

MICHELLE LUJAN GRISHAM  
GOVERNOR



BILL McCAMLEY  
SECRETARY

HOWIE MORALES  
LT. GOVERNOR

STATE OF NEW MEXICO  
DEPARTMENT OF WORKFORCE SOLUTIONS  
Labor Relations Division  
Human Rights Bureau  
1596 Pacheco Street, Suite 103  
Santa Fe, NM 87505  
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**DETERMINATION OF PROBABLE CAUSE**

September 3, 2019

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Jordan McDowell  
1410 Coal Avenue SW  
Albuquerque, NM 87104.

**Re: Jordan McDowell vs. Allsup's Convenience Store #336  
HRB # 18-12-06-0446**

Dear Jordan McDowell:

By the Authority granted the Bureau under Section 28-1-10 (C), NMSA, 1978  
Compilation of the Human Rights Act, the following Probable Cause Determination is  
issued based on an investigation of the above-captioned complaint.

In your December 6, 2018 charge of discrimination, you allege you were discriminated  
against on the basis of race and color in violation of the New Mexico Human Rights Act,  
as amended.

The records and statements submitted to the Human Rights Bureau for review show:

- Mr. McDowell claimed that he was discriminated against when an Allsup's Convenience Store Employee allegedly called the police to remove him because he was black.
- Respondent denies your allegations and states that you were not discriminated against.

On 02/25/2019 Allsup's submitted a response to Mr. McDowell's claim. Allsup's maintains that none of its employees discriminated against Jordan McDowell. On August 8, 2018, Mr. McDowell entered Allsup's Store #336 shortly before 07:45 p.m. and

proceeded to walk around the aisles several times which he picked up bags of various snack foods. Mr. McDowell allegedly placed the snack foods in different areas of the store, and these actions were observed by Allsup's Employee Michelle Glasser, who was managing the store during the incident.

Ms. Glasser referred/ thought Mr. McDowell's actions were, "sketchy." Allsup's Employee Gabriella Herrera also observed Mr. McDowell's behavior of picking up and putting down merchandise and looking at the Allsup's Store Clerks. Ms. Herrera then allegedly told Allsup's Employee Manuela Esther Ramirez to observe Mr. McDowell's behavior.

Allsup's Employee Ms. E. Ramirez took over Cash Register One for approximately twenty minutes while Mr. McDowell walked about the store; whereupon, Mr. McDowell approached the register to purchase a bag of candy. While purchasing the bag of candy, Mr. McDowell allegedly began a verbal assault on Ms. Glasser, as Mr. McDowell claimed they (the store clerks) were watching him. Ms. Glass had allegedly informed that Mr. McDowell's actions were, "sketchy" and he responded by allegedly saying that they thought he had been sketchy because he (Mr. McDowell) was black.

Immediately after both began speaking, a heated discussion ensued which included, arm waiving and pointing between Ms. Esther Martinez and Mr. McDowell during which both spoke rudely to each other. Upon the end of the argument, Mr. McDowell paid for the bag of candy, and Ms. E. Ramirez requested that Mr. McDowell leave the store. Mr. McDowell refused to leave and continued to walk about the store. As Mr. McDowell walked the store, Ms. E. Martinez contacted the Santa Fe Police Department, advised dispatch that Mr. McDowell was being arrogant, requested for him to be removed from the store, and that he was accusing the clerks of being racist. According to Allsup's response, Ms. E. Ramirez repeated that he was being arrogant because he was black and that he was acting like a jerk.

Shortly thereafter, the Santa Fe Police Department arrived after Mr. McDowell had left the store. Ms. E. Ramirez then told responding officers that she only wanted Mr. McDowell out of the store because he was making the clerks nervous and they did not know his intentions. According to Allsup's Employee Ms. Herrera, Ms. E. Ramirez made the comment that Mr. McDowell was black because he had used that description himself. (See Section: Tab B4, Exhibit 6 and Supporting Documentation to Position Statement: Exhibit 6- CD: 911 Call, and Cellphone Footage recorded on 1 compact CD. And, Exhibit 1.)

According to Allsup's, it is evident upon watching/ listening to the 911 call, that Ms. E. Ramirez did not make a racist statement that Mr. McDowell was black, but she was explaining that he had arrogantly accused the employees of being racist, and that the context of his allegation was that he was black.



Two other Allsup's surveillance video were included (Exhibit 5) show multiple clips revealing Mr. McDowell walking around the store over and over, but do not show him arguing with Ms. E. Ramirez.

