

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 discriminated against the charging party's son because of his race.

Background

2. On April 4, 2019, charging party filed this charge and alleged respondent discriminated against the charging party's son in the area of public services, on the basis of his race.¹ Specifically, charging party alleged respondent used unreasonable force against her son, in violation of the Minnesota Human Rights Act (MHRA).
3. Respondent received a copy of the charge, provided MDHR with an answer to the charge, denied it discriminated against charging party's son, and provided documents and witness interviews to support its position. Respondent asserted that the force used against the charging party's son was reasonable and was not based on his race.
4. Charging party received a copy of respondent's answer to the charge and participated in an investigatory interview.
5. MDHR considered all of these materials and interviewed relevant witnesses. MDHR limited its investigation to whether respondent violated the MHRA.

Facts

6. Charging party filed a charge on behalf of her 16-year-old Black son. At the time of this incident, charging party's son stood approximately five feet tall and weighing around 100 pounds. Because charging party's son was a minor at the time, he is referred to as charging party's son, or CPM (for charging party's minor son).
7. Respondent is a police department. Under the MHRA, respondent is a "public service."²
8. Respondent maintains policies concerning its officers' use of force in detaining or arresting an individual. Policy # 300.3.2 requires that officers consider a number of factors to determine whether the use of force is reasonable and appropriate in a given circumstance. Those factors include, but are not limited to:
 - Immediacy and severity of the threat to officers or others.
 - Officer/subject factors (age, size, relative strength, ... the number of officers available vs. subjects).
 - Proximity of weapons or dangerous improvised devices.
 - Seriousness of the suspected offense or reason for contact with the individual.
 - The risk and reasonably foreseeable consequences of escape.

¹ Minn. Stat. § 363A.12, subd. 1.

² Minn. Stat. § 363A.03, subd. 35 (defining public service as "any public facility, department, agency, board or commission, owned, operated or managed by or on behalf of the State of Minnesota, or any subdivision thereof, including any county, city, town, township, or independent district in the state.").

MEMORANDUM

REF: 70468

Page 2

- The apparent need for immediate control of the subject or a prompt resolution of the situation.
 - Prior contacts with the subject or awareness of any propensity for violence.
9. On March 19, 2019, three respondent police officers were dispatched to a call located at 1300 Shingle Creek Crossing, Suite 112, Brooklyn Center, Minnesota following two 911 calls placed from a retail store located at the above address. All three officers are white.
 10. At 6:37 PM on March 19, one of the retail store's managers called 911 about CPM. CPM went to the store to apply for a job and hoped to interview for a position. While in the store, CPM behaved like a typical customer. He was not bothering anyone. He was not being disruptive. No customers complained about him. There was no reason for the manager to call the police.
 11. When the manager, a white woman, first called the police, she reported 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."
 12. Surveillance video from the store shows CPM 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. 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. Another store employee also testified 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.
 13. CPM left the store voluntarily shortly after he was asked to leave.
 14. At 6:45 PM, eight minutes after the first call, the same manager called 911 a second time. She stated that the "tyrant customer" had returned to the store, was "hostile" and was starting to "touch" her employees.
 15. 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.
 16. Respondent's officers arrived at the above address shortly after the second 911 call was placed. Initially, two officers (Officer 1 and Officer 2) and a sergeant arrived at the location. All three were wearing body worn cameras (BWCs). Their interactions with the store manager who placed the 911 call and the person who was the subject of the 911 call – CPM – were captured by the BWCs.
 17. Officer 1 and the Sergeant went to the store to talk to the manager who called 911 and Officer 2 remained in his squad car and saw someone walking to another store that fit the description of the person who was the subject of the call.

