

**BOARD OF FIRE AND POLICE COMMISSIONERS  
OF THE CITY OF MILWAUKEE**

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**In the matter of the appeal of**

**POLICE OFFICER ZOE JACKSON  
from**

**SUMMARY OF PROCEEDINGS,  
FINDINGS OF FACT  
AND DECISION**

**MPD Personnel Order Number 2007-184**

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**SUMMARY OF PROCEEDINGS**

A hearing was conducted on January 30, 2008 regarding this appeal before Commissioners Earl Buford, Leonard Sobczak and Woody Welch with Steven Fronk acting as Hearing Examiner on behalf of the Board. Appellant Zoe Jackson appeared in person and by Attorney Michael Hart. Former Chief of Police Nannette Hegerty appeared by Assistant City Attorney Heidi Galván and Acting Captain Kurt Leibold. The appeal was from MPD Personnel Order No. 2007-184 discharging Police Officer Zoe Jackson from the Department for intentional untruthfulness in violation of Milwaukee Police Department Rule 4, Section 2/105.00 regarding an incident which took place on May 21, 2006.

During the course of the proceedings testimony was received from several witnesses: Police Officer Zoe Jackson; Billie Morgan (the mother of Danyall Simpson); Sergeant Aaron Berken who interviewed Officer Jackson on May 21, 2006; Detective Jeffery Hoover who interviewed Officer Jackson on June 22, 2006 and again on August 24, 2006; Sergeant Kristin Riestra who interviewed Officer Jackson on March 22, 2007; and Lieutenant Gary Gacek who was assigned to oversee and review the completed investigation. Given the fact that all charges herein are to be dismissed, no summary of individual testimony will be provided.

**FINDINGS OF FACT re: Violation of MPD Rule 4 Section 2/105.00 (Untruthfulness)**

*Based upon testimony and evidence received, as to the charge contained in MPD Personnel Order No. 2007-184, the Board does hereby make the following Findings of Fact.*

1. Police Officer Zoe Jackson was, on May 21, 2006 and at all other times pertinent hereto, a member of the City of Milwaukee Police Department and bound by the rules, regulations and procedural requirements thereof.
2. On May 21, 2006, while on-duty, Police Officer Zoe Jackson and her partner Police Officer James Langer came in contact with and arrested one Danyall Simpson.
3. During the course of the aforementioned arrest, Police Officer James Langer struck Danyall Simpson in the head with a flashlight. Police Officer Zoe Jackson was present when Officer Langer struck Simpson.
4. Police Officer Zoe Jackson thereafter was interviewed several times by more than one Milwaukee Police Department supervisor over a period of several months regarding the incident. In each such statement, from the first on May 21, 2006 to the last on March 22, 2007, Officer Jackson consistently indicated that she and Officer Langer were attempting to handcuff Danyall Simpson when Langer struck Simpson in the head with a flashlight.
5. On May 21, 2006, while still at the scene, Officer Jackson gave a statement to Sergeant Aaron Berken regarding the arrest of Danyall Simpson and her specific recollection of how Mr. Simpson was injured in the course of that arrest.
6. In a Use of Force Report (Exhibit 11) dated May 23, 2006, Sergeant Berken wrote that "Officer Jackson stated she observed Langer retrieve his flashlight and deliver two or three strikes to the shoulder area of Simpson" and that "one of the strikes delivered by Langer struck Simpson on the side of his face."

7. Sergeant Berken testified at trial that he “didn’t know” if Officer Jackson “put two and two together or had actually seen the conduct and the result.” Sergeant Berken could not determine from his memo book and had no specific recollection as to whether Officer Jackson had told him that she “saw” Officer Langer strike Danyall Simpson or that she only “heard” the blow being struck and, seeing the flashlight, “knew” what had happened. Berken testified that he had interviewed both Officer Jackson and Officer Langer at the scene on May 21, 2006, but that he had little specific recollection of those interviews. Although Sergeant Berken was sure that both officers had told him that Officer Langer struck Simpson with a flashlight, he could not specifically recall the details of exactly what each officer had told him.
8. On June 22, 2006, Officer Jackson gave a statement to Detective Jeffery Hoover regarding the incident involving Danyall Simpson on May 21, 2006.
9. In a Supplementary Report (Exhibit 9) dated June 22, 2006, Detective Jeffery Hoover wrote that Officer Jackson said she used a “knee sweep” to take Danyall Simpson to the ground. Hoover’s report also indicated that Officer Jackson and Officer Langer were attempting to handcuff Danyall Simpson when “Officer Jackson stated she didn’t observe Officer Langer hit the suspect with the flashlight” but “heard a big thump” and looked up and “noticed that the suspect had a laceration over his right eye and was bleeding.”
10. On August 24, 2006, Officer Jackson gave a statement to Detective Jeffery Hoover and Assistant District Attorney Karen Loebel regarding the incident on May 21, 2006.
11. In a Supplementary Report (Exhibit 10) dated August 24, 2006, Detective Hoover wrote that during the course of an interview that same day with Hoover and Assistant District Attorney Karen Loebel “Police Officer Jackson provided additional information that was not reflected in her original statement” including an alleged asthma attack that she suffered while attempting to subdue Danyall Simpson and a reference to an upstairs neighbor of Simpson’s who yelled profanities at the officers.
12. On March 22, 2007, Officer Jackson gave a statement to Sergeant Kristin Riestra regarding the incident which took place on May 21, 2006.

