

## Forceful impact

### **Suspects have accused Sgt. Jason Mucha 10 times of beating them or planting drugs. He wasn't disciplined, but courts took notice.**

By [Gina Barton](#) of the *Journal Sentinel*

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Jason Mucha has wanted to be a police detective since he was in high school.

He started building his résumé upon graduation, becoming a Milwaukee police aide more than 10 years ago. He has worked in some of the city's toughest neighborhoods and made sergeant at 26.

But Mucha has built a résumé of another kind.

In a three-year span, he was accused at least 10 times of beating suspects, planting drugs or both - claims so similar that judges took notice.

Mucha's record shows how an individual can be the subject of numerous misconduct allegations and continue to advance his career inside a department that lacks a reliable way to track problematic behavior. His story also shows how a single officer was instrumental in changing the way Wisconsin courts consider claims of police misconduct.

As far back as 1993, Milwaukee Police Department leaders recommended using computers to analyze use-of-force statistics. Ten years later, when Nannette Hegerty became chief, a tracking system created in 1999 wasn't working. She committed \$500,000 more to get a better system, but it still isn't monitoring officers.

The department would not have needed computers, however, to spot the many complaints against Mucha, after rulings questioning his credibility were made in separate cases by a local judge and the state Court of Appeals.

In August 2005, Milwaukee County Circuit Judge Charles F. Kahn Jr. ruled that several men who had accused Mucha of wrongdoing should be allowed to testify in the case of a defendant who said Mucha and other officers beat him and planted cocaine.

"It is not really normal, at least not in my experience, that (so many) individuals would all say that one or two police officers did the same, illegal, dishonest thing to them," Kahn said in an interview. He has presided over hearings in four of the 10 cases involving Mucha.

Seven months later, the Court of Appeals applied the same reasoning in a separate case and arrived at a groundbreaking opinion. The court listed several similar allegations of misconduct against Mucha. The three-judge panel agreed it was not in the interest of justice to take the officer at his word.

"It is not appropriate for this court, nor was it appropriate for the trial court, to assume that the defendant was lying and the officer was telling the truth," Judge Ted E. Wedemeyer wrote.

Among the appellate judges who signed the unanimous ruling was Ralph Adam Fine, a law-and-order judge who opposes plea agreements and has served as an advisory board member of the Federalist Society, a conservative lawyers group.

Mucha wasn't the only officer present in any of the 10 cases. At least 10 other officers were on the scene at one or more of the arrests. Mucha, however, was the focus of both Kahn's ruling

and the Court of Appeals decision. In the appeals court opinion, Mucha's name was mentioned 58 times. No other officer was named more than twice.

Hegerty and Mucha's former supervisor, Glenn Frankovis, defended his performance.

"I think Officer Mucha, at least when he worked for me, was an outstanding police officer with a tremendous sense of dedication and sense of duty," Frankovis said.

Mucha's accusers are mostly men with criminal records ranging from misdemeanors to serious felonies - men whose testimony could easily be discredited.

Yet the judges found cause for their claims to be heard.

Felony charges against at least four of them were either reduced or thrown out amid concerns about police conduct.

### **Legal complaints**

The defendants are not serial complainers. None took their concerns to the city's Fire and Police Commission, and just three filed complaints with the Police Department.

Many of the defendants and their lawyers said they didn't file complaints with the department because they don't trust the police, and they didn't turn to the commission because it almost never disciplines officers.

The defendants involved in the 10 cases protested their treatment through the legal system, via their attorneys or by writing letters to the judges who would decide their fates. Many had no previous drug convictions. Most had pleaded guilty to other crimes in the past, unlike their assertions of innocence in the 10 claims of mistreatment involving Mucha.

The sheer number of similar claims with Mucha as the common denominator drew the judges' attention. Some cases included Mucha and a partner. In others, a large number of officers were on the scene. In two cases, Mucha and others were accompanied by former Officer Ala Awadallah, who resigned and pleaded guilty to federal charges of depriving citizens of their civil rights.

Awadallah was convicted after he was caught on tape threatening to plant drugs on a south side man. Mucha was not involved in that incident. Awadallah declined to answer questions for this report.

In the 3rd District neighborhoods they once patrolled, Mucha and those who worked with him in an elite unit gained a reputation - and a nickname. Residents called the officers the "Night Train" because that's what the line of identical police cars looked like when it rolled into the neighborhood. A police wagon was the caboose.

In a recent interview, Hegerty said she was unfamiliar with the court cases that have raised questions about Mucha. After a reporter faxed the written court decisions to her office, she declined through a spokeswoman to discuss them.

Hegerty acknowledged past problems with a specialized unit in District 3, where Mucha had been assigned, but she defended his recent job performance.

