ran the license check on only the Cannon vehicle. (Tr., 183.) Officer Meath testified that there was no one else outside getting their car when he took down the Cannon vehicle information. (Tr., 171.) Officer Meath could provide no explanation for how the African couple apparently vanished without their vehicle. (Tr. 185-86.)

At an earlier stage in these proceedings, Officer Meath, through his counsel, offered a different reason for running the license check on the Cannon vehicle: "Officer Meath ran registration checks on vehicles as they were released." (A-App., 4) (emphasis supplied). At the hearing, Officer Meath admitted that this was not a reason for running a check on the Cannon vehicle. (Tr., 184.) Officer Meath also admitted that he did not have any facts to cause him to run the license check on the Cannon vehicle:

Q. In fact, you didn't have any facts to cause you to run that registration check, did you?

A. Do I need facts to run a registration?

Q. The answer is no then, you didn't have any facts?

A. No.

(Tr., 184.) Officer Meath also conceded that he does not run license checks on every vehicle he sees. (Tr., 185.)

After the Cannon family left Wrecker Services, they went directly to the First Precinct headquarters of the Police Department to make a discrimination complaint. (Tr., 34.)

After making the complaint, the Cannon family returned to get their son's vehicle, which was available to be released by Wrecker Services.

As the result of the Officers' actions, Mr. Cannon has suffered, and continues to suffer, nightmares, lost sleep, depression, and anxiety about the safety of James Jr. (Tr., 39-41, 90.) Mr. Cannon described his distress as follows:

Because since the incident it seems like every other day I wake up and I'm reminded of the incident. It's always on my mind. And I fear primarily for my son, and I'm depressed over that, because of – three or four days go by where my wife and I don't hear from him. I'm always wondering is this a Julie [Hagen] day. Is this a day where he's going to run into Julie [Hagen] or officers similar to her that's going to overreact in a situation that doesn't call for it. And so I'm worried about what's out there on the street, what the police are doing, particularly as it relates to my son...

(Tr., 40-41.) Mr. Cannon had no such fears prior to the incident. (Tr., 41.)

ARGUMENT

a. Standard of Review

Judicial review of contested case hearing decisions rendered by the Commission are governed by Chapter 14 of Minnesota Statutes. MCRO § 141.60. Chapter 14 provides that a reviewing court may do the following:

[T]he court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

Minn. Stat. § 14.69.

With respect to appellate review under the “substantial evidence” standard, the “test is satisfied when there is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *In re Grand Rapids Public Utilities Com'n*, 731 N.W.2d 866, 871 (Minn. App. 2007) (citation omitted). Otherwise put, a reviewing court must “determine whether the agency adequately explained how it derived its conclusion and whether that conclusion was reasonable.” *Id.* (citation omitted). “If the [government agency] engaged in reasoned decisionmaking, this court will affirm.” *In re North Metro Harness, Inc.*, 711 N.W.2d 129, 137 (Minn. App. 2006) (citation omitted).

In making the substantial evidence determination, however, the reviewing court “do[es] not substitute [its] judgment for that of an agency.” *In re Grand Rapids Public Utilities Com'n*, 731 N.W.2d at 871. “Substantial judicial deference is given to administrative fact-finding.” *In re North Metro Harness, Inc.*, 711 N.W.2d at 137 (citation omitted). “The burden of proving that an agency's decision is not supported by substantial evidence is on the relator.” *Id.* (citation omitted).

