



KING COUNTY SHERIFF'S OFFICE
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Seattle, WA 98104

Mitzi G. Johanknecht
Sheriff

April 20, 2020

Ken Thomas, Chief
Des Moines Police Department
21630 11th Avenue South, Suite A
Des Moines, WA 98198

RE: Findings and Disciplinary Recommendations for Officer Clayson Tanner

Dear Chief Thomas,

As you have requested, I have reviewed and made findings with disciplinary recommendations on the personnel investigation you have asked our agency to conduct. The policy violations and rationale behind the findings and recommendations are summarized below.

REVIEW OF INVESTIGATION AND FINDINGS

I have reviewed the investigative file and believe it includes sufficient information from which to form accurate determinations as to potential policy violations. Below is a summary of my findings in this case, which I base on the standard of clear and convincing evidence:

Findings – Abuse Of Authority, Violation Of Privacy Rights, Unauthorized Search And Seizure

100.1 PURPOSE AND SCOPE

The purpose of this policy is to affirm the authority of the members of the Des Moines Police Department to perform their functions based on established legal authority.

100.2 POLICY

It is the policy of the Des Moines Police Department to limit its members to only exercise the authority granted to them by law.

While this department recognizes the power of peace officers to make arrests and take other enforcement action, officers are encouraged to use sound discretion in the enforcement of the law. This department does not tolerate abuse of law enforcement authority.

100.4 CONSTITUTIONAL REQUIREMENTS

All members shall observe and comply with every person's clearly established rights under the United States and Washington Constitutions.

**SUSTAINED – ABUSE OF AUTHORITY, VIOLATION OF ESTABLISHED CONSTITUTIONAL RIGHTS
(Officer Boehmer, Officer Tanner)**



Search and Seizure

311.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Des Moines Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Des Moines Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- *Valid consent*
- *Incident to a lawful arrest*
- *Legitimate community caretaking interests*
- *Exigent circumstances*

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

311.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.*
- (b) Officers should explain to the person being searched the reason for the search and how the search will be conducted.*
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.*

- (d) *In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.*
- (e) *When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:*
 - 1. *Another officer or a supervisor should witness the search.*
 - 2. *The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.*

311.5 DOCUMENTATION

Officers are responsible to document any search and to ensure that any required reports are sufficient including, at minimum, documentation of the following:

- *Reason for the search*
- *Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)*
- *What, if any, injuries or damage occurred*
- *All steps taken to secure property*

The results of the search, including a description of any property or contraband seized if the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer.

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.

**SUSTAINED – UNLAWFUL SEARCH AND SEIZURE, SEARCH OF WARRANT OUT OF POLICY COMPLIANCE
(Officer Boehmer, Officer Tanner)**

320.3.5 CONDUCT: PERFORMANCE

(c) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or instructions of supervisors without a reasonable and bona fide excuse.

(m) Any knowing or negligent violation of the provisions of the department manual, operating procedures or other written directive of an authorized supervisor. The Department shall make this manual available to all employees. Employees shall familiarize themselves with and be responsible for compliance with each of the policies contained herein.

SUSTAINED – KNOWING OR NEGLIGENT VIOLATION OF DEPARTMENT MANUAL, UNSATISFACTORY WORK PERFORMANCE (Officer Boehmer, Officer Tanner)

Vehicle Towing and Release

502.2.3 OFFICER'S RESPONSIBILITIES

If a vehicle is taken for evidence/ seizure, a Vehicle Report and Vehicle Inventory Report shall be completed and the officer will request Records to complete a WACIC/NCIC entry as a departmental impound as evidence. In

cases where there are concerns of compromising evidence inside the vehicle, no internal vehicle inventory is required and the vehicle will be sealed for further investigation.

502.5 VEHICLE INVENTORY

All property in a stored or impounded vehicle shall be inventoried and listed on the vehicle inventory form. A locked vehicle trunk shall not be opened, even if it may be opened without a key from an accessible area of the passenger compartment. Locked or closed containers located within the passenger compartment should be inventoried as a sealed unit, absent exigent circumstances.

Members conducting inventory searches should be as thorough and accurate as practical in preparing an itemized inventory. These inventory procedures are for the purpose of protecting an owner's property, to provide for the safety of officers, and to protect the Department against fraudulent claims of lost, stolen, or damaged property.

**SUSTAINED – OPENING OF TRUNK AND SEARCH IN VIOLATION OF VEHICLE INVENTORY POLICY
(Officer Boehmer, Officer Tanner)**

322.1.1 REPORT PREPARATION

All reports shall accurately reflect the identity of the persons involved, all pertinent information seen, heard or assimilated by any other sense, and any actions taken. Employees shall not suppress, conceal or distort the facts of any reported incident, nor shall any employee make a false report orally or in writing. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

**NOT-SUSTAINED
(Officer Boehmer)**

ANALYSIS OF INVESTIGATION AND FINDINGS

I received your request to assist the Des Moines Police Department with an administrative personnel investigation in late January 2020. The investigation was assigned to Sergeant Tim Meyer of the King County Sheriff's Office Internal Investigations Unit through Captain John McSwain.

