

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

COMPLAINT INFORMATION					
Case Number	Precinct	CCN	Date of Incident	Time	Preference
18-17317			July 09, 2018	0047 hrs	
Location of Incident		City/State/Zip		Date of Complaint	
I-94 & Hiawatha Ave		Minneapolis		July 09, 2018	
Complainant Name (Last, First, Middle Initial)			Sex	Race	DOB
Joint Supervisors					
Home Address		City/State/Zip		Primary Telephone	
JURISDICTION			CATEGORY		
OPCR Ord. § 172.20(8)			Violation of the P&P manual		
BADGE/NAME			ALLEGED POLICY VIOLATIONS		
4884 ; Moua, Kong			MPD P&P § 5-102.01 - MINNESOTA LAW ENFORCEMENT CODE OF ETHICS		
ALLEGATION SUMMARY					
Allegation that an officer was arrested for DWI while driving with 13.43 in the vehicle.					
SUPERVISOR ASSESSMENT					
INQUIRY (INTAKE - COMPLAINT FILED) <input type="checkbox"/>			3401 <input type="checkbox"/> Draft <input checked="" type="checkbox"/> Final approved		
MEDIATION <input type="checkbox"/> Refer to Mediation			DISMISS <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 Withdrawn 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 checked="" type="checkbox"/> Admin Investigation: Investigator Sgt. Rebecca Lane					
FINAL APPROVED INVESTIGATIVE REPORT <input checked="" type="checkbox"/> Refer to Panel					
IAU Supervisor <i>L.H. [Signature]</i>				Date <i>3/18/19</i>	
Director - Office of Police Conduct Review <i>[Signature]</i>				Date <i>3/18/19</i>	



NOTICE OF DISCIPLINE (Grievance Settlement Agreement)

January 20, 2022

Officer Kong Moua
Pct. 4 Dogwatch
Minneapolis Police Department

RE: OPCR #18-14317

Officer Kong Moua,

As a result of the Settlement Agreement following grievance #20-22, the final discipline for OPCR Case #18-14317 is as follows:

<u>Policy Number</u>	<u>Sub-Section</u>	<u>Policy Description</u>	<u>Category</u>	<u>Disposition</u>
5-102.01		MN Law Enforcement Code of Ethics	C	<u>Sustained</u>

Pursuant to the Grievance Settlement Agreement, the city shall impose a 30-hour suspension for a Category C level violation of the MPD’s Policy and Procedure Manual under Section 5-102.01, Minnesota Law Enforcement Code of Ethics.

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 more severe disciplinary action up to and including discharge.

Sincerely,

Amelia Huffman
Interim Chief of Police
Minneapolis Police Department

CC: Personnel file
OPCR

Investigative Summary

Complaint Number: OPCR Matter # 18-14317
Investigator: Sergeant Rebecca Lane
Officer: Officer Kong Moua #4884
Case Type: Administrative
Date of Incident: July 9, 2018
Complaint Filed: August 20, 2018

CASE OVERVIEW

On July 9, 2018, Officer Kong Moua was off-duty, driving his personal vehicle eastbound on I-94 in Minneapolis going to his home [REDACTED] 13.43 [REDACTED] 13.43 was in the vehicle with him.

As Moua approached the Lowry Hill Tunnel, Minnesota State Patrol Trooper Jennifer Barron observed Moua's vehicle cross the fog line, weave within and out of the traffic lane, and fail to signal a lane change. Trooper Barron captured the speed of the vehicle using her front radar. The vehicle was traveling at 70 MPH in a 55 MPH zone. Trooper Barron conducted a traffic stop.

After making contact with the driver, later identified as Kong Moua, Trooper Barron attempted to conduct Standardized Field Sobriety Tests. Moua was read the Implied Consent Advisory and given a breath test. The result of the breath test was 0.09 BAC. Trooper Barron placed Moua under arrest for 3rd degree DWI. He was booked at Hennepin County Jail. Moua was convicted of 4th degree DWI.

ALLEGATIONS

Allegation 1: It is alleged, while off duty, Officer Kong Moua violated the Minnesota Law Enforcement Code of Ethics by operating his motor vehicle under the influence of alcohol while transporting [REDACTED] 13.43 in violation of Minnesota State Statute 169A.26, 3rd Degree DWI.

