

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Kevin J. Phillips

Case Type: Battery & Others

Plaintiff,

Civil Action No. 27-CV-09-29408

v.

**AFFIDAVIT OF PLAINTIFF KEVIN PHILLIPS
(IN OPPOSITION TO DEFENDANTS'
MOTIONS FOR SUMMARY JUDGMENT)**

Metropolitan Council (a/b/a/Metropolitan
Transit Police) , and its John Doe Officers,
(whose identities are unknown at this time),
individual, personally and as employees/agents
of Metro Council; and Mall of America,

Defendants.

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Kevin J. Phillips, hereby state under oath and allege as follows in the above-referenced case:

1. That I brought this civil action claiming that I am an African-American male at all times relevant hereto resided in the State of Minnesota, County of Hennepin; and that to my knowledge, the Defendants, at all times relevant hereto

have been doing business in the State of Minnesota and County of Hennepin where the incident leading up to this civil action occurred.

2. On October 26, 2009, I arrived at the Mall of America around 6:38 p.m. via light rail train and began walking away from the train with other passengers. Suddenly I see a bus I could use to get home to Bloomington, MN and proceed to my left to cut through the gated area separating the tracks from people. At no time while going through the or under the rail did it state from where I was that a person could not take such a shortcut to the buses. I then get in line with other passengers waiting to board the number "539" Bus at Gate C.

3. Then, out of nowhere without warning, a man wearing a black uniform (who I now reasonably believes was a Metro Transit Police Officer), approaches me from my left side. Another black uniformed male approaches me from my right side. I had no idea who these men were, then, I see a third male in black uniform approaching me as well. These three uniformed men, who never identified themselves, then the first two men, who I now know through discovery, were Metro Transit Officers named Torrez and Esposito, both non-Black, grab me. They aggressively jostled me to the hallway of the MOA where they slammed me up against the fiberglass, where I almost pass out and were they continuously jab me with the tazer to my lower back while threatening me that they were going to use the tazer on me.

4. The above jamming of the tazer in my back and telling me they were going to tazer me, caused me added stress because I had just been diagnosed with a weak heart and pulmonary edema and was thinking that if "tazed" it could

kill me. My legs were then kicked open aggravating his arthritic ankle and a recently scoped groin. Then finally I was violently handcuffed, hurting my wrists and arms. After I was handcuffed the three officers lead me through the Mall with many other patrons watching this embarrassing sight, into a holding cell where I was locked up, while still handcuffed.

5. The Metro Transit Police ("MTP") Officers who grabbed me eventually said that they were checking transfer tickets, and that this was why they stopped me. One of the Metro Transit Officers looked through my wallet and saw that I had a valid bus ticket, which was when their faces changed, looking surprised. These Metro Transit Officers Torrez and Esposito never asked me to show a ticket, they simply pounced on me. All these Officers had to do was ask me for my ticket and I would have shown them my valid ticket. But they did not.

6. Understand, I was in line waiting for the bus, and it was obvious I was not leaving, but just standing there—where the Officers had the opportunity to simply ask to see my valid ticket. Instead, without warning these Officers assaulted, battered and falsely imprisoned, not to mention humiliated and embarrassed, me in front of the many other patrons at the Mall. Had I boarded the bus, these Officers could have then at time also my ticket, and they would have seen that I had a valid ticket. I never resisted these Officers and the video surveillance tape I viewed at the Mall of America Office shows this to be true.

7. I have found out through discovery and my attorney, that the Mall of America and Metro Transit Police have an agreement whereby the MOA has made its facility available for the MTP Officers to conduct business, including

providing the holding cells to imprison individuals, such as myself. Note, that after the Officers took me from the bus or transit area outside the Mall's facility, the Metro Transit Officers, (Torrez and Esposito), marched me handcuffed through the Mall and into a holding office, where I was then placed in a separate holding cell in the Mall.

8. That eventually I received a citation from the Defendant-Officers, which I later came to find out that the officers were claiming I was trespassing—instead of a citation for an invalid bus ticket. This was because the Defendant-Metropolitan Council had sought to prosecute me criminally for trespassing and to my surprise that the charge was trespassing in lieu of invalid access due to no valid ticket.

9. The district court judge in the criminal proceedings dismissed the trespassing charge against me, claiming that there was no way I could have been trespassing as Defendant-Met Council claimed.

10. I am claiming and asserting as fact that it was Officer Esposito who was the taller and balding Officer I identified in photos provided to me through discovery and referenced in my deposition taken by Defendants' counsel, who was jabbing the tazer in my lower back on the right side and threatening to taze me; even though I was not resisting and civil. This jabbing of the tazer in my back and threats, caused me emotional distress and pain, thinking if I were tazed it would kill me, due to my preexisting heart condition.

11. According to The Incident Report done by Officers Torrez and Esposito,

they admit to stopping me, and Esposito admitted to threatening to taze me when I was brought into the entry way of the mall.

12. I am claiming that I felt the treatment and suspicion of me was based upon my race, Black, especially since, Security Officer Esposito pointed to me, after the officers found I had a valid ticket, that the 'No. 5 bus is over there'—referring to a bus that took passengers to North Minneapolis, MN, where mostly Black people lived. I was attempting to get on the bus I needed to take him home to Bloomington, MN.

13. I am claiming that the surveillance tape shows the Metro Transit Police Officers in question using excessive force against me when they manhandled me near the bus and in the entrance way that leads in or outside of the Mall premises. I never tried to resist the security officers at any time during the incident.

14. After the October 26, 2009 incident with the Defendants and their security officers, I was seen at Hennepin County Medical Center, by a nurse practitioner named, Kay Tyberg, who specializes in cardiology. I told Nurse Practitioner Tyberg of the injuries I sustained after the incident with the Metro Transit Police Officers, but she did not document my telling her my injuries I was following up seeing her for related to the Mall of America incident. Because I was told by her that I would have to report the incident to my primary care physician to document in my medical records.

FURTHER AFFIANT SAYETH NOT.

Dated: _____

Kevin J. Phillips, Affiant

Subscribed and sworn to before me

This ____ day of _____, 2010

Notary Public