"Since he made sergeant, he has not had a sustained complaint against him, and I think he's doing a great job at this point in time," she said last month.

However, a judge is reviewing brutality allegations against Mucha stemming from an arrest that occurred after his promotion, records show.

Numerous attempts to interview Mucha were unsuccessful. He hung up on a reporter, did not respond to messages left at the department and ignored a certified letter.

In response to another letter left at his house, Mucha filed a complaint with the U.S. Postal Inspection Service, saying the letter should not have been hand-delivered to his mailbox.

### **Policing aspirations**

The Jason Mucha profiled in Wisconsin Lutheran High School's yearbook was an athlete and a leader. One of the goals listed in his senior profile with the class of 1996 was: "Be a detective."

Mucha served on the school's Alcohol and Other Abuse Prevention Team, discouraging elementary school students from using drugs and alcohol. Even so, the first blemish on Mucha's personnel record was a one-day suspension for underage drinking while a police aide. After he completed the aide program and became a recruit, he was suspended again, this time for having an open container in a car, according to his personnel record.

Since entering the training academy in 2000, Mucha has received three minor reprimands: two for failing to appear in court as a state's witness and one for parking illegally.

Over the past seven years, the Police Department has investigated at least seven battery complaints against him: four complaints of improper search and seizure, two of theft and one of false arrest. Each was ruled either unfounded or not substantiated.

Department spokeswoman Anne E. Schwartz said three of those investigations involved individuals named in the 10 cases found by the Journal Sentinel in court records. She would not say which three. Records indicate the department's professional performance division did not investigate the other seven.

Hegerty would not provide details of the Mucha investigations, except to say the department took "as much time as was needed to investigate them thoroughly."

Mucha, 29, was promoted to sergeant in January 2005.

### **Case is turning point**

In at least four court cases involving arrests made by Mucha, felony charges were reduced or dismissed as part of plea agreements amid allegations that Mucha had beaten or planted drugs on the defendant.

In one key court case, according to police and court records, Mucha and Officer Brad Westergard were looking for a suspected drug dealer in a white sedan in January 2004. Instead, they found Walter Missouri - who, they later admitted in court, was the wrong man.

Missouri, now 34, was sitting in the same type of car, waiting for his girlfriend to drop off some movies.

"I look up, I seen a gun, then the badge shine," he said in an interview. "I was looking down the barrel of a gun."

Missouri said he got out of the car and put his hands on the roof, as the police instructed. Mucha hit him, Missouri said, so he jumped back into the car, clung to the steering wheel and

laid on the horn, hoping someone would help. He said Mucha stuck the gun barrel under his chin and said, "Let the (expletive) steering wheel go or I'll blow your brains out."

Missouri let go. He was dragged out of the car, handcuffed and beaten, he said. One of the officers - Missouri isn't sure if it was Mucha or Westergard - shoved a baggie full of cocaine into his mouth, Missouri said. Then Westergard pepper-sprayed him. Missouri said he had no idea why he was being attacked and thought he was going to die.

At Missouri's trial, Mucha and Westergard testified that they feared Missouri was trying to get a weapon from under the driver's seat. When Missouri got out of the car, the officers said, he put a baggie of crack cocaine in his mouth. Missouri resisted, and they were forced to tackle, strike and pepper-spray him. Missouri then spit out the baggie, the officers said.

Although Missouri has a criminal record dating back to 1991, none of his other convictions - before or since - involved drugs. Missouri's trial attorney, Robert Meyeroff, wanted another man who had claimed abuse by Mucha to testify.

Milwaukee County Circuit Judge Elsa Lamelas wouldn't allow testimony from the other man, Booker Scull, who claimed that Mucha beat him and kicked out two of his teeth. A Milwaukee County jury convicted Missouri of cocaine possession with intent to deliver, a felony, and resisting arrest, a misdemeanor.

Missouri's appeals attorney, Jeffrey W. Jensen, has been a defense lawyer long enough to know that people charged with crimes often claim they were framed. But Missouri's allegations sounded exactly like those made by another man Jensen was representing, James Murry.

Jensen knew about Scull's similar complaint from the court file. Jensen and his investigator located three additional men who had made similar claims against Mucha. They found some of the cases with the help of the public defender's office, which had been keeping its own file on Mucha, Jensen said. They learned of others through word-of-mouth.

In Missouri's appeal, Jensen argued that the other men should be allowed to testify. The Court of Appeals, in its unprecedented decision, agreed.

"This court cannot decide whether Mucha or Missouri is telling the truth," the decision says. "We do know that one of them is not."

Missouri's initial convictions were thrown out. The state did not appeal. Prosecutors reached a plea agreement with Missouri: He pleaded guilty to two misdemeanors, was given credit for the more than two years he already had served and was released.