Here, the Minneapolis Commission on Civil Rights acted pursuant to lawful procedures and authority, did not commit errors of law, and made findings of retaliation and damages based on substantial evidence. Under Minn. Stat. § 14.69, therefore, the decision of the Commission should be affirmed.

b. The Commission Had the Authority to Decide a Charge of Discrimination against the Police Department

The Police Department's first argument for reversal is that the "Minneapolis Police Department is not an independent entity subject to suit." (Appellant's Brief, p. 19.) This argument is remarkable in that it is really an argument that the MCRO does not apply to the Police Department. The Police Department is wrong. The MCRO makes it unlawful "[f]or any person engaged in the provision of public services... [t]o discriminate against any person, in the access to, admission to, full use of or benefit from any public service." MCRO § 139.40(j). The MCRO also makes it unlawful "[f]or any person... [t]o engage in any reprisal, economic or otherwise, because another person opposed a discriminatory act forbidden under this title." MCRO § 139.40(m). These are the two ordinances that provide grounds for liability in this matter. Both ordinances impose liability on a "person," and MCRO § 141.50 provides that an aggrieved party may bring a charge of discrimination against a "person" believed to have violated the MCRO. The MCRO defines person as follows:

Person: Includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, public bodies or public corporations, including but not limited to the City of Minneapolis or any department or unit thereof, any other legal or commercial entity, and any agent or employee of all the foregoing.

MCRO § 139.20. Thus, the MCRO authorizes charges of discrimination against “any department” of the City, which includes the Police Department. The Police Department’s suggestion to the contrary is frivolous.

Moreover, the MCRO defines “public services” to include “all activities, services or facilities offered to the public within the City of Minneapolis by any governmental agency or unit of government owned, operated or managed by any local, state or federal government.” MCRO § 139.20 (Emphasis supplied.) The Police Department cannot seriously argue that it is not a “unit of government” providing “services... to the public within the City of Minneapolis.” Moreover, if this definition in the MCRO is not clear enough, the MCRO also contains a provision that leaves no doubt that all City employees are subject to its provisions:

139.60. Responsibilities and duties of city employees; act of discrimination. All officials, commissioners, agents, employees and servants of the City of Minneapolis, elected and appointed, including civil service employees, and whether serving with or without compensation, shall observe the terms and provisions of this title and shall, except as expressly prohibited by law, respond promptly to any and all reasonable requests by the director or the commission, within the scope of their authority, for information and for access to data and records for the purpose of enabling the director to carry out his or her responsibilities under this title. The failure of any such official, commissioner, agent, employee or servant of the City of Minneapolis to comply with any provisions of this title relating to any matter within the scope of his or her official duties shall be deemed an act of discrimination.

As employees of a City department, there can be simply no doubt that the Police Department’s officers are subject to the terms of the MCRO.

Finally, the Police Department waived its alleged affirmative defense that the Commission lacked authority to decide this matter by failing to assert it in its response to

Mr. Cannon's Charge of Discrimination (A-App., 2-9), its motion for summary judgment (R-App., 1-9), or at the hearing of this matter. To the contrary, in its response to Mr. Cannon's Charge of Discrimination, the Police Department admitted that the Department of Civil Rights had "jurisdictional authority" over this matter. (A-App., 3.) "By failing to raise an affirmative defense in a responsive pleading or any subsequent amendment, one is deemed to have waived that defense." *St. Cloud Aviation v. Pulos*, 375 N.W.2d 543, 545 (Minn. App. 1985). Moreover, "a reviewing court must limit itself to a consideration of only those issues which the record shows were, or had to be, presented and considered by the trial court in deciding the matter before it." *Thompson v Barnes*, 200 N.W.2d 921, 927 (Minn. 1972). The question of the Commission's authority to hear a charge against the Police Department was never plead or presented in the proceedings below, and under *St. Cloud Aviation* and *Thompson*, it is deemed waived and cannot be decided now.

The cases cited by the Police Department for its argument that it is not subject to a charge under the MCRO are inapposite. *Hyatt v. Anoka Police Dept.*, 700 N.W.2d 502 (Minn. App. 2005), and *Stepnes v. Tennessen*, 2006 WL 2375645 (D. Minn. Aug. 16, 2006), are lawsuits that were brought in court against police departments under state and/or federal law. The instant case is an administrative matter and subject to the jurisdictional requirements of the MCRO. *Hyatt* and *Stepnes* thus have no applicability to any alleged jurisdictional issues here.

c. The Commission's Determination that the Police Department Committed Reprisal is Supported by Substantial Evidence

MCRO § 139.40(m) makes it unlawful for "any person... [t]o engage in any reprisal, economic or otherwise, because another person opposed a discriminatory act

forbidden under this title.” Under the MCRO, “[a] reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment.” MCRO § 139.20.

