

## NOTICE OF DISCIPLINE

June 22, 2020

Officer Kyle Pond  
Precinct 4 Dogwatch  
Minneapolis Police Department

RE: OPCR Case 18-00560  
**Notice of Suspension (10 hours suspension without pay)**

Officer Pond,

The finding for OPCR Case #18-00560 is as follows:

<u>Policy Number</u>	<u>Sub-Section</u>	<u>Policy Description</u>	<u>Category</u>	<u>Disposition</u>
9-201 (III)(B)(1)		Searching Vehicles	B	Merit

As discipline for this incident you are suspended for 10 hours without pay.

This case will remain in OPCR files per the record retention guidelines mandated by State Law.

Be advised that any additional violations of Department Rules and Regulations may result in disciplinary action up to and including discharge.

Sincerely,



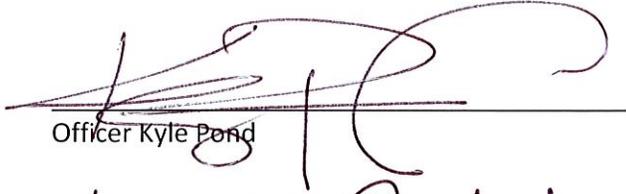
Medaria Arradondo  
Chief of Police

By: Michael Kjos, Assistant Chief of Police  
Henry Halvorson, Deputy Chief, Professional Standards Bureau

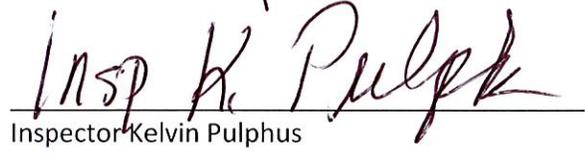
**NOTICE OF RECEIPT**

Acknowledgement of receipt:

I, Kyle Pond, acknowledge that I have received my Notice of Discipline for OPCR Case #18-00560.

  
\_\_\_\_\_  
Officer Kyle Pond

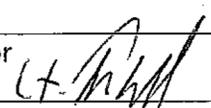
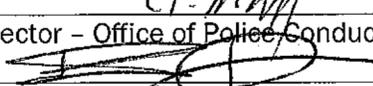
06/23/2020  
Date of Receipt

  
\_\_\_\_\_  
Inspector Kelvin Pulphus

6/23/20  
Date

CC: OPCR Case File  
Inspector Pulphus  
Payroll  
Human Resources

**CITY OF MINNEAPOLIS  
OFFICE OF POLICE CONDUCT REVIEW**

COMPLAINT INFORMATION					
Case Number	Precinct	CCN	Date of Incident	Time	Preference
18-00560	2	17-166421	May 07, 2017	11:37 PM	No Preference
Location of Incident		City/State/Zip		Date of Complaint	
Marshall				January 10, 2018	
Complainant Name (Last, First, Middle Initial)			Sex	Race	DOB
Privacy Policy			Male	Black	Privacy Policy
Home Address		City/State/Zip		Primary Telephone	
Privacy Policy					
JURISDICTION			CATEGORY		
OPCR Ord. § 172.20(8)			VIOLATION OF THE P&P MANUAL		
BADGE/NAME			ALLEGED POLICY VIOLATIONS		
5775 ; Pond, Kyle			MPD P&P § 9-201 (III)B(1) – SEARCHING VEHICLES		
ALLEGATION SUMMARY					
On 5/7/2017, It was alleged that Officer Kyle Pond did not have documented legal reason to search the complainant's vehicle during a traffic stop related to case # 17-166421.					
SUPERVISOR ASSESSMENT					
INQUIRY (INTAKE – COMPLAINT FILED) <input type="checkbox"/>			<b>3401</b> <input type="checkbox"/> Draft <input checked="" type="checkbox"/> Final approved		
MEDIATION <input type="checkbox"/> Refer to Mediation			<b>DISMISS</b> <input type="checkbox"/> Reckoning Period Expired <input type="checkbox"/> No Basis <input type="checkbox"/> Failure to State a Claim <input type="checkbox"/> Failure to Cooperate <input type="checkbox"/> Exceptionally Cleared <input type="checkbox"/> Lack of Jurisdiction <input type="checkbox"/> Withdrawn <input type="checkbox"/> Duplicate <input type="checkbox"/> Refer to Dispatch <input type="checkbox"/> Refer to EIS <input type="checkbox"/> Refer to: _____		
COACHING <input type="checkbox"/> Refer to Precinct					
INVESTIGATIONS <input type="checkbox"/> Preliminary Investigation <input type="checkbox"/> Civilian Investigator: _____ <input type="checkbox"/> Sworn Investigator: _____ <input type="checkbox"/> Admin Investigation: Investigator					
FINAL APPROVED INVESTIGATIVE REPORT <input checked="" type="checkbox"/> Refer to Panel					
IAU Supervisor				Date	
				8/2/18	
Director – Office of Police Conduct Review				Date	
				8/2/18	