Allsup's concluded that Law Enforcement arrived, and Ms. E. Ramirez spoke to the responding officer. According to Allsup's, this was an unusually long and understandably suspicious period of time, especially when he was picking up merchandise and putting it down elsewhere in the store. As per Allsup's, Ms. Glasser, Ms. Herrera, and Ms. E. Ramirez may reasonably have suspected Mr. McDowell might have been waiting for the right moment to shoplift or was casing the store for a robbery.

Furthermore, there are other written statements from the Allsup's employees in Store #336, and statements about Ms. E. Ramirez about her conduct and personality taken by management personnel. (See Exhibit 7). None of these statements allegedly ascribe the use of racist comments by Ms. E. Ramirez toward persons of African American decent.

#### **Investigator Findings (cite supporting evidence):**

On April 12, 2019 Legal Representative Rosenstock submitted a rebuttal to Allsup's response. According to Mr. Rosenstock, the respondent's response to Mr. McDowell's charge of race discrimination was a pretext to conceal the racial animus behind Allsup's decision to call the police and order Mr. McDowell to leave the store on August 3, 2018. It was replete with after the fact proffered "explanations" of what occurred that ignore the contemporaneous evidence with changing stories.

According to Mr. Rosenstock, the content of the 911 call made by Allsup's Employee Ms. Ether Ramirez to the Santa Fe 911 dispatcher made it clear that the decision to order Mr. McDowell to leave the store and to have police come was motivated, in whole or in part, by racial animus directed against him because he was African-American.

Mr. Rosenstock added that the facts of what had occurred are contained in Mr. McDowell's interview with Santa Fe Police Officer McDermott. Ms. McDowell's statement was provided immediately after the incident on August 3, 2018. The tape of the interview and the transcript were submitted in conjunction with the rebuttal. (See Section: Exhibit 1,5,6, and 7.) It was of considerable evidentiary significance that Mr. McDowell's statement was made at the time of the incident. Unlike Allsup's statements, which were submitted days after there had been substantial publicity about the incident.

According to Mr. Rosenstock, Mr. McDowell was in Santa Fe, NM as part of a college group that was studying and visiting various pueblos in Northern New Mexico. Mr. McDowell was staying in a hotel located near the Allsup's where the incident took place. Mr. McDowell and other students on the trip did not have a car. It was early evening and he had nothing better to do, so he walked over to the Allsup's that evening (as he had done before) to look for and buy snacks.

Mr. Rosenstock continued with the rebuttal. The store employees watched him from the moment he walked into the store, one of them, now known as Michelle Glasser, told him: “You’re looking sketchy. You’re picking up stuff, you’re putting stuff down.” It was then when Mr. McDowell, who was being singled out, told her that there were three other people in the store (none of whom were African-American) who were doing the same thing.

Mr. McDowell inquired as to why he looked, “sketchy” to her. At some point, another employee believed to be Esther Ramirez, told Mr. McDowell something to the effect of: “You need to get that (candy) and get out of here.” Mr. McDowell asked “What do you mean “get out of here? What if I want something else?”, and then told her he was going to get something else. At that point, Ms. Ramirez called the Santa Fe Police Department and stated she wanted the police to come deal with Mr. McDowell because he was arrogant and because, “he’s black.” (See Exhibits: 1 and 2). The evidence supports a finding of discriminatory intent. In addition, Mr. Rosenstock included that the statements of the employees pertaining to Mr. McDowell might have been attempting to shoplift, was an after the fact fabrication submitted by Allsup’s to try and justify the racially motivated conduct of Ms. Ramirez.

According to statements provided Mr. Rosenstock, the 911 dispatcher asked Ms. Ramirez, “what he was doing?”, Ms. Ramirez responded, he was just being arrogant because he is black.” According to Mr. Rosenstock, nothing can be more revealing of why she wanted the police there and why she ordered Mr. McDowell to leave the store. When asked by the 911 dispatcher if Ms. McDowell had done anything wrong, Mr. Ramirez claimed that he was arrogant because he was black, and he was being a jerk. At no point during the call did Ms. Ramirez ever state or even suggest that she feared Mr. McDowell might steal items or rob the store. (See Exhibit 1).

When Santa Fe Police Officer McDermott arrived, he spoke with Mr. McDowell outside of the store. Mr. McDowell explained his conduct in the store and why he felt store employees had singled him out for observation, explaining that other customers were picking up items, looking at them, and then putting them back without being eyeballed by store employees as though they were criminals. Before going into the store, Santa Fe Police Officer McDermott explained to Mr. McDowell that Ms. Ramirez was, “mad.”

Once Santa Fe Police Officer McDermott was inside, Ms. Ramirez had described Mr. McDowell as, “an issue” at the store, claimed he had been,” wandering around inside for 15 minutes” and that he, “got bent out of shape because we were keeping an eye on his ass...” Further expressing her racial biases. Ms. Ramirez also stated she does the same with, “all the Natives that walk in here, the drunks, or whatever.” She again described Mr. McDowell as, “arrogant.” At no time did Ms. Ramirez state that she suspected that Mr. McDowell might have been preparing to shoplift or rob the store.