To prove a reprisal, Mr. Cannon first has the burden of proving each of the following elements of a prima facie case by a preponderance of the evidence:

- a. He opposed discrimination;
- b. He suffered an adverse action by the Police Department; and
- c. There is a casual connection between the opposition and the adverse action.

Anderson v. Hunter, Keith, Marshall & Co., 401 N.W.2d 75, 80-81 (Minn. App. 1987), *aff'd in part and rev'd in part on other grounds*, 417 N.W.2d 619, 623 (Minn. 1988); *Hubbard v. United Press Int'l*, 330 N.W.2d 428, 444 (Minn. 1983); *Bradley v. Hubbard Broadcasting, Inc.*, 471 N.W.2d 670, 674, 676 (Minn. App. 1991). The Commission correctly found that Mr. Cannon proved a prima facie case of retaliation, and there is no reason to disturb this finding on appeal.

1. Mr. Cannon Opposed Discrimination

Mr. Cannon satisfied the first element of the prima facie case by stating to Officer Hagen, “I think this is discrimination, we’re going to file a complaint.” (Tr., 31, 50, 82; R-App., 13.) The first element of the prima facie case “is satisfied when a plaintiff alleges facts supporting a good-faith, reasonable belief that the conduct opposed constituted a violation of” the statute at issue. *Bahr v. Capella University*, 765 N.W.2d 428, 436 (Minn. App. 2009). A plaintiff need not prove that discrimination actually occurred – only that there were facts to “support[] the claim that her belief was objectively reasonable.” *Id.* (citation omitted). Mr. Cannon’s opposition was in good

faith because the conduct of Officer Hagen was outrageous and directed only at brown-skinned persons of African descent.

Unlawful discrimination in the area of public services may be proven by conduct “so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation.” *City of Minneapolis v. Richardson*, 239 N.W.2d 197, 202 (Minn. 1976). Mr. Cannon presented substantial evidence at the hearing that Officer Hagen was confronted with a group of persons acting peacefully; they were not being loud, aggressive, or disruptive. In addition, the 911 call was about a single person. Yet Officer Hagen yelled at, demeaned, shamed, and threatened the entire group without regard to what any individual was doing or had done. Not only was this contrary to the Department’s Code of Conduct, but it was a gross departure from what would reasonably be expected of an officer in this situation. Absent discrimination, a reasonable officer would have asked the customers to identify the person who had banged on the window or would have generally asked the persons present what the problem was. It is disturbing that Officer Hagen held the view that she did not think it possible to be courteous “when you address a group like that.” (Tr., 148.) Because Officer Hagen’s conduct was “so at variance with what would reasonably be anticipated absent discrimination,” Mr. Cannon’s opposition to her conduct was both in “good faith” and “reasonable,” and he satisfied the first element of the prima facie case.

In arguing that Mr. Cannon did not have a good faith basis to oppose Officer Hagen’s discrimination, the Police Department attempts to impose the standard rejected by *Bahr*, *i.e.*, that the conduct opposed must actually be discrimination. 765 N.W.2d at

434-36. *Bahr* rejected such a standard and required only that the opposition meet the test of “good-faith, reasonable-belief,” a test Mr. Cannon has satisfied. *Id.* at 436.