Missouri said he entered the pleas because he already had served the time and wanted to get on with his life.

### **Changed court convention**

The appellate ruling in the Missouri case turned conventional courtroom wisdom on its head, said Daniel Blinka, a professor at Marquette University Law School.

Historically, jurors often have been allowed to hear evidence of a defendant's past wrongdoing, either to show a motive or to attack his credibility. The Missouri decision opened the door for similar evidence about police officers, Blinka said.

"Now what you really have, what (the Missouri case) embodies, is the idea that there's balance here," Blinka said. "If there's a state's witness, even if it's a police officer, who has engaged in relevant misconduct, we're going to hear it."

Milwaukee County Deputy District Attorney Jon Reddin agreed that the Appeals Court took a standard usually applied to defendants and applied it to police officers. That reasoning, combined with recent instances of police brutality that have caused officers to lose credibility with jurors, makes the prosecution's job harder, he said.

"Jurors are not as likely anymore to believe a cop just because he's a cop, or she's a cop," he said. "That creates serious problems just on a system basis for us. The cold, hard fact is that most of our witnesses are police officers."

At Missouri's sentencing hearing, Mucha accused Missouri of trying to damage his reputation.

"He tried to change the facts in this case from him possessing drugs, which he intended to sell, and him attacking me, to him being a victim of police brutality and corruption, which was not the case," Mucha said of Missouri. "I've worked very hard for my reputation. . . . He shows no responsibility for his actions, and he's willing to lie before this court to get himself out of the trouble he got himself into, regardless of . . . what harm his accusations caused myself and the reputation and the perception of police in the City of Milwaukee."

In court records and police use-of-force reports regarding the other cases, Mucha said the defendants had drugs or threw them to the ground as they fled. He contended that he used the minimum force necessary.

Westergard, who was with Mucha at least one other time when a defendant accused police of planting drugs, declined to be interviewed.

### **Changes in District 3**

When Hegerty became chief, she noticed some problems with a special unit in District 3, where Mucha worked, she said. The unit's mission was to swarm high-crime neighborhoods. As a rule, the officers didn't have to answer radio calls and focused on making themselves visible. Hegerty disbanded the unit and others like it in early 2004 amid concerns about their professionalism.

"They seemed to have generated a number of complaints," she said of the special patrols. "I did make some personnel changes. I moved some people around. I did all kinds of training to try and overcome some of these, what I thought were historical problems, within the department."

The training occurred departmentwide. Mucha was not singled out for special training, she said.

"I believe that if he was a problem at that time, I believe that the problem has been dealt with," she said recently. "Officers who may be problem officers in the past, we want to turn them around. This is something that definitely happened in this case."

Nine of the 10 cases involving Mucha found by the Journal Sentinel in court records occurred after Hegerty became chief and after she transferred his supervisor, Frankovis, a captain.

The controversial decision to remove Frankovis from command came after he wrote a memo urging his officers to make the lives of thugs miserable.

Frankovis, who had been in command of District 3 since November 2001, defended the effectiveness and professionalism of the special unit he ran.

Mucha worked for Frankovis for more than a year. Mucha always wanted to be a part of the specialized unit, Frankovis said.

"He wanted to be on the field, wanted to be playing the game, wanted to be on the 'A' team. Guys on a unit like this tend to see themselves as harder workers, harder chargers, like Special Forces in the military," Frankovis said. "Find me one Special Forces guy who doesn't think he's a cut above the average Army guy. Why would you not want a guy like that?"

Frankovis made Mucha wait before giving him the coveted assignment, wanting to be sure the young officer gained experience.

If Frankovis had been around long enough to see Mucha or any other officer rack up 10 misconduct claims, he would have referred the officer to the professional performance division, he said.

"Certainly, you look at those types of things," he said. "You're going to look at it, investigate to see if it has any merit. If I get one, two, three complaints from different people, I might give (the officer) the benefit of the doubt, but if it's over and over again from different people, there might be something there that we're going to need to investigate."

### **Identifying trends**

Stanley A. Goldman, a professor at Loyola Law School in Los Angeles, said the Police Department and district attorney should have investigated the 10 cases involving Mucha as a trend. Even two or three similar misconduct claims should warrant serious scrutiny, he said.

"They're always saying about criminal defendants, 'Where there's smoke, there's fire.' Why is it any less true for police officers?" said Goldman, who researched the Los Angeles Police Department's Rampart scandal, in which dozens of officers were criminally charged with or disciplined for beating suspects or planting evidence.

