

MEMORANDUM

The Minnesota Department of Human Rights (MDHR) has finished its investigation into this charge of discrimination (charge) and the Commissioner determines:

1. There is **PROBABLE CAUSE** to find that respondent denied charging party's son access to a public accommodation because of his race.
2. There is **PROBABLE CAUSE** to find that respondent failed to hire charging party's son because of his race.

Background

3. On April 4, 2019, charging party filed this charge on behalf of her 16-year-old minor child and alleged that respondent discriminated against her son in the areas of public accommodation and employment, on the basis of his race.¹ Specifically, charging party alleged respondent racially profiled her son when respondent's employees asked him to leave and called the police on him. She further alleged that respondent failed to hire her son because of his race. Charging party alleged that respondent's actions violated the Minnesota Human Rights Act (MHRA).
4. Respondent received a copy of the charge, provided MDHR with an answer to the charge, denied it discriminated against charging party, and provided documents and witness interviews to support its position. Respondent asserted that it asked charging party's son to leave the store because he was being disruptive to employees and customers, not because of his race. While respondent acknowledged charging party's son inquired about a job while in the store, it disputed whether he was actually applying for a job while in the store that day.
5. Charging party received a copy of respondent's answer to the charge and participated in an investigatory interview.
6. MDHR considered all of these materials and interviewed relevant witnesses. MDHR limited its investigation to whether respondent violated the MHRA.

Facts

7. Charging party filed a charge on behalf of her Black son, who was 16 years old at the time of the events in this case. Because CPM was a minor at the time, he is referred to as CPM, or charging party's minor son.
8. Respondent is a store that specializes in selling art supplies and crafts. Respondent's place of business is open to the public and is therefore a "place of public accommodation" under the MHRA.² The store has in-store surveillance camera without audio. The interactions with the store manager who placed the 911 calls and the person who was the subject of the 911 call – CPM – were captured by the in-store surveillance camera without audio.
9. On March 19, 2019, CPM entered respondent's store to complete a job application.

¹ Minn. Stat. § 363A.11, subd. 1(a)(1).

² Minn. Stat. § 363A.03, subd. 34.

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10. Prior to entering the store, CPM spoke with a store employee who was sitting outside the store on break. She told him that respondent was hiring and that he would have to fill out the application online.
11. CPM hoped to have an immediate interview so chose to fill out the online application on his phone while he was in the store. CPM started, but did not complete, the job application while in the store.
12. While CPM was in the store he walked around, picked up and juggled a few items from the shelves, put the items back, and moved his feet in time to the music.
13. CPM behaved like a typical customer. He was not bothering anyone. He was not being disruptive. No customers complained about him.
14. One of respondent's store managers, a white woman, approached CPM and told him he needed to leave if he wasn't going to buy anything. CPM told her that he was filling out an application and asked why he needed to leave. CPM asked why she was coming up to him when there were other people in the store also looking around. The manager told him that he needed to leave and threatened to call the police.
15. There was no reason for the manager to instruct CPM to leave the store.
16. Other employees were aware of this manager's pattern of racially profiling customers by treating Black people differently than white people including increased surveillance of Black people when they came into the store and asking employees to regularly surveil Black customers but only asking employees to watch white customers who were clearly under the influence of drugs.
17. The manager called 911 at 6:37 PM, stating that "a kid" was in the store creating a disturbance, that he was asked to leave numerous times but would not do so. She provided a description, reporting the "kid" was "Black with dreads and has a black coat on." She further reported that he was "going through the store, playing with the balls, throwing stuff up in the air, knocking stuff off shelves, just being 21." CPM was 16 at the time.
18. There was no reason for the manager to call the police on CPM.
19. CPM left the store voluntarily shortly after he was asked to leave around when she was calling 911. CPM did not know the manager called the police.
20. CPM had returned, frustrated, because he believed he was kicked out because he is Black. The manager and another employee met him in the vestibule and blocked CPM from coming back into the store. They all yelled at each other for a few moments until CPM walked away. CPM did not touch the manager or other employees.
21. After CPM left the store the second time, the same store manager called 911 again, at 6:45 PM. She stated that the "tyrant customer" had returned to the store, was "hostile" and was starting to "touch" her employees. CPM never attempted to touch any employee.
22. An officer and sergeant entered the store shortly after the second 911 call was placed and talked to the manager who made the calls. She told them CPM was wearing red shoes and headphones. She further

told the Sergeant that CPM called her and her employee “goofy bitches” and was “waving his phone in their faces, recording.”