# DISCHARGE, SUSPENSION OR INVOLUNTARY DEMOTION FORM

Please enter the requested information directly into the form and provide a copy to the employee once completed and signed.

Employee Name: Kyle Pond	Employee ID: 005775
Job Title: Officer	Job Code:
Department: Minneapolis Police Department	
Is this employee a Veteran? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown	
Has this employee passed probation? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

**NATURE OF ACTION:**

Discharge: Effective Date: At  a.m.  p.m.

Probationary Release: Effective Date: At  a.m.  p.m.

Suspension without pay:

Total Working Days (or hours): 10 Hours

Beginning on: 6/23/2020

Ending on: 8/25/2020

Demotion:

Permanent – Effective Date:

Temporary – Beginning on: Ending on:

Demoted to:

Job Title: Job Code: at the following hourly rate of pay or annual salary: \$

**REASON(S) FOR THIS ACTION:** (Check applicable boxes below and attach Letter of Determination that includes specific violations)

Violation of Civil Service Commission Rule 11.03 – Subdivision: B19, B20

A. Substandard Performance

B. Misconduct

Violation of the Department Rule(s), Law(s), Ordinance(s), or Regulation(s) 9-201

## **NOTICE TO CLASSIFIED EMPLOYEES OF LEGAL RIGHTS**

### **DISCHARGE AND PROBATIONARY RELEASE AND SUSPENSION AND INVOLUNTARY DEMOTION**

**Probationary Employees** – Employees, including veterans separated from the United States military service under honorable conditions, who have not passed an initial hiring probationary period do not have a right to a hearing before the Civil Service Commission (CSC).

**Veteran Employees (Permanent)** - Employees holding a permanent position with the City or Park Board of Minneapolis, and who is a veteran separated from the United States military service under honorable conditions and who has passed an initial hiring probationary period, has a right to a hearing prior to discharge from employment or involuntary demotion. Temporary employees who are veterans do not have a right to a hearing.

**Permanent Non-Veteran Employees** have a right to a hearing by the CSC upon written request. Non-veterans who have passed probation are permanent employees.

**Disciplinary Suspension or Demotion** - Employees may be suspended without pay for disciplinary reasons for periods not to exceed 90 calendar days. Suspensions of 31 to 90 calendar days may be appealed by the employee to the CSC.

Employees may be demoted for disciplinary reasons and/or for substandard performance, either temporarily (up to 180 days) or permanently. Permanent employees may appeal any permanent demotion and/or salary decrease.

NOTICE TO CLASSIFIED EMPLOYEES OF LEGAL RIGHTS continued

REQUESTING A HEARING

**IMPORTANT:** The employee should refer to the Civil Service Rules and/or the appropriate labor contract to determine what, if any, appeal rights he or she may have. The employee may choose whether to appeal this action through the Civil Service Commission or through processes available through a labor contract, but may not appeal through both.

**Requesting a Hearing: Non-Veterans** - A written request for hearing must be postmarked or received by the Civil Service Commission within 15 calendar days from the date disciplinary action was provided to the employee. The 15 days are counted from the first day after the notice was provided to the employee. If the 15<sup>th</sup> day falls on a Saturday, Sunday, or legal holiday, the request may be served on or before the following business day. The date of postmark must be within that 15-day period. The request for a hearing may be accompanied by the employee's statement of his or her version of the case.