13. In her report regarding the interview with Officer Jackson (Exhibit 3), Sergeant Riestra noted that “the majority of Officer Jackson’s account of what occurred on May 21, 2006 was similar” to statements Jackson gave previously but there were discrepancies regarding details such as an asthma attack, a knee sweep, a neighbor yelling profanities and whether Jackson merely “heard” or actually “saw” Officer Langer strike Simpson.
14. At time of trial Police Officer Jackson testified regarding the events of May 21, 2006, and the statements which she had given to a supervisor that evening and to other supervisors when requested months after the incident. We find Officer Jackson’s testimony to be candid and credible. Officer Jackson testified that on May 21, 2006 and every other time thereafter she had been truthful in recalling the incident: She was struggling to maintain control of Danyall Simpson and looking at Simpson’s mother, Billie Morgan, who was also on the ground and less than a foot away from her, when she heard a “thump” and turned to see Simpson bleeding and Officer Langer with a flashlight. A statement taken from a citizen witness (Quintana VanRoosenbeck ) and outlined in the notes in Sergeant Berken’s memo book (Exhibit 12) would appear to corroborate essentially all essential elements of Officer Jackson’s version of the incident.
15. The evidence in this case, when viewed in its entirety, is insufficient to prove that Officer Jackson was untruthful or spoke with reckless disregard for the truth in violation of MPD Rule 4, Section 2/105.00 regarding the events of May 21, 2006.

## DECISION

We agree with the Department that, if you compare reports of each of the interviews with Officer Jackson conducted over a 12 month period, you will find inconsistencies. But mere inconsistencies are not necessarily, in and of themselves, proof of intentional untruthfulness or reckless disregard for the truth as is prohibited by the Milwaukee Police Department rule at issue in this case. Some of the Police Department members who authored reports of interviews with Officer Jackson testified that their reports may not contain complete, accurate, verbatim quotes of what was said, in context, and that there is often no indication as to the specific question that was asked that elicited a specific response. One Department member testified that the difference between inconsistencies as opposed to untruthfulness or reckless disregard for the truth is “an intent to deceive, or to prevent the truth from coming out.” We concur.

The issue which resulted in this investigation being initiated was whether or not Officer Langer struck Danyall Simpson in the head with his flashlight on May 21, 2006, and whether or not that striking was justified. Officer Jackson has consistently and repeatedly indicated that she “heard” a thump and “knew” that Officer Langer struck Simpson in the head with his flashlight. Sergeant Berken, who interviewed Officer Jackson on the date of the incident, testified that he is sure that Officer Jackson told him that “it happened” but he does not recall if she said she heard the thump and “put two and two together” or if she said she had actually observed Langer strike Simpson. Detective Hoover, in a report concerning an interview on June 22, 2006, wrote that “Officer Jackson states that ... all of a sudden, she heard a big thump” and “looked up and noticed that the suspect had a laceration over his right eye and he was bleeding.” Later in that same report Detective Hoover wrote “Officer Jackson states that she didn’t observe Officer Langer hit the suspect with the flashlight.” In a report summarizing an interview of Officer Jackson on March 22, 2007, Sergeant Riestra wrote that Officer Jackson said that “she did not see Officer Langer strike Mr. Simpson” but she saw Langer with the flashlight when she looked up after hearing a “thud” sound. In comparing the statement by Officer Jackson on the day of the incident regarding how Simpson was injured with other statements by Officer Jackson months thereafter, we see no intentional untruthfulness or reckless disregard for the truth.

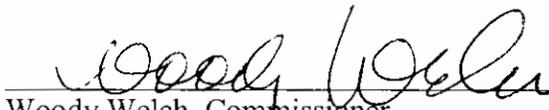
We find that insufficient evidence has been presented by the Department to meet the burden of proof in this case, and accordingly dismiss the charge against Officer Jackson.

Board of Fire and Police Commissioners  
of the City of Milwaukee

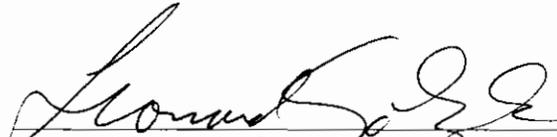
By

  
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Earl Buford, Commissioner

3/4/08  
Date

  
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Woody Welch, Commissioner

3/5/08  
Date

  
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Leonard Sobczak, Commissioner

3/5/08  
Date