23. A few minutes later, a police officer followed CPM into a nearby store with the other officer and the Sergeant close behind. They confronted him, took him to the ground, handcuffed him, and placed him under arrest.³
24. CPM was charged with disorderly conduct, trespassing, and obstructing legal process. He was not charged with assault. All charges were ultimately dismissed.
25. Police also issued CPM a trespass order, prohibiting him from entering the retail store for one-year.

Legal Standard for Claim 1: Racial Profiling/Denial of Service

26. Under the MHRA, it is an unlawful discriminatory practice to deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race.⁴
27. Charging party alleged respondent asked her son to leave the business and called the police on him because of his race, the “adverse actions” charging party claims were unlawful.
28. A charging party can prove a respondent discriminated against them by presenting direct and/or indirect evidence.⁵
29. Direct evidence of race discrimination in public services can be demonstrated through the use of racial epithets or overt statements or conduct demonstrating that the treatment in question was motivated by the subject’s race.
30. When there is no direct evidence of discrimination, a fact finder can rely on indirect evidence or all of the evidence put together, to infer that respondent’s alleged discriminatory intent motivated the action. If a case involves indirect evidence, like this one, the evidentiary burden shifts back and forth between charging party and respondent.⁶
31. First, to make a threshold race discrimination claim, charging party must establish the following three elements: (1) that CPM is a member of a protected class under the MHRA, (2) that respondent denied services or accommodations to CPM, and (3) circumstances suggest that the denial occurred because of CPM’s protected class status.⁷

³ The officers’ use of force in restraining and arresting CPM appeared to violate applicable use-of-force guidelines and policies and resulted in the filing of a separate race discrimination charge against the police department.

⁴ Minn. Stat. § 363A.11, subd. 1(a)(1).

⁵ See *Aase v. Wapiti Meadows Cmty. Techs. & Servs., Inc.*, 832 N.W.2d 852, 856 (Minn. Ct. App. 2013) (explaining that a complainant may prove discriminatory intent by presenting sufficient direct evidence to prove her claim or by relying on indirect evidence and employing the *McDonnell Douglas* burden-shifting analysis).

⁶ *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986).

⁷ *Monson v. Rochester Athletic Club*, 759 N.W.2d 60 (Minn. Ct. App. 2009); *Bray v. Starbucks Corp.*, A17-0823, 2017 WL 6567695, *7 (Minn. Ct. App. 2017) (“Neither the MHRA nor case law expressly limits public-accommodation discrimination claims to those in which a person is denied access to or refused service by a place of public accommodation.”).

32. If charging party can establish these three elements, respondent must provide a legitimate, non-discriminatory reason for its actions.⁸
33. If respondent produces a legitimate, non-discriminatory reason for its actions, charging party has to show that respondent's reasons are false and are really an excuse for discrimination.⁹
34. If charging party cannot show this, then MDHR cannot find that respondent discriminated against CPM.¹⁰