**Requesting a Hearing: Veterans** - A written request for hearing must be received by the Civil Service Commission within 30 calendar days of receipt by the employee of the notice of intent to discharge. The 30 days are counted from the first day after receipt of the notice by the employee. If the 30th day falls on a Saturday, Sunday, or legal holiday, the request may be served on or before the following business day. The request for a hearing may be accompanied by the employee's statement of his or her version of the case. A failure to request a hearing within the provided 30 day calendar period constitutes a waiver of the right to a hearing.

ALL REQUESTS FOR A HEARING AND APPEALS MUST BE MAILED WITHIN THE REQUIRED TIMELINES TO:

Minneapolis Human Resources Department/Civil Service Commission  
250 South 4th Street, Room 100  
Minneapolis, MN 55415

NOTIFICATION TO EMPLOYEE:

The employee was given an opportunity to respond to the written charges at a pre-determination meeting held on: Date: February 18, 2020

The employee failed to appear at the pre-determination meeting.

A copy of this form and relevant accompanying information was given to the employee on 06/23/20.  
 A copy of this form and relevant accompanying information was sent by US mail, to the employee's address of record provided by employee.

Signature of Department Head: [Handwritten Signature]

Date: 6-22-20

Signature of Person Mailing/Delivering Notice: [Handwritten Signature]

Date:

Entered into COMET-HR by: \_\_\_\_\_ Date: \_\_\_\_\_

## Investigative Summary

**Complaint Number:** 18-00560  
**Investigator:** Sergeant Brian Sand  
**Officer:** Pond, Kyle #5775  
**Case Type:** Administrative  
**Date of Incident:** May 7, 2017  
**Complaint Filed:** January 10, 2018

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### CASE OVERVIEW

Officer Kyle Pond was driving squad 221 with his partner Marcus Ottney. The Officers observed the complainants vehicle fail to come to a complete stop and didn't have a rear license plate lamp. The Officers activated their lights to initiate a traffic stop but the complainant didn't stop right away and pulled into Tony Jaros parking lot at Marshall Street and Lowry Avenue. Officers instructed the complainant to exit the vehicle but he did not comply with the officer's instructions and kept asking the officers what he did wrong.

The officers eventually get him handcuffed and into the back of the squad car. Officer Pond then searched the passenger side and back seat of the vehicle. Pond returns to the squad where the complainant is describing a time where he was arrested for having a gun. Pond then tells his partner he is going to search the trunk where he gets the keys opens the trunk and begins to search.

The complainant is then let go from the scene and advised on his equipment violations. The officers then add remarks into Visinet but make no mention of why the vehicle was searched. The complainant contacted Sergeant Letch where an electronic complaint notification form was completed. Gabriel Ramirez from OPCR then contacted the complainant and instructed him how to fill out a complaint form on-line which was done on January 10, 2018.

## ALLEGATIONS

***Allegation 1:*** That Officer Kyle pond did not have a documented legal reason to search the complainant's vehicle during a traffic stop related to case # 17-166421 (9-201 SEARCHING VEHICLES)

## CASE INVESTIGATION

Visinet report #17-166421 was reviewed along with body worn camera from Officers Pond, Ottney and Chaput. A certified letter was sent to the complainant's address of 2601 4<sup>th</sup> St N listed on the complianant form but was returned no such address. A phone call was made to (913) 237-2656 on May 22, 2018 but the person who answered said I had the wrong number. MNCIS check shows the complainant Joe Jacobs does have a felony conviction for possessing a firearm in August of 2016 as this showed up on officers computer as they were talking to him prompting Pond to search the car. Joe Jacobs currently has a felony warrant for his arrest for not appearing for a court date on June 6, 2018. Officer Pond was interviewed in internal affairs on June 12, 2018.

## DISCUSSION

The Minneapolis Police Department's Policy and Procedure Manual states in part:

### **9-201 SEARCH AND SEIZURE**

#### **Searching Vehicles**

Generally, officers can legally search a vehicle in the following circumstances:

- Plain View
- Medical Emergency/Life-Saving
- Probable Cause
- Protective Weapons Sweep
- Search Incident to Custodial Arrest (this exception is limited in the context of vehicle searches)
- Inventory Search
- Consent Search

#### **Searching Vehicles – Documentation**

If the search of a vehicle results in an arrest or seizure of evidence or contraband, a CAPRS report and supplement shall be completed and the officer must articulate in his/her supplement the legal justification for the search. The supplement shall contain all pertinent information concerning the search including:

- Legal justification for the search
- Results of the search
- Any damages that occurred
- Officers who conducted the search
- The name and date of birth of the consenting person (if applicable).

