



State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

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Promoting Equality and Justice for all People

July 25, 2023

CHRO ex rel. Rodney Thomas v. State of CT, Department of Emergency Services & Public Protection CHRO No. 2040080.

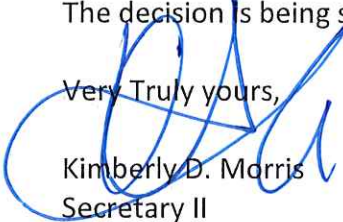
FINAL DECISION

Dear Complainant/Respondent/Commission:

Transmitted herewith is a copy of the Presiding Referee's Final Decision in the above captioned complaint.

The decision is being sent via email to the commission, complainant, and respondent.

Very Truly yours,


Kimberly D. Morris
Secretary II

cc.

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Jon P. FitzGerald, Presiding Human Rights Referee

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**STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITES
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and
Opportunities ex rel. Rodney L. Thomas,
Complainant

CHRO No. 2040080

v.

State of Connecticut, Department of Emergency
Services & Public Protection, Respondent

July 25, 2023

FINAL DECISION

PRELIMINARY STATEMENT

On September 13, 2019, Rodney L. Thomas filed his affidavit of illegal discrimination (complaint) with the commission on human rights and opportunities (commission) against the State of Connecticut department of emergency services and public protection: division of state police – Troop F Westbrook (DESPP). He alleged that DESPP violated General Statutes §§ 46a-64 and 54-1/ as enforced through General Statutes § 46a-58 (a) when it denied him equal services, racially profiled him, and illegally ticketed him for running a stop sign because of his race, African American, and color, Black.

The commission certified the complaint to the office of public hearings on October 8, 2021. On January 11, 2022, DESPP filed its answer and special defenses to the complaint. On May 13, 2022, the commission filed notice that it was deferring prosecution of the complaint to Mr. Thomas' attorney pursuant to General Statute § 46a-84 (d).

The public hearing was held on June 15, 2023. Mr. Thomas testified on his behalf. Trooper David Tretter (retired) and Sergeant Mark Farotti of the state police testified on behalf of DESPP. The parties waived the filing of briefs.

For the reasons set forth herein, it is found that Mr. Thomas did not establish by a preponderance of the evidence that DESPP denied him equal services in violation of § 46a-64.

For the reasons set forth herein, it is found that DESPP illegally discriminated against Mr. Thomas in violation of §§ 46a-58 (a) and 54-11. Relief is awarded as set forth herein.

I PARTIES

The parties to this action are the commission on human rights and opportunities, 450 Columbus Blvd., Hartford, Connecticut; Rodney L. Thomas, c/o Attorney John R. Williams, 51 Elm Street, New Haven, Connecticut; and the State of Connecticut department of emergency services and public protection, c/o Assistant Attorney General DeAnn S. Varunes, 110 Sherman Street, Hartford, Connecticut.

II FINDINGS OF FACT

References to the transcript are designated by "Tr." And page number. References to exhibits are designated as C/R-1 and C/R-2 for Mr. Thomas and DESPP.¹ Based upon

¹ Although DESPP submitted a list of three proposed exhibits, it did not file any exhibits. Its exhibits 1 and 2, though, were the same as Mr. Thomas' exhibits 1 and 2. DESPP exhibit 3 was Trooper Tretter's body cam video of the traffic stop and was viewed at the hearing. Although the body cam had video, it had no audio. As the video showed only the stop itself, not when Mr. Thomas allegedly ran a stop sign, it did not appear relevant to the issues raised in the complaint.

a review of the pleadings, exhibits, and transcripts, and an assessment of the credibility of the witnesses, the following facts relevant to this decision are found:

1. Mr. Thomas self-identifies as African American. Tr. 8.
2. In 2019, Mr. Thomas was employed as a taxi/livery driver who drove clients to and from their medical appointments, the airport, the train station, and other locations. Tr. 7-8.
3. On July 18, 2019 at approximately 1:00 PM, Mr. Thomas was driving north on Bokum Road in Essex toward Old Saybrook to pick up a client in Essex. Tr. 8, 10.
4. Mr. Thomas was driving a company van that displayed a taxi placard on the roof of the vehicle. Tr. 46-47.
5. At that time, it was raining heavily. Tr. 9, 14, 41, 42; C/R-2, Finding 5.
6. Bokum Road is a country road and at the time relevant to the present case there was little traffic on the road. C/R-2, Finding 16.
7. Trooper Tretter was traveling south on Bokum Road. He pulled over to the side of Bokum Road to take a phone call. Tr. 41.
8. Trooper Tretter was not conducting vehicular stops. C/R-2, Finding 16.
9. Trooper Tretter self-identifies as white. C/R-2, Finding 13.
10. As Mr. Thomas passed Trooper Tretter's vehicle, Mr. Thomas slowed to a near stop. Tr. 43.
11. Mr. Thomas was in the lead vehicle followed by two other vehicles. All three vehicles passed Trooper Tretter. Tr. 12, 43-44.