The Police Department next argues that Mr. Cannon’s statement, “I think this is discrimination, we’re going to file a complaint,” does not satisfy the first element of the *prima facie* case because it is too vague and was part of an argument. (Appellant’s Brief, pp. 23-24.) Specifically, the Police Department argues, “Cannon does not specify what part of the ordinance is being violated or how it is being violated.” (*Id.*) Minnesota law has no such requirement that when opposing discrimination a citizen be required to cite the statute or ordinance violated.³ See *Abraham v. County of Hennepin*, 639 N.W.2d 342, 355 (Minn. 2002) (Plaintiff not required to “specifically identify in the pleadings the law or rule adopted pursuant to law that the [plaintiff] suspects has been violated.”) This Court should not be the first to impose such a requirement. The Police Department also claims that Mr. Cannon’s use of the word “this” to identify the discrimination is not specific enough. (Appellant’s Brief, p. 23.) This contention is ridiculous in that Mr. Cannon’s use of the word “this” came right on the heels of Officer Hagen’s yelling at, threatening, and demeaning the customers present at Wrecker Services. The “this” could not have been referring to anything else.

Mr. Cannon’s opposition to Officer Hagen’s discrimination was also not part of an argument, contrary to the Police Department’s contention. Throughout the encounter with the Officers, the Cannon family and other persons waiting were not being loud or

³ The Police Department cites *Carter v. Peace Officers Standards & Training Bd.*, 558 N.W.2d 267, 273 (Minn. App. 1997), in support of its specificity argument. *Carter* is entirely distinguishable from the instant case in that it involved the reporting of “concerns.” Mr. Cannon stated that Officer Hagen’s conduct was in fact discrimination – not that he had “concerns” about it.

aggressive or engaging in any type of disruptive, defiant, or aggressive behavior. (Tr., 28-30, 58-59, 62.) In fact, Officer Hagen observed Mr. Cannon “quietly watch[ing] and observing.” (A-App., 4.) Prior to his opposition to the discrimination, Mr. Cannon’s only action toward Officer Hagen was to approach and try to explain that the customers had been waiting 45 minutes – nothing more. (Tr., 29.) When Officer Hagen yelled back, “I don’t care if you’ve been waiting four days,” Mr. Cannon decided to leave with his family. (Tr., 29, 31, 128-29.) Mr. Cannon’s last words to Officer Hagen were, “I think this is discrimination, we’re going to file a complaint.” (Tr., 31, 50, 82.) Thus, there was no argument between Mr. Cannon and Officer Hagen.

Finally, the Police Department argues that a “rational and reasonable interpretation of the ordinance requires a complaint be made to someone other than the person about whom the complaint is being made.” (Appellant’s Brief, p. 24.) The Police Department cites no authority for this proposition. There is none. To the contrary, MCRO § 139.40(m) provides protection to any person who “opposed a discriminatory act,” which Mr. Cannon clearly did. If the City had intended to protect only reports to supervisors or managers, it could have written that requirement into the ordinance. This Court should decline the Police Department’s invitation to rewrite MCRO § 139.40(m) to include such a requirement.

2. Mr. Cannon Suffered an Adverse Action

The second element of the prima facie case for reprisal may be proven by evidence of an act by a public service that might dissuade a reasonable person from making a report of an actual or suspected violation of the discrimination laws. *White v. Burlington*

N. & Santa Fe Ry. Co., 126 S. Ct. 2405, 2414 (2006). Mr. Cannon proved an adverse action by establishing (1) that Officer Hagen yelled at him that he couldn't do anything to her; (2) that Officer Hagen slowly and repeatedly yelled her badge number at Mrs. Cannon in his presence; and (3) that Officer Meath followed the Cannon family to their car, obstructed their exit from the parking lot, took down their license plate number, and ran a license check on them. This conduct on the part of the Officers was intimidating and harassing and would dissuade a reasonable person from making a report of discrimination.