CASE INVESTIGATION

This case was referred to the Minneapolis Internal Affairs Unit after Kong Moua self-reported that he was arrested for a DWI on July 9, 2018. On August 20, 2018, this case was assigned for an Administrative Investigation. Ninety days after the date of final disposition, the Minnesota State Patrol released the Field Report, related audio, and video. They were reviewed. Statements were taken from Minnesota State Patrol Trooper Barron, Officer Menter, Metro Transit Police, as well as Officer Kong Moua.

Minnesota State Patrol Field Report

On July 9, 2018, Trooper Barron observed an SUV traveling eastbound on I-94 prior to the Lowry Hill Tunnel. She observed a 13.43 cross over the fog line, fail to signal a lane change, and weave within and outside lane lines. The vehicles speed was captured by Trooper Barron's front radar as 70 MPH in a 55 MPH zone. Trooper Barron conducted a traffic stop on the vehicle. The vehicle stopped on eastbound I-94 prior to Hiawatha Ave.

Trooper Barron approached the vehicle and "[She] immediately noticed the strong odor of an alcoholic beverage."¹ She noted the driver's eyes were bloodshot and watery. Trooper Barron identified Moua by his Minnesota Driver's License. Moua told Trooper Barron he was coming from 13.43 13.43 Moua stated he consumed 2 -3 beers.

Trooper Barron had Moua step out of the vehicle to preform Standardized Field Sobriety Tests (SFSTs). Trooper Barron attempted to administer the Horizontal Gaze Nystagmus Test (HGN). Trooper Barron wrote, "Moua would not follow my instructions and I was unable to complete the test."² Moua would not look at the stimulus, look past it, or in the opposite direction. Trooper Barron asked him if he was going to cooperate with the test and Moua stated, "I'm sorry...I can't."³

A male Metro Transit Officer had arrived on scene to assist Trooper Barron. He assisted in searching Moua. Trooper Barron asked Moua about his passenger and Moua stated it was 13.43 - Personnel Data who was in the car with him.

13.43 - Personnel Data The vehicle was towed.

Moua was transported to Hennepin County Jail. The Implied Consent Advisory reading was video/audio taped. Moua understood the advisory and wanted to speak with a lawyer. Moua made several phone calls and stated he would take the breath test. The result of the DMT breath test was 0.09 BAC.

¹ Minnesota State Patrol Field Report #18508289, Page 1

² Minnesota State Patrol Field Report #18508289, Page 2

³ Minnesota State Patrol Field Report #18508289, Page 2

The Miranda Warning was not read, nor were any additional questions asked. Moua was booked at Hennepin County Jail for DWI. Trooper Barron suggested the charge of 3rd Degree DWI, 169A.26.

Moua was given a Notice of Driver's License Revocation, Notice and Order of License Plate Impoundment, and the DataMaster Test Record.

The Minnesota DWI Report ICR# 18508289 noted the previously aforementioned observations, in addition to slurred speech, unsteady gait, swaying, and slow movement. Moua's attitude was noted as polite and upset/emotional.

Minnesota State Patrol Squad Video

There are two different camera angles recorded on the Minnesota State Patrol squad car. One shows a front view and the other shows the rear seat of the squad car. At times, the audio in the video is inaudible due to traffic and wind noise. Squad car video from Trooper Barron's squad car showed a vehicle committing moving violations and the subsequent traffic stop. After a short conversation at the driver's window, Trooper Barron had Moua step out of the vehicle to perform the Horizontal Gaze Nystagmus Test. Moua could not or would not follow Trooper Barron's instructions for the test. Trooper Barron asked Moua if he was going to cooperate with the test. He stated, "I'm sorry. I can't." Moua was placed in handcuffs and placed under arrest. While being searched Moua stated [REDACTED]

[REDACTED] was in the vehicle with him. 13.43 - Personnel Data [REDACTED]
13.43 - Personnel Data [REDACTED] During the transport to Hennepin County Jail, Moua stated, "I know I shouldn't be driving."⁴ Moua was cooperative and respectful during the whole arrest process.

Minnesota State Patrol does not use Body Worn Cameras.