12. Trooper Tretter pulled out. Tr. 12. He turned his vehicle around, and made a u-turn to get behind Mr. Thomas. Tr. 43.
13. Trooper Tretter activated his lights and siren to get around the vehicles behind Mr. Thomas. Tr. 44
14. Mr. Thomas and the two vehicles behind him pulled over. Tr. 12, 44.
15. Trooper Tretter pulled up behind Mr. Thomas. Tr. 12.
16. Trooper Tretter gave Mr. Thomas a ticket for a traffic infraction for running a stop sign. Tr. 10, 48; C/R-1.
17. The drivers of the other two vehicles were Caucasian. Tr. 9-10, 12, 18.
18. The other vehicles were not ticketed. Tr. 13, 46.
19. There are no stop signs on Bokum Road in Essex. Tr. 9, 22, 32
20. Officers have discretion in deciding whether to pursue an individual for traffic violations. Tr. 26-27, 46.
21. After the stop, Mr. Thomas picked up the client in Essex and completed his assignment. Tr. 10.
22. Following the end of his shift, Mr. Thomas notified his employer that he had received a ticket. Tr. 10-11.
23. Mr. Thomas returned to the area where he had been ticketed and confirmed that there was no stop sign. Tr. 22.
24. Mr. Thomas went to the state trooper barracks and spoke with Sergeant Mark Farotti, the sergeant on duty. Tr. 11, 31-32.

25. Mr. Thomas explained to Sergeant Farotti that he had been ticketed for running a stop sign at a location where there was no stop sign. The sergeant said that he would look into the matter and get back to Mr. Thomas. Tr. 11, 32.
26. Sergeant Farotti went to the scene and observed that there was no stop sign. Tr. 32.
27. The following day Trooper Tretter went to the site and saw that there was no stop sign. Tr. 49.
28. Within twelve hours of when Mr. Thomas received the ticket, Trooper Tretter called Mr. Thomas on his cell phone and left messages that he had issued the ticket in error and wanted to retrieve it. Tr. 11-12, 49-50.
29. Mr. Thomas did not return the phone call. Tr. 21.
30. Mr. Thomas retained an attorney and contested the infraction ticket. Mr. Thomas and his attorney appeared at court. The ticket was dismissed. Tr. 13.
31. Mr. Thomas paid his attorney \$500 for the representation in contesting the ticket. Tr. 13-14.
32. Mr. Thomas had no loss of income as a result of the incident. Tr. 13.
33. Trooper Tretter had previously pulled over Mr. Thomas and treated Mr. Thomas like a second-class citizen. Tr. 21.
34. At the time of the incident, Trooper Tretter had been the resident trooper in Essex for three to four years. He was familiar with the streets and roads in Essex; Tr. 39-40, 52-53; including Bokum Road which he often drove on. C/R-2, Finding 7.

III
DENIAL OF EQUAL SERVICES

In his complaint, Mr. Thomas alleged that DESPP denied him equal services on the basis of his race and color in violation of § 46a-64.

Section 46a-64 (a) provides in part that:

It shall be a discriminatory practice in violation of this section: (1) To deny any person within the jurisdiction of this state full and equal accommodations in any place of public accommodation, resort or amusement because of race, creed, color, national origin, ancestrysubject only to the conditions and limitations established by law and applicable alike to all persons; (2) to discriminate, segregate or separate on account of race, creed, color, national origin, ancestry

The only clear discussion of the denial of equal accommodations occurred during Mr. Thomas' cross-examination. During her cross-examination of Mr. Thomas, DESPP's attorney asked him: "And you were never denied equal services, were you, sir?" Mr. Thomas' attorney objected to the question and his objection was sustained. Tr. 20.

As there was no persuasive testimony identifying what accommodations were allegedly denied, the claim is dismissed.

IV
SECTION 54-1/

Mr. Thomas alleged that DESPP violated § 54-1/, known as the Alvin W. Penn Racial Profiling Prohibition Act. Mr. Thomas contends that he was racially profiled and illegally ticketed because of his race, African American, and color, black, for running a nonexistent stop sign.