The Police Department contends that these actions cannot amount to adverse actions, but cites no authority for its position. There is none. In defining "Reprisal," the City made a decision to define it broadly. "Any form of intimidation [or] retaliation" constitutes reprisal. MCRO § 139.20. The Police Department's own witness, Officer Meath, admitted that being followed by a police officer and having your background checked by the police could be intimidating. (Tr., 184-85.) Indeed, Mr. Cannon testified that it was frightening and intimidating to have Officer Meath come out of the business after him and his family, take down their license number, and delay their exit. (Tr., 33-34.) Similarly, it was humiliating for Mr. Cannon to witness Officer Hagen mocking his wife by yelling, "Yeah, you got my badge number! My badge number is 1019, got that?" and repeating it twice slowly (Tr., 32, 84, 115-16, 130.) Officer Hagen also intended to intimidate Mr. Cannon by telling him that he could not do anything to her. (R-App., 55; Tr., 38.) To allow law enforcement officers to retaliate in this manner, as the Police Department contends this Court should, would give officers carte blanche to intimidate

and humiliate persons who opposed their discriminatory conduct. Such a holding would be contrary to the plain language of MCRO § 139.20 and would be a precedent with terrible consequences.

3. There Was Substantial Evidence to Demonstrate a Casual Connection between the Opposition and the Adverse Action

The Police Department claims that “Officer Meath did not and could not have heard” Mr. Cannon’s opposition to Officer Hagen’s discrimination and that there was therefore no causal connection. (Appellant’s Brief, p. 27.) This argument asks this Court to take a tortured view of the facts and is contrary to *In re North Metro Harness*, which requires that “substantial judicial deference” be given to the Commission’s “fact-finding.” 711 N.W.2d at 137. Moreover, this argument does not even address the first acts of retaliation, Officer Hagen yelling that Mr. Cannon could not do anything to her and yelling loudly and slowly her badge number. These acts by Officer Hagen were a direct response to Mr. Cannon’s complaint statement and the Cannon family’s attempt to get identifying information for their complaint. As such, this conduct was on its face causally related to Mr. Cannon’s opposition and satisfies the third element of the prima facie case.

The causal connection between the opposition and the retaliation can also be established by temporal proximity. Where the “adverse [] action follows closely in time” to the opposition to discrimination, the inference of a causal connection may be drawn. *Hubbard*, 330 N.W.2d at 445. Here, Officer Meath immediately followed the Cannon family out of the business, took down their license number, and temporarily

blocked their exit. Under *Hubbard*, this temporal proximity alone is sufficient to support a finding of a causal connection.

The evidentiary record refutes the Police Department's argument that Officer Meath was in a shell and had no idea what was going on between Mr. Cannon and Officer Hagen. Officer Meath was right behind Officer Hagen when Mr. Cannon told her that he would be filing a complaint and she responded that he could not do anything to her. (Tr., 51.) It is simply not believable that Officer Meath missed hearing this exchange when he was in such close proximity to Officer Hagen. Officer Meath also could not have missed Officer Hagen yelling, "Yeah, you got my badge number! My badge number is 1019, got that?" and twice repeating her badge number. (Tr., 32, 84, 115-16, 130.) This too indicated to Officer Meath that the Cannon family was going to file a complaint against Officer Hagen. Importantly, Officer Meath did testify that he heard Mrs. Cannon call both him and Officer Hagen racists. (Tr., 169.) Even though Mrs. Cannon did not make these statements to the Officers, the testimony of the Officers and witnesses establishes that the Officers were aware that the Cannon family had voiced its opposition to their discriminatory conduct and were going to file a complaint against them. The Commission thus had substantial evidence to support its finding of causation.

4. Substantial Evidence Supports the Finding of Pretext

With a *prima facie* case of retaliation established, a presumption arises that the Police Department unlawfully retaliated against Mr. Cannon. *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986). This shifts the burden of production to the Police Department to present evidence of some legitimate, non-discriminatory reason for its

actions. *Id.* Officer Hagen claims that she had to loudly and slowly repeat her badge number to Mrs. Cannon because Mrs. Cannon could not hear her. Officer Meath has provided two different explanations for his actions: he first claimed that he took down the license plate numbers of vehicles being released from the towing company. Later in these proceedings, however, Officer Meath found out that the Cannon vehicle was not a released vehicle. Officer Meath then changed his story and claimed that he took down the license plate number of the Cannon vehicle because it was the only vehicle present at the towing company.