Discussion for Claim 1: Racial Profiling/Denial of Service

35. Here, there is only indirect evidence of discrimination, and therefore, a burden-shifting analysis applies.
36. CPM easily states a threshold claim by showing that he is Black and asserting that he was told that he had to leave the store even though he behaved like a typical customer. Video evidence confirms that CPM was not bothering anyone, and he was not being disruptive. CPM went to the store to apply and be interviewed for a job. Instead, CPM but was told to leave the store and thus denied access to the store's services.
37. Respondent easily meets its burden by explaining that it asked charging party to leave because he was causing a disturbance.
38. The burden therefore shifts back to the charging party to demonstrate that respondent's explanation is not credible.
39. Here, the evidence shows that respondent's alleged justification for its treatment of CPM was false or merely an excuse for discrimination based on the race of CPM.
40. Surveillance video from the store corroborates CPM's testimony that he was behaving like a typical customer when the manager approached him and asked him to leave. The video also shows he was not causing a disturbance of any kind, not bothering anyone, and was not engaged in the conduct described by the store manager in her call to 911. Further, in addition to CPM, another store employee explicitly disputed the manager's contentions, stating that CPM was not acting out of the norm and there was no reason to ask him to leave or to call the police on him.
41. Rather, the circumstances of this case strongly suggest that respondent's decision to order CPM to leave the store and call the police was motivated by CPM's race. This conclusion is supported by two primary findings.
42. First, video footage and witness testimony directly contradicts the narrative that the manager gave to the police when she called them and falsely described CPM's behavior and conduct. She intentionally described him as an older, physically aggressive Black man – mimicking false racial stereotypes about

⁸ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515-16 (1993) ("a reason cannot be proved to be 'a pretext for discrimination' unless it is shown both that the reason was false, and that discrimination was the real reason").

⁹ *Id.* at 802.

¹⁰ *Id.*

Black men. In fact, video footage shows that CPM was a 16-year-old boy moving through the store like a typical customer. He was not a “tyrant,” as the manager claimed, and the store’s surveillance footage disproves any claim that CPM was trying to touch employees. The false statements that are directly contradicted by video and witness testimony were simply an excuse to eject CPM from the store, and suggest that the manager’s behavior was motivated by CPM’s race.

43. Second, evidence obtained during the investigation demonstrates that respondent’s manager had a known reputation for racially profiling Black customers. For example, one respondent employee explained that the manager instructed employees to surveil and track all Black customers who entered the store, but only instructed employees to track white customers who appeared to be under the influence of drugs. Another respondent witness explained that they observed respondent’s manager treat Black people differently than white people and that they were aware that the manager held beliefs about Black people based on stereotypes.
44. Accordingly, the totality of the evidence demonstrates that respondent discriminated against CPM because of race.

Legal Standard for Claim 2: Failure to Hire

45. It is an unlawful discriminatory practice for an employer to discriminate against a person because of race.¹¹
46. The charging party alleged the respondent refused to hire her son because of his race.¹² This failure to hire is the “adverse employment action” that the charging party claims is unlawful.
47. A charging party can prove a respondent discriminated against them by presenting direct and/or indirect evidence.¹³
48. *Indirect Evidence Analysis.* When there is no direct evidence of discrimination, a fact finder can rely on indirect evidence or all of the evidence put together, to infer that the respondent’s alleged discriminatory intent motivated the adverse employment action. If a case involves indirect evidence, like this one, the evidentiary burden shifts back and forth between the charging party and the respondent.¹⁴
49. First, to state a threshold race discrimination claim here, charging party must establish that her son: (1) belongs to a protected class; (2) he applied and was qualified for the job for which the employer was seeking applicants; (3) despite his qualifications, he was not hired for the position; and (4) a fact finder can infer discrimination based on the totality of the circumstances or the position remained available or was filled by someone else with similar qualifications.¹⁵

¹¹ Minn. Stat. § 363A.08, subd. 2.

¹² *Id.* at subd. 2(1).

¹³ See *Aase v. Wapiti Meadows Cmty. Techs. & Servs., Inc.*, 832 N.W.2d 852, 856 (Minn. Ct. App. 2013) (explaining that a complainant may prove discriminatory intent by presenting sufficient direct evidence to prove her claim or by relying on indirect evidence and employing the *McDonnell Douglas* burden-shifting analysis).

¹⁴ *Sigurdson v. Isanti County*, 386 N.W.2d 715, 720 (Minn. 1986).