A

STATUTES

Section § 46a-58 (a) provides in part that:

It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race

Section 54-1l. provides that:

(a) This section and section 54-1m shall be known as the "Alvin W. Penn Racial Profiling Prohibition Act".

(b) For the purposes of this section, "racial profiling" means the detention, interdiction or other disparate treatment of an individual solely on the basis of the racial or ethnic status of such individual.

(c) No member of the Division of State Police within the Department of Emergency Services and Public Protection, a municipal police department or any other law enforcement agency shall engage in racial profiling. The detention of an individual based on any noncriminal factor or combination of noncriminal factors is inconsistent with this policy.

(d) The race or ethnicity of an individual shall not be the sole factor in determining the existence of probable cause to place in custody or arrest an individual or in constituting a reasonable and articulable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a motor vehicle.

B STANDARD

In determining the burden of proof requirements in discrimination case, "we look to federal law for guidance." *Ford v Blue Cross & Blue Shield of Connecticut, Inc.*, 216 Conn 40, 53, 578 A.2d 1054 (1990).

In *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), the United States Supreme Court set forth the basic allocation of burdens and order of presentation of proof in cases involving claims of employment discrimination. The plaintiff bears the initial burden of

proving by the preponderance of the evidence a prima facie case of discrimination. *Id.*, 802, 93 S.Ct. at 1824. In order to meet this burden, the plaintiff must present evidence that gives rise to an inference of unlawful discrimination. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 252–53, 101 S.Ct. 1089, 1093, 67 L.Ed.2d 207 (1981). If the plaintiff meets this initial burden, the burden then *54 shifts to the defendant to rebut the presumption of discrimination by producing evidence of a legitimate, nondiscriminatory reason for its actions. *McDonnell Douglas Corporation v. Green*, *supra*. “If the defendant carries this burden of production, the presumption raised by the prima facie case is rebutted, and the factual inquiry proceeds to a new level of specificity.” *Texas Department of Community Affairs v. Burdine*, *supra*, 450 U.S. at, 255, 101 S.Ct. at, 1094–95. The plaintiff then must satisfy her burden of persuading the factfinder that she was the victim of discrimination “either directly by persuading the court [or jury] that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer’s proffered explanation is unworthy of credence.” *Id.*, at 256, 101 S.Ct. at, 1095; see *McDonnell Douglas Corporation v. Green*, *supra*, 411 U.S. at, 804–805, 93 S.Ct. at, 1825.

Id.

To prove pretext, the plaintiff may show by a preponderance of the evidence that [the defendant’s] reason is not worthy of belief or that more likely than not it is not a true reason or the only true reason for [the defendant’s] decision to [terminate the plaintiff’s employment] A plaintiff may show pretext by demonstrating such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in the employer’s proffered legitimate reasons for its action that a reasonable [fact finder] could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons.

(Internal citations omitted; internal quotation marks omitted.) *Stubbs v icare Management, LLC*, 198 Conn. App. 511, 522-523, 233 A.3d 1170 (2020).

C ANALYSIS

In the present case, Mr. Thomas has met his prima facie burden. First, he is a member of a protected class, being African-American. Second, he suffered an adverse action when he was stopped and ticketed by a state trooper for allegedly running a stop

sign, and incurred \$500 in attorney fees in defending against that action. Third, the circumstances of the stop give rise to an inference of discrimination: there was no stop sign and Caucasian drivers were not ticketed.

As Mr. Thomas has met his initial burden, a burden of production shifts to DESPP to articulate a nondiscriminatory reason for stopping and ticketing Mr. Thomas. "This is burden is one of production, not persuasion; it can involve no credibility assessment." *Feliciano v. Autozone*, 316 Conn. 65, 74, 111 A.3d 453 (2015). According to DESPP, the trooper believed Mr. Thomas had run a stop sign because there is a white line before the train tracks, he thought he saw the back of an octagon sign which resembled a stop sign and, due to road and utility work, the town had been putting up and taking down temporary stop signs. Tr 42-43.

As DESPP has met its production burden, a burden of persuasion now shifts to Mr. Thomas to establish by a preponderance of the evidence that he was a victim of discrimination. He may accomplish this either directly by persuading the hearing officer that a discriminatory reason more likely motivated the trooper or by indirectly by showing that the trooper's proffered explanation is not worthy of credence. Mr. Thomas has met his burden of persuasion.