Mr. Rosenstock continued to rebuttal the statements provided by Allsup's. Mr. Rosenstock claimed that Allsup's employee were eyeballing Mr. McDowell from the moment he walked into the store. As noted above, according to Ms. Ramirez, they were watching Mr. McDowell the way they watch all Native Americans who come into the store. Mr. Rosenstock then referred back to the 911 call. As per Mr. Rosenstock, the 911 call and Ms. Ramirez's conversation with Santa Fe Police Officer McDermott make it clear that Mr. McDowell's race was a motivating factor. Mr. Rosenstock added that Mr. McDowell was in fact singled out because of three other people that were doing the same thing; however, no attention was directed towards the three shoppers.

The respondent claims in its Position Statement that Ms. Ramirez commented on Mr. McDowell's race simply "because he had used the term himself" was a further smokescreen put up by Allsup's to conceal the truth of what had occurred. First, the tape and transcript of Ms. Ramirez's 911 call on August 3, 2018, revealed that she did not state that Mr. McDowell was Black in order to describe what he looked like. Rather, Ms. Ramirez identified Mr. McDowell's race to the 911 dispatcher as a part of the reason that she wanted the police to come to the store: "because he's arrogant and because he is Black."

Mr. Rosenstock continued with the incident and that no store employee had contacted their store manager to report inappropriate conduct by Mr. McDowell. As per Mr. Rosenstock, Ms. Glasser told Ms. Gonzales on August 7<sup>th</sup> that she did not remember anything about the incident. Mr. Gonzales then spoke with Ms. Herrera on the 7<sup>th</sup> and she told him: "Esther was called up front to watch a customer who was being "suspicious" and that Esther and the customer got into a verbal altercation and started badmouthing each other." Ms. Herrera's credibility was, to say the least, weak. According to the Stone report, after getting the story from Ms. Herrera, the Store Manager then went back to Ms. Glasser to "refresh her memory of the incident." As per Mr. Rosenstock, Amazingly, Ms. Glasser suddenly had a recollection of Mr. McDowell acting suspiciously.

Moreover, the video showed that Ms. McDowell was not wondering about the store for 30 minutes as the Respondent now claimed in the Position Paper. On August 3, 2018, immediately after the incident, Ms. Ramirez, told Police Officer McDermott that Mr. McDowell was in the store about 15 minutes. Despite the fact that the videotapes do not show Mr. McDowell in the store for 30 minutes and that Ms. Ramirez claimed he was there for about 15 minutes.

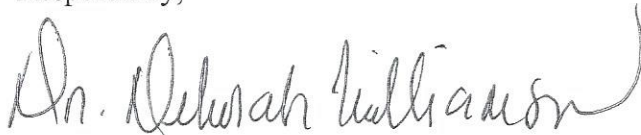
Mr. Rosenstock concluded that it was significant that after all the store employees, including Ms. Ramirez, were interviewed on August 7, 2018 and management had the chance to listen to tape of the 911 call, Allsup's District Manager Chavez decided to suspend Ms. Ramirez for her conduct. The preponderance of the evidence demonstrated that Mr. McDowell was allegedly subject to discrimination because of his race.

After consideration of all the evidence presented to the Human Rights Bureau in connection with your complaint, I find there is sufficient evidence to believe that discrimination has occurred. Therefore I am issuing a **PROBABLE CAUSE** determination on the basis of race and color. Respondent will be notified by copy of this Determination.

I would prefer to achieve a conciliation of this complaint and by copy of this letter, I am requesting all parties to explore conciliation. If conciliation efforts fail, a Formal Hearing has been scheduled for December 6, 2019, in accordance with Section 28-1-10 (F), of the Human Rights Act.

Pursuant to Section 28-1-10 (J) of the Human Rights Act, you have the right to request a waiver of right to hearing. This request must be received in writing within sixty days from the date of service of the written probable cause determination. Notice of the waiver will be served upon the Complainant and Respondent. The complainant may request a trial de novo pursuant to Section 28-1-13, NMSA 1978 within ninety days from the date of service of the waiver.

Respectfully,

A handwritten signature in cursive script, reading "Dr. Deborah Williamson". The signature is written in dark ink and is positioned above the typed name.

Dr. Deborah Williamson  
Director  
Human Rights Bureau

c: Allsup's Convenience Store #336  
Leon Howard, Legal Representative, ACLU-NM  
Richard Rosenstock  
Daniel Lindsey, Lindsey Law Firm