

DEPARTMENT OF HUMAN RIGHTS COPY

Ref: 35202

Kevin J Phillips

vs.

MN Department of Public
Safety

APPEAL OF NO PROBABLE CAUSE DETERMINATION

I believe the Commissioner's determination of No Probable Cause is in error. Therefore, I request that the determination be reconsidered. My reasons for requesting a reconsideration are as follows:

PLEASE REFER TO *** ATTACHED SHEETS. YOU WILL FIND MY
COMPLETE REASONS FOR REQUESTING RECONSIDERATION ~~2~~ CONCERNING
MY COMPLAINT.....

(Attach additional sheets if necessary; sign and date each sheet.)

I HAVE DELIVERED/MAILED A COPY OF THIS APPEAL TO THE RESPONDENT.

Signature of Charging Party:

Kevin J. Phillips

Date:

6-22-01

Mail or bring this copy to the Department of Human Rights within 10 (ten)-calendar days of receipt.

APPEAL OF NO PROBABLE CAUSE DETERMINATION

Having read received and read the Commissioner's determination of no probable cause, and its Memorandum, I feel I must respond and appeal the Commissioner's determination. Below I have explained my reasons for appealing and why I believe the Commissioner should reconsider its determination.

First, the Commissioner wrote, "Although impossible to discern with certainty, investigation found it unlikely that the officer would have been able to identify Charging Party's race in the far lane of traffic..."

I disagree. Rather, it is as difficult or more to discern a car's license plate as it is the race or color of the driver. In fact, the Commissioner had just found in the same paragraph that, upon agreement of both the parties, "that their vehicles were initially in close proximity." Respondent admits to picking one car out of many and following it. He can not credibly claim to not have known my race while he was following my car, close enough to read the license plate, and long enough to run a check on it. The officer knew my race at or before the time he saw my license plate. The officer was parked at the bend in the road, able to observe oncoming traffic. He was able to see the driver of cars as easy or easier as he would have been able to see the license plate. In so far as the Commissioner concluded that Officer Churney was not aware of my race, the decision should be reconsidered.

Second, Respondent admits that Officer Churney was involved in drug interdiction. His actions in this case show that his concern was drug interdiction. I was not stopped for a traffic violation. I was not given a ticket for speeding or any other moving violation. There is absolutely no dispute on this. The officer's only purpose in stopping me was to look for drugs. He saw a black man with Illinois plates and stopped that car because it fits a stereotype of a drug dealer. That is the very definition of racial profiling.

Third, the search was without probable cause. There is no dispute on this. I showed Officer Churney all the correct verification and documentation. He claimed my eyes were "pink." My eyes were not pink, and I had not been smoking marijuana. Officer Churney did not, and never claimed that I had. Respondent never claimed that there was probable cause to search my car. If he believed he had probable cause he would not have claimed that it was a consensual search.

I never gave my consent to be searched. Respondent admits that in its letter to Human Rights, attached as Ref. E. It then said that Officer Churney told me that I could

Signature of Charging Party:

Karin J. Phillips

Date:

6-22-01

stay or could go, but the car would stay. This is coercion and the Respondent's own letter corroborates that it was coercion. I had no choice. This was not consensual nor would any reasonable person say it was consensual. I would have been left miles from no where, near dark, with little hope of ever reaching my destination. In so far as the Commissioner found that there was no coercion by Officer Churney, its determination should be reconsidered.

After I had showed Officer Churney all the appropriate documentation, it was then that he made me go sit in his car. It was supposedly there that he noticed my pink eyes and "defensive stance," also in Ref E. I was not acting defensive. In fact, we talked casually about a lot of things in a manner that a defensive person wouldn't have. We talked about Donald Blum being in a jail nearby with the four defendants in the Paul Antonich murder. Officer Churney also told me that he was not long out of the academy, that he had been working in the Twin Cities but didn't like it and moved back up north where he was living alone with his dog. If I was defensive I wouldn't have engaged in a conversation that I would even go so far as to call friendly. However, my question is why was I forced to go sit in his car in the first place.

← find

I also want to point out that there is no collaborating evidence to support Respondent's claim that my eyes were pink or that I was acting defensively. The Commissioner stated in its Memorandum that the Department must find corroborating evidence to conclude what most likely occurred. In so far as the Commissioner found that my "pink eyes" or "defensive stance," its determination should be reconsidered.