An Advisory Board was held March 25, 2020, to review the investigation to date and determine if further investigative steps were warranted. I requested several additional investigative steps after the Advisory Board. I received the finished investigation from Captain McSwain on April 8, 2020 and have carefully reviewed it.

In considering this matter, I am taking into account what I have reviewed from record and the discussion and views presented at the Advisory Board of March 25, 2020. The Advisory Board involved investigators and labor attorneys from both King County and Des Moines where we discussed the facts, issues, policies and law.

Background

This investigation revealed that on December 21, 2019, approximately 2040 (8:40 PM) hours, Des Moines Police Department Officer Michael Boehmer stopped a motor vehicle for not having its headlights on during hours of darkness. Officer Boehmer's investigation revealed that the driver, who originally given a false name, had no valid driver's license for which he was arrested. The arrested driver was then placed

in the back of a patrol car while Officer Boehmer continued his investigation. Officer Boehmer requested a narcotics canine to respond to the traffic stop to assist. Officers Tanner, Gallagher and Lamarsh subsequently joined Officer Boehmer at the stop.

Officer Boehmer's training and experience, along with that of the other officers who responded to assist him, led him to believe that the vehicle contained illegal drugs. The driver of the car declined to give consent to search the vehicle. All officers at the scene, except Tanner, felt they had reached a point in the investigation where the stopped vehicle was going to be impounded and held pending the issuance of a search warrant to search it. Tanner was unsure if an inventory search should be conducted.

Policy Violations

Officer Boehmer made the decision to open the trunk from inside the car's front seat area. It appears he made this decision on his own. Officer Tanner, who was at the rear of the car, almost immediately went to a bag that was in the truck, unzipped it to open it, reached in and pulled out what appeared to be packaged drugs. The trunk was open for about a minute (plus or minus) then closed according to Officers Tanner and Lamarsh. None of the four officers could articulate an exception to the need for a search warrant to search the trunk or interior of the vehicle. Gallagher and Lamarsh both state they knew the actions amounted to an unlawful search and Gallagher specifically told Boehmer that he could not book the driver for the drugs. Gallagher was the acting Sergeant that evening. Gallagher had Boehmer read the Lexipol training notice on Inventory Searches. After reviewing it, Boehmer said "it would be OK".

When interviewed, Officer Tanner readily admitted what he did violated department policy and that Gallagher spoke to him about department policy and the lack of search warrant exception afterwards. He confirmed he was the only one to search the trunk. Gallagher and Lamarsh both said Boehmer opened the trunk from inside the front of the car and Tanner was the only one to search the trunk. Both knew it was an unlawful search.

Officer Boehmer said he decided to check the trunk of the stopped car for safety reasons. He did this by popping the trunk from the front area of the car. When questioned about what training he had that would support checking the trunk for safety reasons, he referred to training he had during an academy class in Kansas in 2006. Boehmer was specifically asked if anything was in the trunk that would have presented a danger that necessitated the search of the trunk. After listening to Officer Boehmer's answers numerous times, I heard no specific or articulable fact. Instead, he provided broad explanations of totality of the circumstances and fluid situation.

King County Sheriff's Sergeant Myer went through the Des Moines Police Department Policy on Searches (313.3) to discuss exceptions to the requirement for search with a warrant with Officer Boehmer. Boehmer acknowledged that the search did not conform to the requirements of the policy but still justified the search based on the totality of the circumstances.

Findings

Officer Clayson Tanner

I find that on December 21, 2019, that Officer Michael Boehmer lawfully stopped a motor vehicle traveling on the roadway without its headlamps on in violation of RCW 46.37.020. The driver of that

motor vehicle was unable to produce a valid operator's license and gave a false name in violation of RCW 46.20.005. The driver was arrested, handcuffed and placed in the back of a patrol car.

Officers Tanner, Lamarsh and Gallagher responded to the stop location. Through observations, determination was made that probable cause existed to apply for a search warrant to search the vehicle. Des Moines Police Department Policy 3.111.1-.5 outlines search and seizure protocols for this type of situation to include the need to obtain a search warrant.

The fact pattern presented in this situation did not qualify for an exception to the general requirement to obtain a search warrant. Further, Des Moines Police Department Policy 502.2.3 and .5 outlines how and when vehicle inventories are to be conducted and, most importantly in this case, not conducted. It clearly details how to handle situations where the vehicle has evidence of a crime inside. Additionally, the officers discussed a warrant and therefore understood they could impound the vehicle and seek a warrant to search the trunk.

