

BEFORE THE BOARD OF POLICE AND FIRE COMMISSIONERS  
OF THE CITY OF MADISON

---

Debra Taylor,  
Complainant

vs.

Police Officers Minh Duc Tieu, Jason M.  
Sweeney, Andrya J. Coutts, and William  
Needelman,  
Respondents

---

CONSOLIDATED  
DECISIONS AND ORDERS

CONSOLIDATED DECISIONS

*Case Summary*

Complainant Debra Taylor filed charges against Police Officers Andrya J. Coutts, William Needelman, Jason M. Sweeney, and Minh Duc Tieu. The statement of charges before us consists of a packet of materials filed with us by Debra Taylor, headed by our standard-form COMPLAINT document, naming the four individual officers as respondents. We refer to this packet as the "complaints." The officers accepted service of the complaints through their attorney on November 21, 2005. We omit a description of several procedural difficulties preceding the trial of this matter at our evidentiary hearing on February 8, 2006. Complainant has acted for herself; Respondents have been represented by Attorney Gordon McQuillen, Legal Director of the Wisconsin Professional Police Association.

After Complainant Taylor had presented her case, counsel for the respondents moved to dismiss the complaints on the grounds that no violation of any standard of conduct had been demonstrated by the evidence. We deferred ruling on that motion until the respondents had presented their defense. Counsel in his closing statement renewed the motion to dismiss.

After receiving the testimony and exhibits offered by the parties at hearing, we recessed for deliberations and now issue our decisions and orders in this consolidated document.

*Legal Standard*

Our disciplinary decisions are subject to 62.13, Wisconsin Statutes, which sets forth the standards which the Board must use in imposing discipline, summarized generally as "just cause" and known colloquially as the "seven standards:"

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

These standards are clearly designed to guide decisions on charges prosecuted by chiefs, but the statute does not distinguish formally between such charges and those brought by a citizen such as Ms. Taylor; we are merely directed to consider the seven standards "to the extent applicable," and therefore we must evaluate the applicability of the seven standards to the facts before us in each instance.

*The Incident and the Charges: Findings of Fact*

We sketch a broad outline the events underlying these complaints, omitting many details from the complaint materials, extensive testimony, and exhibits. On October 2, 2005, at approximately 7:50 a.m., Respondents Police Officers Tieu, Sweeney, and Coutts were dispatched to the Copps store on South Whitney Way in response to a telephone report by Respondent P.O. Needelman, who was not on duty, that he had seen at a distance, through a store window, a person matching the description of Iisha Murphy, who was wanted for very serious criminal violations. Murphy had apparently injured an officer by dragging him with her moving auto, so concern for officer safety had been part of the department briefing regarding Murphy. P.O. Tieu received the dispatch call while on the road and was the first to arrive on the scene; P.O.s Sweeney and Coutts responded in separate vehicles from the South District office, arriving shortly behind Tieu. In fact P.O. Needelman was mistaken; he had seen Debra Taylor, not Iisha Murphy. P.O. Tieu arrived in the lot, spotted Debra Taylor and her vehicle, concluded correctly that she was the subject of the dispatch, stopped his squad in front of the Taylor vehicle, and approached Debra Taylor, who was standing at the open door of her car intently counting money which lay on the driver's seat. Debra Taylor did not respond to P.O. Tieu's oral instructions to step back from her car. P.O. Tieu approached closely and placed his hands on Debra Taylor's right arm, continuing his instructions and intending to direct her away from the vehicle. Debra Taylor was startled, upset, noncompliant, vocally resistive; she denied that she was Murphy and referred to her identification on the car seat. P.O. Tieu tightened his grasp into a compliance hold, eliciting further vocal resistance; apparently Debra Taylor did step back perhaps one or two steps from the car doorway. This entire interaction between P.O. Tieu and the Complainant did not take very long, perhaps less than a minute.

Roughly at this point P.O.s Sweeney and Coutts arrived, and P.O. Tieu released his hold and received Debra Taylor's identification - - testimony is not clear as to how. The officers now realized that Debra Taylor most probably was not Iisha Murphy. P.O. Tieu offered an explanation and apology which were not well received by Debra Taylor, and withdrew to his squad to run a computer check on the driver's license; P.O.'s Sweeney and Coutts maintained the contact with Debra Taylor, offering further explanation and apology, without substantially satisfying Debra Taylor. When P.O. Tieu confirmed Debra Taylor's identity and returned her license with further apology, Taylor remained unassuaged. P.O.s Tieu and Sweeney then left the scene; P.O. Coutts remained at Debra Taylor's request in order to assist Taylor with unrelated business.