After the Police Department proffered its non-retaliatory reasons for its actions, Mr. Cannon had to prove by a preponderance of the evidence that the reasons were actually a pretext for retaliation and that the Officers intentionally retaliated against him. Mr. Cannon may carry this burden “either directly by persuading the court that a [retaliatory] reason likely motivated [the Officers] or indirectly by showing that [the Police Department’s] proffered explanation is unworthy of credence.” *Sigurdson*, 386 N.W.2d at 720. Mr. Cannon satisfied his burden under *Sigurdson* by presenting substantial evidence that a retaliatory reason motivated the Officers and that their stated reasons for their actions were false.

To begin, there was no non-retaliatory justification for Officer Hagen to yell at Mr. Cannon that he could not do anything to her. Though Officer Hagen denied yelling this, the Commission was within its authority to credit the testimony of Mr. Cannon and the notes of the interview with Mohamud Isse and find that Officer Hagen did make the statement. This finding was consistent with Officer Hagen’s testimony that she was not

courteous, respectful, polite, and professional under the circumstances and that she did not think it was possible to act that way “when you address a group like that,” even though the group was peaceful. (Tr., 28-30, 148.) On appeal, this Court gives “[s]ubstantial judicial deference” to such administrative fact-finding, and this finding should not be disturbed. *In re North Metro Harness, Inc.*, 711 N.W.2d at 137.

The Commission was also warranted in finding that Officer Hagen’s stated reason for yelling and repeating her badge number was pretextual because there was direct evidence of her retaliatory motive. Officer Hagen thought it was “extremely inappropriate” for the Cannon family to raise the issue of racial discrimination with her. (Tr., 134.) Such a strong reaction from Officer Hagen indicates that retaliation “likely motivated” her. *Sigurdson*, 386 N.W.2d at 720.

But there’s more. When Officer Hagen was loudly and slowly repeating her badge number, she was doing so in a small space, the waiting room, and the persons present were not being loud or disruptive. Moreover, Mrs. Cannon had not even asked for Officer Hagen to state her badge number. There was thus no legitimate reason for Officer Hagen to be yelling and repeating her badge number. These circumstances show that Officer Hagen’s stated reason for doing so is false, and a finding of pretext was proper.

Officer Meath’s stated reasons for following the Cannon family out of the business, recording their license plate number, and temporarily blocking their exit are also false and warranted the finding of pretext. To begin, the Police Department has offered two different explanations for Officer Meath’s actions. First, in response to Mr. Cannon’s

Charge of Discrimination, the Police Department stated, "Officer Meath ran registration checks on vehicles as they were released." (A-App., 4). At the hearing, Officer Meath admitted that this reason was false. (Tr., 184.) The Cannon family left before the vehicles were released, and Officer Meath's first stated reason therefore could not have had anything to do with taking down the Cannon family's license plate number.

At the hearing, the Police Department came up with a second reason for Officer Meath's decision to run a license check on the Cannon vehicle: it was the only vehicle present. (Tr., 185.) These shifting reasons alone are sufficient to warrant a finding of pretext. *See Cleveland v. Home Shopping Net.*, 369 F.3d 1189, 1994-95(11th Cir. 2004).

Officer Meath's second stated reason is also pretextual because it does not even provide an explanation for his actions. Officer Meath's primary duty on the call to Wrecker Services was to observe and make sure nobody got behind Officer Hagen or threatened her safety. (R-App., 50.) Officer Meath made a decision to abandon that duty and follow the Cannon family out of the towing business. He has not provided any explanation for his decision to follow the Cannon family outside. Officer Meath then wrote the Cannon vehicle's license plate number on his hand and ran a check on it "to make sure there was a valid driver, there [were] no warrants on the vehicle, [and] the vehicle wasn't stolen." (Tr., 171.) Officer Meath, again, was unable to provide any reason for why he chose to do that with the Cannon family vehicle:

Q. In fact, you didn't have any facts to cause you to run that registration check, did you?

A. Do I need facts to run a registration?

Q. The answer is no then, you didn't have any facts?

A. No.

(Tr., 184.)