Officer Boehmer asked the driver of the stopped vehicle for consent to search which the driver denied to grant. Although the officers developed cause to impound the vehicle and have it towed and stored pending issuance of a search warrant, it is unclear why Boehmer proceeded to pop the trunk and Tanner searched inside of it without the benefit of the planned warrant. Again, the driver was arrested, handcuffed and in the backseat of a patrol vehicle unable to get to weapons or evidence in the stopped vehicle. When Officer Boehmer entered the front seat area and popped the trunk, he violated policies 3.111.1-.5 and 502.2.3 and 5. When Gallagher discussed the issue with him later, pointing out the Lexipol training bulletin, Boehmer responded it was OK. Boehmer's popping the trunk directly led to Tanner unzipping the bag in the trunk and finding the packages of drugs. These actions are not consistent with the obligation to conduct policing that is consistent with the Constitution.

The lack of meaningful discussion by the lead officer, Boehmer, on the stop can be tied directly to the actions and consequences of Tanner. Had Boehmer not been in the front seat area where he should not have been, popping the trunk (which he should not have been doing), Tanner would not have had the opportunity to impulse open the bag. It should be noted that Tanner was the least experienced officer on-scene and should have been receiving training and mentoring from the more senior officers on how to correctly and legally handle the stop.

Officer Boehmer's explanation of why he popped the trunk "for safety reasons based on the totality of the facts", is not credible. These are conclusory statements and fail to provide factual support for his actions. Even after the investigator went over the DMPD policy, Boehmer was unable to articulate any specific or tangible fact to support the warrantless search. Rather, he continued to use broad verbiage and dated training that had nothing to do with Washington State law or Des Moines Police Department policies. In fact, he acknowledged his actions did not follow Des Moines Police Department policies then continued to justify them with broader explanations. His answers on whether he had handled similar type stops the same way and the evasive nature and pause in his answers causes me concern and solidifies my view that his actions in this event were an intentional act in violation of privacy rights and an abuse of his police powers authority (100.2, and .4).

In listening to his interview, I do not see where Officer Boehmer took responsibility for, or acknowledged, his mistakes; thus, does not appear to be willing to learn from them.

Discipline

This discipline recommendation is intended to be corrective in nature, not punitive. It is based on the seriousness of the misconduct, the employee's complaint history, the likelihood that the employee will repeat these actions and comparables. Des Moines has requested that the comparables be based on those of the King County Sheriff's Office because of a lack of historical record on their part.

My philosophy is to deal with well-intentioned mistakes through training, coaching and measured progressive discipline. Conversely, where employees know what should be done but make decisions to not follow policy, direction, or the law, the philosophy is to deal with the misconduct swiftly in a manner that is in alignment with the level of misconduct. Bad faith conduct cannot be tolerated. Violation of policies written to promote constitutional policing creates foundation for unhealthy culture in organizations, and undermines public trust and support. I am viewing the decisions and actions of Officer Clayson Tanner during this event as bad judgement and lack of impulse control. I am encouraged that he readily admitted his mistake and took ownership of it in his internal investigation interview.

Allegation 1: ABUSE OF AUTHORITY, VIOLATION OF PRIVACY RIGHTS, UNAUTHORIZED SEARCH AND SEIZURE

DMPD 100.1, .2, and .4

SUSTAINED

I am recommending **one day (12 hours) suspension without pay** as discipline for the intentional Abuse of Authority (concurrent with other violations). My hope is that Officer Tanner share what he has learned with others so that they can avoid the same violations and to help DMPD build healthy culture.

Allegation 2: UNLAWFUL SEARCH AND SEIZURE, SEARCH OF WARRANT OUT OF POLICY COMPLIANCE

DMPD 3.11.1, .2, .3, .4 and .5

SUSTAINED

I am recommending **one day (12 hours) suspension without pay** as discipline for the intentional Abuse of Authority (concurrent with other violations). My hope is that Officer Tanner share what he has learned with others so that they can avoid the same violations and to help DMPD build healthy culture.

Allegation 3: OPENING OF TRUNK AND SEARCH IN VIOLATION OF VEHICLE INVENTORY POLICY

DMPD 5.02.2.3, .5

SUSTAINED

I am recommending **one day (12 hours) suspension without pay** as discipline for the intentional Abuse of Authority (concurrent with other violations). My hope is that Officer Tanner share what he has learned with others so that they can avoid the same violations and to help DMPD build healthy culture.

Allegation 4: KNOWING OR NEGLIGENT VIOLATION OF DEPARTMENT MANUAL, UNSATISFACTORY WORK PERFORMANCE

DMPD 320.3.5

SUSTAINED

I am recommending **one day (12 hours) suspension without pay** as discipline for the intentional Abuse of Authority (concurrent with other violations). My hope is that Officer

Tanner share what he has learned with others so that they can avoid the same violations and to help DMPD build healthy culture.

Allegation 5: REPORT PREPARATION

DMPD 322.1.1

NOT-SUSTAINED

Conclusion

This concludes my review and findings of the investigation, as requested. Please feel free to contact me at 206.477.6445 if you have further questions or if there is ever any service that the King County Sheriff's Office can provide.

Respectfully,



Scott A. Somers
Undersheriff

cc: IIU file