Photographs of both Iisha Murphy and Debra Taylor from the records of the Dane County Sheriff's Office are included in the complaints and were introduced separately into evidence by respondents.

P.O. Needelman had seen the Murphy photographs at the beginning of the shift from which he had gone off duty when he called in his mistaken sighting at Copps. P.O. Tieu had not seen a photograph of Iisha Murphy, did not have a photograph with him in his squad, did not attempt to obtain a photograph by using his MDT while responding to the dispatch, and testified that doing so would not have been practical. Testimony of the officers also indicated that department policy and practice does not anticipate or require that officers always have or obtain photographs of subjects before contact. Coutts and Sweeney neither had nor obtained photos of Iisha Murphy. The evidence shows that using the MDT system to obtain photographs of subjects while responding on calls is often not practical, although the MDT system apparently can generate photo printouts.

Debra Taylor reported being in physical and emotional distress during and after the incident. She was and is deeply offended to have been mistaken for Iisha Murphy. She testified that the compliance hold applied by P.O. Tieu was painful, and we infer that she may believe that she was injured, but she did not present evidence corroborating any physical injury.

At our hearing Debra Taylor was adamant and emotional regarding her version of events, which she perceives to differ from the narratives of the officers. However, we regard the differences among the accounts as well within the normal range of variations among perception and recollection of participants and witnesses to any event, especially stressful events. In effect we accept Debra Taylor's version of the events for our purposes, to the extent that her version may differ from others presented. Our disposition of these charges is not based on any finding of disputed fact but on the facts presented by Debra Taylor. The evidence of the respondents was helpful, credible, thorough, and gave us a much fuller understanding of the incident, but does not fundamentally alter our analysis or conclusions.

#### *Discussion; Conclusions of Law*

The complaints do not specify violations of department rules, City of Madison ordinances, or state statutes. However, the complaints refer to excessive use of force, false accusations, and racial discrimination. Respondents did not object to the complaints on the grounds of insufficient specificity of these allegations, and we believe that the complaints in context are sufficiently specific to frame the issues of possible violations. Respondents certainly know and knew that they must not use excessive force, falsely accuse subjects of law violations, or engage in racial discrimination, on risk of discipline. These concepts are well known, understood, and accepted, and pass the reasonableness test. In short, the complaints are sufficient under the first two of the "Seven Standards," to the extent that those standards are applicable.

Standards 3 through 6 direct us to review the investigation conducted by a chief prior to bringing charges before us and therefore are largely inapplicable to complaints brought by a person other than a chief. The standards are suggestive of the due process which we would expect to respect in our decision-making, calling for fairness, objectivity, and non-discrimination. In summary, in accordance with these elements of the Seven Standards to the extent applicable here and in accordance with other legal requirements, including the overall requirement of "just cause," in order to impose discipline we must find by a preponderance of the evidence that a respondent did in fact violate a rule or order.

We have concluded that the evidence before us has not established that any respondent violated any rule or order. Our conclusion does not reflect a difficult weighing of evidence and a close call of non-preponderance; we find simply no evidence whatsoever that a rule was violated by an officer.

We do not reach this conclusion by rejecting the evidence offered by Debra Taylor and accepting the evidence offered by the respondents. We believe Debra Taylor in every material respect. Her testimony was articulate, intelligent, passionate, and entirely credible, and her dissatisfaction is entirely understandable and sympathetic. But the conduct of the officers in this matter reflects nothing more than very reasonable mistakes of fact, and perhaps only one of those - - P.O. Needelman thought he had sighted Iisha Murphy when he hadn't; he had instead seen Debra Taylor. From that point forward, each officer performed dutifully, responsibly, reasonably, and courteously, although not to the satisfaction of the Complainant.