¹⁵ *Sigurdson v. Carl Bolander & Sons, Co.*, 532 N.W.2d 225, 228 (Minn. 1995); *Takele v. Mayo Clinic*, 576 F.3d 834, 838 (8th Cir. 2009); *Clark v. Runyon*, 218 F.3d 915, 918 (8th Cir. 2000).

50. If charging party can establish these four elements, then respondent must provide a legitimate, non-discriminatory reason for its actions.¹⁶
51. If respondent produces a legitimate, non-discriminatory reason for its actions, charging party then has to show that respondent's reasons are false and are really an excuse for discrimination.¹⁷
52. If charging party cannot show that the respondent's reasons are false or an excuse for discrimination, then the Department cannot find that the respondent discriminated against CPM.¹⁸

Discussion for Claim 2: Failure to Hire

53. Here, there is only indirect evidence of discrimination, and therefore, a burden-shifting analysis applies.
54. Charging party explained that one of respondent's employees told CPM respondent was hiring and that he could submit an online application on his phone. Respondent did not permit CPM to complete the job application process while he was at the store because the manager asked him to leave the store, and the evidence shows CPM was asked to leave the store because he is Black.
55. Charging party contends that respondent's overtly discriminatory actions made it impossible for her son to complete the application, and that future submission of an application would never result in him being hired. This is sufficient to state a threshold failure to hire claim.¹⁹
56. The burden then shifts to respondent to provide a legitimate, non-discriminatory reason for its actions. Respondent asserts that CPM never actually applied for a job. It denies that it prevented him from doing so and insists that its decision to ask him to leave was based solely on his disruptive conduct.
57. For the same reasons that respondent's alleged justification was not credible for Claim 1, respondent's alleged justification for failing to hire CPM is false or merely an excuse for discrimination based on the race of CPM.
58. In its answer, respondent acknowledged that CPM was inquiring about applying for a job on the day of this incident. Witness testimony also supported the allegation that CPM went into the store that day to apply for a job. The witness stated that CPM asked her if respondent was hiring before he entered the store. She reported that she told him, yes, respondent was hiring, and he would need to fill out an online application. She also reported that he chose to fill out the application in the store with the hope that he would have an interview once he had completed the application. The witness also stated that the manager was aware that CPM was in the store to apply for a job before she asked him to leave. Further, CPM credibly told the manager that he was there to apply for a job when she told him to leave.

¹⁶ *McDonnell Douglas*, 411 U.S. at 802.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Banks v. Heun-Norwood*, 566 F.2d 1073, 1076 (8th Cir. 1977) (concluding, in individual case, that "[s]ound authority dictates that where a person seeking employment is effectively deterred by the discriminatory policy or conduct of the employer, the complaining party is not required to formally apply for the position in order to seek and obtain relief because of the discrimination")

59. While respondent alleges that CPM was asked to leave the store because he was being disruptive, video evidence and witness testimony show otherwise. There is no evidence in the record to support respondent's position.
60. However, there is evidence in the record to show that the manager had a demonstrated bias against Black people. As discussed above, two former store employees reported that the manager treated Black people differently and worse than white people.
61. Given what occurred in respondent's store that day, including the fact that he was criminally trespassed from the store, it would have been futile for CPM to continue the online application process at a later date. The events of that day effectively deterred him from continuing to pursue employment with respondent. Importantly, charging party's removal from the store was discriminatory.
62. Based on the totality of the evidence, MDHR finds that respondent discriminated against CPM in the area of employment because of his race.

Conclusion

63. THEREFORE, MDHR finds that there is **PROBABLE CAUSE** to find that respondent racially profiled and failed to hire charging party's son because of his race, in violation of the MHRA.²⁰

Minnesota Department of Human Rights

FOR THE DEPARTMENT BY:



Rebecca Lucero, Commissioner

Dated: September 20, 2021

²⁰ Minn. Stat. §§ 363A.11, subd. 1(a)(1); 363A.08, subd. 2(1).