The proffered explanation is not worthy of credence for several reasons. First, DESPP's testimony is inconsistent. During the commission's investigation of the complaint, DESPP submitted photographs of a stop sign at an intersection. This stop sign, however, was not even on Bokum Road but at an intersection of a street that intersects Bokum Road in Old Saybrook, not Essex. C/R-2, Finding 20. In addition, the commission

investigator found that the trooper could not have seen whether Mr. Thomas had run a stop sign because the trooper testified he looked up only when Mr. Thomas drove past his vehicle. C/R-2, Findings 8 and 17. At the hearing, though, the trooper testified to having observed Mr. Thomas driving over the train tracks. Tr. 41.

Second, Mr. Thomas came to a near stop as he passed the trooper's vehicle. The trooper could see Mr. Thomas was African-American, and the trooper had a prior history of treating Mr. Thomas as a second-class citizen.

Third, in the exercise of his discretion the trooper could have given Mr. Thomas a warning or not pulled him over at all Tr. 46. Yet, despite the heavy rain and a country road with little traffic, the trooper chose to pull over Mr. Thomas and issue him an infraction ticket.

V DAMAGES

A STATUTES

The relief a complainant can be awarded is found generally in General Statutes § 46a-86. This section provides in relevant part that:

(a) If, upon all the evidence presented at the hearing conducted pursuant to section 46a-84, the presiding officer finds that a respondent has engaged in any discriminatory practice, the presiding officer shall make written findings of fact and file with the commission and serve on the complainant and respondent an order requiring the respondent to cease and desist from the discriminatory practice and to take such affirmative action as is necessary to achieve the purpose of this chapter.

(b) In addition to any other action taken under this section, upon a finding of a discriminatory employment practice, the presiding officer shall (1) issue an order to eliminate the discriminatory employment practice complained of and to make the complainant whole, including restoration to membership in

any respondent labor organization, and (2) may (A) determine the amount of damages suffered by the complainant, including the actual costs incurred by the complainant as a result of the discriminatory employment practice, and (B) allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant. . . .

(c) In addition to any other action taken under this section, upon a finding of a discriminatory practice prohibited by section 46a-58, 46a-59, 46a-64, 46a-64c, 46a-81b, 46a-81d or 46a-81e, the presiding officer shall determine the damage suffered by the complainant, which damage shall include, but not be limited to, the expense incurred by the complainant for obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually incurred by the complainant as a result of such discriminatory practice and shall allow reasonable attorney's fees and costs. The amount of attorney's fees allowed shall not be contingent upon the amount of damages requested by or awarded to the complainant. . . .

B STANDARD

Section 46a-86 (c) authorizes the presiding officer to award compensatory, or emotional distress, damages for violations of statutes including §§ 46a-58 and 46a-64. *Commission on Human Rights & Opportunities v. Board of Education*, 270 Conn. 665, 694, 855 A.2d 212 (2004). "Punitive damages are not authorized. The CHRO's authority for awarding damages differs from the authority of courts." *Commission on Human Rights & Opportunities v Cantillon*, Superior Court, Judicial District of New Britain, Administrative Appeals Session, Docket HHB-CV-17-6039406, n. 9 (October 2, 2019) (2019 WL 5549576) aff'd, 207 Conn 668 (2021),aff'd 347 Conn 58 (2023); *Chestnut Realty, Inc. v. Commission on Human Rights & Opportunities*, 201 Conn. 350, 366, 514 A.2d 749 (1986). "Awarding of compensatory damages for emotional distress is not a science." *Commission on Human Rights & Opportunities v Cantillon*, supra, 2019 WL 5549576, *5.

A complainant need not present expert medical testimony to establish his or her internal, emotional response to the harassment; his or her own testimony, or that of friends or family members, may suffice. *Busche v. Burke*, 649 F.2d 509, 519 n. 12 (7th Cir. 1981); see also, *Marable v. Walker, supra*. However, medical testimony may strengthen a case. *Id.* As the Supreme Court stated in *Carey v. Phipus*, “[a]lthough essentially subjective, genuine injury in this respect [mental suffering or emotional anguish] may be evidenced by one’s conduct and observed by others.” *Carey v. Phipus*, 435 U.S. 247, 264 n. 20, 98 S.Ct. 1042 (1978).