Debra Taylor alleges racial discrimination, suggesting that she was wrongfully contacted because "they think all black look a lot alike." [sic] We take this allegation and concern very seriously, although we are not sure that the issue raised is actually one of illegal discrimination strictly defined. We find no evidence to support any intentional misconduct related to or arising from Debra Taylor's race. P.O.s Tieu, Sweeney, and Coutts were responding to a dispatch regarding a specific individual who is, in fact, black, and who was in fact wanted by police for unlawful and dangerous behavior - - that person being Iisha Murphy. These officers correctly spotted and contacted the individual who had been the subject of the dispatch, namely Debra Taylor. The identification mistake, and logically the only possible point of "discrimination" in the sense of confusing one black person for another, was by the off-duty officer who saw Debra Taylor at a distance and thought that she might be Iisha Murphy, whose photograph he had seen hours previously. We have examined the photographs of Iisha Murphy and Debra Taylor. They are rather standard institutional identification photos, front and profile - - "mug shots." We understand and fully appreciate Debra Taylor's rancor at being mistaken for Iisha Murphy. We simply do not agree that any person, black or white, could be faulted for thinking that the one person seen at a distance might be the other. Of course the one *is not* the other; Debra Taylor *is not* Iisha Murphy; but the confusion under the circumstances is not unreasonable. Two people, regardless of race, can look sufficiently alike to be confused under some circumstances, especially at a distance or where time is short, as happened here; such confusion is not evidence of racial discrimination.

Outside the formal parameters of our narrow disciplinary jurisdiction, commissioners personally noted three areas of concern or question. First, we may regret that the powerful MDT technology cannot be routinely used to provide immediately useful information to responding officers, particularly relevant photographs. Of course, just a few years ago such resources were not conceived of, and probably in a few more years technology will have taken us much further - - quicker downloads, for example; or unified software systems; or voice activation. Without attributing fault either to department policy or to individuals, we can hope for continuing efforts to maximize the field utility of all department technologies, for the benefit both of police officers who may be dealing with dangerous individuals in some cases, and of the public, to avoid identification errors.

Of course, in this instance we cannot conclude and do not suggest that P.O. Tieu would have been aided by a photograph of Iisha Murphy, because he did not have a clear view of the subject until after he had initiated contact; she did not see him coming, and he approached her from behind while she was bending into her car.

Second, the very reasonable confusion of the identities of Iisha Murphy and Debra Taylor, the discrepancies in detail of narrative testimony among complainant and the respondents, and the emotional commitment of complainant especially to her version of the incident, all illustrate neatly the limitations and weaknesses of eyewitness identification methods and witness recall.

Third, we note the view that P.O. Tieu, far from using excessive force under the circumstances as he understood them, employed the barest minimum tactical control. Iisha Murphy was properly understood to be a dangerous person likely to flee; in fact, Tieu had blocked her vehicle for that reason. P.O. Tieu exercised a very careful and respectful judgment in approaching what he in good faith thought might be a dangerous person. Of course, he subsequently learned that the subject was not Murphy, and was not dangerous. We respect his initiative, his judgment, and his professional skill, and we do not second-guess his call in the circumstances.

We note that all of the officers who were on duty and involved in this incident expressed to Debra Taylor their sincere regret for the identification error that took place at the scene.

In summary, Debra Taylor did not establish that any order or rule violation occurred. Formally, this failure of proof may be construed as insufficiency of Complainant's case under standards 3. through 6.

We are limited by statute to a simple set of possible penalties: suspension, reduction in rank, and discharge. We cannot impose other sanctions, and we do not have other remedial powers. We cannot issue command orders or policy guidance either to these respondents or more generally to department management. In the absence of sustained allegations of misconduct, we need not address possible penalties broadly or in the framework of the seventh of the seven standards, which deals with setting an appropriate penalty.

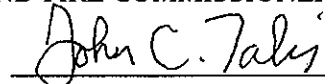
CONSOLIDATED ORDERS


Respondents' motions to dismiss are granted. The Complaints of Debra Taylor served November 21, 2005, are dismissed, with prejudice.

*Approved following deliberations, and  
filed with the Secretary this 20<sup>th</sup> day of February, 2006:*

MADISON BOARD OF POLICE AND FIRE COMMISSIONERS

  
\_\_\_\_\_  
Comm. Gretchen Lowe, President

  
\_\_\_\_\_  
Comm. John Talis, Secretary

  
\_\_\_\_\_  
Comm. Michael Lawton

*Note: Commissioners LaMarr Billups and Shiva Bidar-Sielaff were not present for the evidentiary hearing and do not participate in this decision.*