Interview with Minnesota State Patrol Trooper Jennifer Barron Badge #518

On January 11, 2019, I interviewed Trooper Barron via telephone. The following is a summary of the interview, not necessarily in chronological order. Trooper Barron observed a SUV commit several driving violations and she conducted a traffic stop. Trooper Barron smelled an odor of alcohol coming from the driver. The driver, Kong Moua, opened his wallet. Trooper Barron saw Moua's police identification card on top of his driver's license. Moua provided Trooper Barron his driver's license. Trooper Barron could not remember the exact point Moua verbally told her he was a police officer. Moua admitted drinking 2 – 3 beers. Trooper Barron had Moua exit the vehicle for Standardized Field Sobriety Tests. At some point, a Metro Transit Police Officer, James Menter, stopped and provided back up to Trooper Barron. Moua would not or could not follow Trooper Barron's directions during the Horizontal Gaze Nystagmus Test. Trooper Barron asked Moua if he was going to cooperate with

⁴ Minnesota State Patrol Squad Camera, Trooper Barron 07/09/2018 01:10:03

the Standardized Field Sobriety Tests and he stated, "I'm sorry. I can't."⁵ Officer Menter searched Moua. Trooper Barron transported Moua to Hennepin County Jail for a breath test. Moua was read the Implied Consent Advisory and made several phone calls. The result of Moua's breath test was 0.09 BAC. Moua was booked at Hennepin County Jail.

13.43 - Personnel Data

13.43 - Personnel Data

13.43 - Personnel Data

Trooper Barron described Moua as "very apologetic" and "very nice."⁶ At one point during the arrest process, Trooper Barron said Moua told her, "Don't do that to him" and "Shred the report and not submit it."⁷ Trooper Barron stated, "Honestly, I think he's probably a good guy, good officer. He just made a mistake that night."⁸

Interview with Metro Transit Police Officer James Menter Badge #117

On January 25, 2019, I interviewed Officer James Menter, Metro Transit Police, via telephone. Officer Menter stated on July 9, 2018, he observed a State Trooper had a vehicle pulled over on the freeway and he stopped to assist. He did not remember many details, but the Trooper was working alone and Officer Menter helped watch the occupant and driver of the vehicle. He described the driver [REDACTED]

13.43 - Personnel Data

Officer Menter "stood by" while the Trooper dealt with the male. Officer Menter does not recall any specific conversation with the male nor does he remember anything the male said during the stop. Officer Menter was not aware the driver was a police officer and does not recall if anyone told him the driver, Moua, was a police officer. Moua's demeanor was described by Officer Menter as, "quiet." Officer Menter did not recall specifically why he wrote in his Metro Transit Cad Comments, "ASSISTED MINNESOTA STATE PATROL WITH UNCOOP A/M ON SFSTS."⁹ Officer Menter did recall Moua was not, "loud, abusive, or trying to flee, or anything like that." Officer Menter stayed with Trooper Barron until another Trooper arrived on scene to assist.

Interview with Kong Moua

On January 31, 2019, I conducted an interview of Officer Kong Moua. Also present at the interview was Sergeant David Garman of the Minneapolis Police Officer's Federation. The following is a summary of the interview, not necessarily in chronological order.

⁵ Minnesota State Patrol Trooper Barron Q&A Page 3 Line 27

⁶ Minnesota State Patrol Trooper Barron Q&A Page 5 Line 18

⁷ Minnesota State Patrol Trooper Barron Q&A Page 5 Line 19-20

⁸ Minnesota State Patrol Trooper Barron Q&A Page 5 Line 20-21

⁹ Metro Transit Call for Service # MC 180709-037754

Kong Moua had been drinking at Checker Bar in St. Paul with 13.43 He drank five or six beers. He started drinking at 2100 hrs and his last drink was at 2330 hrs.

13.43 - Personnel Data

Moua stated he felt the effects of the alcohol, "A little bit."¹¹ He stated, "I feel like I could still drive."¹² He described the effects of the alcohol as "buzzing."¹³

Moua was pulled over by the Minnesota State Patrol on I-94 near Hiawatha Ave. He opened his wallet and provided his driver's license to the Trooper. Moua kept his police identification card in place where if the wallet was opened, someone could see the identification card. The Trooper may have seen his Police Identification Card when he opened his wallet and she was shining her flashlight at his wallet.