In assessing damages for emotional distress the CHRO referees use a three-factor analysis which was enunciated in the case of *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco*, CHRO No. 7930433 (1985), and which is sometimes referred to as the “*Harrison* factors.” This analysis of emotional distress damages also has superior court support. *Commission on Human Rights and Opportunities ex rel Peoples v. Belinsky*, Superior Court, judicial district of Stamford–Norwalk at Norwalk, Docket No. 88061209 (November 8, 1988, Riefberg, J.). Under the *Harrison* analysis, the most important factor of such damages is the subjective internal emotional reaction of the complainants to the discriminatory experience which they have undergone and whether the reaction was intense, prolonged and understandable. *Harrison, supra*. Second, is whether the discrimination occurred in front of other people. *Id.* For this, the court must consider if the discriminatory act was in public and in view or earshot of other persons which would cause a more intense feeling of humiliation and embarrassment. *Id.* The third and final factor is the degree of the offensiveness of the discrimination and the impact on the complainant. *Id.* In other words, was the act egregious and was it done with the intention and effect of producing the maximum pain, embarrassment and humiliation.

Commission on Human Rights & Opportunities v Sullivan Associates, Superior Court, judicial district of New Haven, Docket CV 94 4031061s, CV 95 4031060s (June 6. 2011), (2011 WL 3211150, *4).

C
ANALYSIS

1
Economic

Section 46a-83 (b) authorizes the award of damages to make a complainant whole. In the present case, Mr. Thomas incurred legal expenses of \$500 paid to Attorney Williams for his representation in court against the charge of running a stop sign.

2
Emotional distress

Three factors are considered in determining the amount of compensatory emotional distress damages to be awarded pursuant to § 46a-86. The most important factor is the subjective internal reaction experienced by a complainant and whether that reaction was intense, prolonged, and understandable.

Scant testimony was offered as to the subjective internal reaction experienced by Mr. Thomas and whether the reaction was intense and prolonged. The testimony regarding emotional distress was limited to the following exchange between Mr. Thomas and his attorney:²

Attorney Williams: All right. As a result of what happened to you, what were your injuries? You suffered humiliation, I'm sure, right?

Mr. Thomas: Yes.

Attorney Williams: Embarrassment?

Mr. Thomas: Yes.

² Tr. 13.

Mr. Thomas' humiliation and embarrassment are understandable. He had been stopped in public while driving his employer's vehicle for a traffic violation he did not commit. He had to report to his employer that he had been ticketed while driving a company vehicle. However, there is insufficient testimony to conclude that the humiliation and embarrassment were intense and prolonged.³

The second factor to consider is whether the discriminatory act was in public, causing a more intense feeling of humiliation and embarrassment. This discriminatory act clearly was in public. Mr. Thomas was pulled over on a public street and at least two vehicles passed by and saw him there. In addition, he had to explain to his employer that he had been stopped and received a traffic citation while driving a company van. He then had to appear in court.

As to the third factor, there is insufficient evidence to conclude that the discriminatory act was done with the intention and effect of producing the maximum pain, embarrassment, and humiliation. Nonetheless, racially profiling ticketing someone for a violation that he did not commit is clearly egregious.

3

Interest

Connecticut has sovereign immunity against claims for prejudgment and post-judgment interest. *Connecticut Judicial Branch v Gilbert*, 343 Conn. 90, 127, 272 A.3d 603 (2022).

³ Mr. Thomas' limited testimony of his emotional distress as being humiliation and embarrassment is in sharp contrast to the allegations in his complaint. In his complaint he alleged that he had "been plagued with nightmares and have missed several days of work due to the anxiety and stress and the lack of sleep this all caused me. It was and continues to be an extremely traumatic experience for me." Complaint, ¶ 20. This information was not offered as testimony and, therefore, was not subject to cross-examination or able to be considered in setting an award.

**VI
CONCLUSIONS OF LAW**

1. Mr. Thomas did not establish by a preponderance of the evidence that DESPP violated § 46a-64.
2. Mr. Thomas established by a preponderance of the evidence that his race and/or color was a cause in his receiving a ticket for running a non-existent stop sign.
3. Mr. Thomas established by a preponderance of the evidence that DESPP violated General Statutes §§ 46a-58 (a) and 54-1/ when it racially profiled him and illegally detained and ticketed him solely on the basis of his race, African American, and color, black, for running a non-existent stop sign.

**VII
ORDER**

1. DESPP shall pay Mr. Thomas \$500 as reimbursement for the attorney fees Mr. Thomas incurred in defense against the motor vehicle infraction ticket. Payment is to be made on or before August 30, 2023.
2. DESPP shall pay Mr. Thomas \$10,000 in emotional distress damages. Payment is to be made on or before August 30, 2023.
3. DESPP shall cease and desist from issuing traffic citations on the basis of race and color.

/s/ Jon P. FitzGerald
Hon. Jon P. FitzGerald
Presiding Human Rights Referee