Moreover, Officer Meath's testimony that the Cannon vehicle was the only vehicle present confirms that he followed only the Cannon family out of the building. If as Officer Meath claims he had followed out the African couple as well, then he would have seen their vehicle too. Officer Meath, however, could provide no explanation for the disappearance of the African couple and their vehicle. (Tr. 185-86.) In light of the temporal proximity to Mr. Cannon's opposition and his awareness of that opposition, Officer Meath's actions were retaliatory, and the Commission's finding of retaliation was justified.

d. The Commission Did Not Err in Refusing to Recuse Itself

The Police Department appeals the denial of its motion to have the Commission recuse itself from hearing this matter. The Police Department's motion was based solely on Mr. Cannon's service as a Commissioner over ten years ago. Rule 63.02 of the Minnesota Rules of Civil Procedure provides that "[n]o judge shall sit in any case... if that judge might be excluded for bias from acting therein as a juror." The Police Department made no showing of actual or potential bias here, and its motion was thus properly denied.

Mr. Cannon served on the Commission from approximately September of 1988 to September of 1998. None of the current Commissioners were on the Commission while Mr. Cannon was serving. Mr. Cannon does not know personally any of the current Commissioners. At no time did the Police Department bring forth any facts to cast doubt

on Mr. Cannon's complete lack of a professional or personal relationship with any current Commissioner. The undisputed facts, therefore, did not create the appearance of bias concerning the Commission as a whole or any individual Commissioner.

The Police Department's argument is also contrary to the MCRO. The Police Department's argument boils down to the proposition that once a person has served on the Commission, he or she is forever precluded, as a matter of law, from having a claim heard by the Commission. The MCRO contains no such restriction. To the contrary, the MCRO provides that "*Any person* believing discrimination has occurred may file [a complaint] with the director." MCRO § 141.50 (emphasis supplied). Former Commissioners, like Mr. Cannon, are not excluded.

In sum, the Police Department did not make a showing of actual or potential bias on the part of the Commission, and its motion was properly denied.

e. The Police Department Has Not Shown Bias by the Commission

The Police Department argues that the Commission was biased based on the following passage from its Memorandum:

Furthermore, when deciding the facts, panel members are instructed as follows, 'Your best guide is your own good judgment, experience and common sense.' Each of the panel members had experiences with Minneapolis Police Officers where the officers acted uncourteous, disrespectful, and impolite. It was agreed by the panel that the Minneapolis Police Department unfortunately has a bad reputation of treating the individuals they stop in a disrespectful manner. And as advocates for the City of Minneapolis, the panel wishes that the MPD's culture would improve. Yet, two of the panel members are Caucasian and one is African American. Thus, we were unable to conclude based on our experience or by a preponderance of the evidence that the [Police Department's] mistreatment of the Complainant was based on his race.

(A-Add., 27-28) (Emphasis supplied.) The Police Department is complaining about a section of the Commission's Memorandum in which the Commission ruled in the Police Department's favor. These statements, therefore, did not constitute bias against the Police Department.

Furthermore, there is nothing improper about the statements within this section of the Memorandum. The Commission members who decided this matter were entitled to rely on their experience, per the panel instruction. The Police Department did not object to this instruction at the hearing, much less claim any bias on the part of the Commission, and should not be allowed to do so now. To hold that no Commission member could preside over a hearing involving the Police Department if he or she has had a negative experience with the Department would reward the bad conduct of the Police Department.

As for the Commission's statement that they are advocates for the City of Minneapolis, if it evidences any bias at all, it is bias against Mr. Cannon. The Police Department is a branch of the City government. Mr. Cannon is a private citizen with no connection to the City government. To the extent they are advocates for the City, therefore, the Commission is more likely to look favorably on a department of the City than Mr. Cannon. A more reasonable reading of that statement, however, is found within the MCRO. The Minneapolis Commission on Civil Rights was formed to,

prevent and eliminate bias and discrimination... by means of education, persuasion, conciliation and enforcement, mediation and the impartial resolution and adjudication of disputes, and utilize all the powers at its disposal to carry into execution the provisions of this title.