MEMORANDUM

REF: 70468

Page 3

18. The person Officer 2 was observing was CPM. CPM was unknown to either of the officers or to the Sergeant at the time of this incident.
19. The store manager who placed the 911 calls told Officer 1 and the Sergeant that 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."
20. Meanwhile, while in his squad car, Officer 2 observed CPM enter a different store in the shopping plaza. After receiving confirmation that CPM was likely the person they were looking for, Officer 2 entered the same store. CPM was in between clothing racks. He had no clear path to an exit.
21. The officer approached CPM, saying, "Come here man. ... I gotta talk to you, bro."
22. CPM responded in a conversational tone, "What's going on sir?" and "What's going on Officer?" The officer didn't answer but continued quickly walking toward the 16-year-old and reached to grab his arm. CPM stepped back, saying "don't touch me" to the officer, while putting his hands in the air, continuing to look at the officer.
23. Within 7 seconds of first speaking to CPM, Officer 2 grabbed him.
24. Respondent officers testified that a person raising their hands up, as CPM did, is an assaultive posture demonstrating resistance and an intent to push the officer. They further stated that moving away from an officer and looking in different directions can indicate someone intends to flee from a police officer.
25. CPM was surprised and scared when Officer 2 quickly approached him and moved backwards to create space. He immediately put his hands up because he did not want the officer to shoot him.
26. The officers testified that it is important that police officers issue clear commands when engaging with community members so that the person they are communicating with hears them, the people around hear them, and other officers hear them and all who are present know what is going on.
27. Officer 2 did not provide clear commands. He did not request that CPM comply with any order to place his hands in the air, stop moving, or get on the ground. Officer 2 did not tell CPM why he was there, why he was speaking to CPM, or why he was grabbing at CPM. CPM did not know what was happening.
28. While Officer 2 held CPM, Officer 1 and the Sergeant entered the store. Officer 1 approached Officer 2 and CPM, grabbed CPM, and told him he was about to go on the ground. Both officers threw CPM to the ground. While face down on the ground, the officers and the Sergeant grabbed and pulled CPM by his locs (dreadlocks), put a knee into his back, and handcuffed him.
29. While on the ground, CPM cried out, "don't kill me, I want to grow up."
30. Officer 1 responded by stating "maybe you should stop fighting the police." CPM was not fighting police.
31. CPM never had any interaction with police before this incident.
32. With CPM's hands cuffed behind his back, laying on his stomach, the officers jerked CPM by the handcuffs to a standing position and carried him outside where they put CPM up against a brick wall. The

officers did not give CPM an opportunity to stand up on his own, did not help him to a seated position, and did not instruct him on how to stand while restrained in handcuffs.

33. Once outside against the wall, the officers searched CPM while he cried, saying, "I didn't do anything." CPM pleaded repeatedly, "I want to grow up."
34. Respondent officers and a sergeant who arrived when CPM was up against the brick wall later watched BWC footage and stated that CPM pleading, "don't kill me," and, "I want to grow up," was attention seeking behavior and not an expression of fear.
35. CPM repeatedly pleaded, "don't kill me," and, "I want to grow up," and, "I want to live," because he was scared and he didn't want the officers to kill him.
36. Officers put CPM into a squad car and called an ambulance to transport him to a hospital.
37. After the incident, respondent's officers filed a number of official reports containing statements which were clearly contradicted by the BWC footage. For example, in his incident report Officer 2 stated that, after CPM was handcuffed, "I then assisted [him] up from the ground." Similarly, Officer 1 submitted a "Hold" report stating that CPM had "fought with police officers" and engaged in a "temper tantrum." And in his post-incident report justifying the use of force against CPM, Officer 1 wrote that he commanded CPM to put "hands behind your back."
38. In their official reports, respondent officers wrote that CPM "backed away," "pulled away," and "moved away" when Officer 2 initially reached toward him. None of the reports indicate CPM made any attempt to flee or that officers feared he would do so.
39. CPM was charged with disorderly conduct, trespassing, and obstructing legal process. He was not charged with assault. All charges were ultimately dismissed.
40. Police also issued CPM a trespass order, prohibiting him from entering the retail store for one-year.

Legal Standard

41. Under the MHRA, it is an unlawful discriminatory practice to deny any person "access to, admission to, full utilization of or benefit from any public service" because of an individual's race.³
42. Charging party alleged respondent used unreasonable force against her son because of his race. The force used against the CPM is the "adverse action" that charging party claims is unlawful.
43. Individuals have the right to be free from discrimination in all aspects of their interaction with police officers.⁴

³ Minn. Stat. § 363A.12, subd. 1.

⁴ *City of Minneapolis v. Richardson*, 307 Minn. 80, 89 (1976) (holding that civil, non-discriminatory treatment of citizens by police is an important part of the full utilization of and benefit from police services).

44. A charging party can demonstrate that respondent discriminated against them in public services by presenting direct and/or indirect evidence.
45. 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.⁵ When there is no direct evidence of discrimination, as is the case here, charging party can rely on indirect evidence, or all of the evidence put together, to infer that respondent's alleged discriminatory intent motivated the adverse action.
46. Indirect evidence of race discrimination in public services can be demonstrated by showing either (1) respondent treated charging party's son worse than it treated people of different races who engaged in the same behavior; or (2) respondent treated charging party's son in a manner that was so at variance with what would reasonably be anticipated absent discrimination that discrimination is the probable explanation.⁶
47. If charging party establishes a threshold discrimination claim, respondent must provide evidence showing that its actions were legally permissible and not due to discrimination.⁷
48. If respondent produces such evidence, charging party then has to show that respondent's alleged justification for its treatment of charging party is not credible.⁸
49. If charging party cannot show this, then MDHR cannot find that respondent discriminated against CPM.⁹

Discussion

50. Charging party easily establishes that the actions of respondent's officers were so unreasonable that race discrimination is the only likely explanation for their behavior. CPM credibly testified, and BWC footage clearly confirmed that CPM, then a 16-year-old only around 100lbs and 5 foot tall, was compliant with officers. That he was not armed and never attempted to strike the officers, made no attempt to flee, raised his hands in the surrender posture, and was clearly frightened. Nevertheless, respondents' officers failed to adhere to their own training protocols and policies when they used force against CPM.
51. The burden therefore shifts to respondent to establish a legally permissible basis for its actions. It attempts to do so by asserting that its officers' use of force and ultimate decisions to arrest CPM were reasonable and appropriate responses to CPM's alleged, aggressive resistance and uncooperative behavior. The officers claimed that the 16-year-old refused to obey commands, behaved erratically, fought them, and attempted to flee.
52. Respondent's explanation, however, is contradicted both by clear video evidence and was otherwise not credible. The video evidence showed an unarmed 16-year-old who was scared, placed his hands in the

⁵ *Id.* at 89.