Moua stated the Trooper gave him the HGN test. Moua was nervous and he believed that could have effected the result of the test. Moua believed he completed the test because the Trooper stopped the test. Moua admitted he heard and understood the instructions of the HGN test. Moua agreed that the Trooper did not feel he was cooperating with the test and when asked if he was going to cooperate Moua stated, "I'm sorry. I can't."¹⁴ I asked Moua why he did not finish the test or why he did not cooperate with the test and he stated, "Um, I-, I felt like, um, I wasn't doing good on the test."¹⁵

After the Standardized Field Sobriety Tests started, Moua told the Trooper he was a police officer. He was concerned he would be treated like a "criminal."¹⁶ Moua stated he is not a violent person and he wanted the Trooper to know, "I'm not violent, um, and, you know, I'm-, I'm also law enforcement officer. I-, I understand your job. I'm not gonna fight with one, uh, because I could see that she was, uh, kind of looking around, looking at me cause, um...and she also placed me in handcuffs behind my back, so I was just concerned that she was concerned about me doing something."¹⁷ Moua did not expect any favors or special treatment from the Trooper.

¹⁰ Q and A, Officer Kong Moua Page 7 Line 1-2

¹¹ Q and A, Officer Kong Moua Page 3 Line 10

¹² Q and A, Officer Kong Moua Page 3 Line 13

¹³ Q and A, Officer Kong Moua Page 3 Line 22

¹⁴ Q and A, Officer Kong Moua Page 5 Line 6-7

¹⁵ Q and A, Officer Kong Moua Page 5 Line 11

¹⁶ Q and A, Officer Kong Moua Page 9 Line 32

¹⁷ Q and A, Officer Kong Moua Page 9 Line 37-41

Moua was taken to Hennepin County Jail and read the Implied Consent Advisory and spoke to a lawyer. Moua agreed to a breath test. The result of the test was 0.09 BAC. Moua was booked into Hennepin County Jail. Moua's driver's license was suspended and he obtained a Limited Driver's License. Moua's driving privileges have now been fully restored.

Moua [REDACTED] 13.43 - Personnel Data [REDACTED] pled to misdemeanor 4th degree DWI. He was sentenced to a year probation, a DARE class, and an 8-hour alcohol class. Moua has completed the classes.

Initially during the interview, Moua stated while he was driving, he did not feel he put [REDACTED] 13.43 - Personnel Data [REDACTED] the traveling public in any danger.¹⁸ Later, I asked, while he was driving, if he felt he put the public [REDACTED] [REDACTED] in danger and he stated, "At the time, no."¹⁹ I asked looking back on the incident now, if he felt differently and he stated, "Now, I can see that, yeah, I-, I might have made a mistake and, uh, and I did something that could be...there's better options."²⁰ I asked if Moua would have done anything differently and he said, "Yes, I guess I could have just told [REDACTED] hey, I'm sorry, you know, I've been drinking. You know [REDACTED] would probably just drop me off at home. We'll just have to go get [REDACTED] in the morning, I mean, so."²¹

Charges

On July 13, 2018, Kong Moua was charged with the following:

1. [REDACTED] 13.43 - Personnel Data [REDACTED]
2. DWI - OPERATE MOTOR VEHICLE - ALCOHOL CONCENTRATION 0.08 WITHIN 2 HOURS-FOURTH DEGREE
3. [REDACTED]
4. [REDACTED] 13.43 - Personnel Data [REDACTED]
5. [REDACTED]
6. [REDACTED]

Disposition

On September 9, 2018, Moua plead guilty to Count 2. DWI - OPERATE MOTOR VEHICLE - ALCOHOL CONCENTRATION 0.08 WITHIN 2 HOURS-FOURTH DEGREE.