MCRO § 141.40. The Commission is an “advocate” in the sense that it is charged with “prevent[ing] and eliminat[ing] bias and discrimination.” Surely, the Police Department does not object to that role.

f. The Facts and Law Supported the Damages Award and the Penalty

The Commission awarded Mr. Cannon \$10,000 for past emotional harm and \$5,000 for future emotional harm. (A-Add., 9.) Substantial evidence supported this award and included testimony by Mr. Cannon that as the result of the incident, he suffered, and continues to suffer, nightmares, lost sleep, depression, and anxiety about the safety of James Jr. (Tr., 39-41, 90.) Mr. Cannon described his distress as follows:

Because since the incident it seems like every other day I wake up and I’m reminded of the incident. It’s always on my mind. And I fear primarily for my son, and I’m depressed over that, because of – three or four days go by where my wife and I don’t hear from him. I’m always wondering is this a Julie [Hagen] day. Is this a day where he’s going to run into Julie [Hagen] or officers similar to her that’s going to overreact in a situation that doesn’t call for it. And so I’m worried about what’s out there on the street, what the police are doing, particularly as it relates to my son...

(Tr., 40-41.) The Commission found Mr. Cannon’s testimony credible concerning his damages, and the Police Department has come forward with no valid ground for disturbing these findings on appeal.

The Police Department also argues that the MCRO caps emotional distress damages at \$8,500 and that it does not allow the multiplying of such damages.

(Appellant’s Brief, p. 32.) The Police Department misreads the MCRO. The MCRO provides,

In all cases, the hearing committee may order the respondent to pay an aggrieved party, who has suffered discrimination, compensatory damages in an amount up to three (3) times the actual damages sustained.

MCRO § 141.50(m). This provision applies to “all cases” and gives the Commission authority to award a multiplier of “compensatory damages.” The Police Department does not dispute that damages for emotional distress are “compensatory.” Therefore, under MCRO § 141.50, such damages may be multiplied up to three times. Here, they were doubled.

The MCRO also provides,

In all cases, the hearing committee may also order the respondent to pay an aggrieved party, who has suffered discrimination, damages for mental anguish or suffering and reasonable attorneys fees in addition to punitive damages in an amount not more than eight thousand five hundred dollars (\$8,500.00).

MCRO § 141.50(m). This section does not limit the multiplying of compensatory damages. Rather, it makes clear that in “all cases” a party may be awarded “damages for mental anguish or suffering.” Both of the above-cited clauses in MCRO § 141.50(m) apply to “all cases” and are therefore not mutually exclusive. The multiplying of damages must thus be available in cases where damages for emotional distress are awarded, as is the case here.

The \$8,500 cap referenced in MCRO § 141.50(m) is a limit on punitive damages – not emotional distress damages. The text of MCRO § 141.50(m) uses “in addition to” to delineate punitive damages from damages for mental anguish and reasonable attorneys’ fees. Indeed, the Police Department does not challenge the amount of attorneys’ fees claimed in this case to date even though they far exceed the \$8,500 limit for punitive damages. Under the Police Department’s erroneous interpretation of MCRO § 141.50(m), attorneys’ fees would also be capped at \$8,500. The Department’s own

acquiescence to the fee award in this case, however, shows that it does not believe that to be true.

Finally, Mr. Cannon supports the Commission's imposition of a \$7,500 penalty and believes that it is specifically authorized by MCRO § 141.50(m):

The hearing committee shall order any respondent found to be in violation of any provision of section 139.40 to pay a civil penalty to the City of Minneapolis. 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. Any penalties imposed under this provision shall be paid into the general fund of the city.

CONCLUSION

For the foregoing reasons, this Court should affirm the Judgment entered by the Minneapolis Commission on Civil Rights and award Mr. Cannon his attorney's fees and costs incurred in opposing this appeal.

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