⁶ *Id.* at 87; *Cannon v. Minneapolis Police Dep't*, 783 N.W.2d 182, 192 (Minn. Ct. App. 2010) (holding that police statements toward individuals involving harassing and intimidating tone and volume can rise to adverse action in the public services context).

⁷ *Id.* at 87.

⁸ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

⁹ *Id.*

air, made no attempt to flee, and never attempted to fight. Respondent's explanation that CPM putting his hands in the air was a threat, a way of resisting, or even getting ready to fight is simply not credible when raising hands up in the air is a well-known posture of surrender.

53. When interviewed, respondent's officers argued that CPM moved backwards when he was approached and therefore intended to flee. However, MDHR is not persuaded that the backward movement of CPM in this situation is such an indicator. CPM was startled by Officer 2's abrupt approach and was surrounded by clothing racks as he backed up; there was no path of escape and CPM never attempted to do so. Furthermore, CPM continued looking at the officer as he put his hands in the air. Respondent's own training indicates that taken in total, these circumstances suggest that suspects in similar circumstances are not attempting to flee, but instead showing the officer their hands are empty and they are indicating compliance. CPM credibly testified that he was surprised and scared when an officer quickly approached him and moved backwards because he thought the officer was going to kill him. He immediately put his hands up because he did not want the officer to shoot him.
54. Moreover, the officers' claimed concern that CPM might flee was never mentioned in their written reports. The officers merely wrote that CPM "backed away," "pulled away," or "moved away" when Officer 2 initially reached toward him. None of the reports indicated that CPM made any attempt to run or escape, or that the officers feared he would do so.
55. In short, after reviewing the BWC footage, no reasonable person could conclude that CPM posed a serious threat or flight risk. In fact, none of the factors listed in respondent's own use-of-force policies (discussed above) supported the use of force in this instance. CPM was a small, unarmed, 16-year-old who made no attempt to flee an area in which three officers were present. He was suspected of a minor offense, he had had no known previous encounters with respondent's officers, and he had put his hands up in the air in a show of surrender.
56. The BWC footage also showed that respondent's officers made a number of inaccurate representations in their official reports. Officer 1's written statements that CPM "fought with police officers" and threw a "temper tantrum" were belied by the footage. Similarly, Officer 2's self-serving claim that he "assisted [CPM] up from the ground" is a gross mischaracterization of what really happened. Finally, the BWC footage shows that Officer 1's claim that he had commanded CPM to place his hands behind his back – which he wrote on a form justifying his use of force against CPM – was false.
57. In addition, evidence showed that respondent's police officers failed to conform to their own standard practices and training. While being interviewed by MDHR, the officers detailed that they were trained to use a standard protocol when approaching a community member, emphasized the importance of issuing clear commands, and described when it is necessary to use force. However, the BWC footage showed that they made no attempt to employ those practices. Officer 2 does not identify why he is there or why he wants to talk to CPM, even though that is requested of him. Officer 2 does not tell CPM to stop as CPM steps back from him, and he does not tell CPM that he is being detained. Failing to follow respondent's training and policy, Officer 2 decided to use force even though he knew additional officers were on their way (in fact, Officer 1 arrived mere seconds later), and there was no need to escalate this situation.

58. Furthermore, each officer's assertion that CPM's statements of "Don't kill me" and "I want to grow up" was "attention seeking behavior" is not persuasive. Video evidence demonstrates that CPM was terrified, he was crying, and was making these statements as legitimate expression of fear. At no point did the officers offer any explanation or provide any assurances to CPM to deescalate the situation.
59. Finally, all criminal charges against CPM were dropped. This directly contradicts respondent's argument that the citations issued to CPM were justified.
60. In sum, the preponderance of the evidence shows that race discrimination is the most probable explanation for the decision to employ excessive force and arrest CPM.

Conclusion

61. THEREFORE, MDHR finds that there is **PROBABLE CAUSE** to find that respondent discriminated against CPM on the basis of his race, in violation of the MHRA.¹⁰

Minnesota Department of Human Rights

FOR THE DEPARTMENT BY:



Rebecca Lucero, Commissioner

Dated: September 20, 2021

¹⁰ Minn. Stat. § 363A.12, subd. 1.