- [REDACTED] 13.43 - Personnel Data [REDACTED]
2. DWI - OPERATE MOTOR VEHICLE - ALCOHOL CONCENTRATION 0.08 WITHIN 2 HOURS-FOURTH DEGREE – Convicted

¹⁸ Q and A, Officer Kong Moua Page 5 Line 39

¹⁹ Q and A, Officer Kong Moua Page 6 Line 24

²⁰ Q and A, Officer Kong Moua Page 6 Line 27-28

²¹ Q and A, Officer Kong Moua Page 9 Line 3-5

13.43 - Personnel Data

Sentenced

On September 26, 2018 Moua was sentenced to the following:

Count 2. DWI - OPERATE MOTOR VEHICLE - ALCOHOL CONCENTRATION 0.08 WITHIN 2 HOURS-
FOURTH DEGREE (MSD) 169A.20.1(5) (169A2015)

Local Confinement:

Agency: Hennepin County Workhouse - Adult Corrections

Term: 30 Days

Time To Serve: None

Stay 0 Yr 0 Mo 30 Days For 1 Yr

Status: Active 09/26/2018

Monitoring - Adult:

Type: Probation to the Court

Agency: Hennepin District Court

Term of 1 Yr

09/26/2018 - 09/26/2019

Status: Active 09/26/2018

Condition - Adult:

1. No driver license violations, 09/26/2018, Active 09/26/2018
2. No driving without insurance, 09/26/2018, Active 09/26/2018
3. No alcohol-related traffic offenses, 09/26/2018, Active 09/26/2018
4. No drug-related traffic offenses, 09/26/2018, Active 09/26/2018
5. No careless driving, 09/26/2018, Active 09/26/2018
6. No reckless driving, 09/26/2018, Active 09/26/2018
7. No same or similar, DWI 09/26/2018, Active 09/26/2018
8. Complete Chemical Assessment, 09/26/2018, Active 09/26/2018
9. Follow recommendations of evaluation, 09/26/2018, Active 09/26/2018
10. Victim impact panel, 09/26/2018, Active 09/26/2018

Level of Sentence: Convicted of a Misdemeanor

DISCUSSION

It is alleged that Officer Kong Moua violated the Minnesota Law Enforcement Code of Ethics when, while off duty, he drove vehicle under the influence of alcohol with [REDACTED] 13.43 present in the vehicle.

The Minneapolis Police Department's Policy and Procedure Manual at the time of the incident stated in part:

5-102.01 MINNESOTA LAW ENFORCEMENT CODE OF ETHICS (08/01/91) (A-D)

MINNESOTA LAW ENFORCEMENT CODE OF ETHICS:

"As a Minnesota Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both by personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear of favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement."

Moua drank five to six beers at a bar in St. Paul. He drove to North Minneapolis and picked up [REDACTED] [REDACTED] 13.43 and was on his way home. Trooper Barron observed multiple moving violations and conducted a traffic stop. Moua would not or could not complete the Standardized Field Sobriety Tests. Moua agreed to take a breath test. The result of the test was 0.09 BAC. An aggravating factor in the charging decision was the fact that [REDACTED] [REDACTED] was a passenger in the car at the time of the stop. Moua was convicted of 4th degree misdemeanor DWI.

The Minnesota Law Enforcement Code of Ethics states in part officers will, "...be constantly mindful of the welfare of others." When Moua chose to drive with [REDACTED] [REDACTED] in the car, he endangered [REDACTED] as well as the traveling public.

The Code of Ethics also states, "I will be exemplary in obeying the laws of the land and the regulations of my department." Officer Moua was convicted of 4th degree DWI in violation of the Minnesota Law Enforcement Code of Ethics.

CLOSING

Did Officer Kong Moua violate the Minnesota Law Enforcement Code of Ethics when, while off duty, he drove vehicle under the influence of alcohol with [REDACTED] [REDACTED] present in the vehicle?

- Moua had not planned on picking up [REDACTED] until 13.43 called and asked him to pick [REDACTED] up.
- [REDACTED] **13.43 - Personnel Data** [REDACTED]
- Moua admitted he felt the effects of the alcohol and was "buzzing."
- Moua drove with [REDACTED] [REDACTED] in the car and was pulled over by the Minnesota State Patrol.
- Moua submitted to a breath test with the result of 0.09 BAC.
- Moua was booked at Hennepin County Jail for 3rd Degree DWI.
- Moua pled to misdemeanor 4th degree DWI.
- Moua now sees his actions put people in danger and there were different options he could have chosen.

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



Investigator: Sergeant Rebecca Lane

2/28/2019

Date