Many other police departments use early warning systems like the one Milwaukee has struggled to implement. Some departments flag officers with three similar complaints. Others decide action is needed at five complaints, said Paul Chevigny, professor at the New York University School of Law and author of the book "Edge of the Knife: Police Violence in the Americas." After that threshold is reached, the officer is supposed to be questioned, monitored and retrained, he said.

Milwaukee police officials have said they can't figure out a department average for battery complaints, uses of force or internal investigations. The last report the city's Fire and Police Commission received on the subject covered the years 1994 to 1998, said commission attorney Steve Fronk.

Kahn, the Milwaukee County judge, said he has never seen as many similar accusations made against a small group of police officers in 30 years. One of the cases Kahn presided over was the 2004 case of Lemar Barnes, who said Mucha was among a group of officers who beat him and planted cocaine.

In Barnes' case, Kahn ruled that several other men should be allowed to testify about their experiences with Mucha. In his decision, Kahn called their accounts "strikingly similar." He wrote that the events "certainly could constitute evidence of a plan or intent by an officer or officers to misuse police powers and obtain additional arrests or convictions regardless of the innocence of the arrested parties."

The prosecution's case fell apart.

Reddin, the prosecutor, wouldn't discuss the Barnes case but said such rulings force prosecutors to take the officer's testimony out of the equation. Without it, a misdemeanor charge is often all they can prove.

That's what happened with Barnes. The felony drug charge against him was reduced to misdemeanor disorderly conduct.

Like Barnes, the others accusing Mucha of misconduct are black. Mucha is white.

The Court of Appeals raised race as an issue in the Missouri case, and attorney Jensen believes prejudice could have played a role. Another motive, Jensen said, could be a power trip.

"Police officers have been taught that 'we can do whatever we want to do,' " he said. "They might start out doing a good job, doing the right thing, then they start taking out personal frustrations on people in the community because they believe they can do it with impunity. All they have to do is show up with their uniform on, and people will believe whatever they say."

### **Latest allegations**

Despite Hegerty's assurances that problems Mucha might have had are in the past, another judge is reviewing brutality allegations against him.

According to records, Mucha was the sergeant on the scene during the arrest of parolee Duane Dolenshek on Sept. 15, 2006. Dolenshek's case on a charge of cocaine possession with intent to deliver is pending. The arresting officer, Daniel Zolo, testified that he was answering a drug-dealing complaint. According to Zolo, when Dolenshek saw police coming, he ran, dropping a baggie of 34 individually wrapped rocks of crack cocaine.

Dolenshek was arrested after he fell, Zolo said. He needed six stitches in his head, according to his attorney.

Zolo and Mucha both testified that Mucha was not directly involved in the arrest. Rather, Mucha started chasing Dolenshek but stopped to pick up the baggie, they said.

Dolenshek, however, is prepared to testify that Mucha pistol-whipped him and that he did not have the cocaine Mucha found, according to court records. Dolenshek has three misdemeanors and two felonies on his record. None are drug offenses, though a charge of marijuana possession was dismissed in an earlier case.

In March, Milwaukee County Circuit Judge Timothy Witkowiak ordered the police to turn over internal files of pending investigations of Mucha. Witkowiak, who was first appointed to the bench by Republican Gov. Scott McCallum, wants to review the files before ruling on whether other witnesses should be allowed to testify about Mucha.

The department turned over some of the documents, but at a July hearing, attorney Michael Tobin argued on the department's behalf that others should not be released, not even to a judge. Witkowiak ruled against him. Witkowiak plans to decide this week whether any of the information should be turned over to the defense.

## **Key Findings**

A Journal Sentinel investigation found:

- At least 10 defendants in unrelated cases accused Milwaukee police Sgt. Jason Mucha of beating them, planting drugs or both. Charges in at least four cases were either reduced or dismissed amid questions about the officer's behavior.
- The Police Department still isn't using computers to track problematic behavior by officers.
- Police failed to investigate the pattern of claims involving Mucha, even after a state Court of Appeals ruling questioned the officer's credibility. The ruling changed the way Wisconsin courts consider cases of alleged police misconduct.

## Watching The Cases

**Charles F. Kahn Jr.** is a Milwaukee County circuit judge who has presided over hearings in four of the 10 cases involving Mucha, of the Milwaukee Police Department. Kahn's legal experience spans 30 years. He said:

"It is not really normal, at least not in my experience, that (so many) individuals would all say that one or two police officers did the same, illegal, dishonest thing to them."

## Is It A Pattern?

Judges have suggested that several claims against Jason Mucha constitute a trend. The Police Department, though, has not investigated them that way. In fact, it did not investigate seven of them at all. As for the other three, the department looked into each one as a separate, unique event - a practice that national experts say allows problematic officers to slip through the cracks.

Mucha has not been disciplined in any of the cases.