If damage to property was caused during the course of a search and/or resulting seizure:

A supervisor shall be notified;

Photographs shall be taken and property inventoried to document any known damages.

If the search of a vehicle does **not** result in an arrest, property damage or seizure of evidence or contraband, the fact that a search occurred and the legal justification for it should be documented via added remarks to the call in CAD (Computer Aided Dispatch) or by another method.

Officer Pond states that the reason for searching the car the first time was to look for weapons and narcotics due to the complainant's irrational behavior and failing to stop for multiple blocks. Pond continued to say that with the driver being noncompliant with commands and he believed that the driver was trying to hide something.<sup>1</sup> The policy gives seven reasons an officer can search a vehicle and one of those reasons is to do a "protective sweep".<sup>2</sup> Pond stated that this initial search of the car where he searches the passenger compartment of the car and back seat was a protective weapons sweep.<sup>3</sup>

When Pond is done with the initial search of the vehicle he goes back and sits in the driver's seat of the squad and the complainant describes a time when he was caught by the Sheriffs for having a gun in the vehicle and subsequent being arrested.<sup>4</sup> Pond then stated to his partner that he is going to search the trunk after a MNCIS check showed the complainant did have a felony conviction for possessing a firearm in August of 2016. Pond then gets the keys to the car where he opens the trunk and searched it against the wishes of the complainant.

Pond stated the reason for searching the trunk was again for a protective weapons sweep. Pond did not want to release the driver where he could return to his vehicle and go in the trunk and possibly grab a firearm or weapon.<sup>5</sup> Officers in 2017 took on-line courses called "PATROL" where one of the classes was about warrantless searches of vehicles. They describe a protective sweep as a limited search of the passenger compartment of a vehicle and where an occupant may gain immediate control of it.<sup>6</sup>

When asked about why he did not document this reason into the computer aided dispatch (CAD) he took full responsibility for not documenting the search.<sup>7</sup>

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<sup>1</sup> Pond statement page 3 line 19

<sup>2</sup> Search and Seizure guide page 21 a protective weapons sweep of a vehicle can be done when an officer stops a vehicle and has reasonable suspicion, based on specific and articulable facts which, when taken together with rational inference from those facts, reasonably warrant the officer to believe that an occupant may be armed. Officers must be able to articulate their reason for believing an occupant is armed and dangerous.

<sup>3</sup> Pond Statement page 3 line 36

<sup>4</sup> Pond BWC 10:30 mark

<sup>5</sup> Pond Statement page 4 line 36

<sup>6</sup> Patrol online handout page 3

<sup>7</sup> Pond Statement page 5 line 7

**CLOSING**

The key issue presented when considering this case:

1. Whether Officer Kyle Pond had a documented legal reason to search the complainant's vehicle.

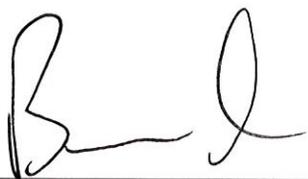
a. Pond does a protective weapons search of the passenger compartment of the vehicle initially after the driver is removed from the vehicle.

b. Pond does another "protective sweep" of a locked trunk after learning the driver was arrested for a past firearm charge.

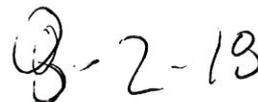
c. A "protective weapons sweep" is a limited search of the passenger compartment and where an occupant may gain immediate control of it.

d. Documentation of why the vehicle was searched was never entered into Visinet and Pond took full responsibility for it.

I confirm that the information I provided in this case is true to the best of my knowledge.



Investigator:



Date

## EVIDENCE

### 1. **Statements**

- a. Officer Kyle Pond

### 2. **Records**

- a) Visinet Report #17-166421
- b) Search and Seizure guide
- c) PATROL on line training