I also want to point out the inconsistency in the Respondent's view of events. In the Memorandum the Commissioner stated, "The officer stated that he followed a group of cars and checked Charging Party's license plate first because it was an out of state plate." Yet it is undisputed that Officer Churney was parked and would have only started following the group of cars *after* he identified my car and the race of its driver. In so far as the Commissioner found that Officer Churney was following a group of cars already, its decision should be reconsidered.

Another important issue arises as to why out of state cars should be targeted at all. Duluth is a cosmopolitan city with a large university, and many other colleges, with foreign students, a renowned tourist area, and international shipping port. Respondent's story about an out of state plate is not credible without race as another motivating factor in why he stopped me.

Signature of Charging Party: Kevin J. Phelan
Date: 6-22-01



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

MIKE HATCH
ATTORNEY GENERAL

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445 MINNESOTA STREET
ST. PAUL, MN 55101-2128
TELEPHONE: (651) 282-5700

June 28, 2001

Commissioner Janeen E. Rosas
Minnesota Department of Human Rights
Army Corps of Engineers Centre
190 E. 5th Street
Suite 700
Saint Paul, MN 55101

Re: *Kevin J. Phillips vs. MN Department of Public Safety*
Charge No. 35202

Dear Commissioner Rosas:

Enclosed herewith is Respondent Minnesota Department of Public Safety's Response to Complainant's Appeal in the captioned proceeding.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jerome L. Getz".

JEROME L. GETZ
Assistant Attorney General

(651) 215-1580

Enclosure

cc: Kevin John Phillips
Sarah Milbrandt

BEFORE THE HUMAN RIGHTS DEPARTMENT
OF THE STATE OF MINNESOTA

IN THE MATTER OF A CHARGE
FILED BY

MDHR Case No. 35202

Kevin J. Phillips,
AGAINST

**RESPONSE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY TO
COMPLAINANT'S APPEAL OF NO
PROBABLE CAUSE DETERMINATION**

MN Department of Public Safety.

Respondent Minnesota Department of Public Safety hereby responds to Complainant's appeal of the Commissioner's decision determining that there is No Probable Cause dated June 14, 2001, as follows:

Complainant's request for reconsideration does not add anything new to what was presented to the Department or form a basis for reconsideration of the dismissal by the Commissioner; the lack of corroborating evidence which prevented the Commissioner from reaching a finding (see paragraphs j and k of the Commissioner's Memorandum) remains an insuperable barrier to a finding of probable cause.

Complainant's appeal is based in part on a misunderstanding of Trooper Churness's statement. Complainant mistakenly believes that Trooper Churness stated that, while his squad was sitting in the median and Complainant's car was passing by, Trooper Churness saw Complainant's car had an Illinois license plate and pulled out to pursue him for that reason. He suggests that if the Trooper could see the Illinois plate from the median he could certainly see his race as the driver of the vehicle from the median: "The officer was parked at the bend in the road, able to observe oncoming traffic. He was able to see the driver of cars as easy or easier as he would have been able to see the license plate." However, Trooper Churness never stated that

he saw the Illinois plate while he was sitting on the median or even that he saw any potentially illegal conduct by the any of the drivers of the vehicles in the group of which Complainant's vehicle was a part while sitting on the median. He stated that he pulled out to check a group of vehicles, something which he routinely does without any indication of violations by any of the drivers, and that it was only after he had pulled out and caught up to the group that he noticed that one of the vehicles had Illinois plates and, following his usual practice, checked that vehicle's registration first.

Complainant speculates that the real reason he was stopped was because of Trooper Churness's concern for drug interdiction. In fact, the reason why he was stopped is because Trooper Churness received a response to his inquiry that the registration on Complainant's vehicle was not on file in Illinois. This was a sufficient reason for Trooper Churness to stop Complainant and to check the registration papers for the car. Whether it was not the "real" reason is pure speculation on Complainant's part.

Complainant's appeal is also based on factual assertions which cannot be corroborated: First, Complainant contends that his eyes were not pink and that he did not act defensively. He also contends they had a pleasant conversation about Donald Blum, etc. while they were sitting in the squad and this shows he was not acting defensively; Trooper Churness stated that Complainant did have pink eyes and that he did act defensively, all before Trooper Churness made the determination to call the canine unit to check the vehicle. Trooper Churness agrees that they had a pleasant conversation about a number of topics while they waited for the canine unit to arrive, but that is irrelevant as he had already made the decision to call for the canine unit and had called for it and they were just waiting for it to arrive. There were no other witnesses

who could corroborate Complainant's contention that he did not have pink eyes and did not act defensively.

Complainant states that he did not consent to the search. Whether or not he consented to the search is irrelevant; Trooper Churness did not rely on his consent to search the vehicle. Instead, he relied on the two "hits" made by the canine unit outside of Complainant's vehicle. There was clearly probable cause to search the vehicle. Complainant's argument of no probable cause is further weakened by the fact that he pleaded guilty to the charge of possession.

Complainant speculates that race is a factor when Trooper Churness targets out of state license plates; the DHR's investigation showed that Trooper Churness frequently stops vehicles with out of state license plates, and that there is no data from which it could be determined whether a disproportionate number are of minorities.

CONCLUSION

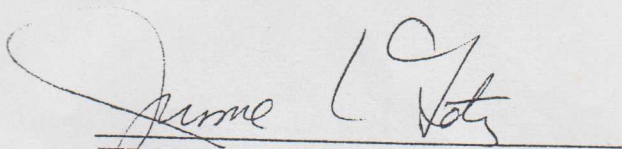
The Commissioner correctly concluded that there was no probable cause to credit the

charging party's allegation of an unfair discriminatory practice. Complainant's appeal should be dismissed.

Dated: 2/28/01

Respectfully submitted,

MIKE HATCH
Attorney General
State of Minnesota



JEROME L. GETZ
Assistant Attorney General
Atty. Reg. No. 34423

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St. Paul, Minnesota 55101-2128
(651) 215-1580 (Voice)
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ATTORNEYS FOR MINNESOTA
DEPARTMENT OF PUBLIC SAFETY



Minnesota Department of Human Rights

July 17, 2001

Ref: 35202
Kevin J Phillips
vs.
MN Department of Public Safety

Kevin J Phillips
250 E 6th St Apt 336
St. Paul, MN 55101

Dear Kevin J Phillips:

This letter is to inform you that your appeal of the No Probable Cause issued in this case has been completed. Enclosed is the order reaffirming the prior determination.

In the appeal, no new information was provided or identified which would justify a reversal of the Department's determination, or show sufficient reason to reinvestigate the case.

Thank you for your patience and cooperation.

Sincerely,

Janeen E. Rosas

Janeen E. Rosas
Commissioner

Enclosure

c:

BEFORE THE HUMAN RIGHTS DEPARTMENT
OF THE STATE OF MINNESOTA

In the Matter of a Charge filed by

Kevin J. Phillips,
Charging Party,
against

ORDER

Case No. 35202

MN Department of Public Safety,
Respondent,

Pursuant to Minnesota Statutes Chapter 363.

Having duly considered the arguments made by Charging Party in the appeal of the prior No Probable Cause determination made in the above-captioned charge, I hereby reaffirm the prior determination, pursuant to provisions of Section 363.06, subd. 4 (2) of the Minnesota Statutes.

Upon review and consideration, I conclude:

1. Charging Party alleged that Respondent's officer stopped and searched his car because of his race. Respondent denied the allegations. The Minnesota Department of Human Rights ("department") insufficient evidence to conclude that the officer's conduct violated the Minnesota Human Rights Act ("MHRA").
2. On appeal, Charging Party fails to identify new evidence, evidence that was not considered, or evidence that was improperly weighed – the criteria for a successful appeal. Contrary to Charging Party's assertion, the department did not find that the officer's statement (i.e., that Charging Party's eyes were pink) to be true. It simply noted that the officer made this statement in support of his version of events. The initial determination expressly stated that there was no evidence to corroborate either party's version, and, therefore, the department could not reach a conclusion. Further, because Respondent did not record the race of the drivers, it was impossible to establish that Respondent's officer treated white drivers more favorably or that he had a pattern or practice of stopping black drivers. Under these circumstances, the initial determination was correct.

ORDER
Case No. 35202
Page Two

THEREFORE, IT IS ORDERED that the above-captioned charge be, and the same hereby is, dismissed.

Minnesota Department of Human Rights

FOR THE DEPARTMENT:

Dated: 7-11-01

By: Jaheen E. Rosas
Jaheen E. Rosas, Commissioner