• **ADAM FORTNEY**
SHERIFF

SNOHOMISH COUNTY
SHERIFF'S OFFICE

• **JEFF BRAND**
UNDERSHERIFF

M E M O R A N D U M

DATE: **January 24, 2020**

TO: **Snohomish County Deputy Sheriff's Association**

FROM: **Sheriff Adam Fortney**

RE: **Grievance Response—MPD Boice and DeputyTwedt**

The purpose of this memorandum is to memorialize my decision in the grievances filed by the Snohomish County Deputy Sheriff's Association ("DSA") with respect to the terminations of Master Patrol Deputy Matt Boice and Deputy Evan Twedt. The DSA's grievances were filed on November 9, 2019, and contend the terminations were without just cause, in violation of Article 16.1 of the collective bargaining agreement.

I have reviewed all documents in the personnel complaints, including the termination and pre-disciplinary letters, the entire personnel complaint file, and written responses provided by the DSA to the former administration. As detailed below, I have also heard argument from the DSA in a grievance hearing as to why the discipline decisions were without just cause.

As discussed further below, I have decided to grant the DSA's grievances in part, rescinding the findings and discipline for violation of Policy 341.2.3 (Observance of Criminal and Civil Laws) and Policy 341.2.4 (Dishonesty or Untruthfulness). I do not believe Dep. Boice or Dep. Twedt purposefully violated any laws whatsoever, nor were they dishonest in any of the dealings related to this matter. I am, however, sustaining findings as to violation of Policy 341.2.2 (Knowing, Observing, and Obeying All Written Directives, Policies, Procedures) because I do not believe Dep. Boice or Dep. Twedt adequately documented their full activities (in accord with Policy 322.4) with regard to the traffic stop, arrest, and search in question. As a result, I am proposing to reinstate Dep. Boice and Dep. Twedt to their former positions, but will leave in place a 3-year letter of reprimand in the files solely for failure to adequately document their actions.

I. Facts Relevant to this Matter

The discipline in this matter arose from a traffic stop conducted by Dep. Boice in the early morning hours of June 10, 2017. Dep. Boice observed a vehicle going 45 mph in a 35 mph zone. He pulled the vehicle over and spoke to the driver. In speaking with the driver, Dep. Boice observed a glass meth pipe in the center console of the vehicle. Dep. Boice arrested the driver based on possession of drug paraphernalia. As he was making this arrest, Dep. Twedt arrived on scene. Dep. Boice and Dep. Twedt conducted a search incident to arrest of the driver. During the search, a Deputy undergoing the "Field Training" process (the "Trainee") and his trainer/FTO arrived. In the search, Dep. Twedt found two small baggies containing meth in the driver's pants pocket. They also observed a bag of ammunition in the side container of the open driver's side door. Dep. Boice informed the driver he was also being placed under arrest for possession of illegal drugs ("VUCSA"). The driver was handcuffed and moved over to a patrol car while Dep. Boice processed paperwork related to the arrest. Dep. Boice asked the driver if he would consent to the deputies searching his vehicle. The driver declined.

The officers believed the suspect vehicle was unsafely blocking a busy roadway, and would need to be moved. However, the driver was alone and did not have a passenger with him that could operate the vehicle (and the driver himself was to be booked into jail). The officers thus collectively decided they would need to impound the vehicle. This required the officers to conduct an inventory "search," accounting for the items in the vehicle before it was towed (this limited search is allowed by case law, despite the driver declining to give consent to search). Dep. Twedt began an inventory in the passenger area of the vehicle, and the Trainee began the same in the trunk (which was accessed via a latch in the passenger compartment). Quickly after beginning the search, the Trainee found a shotgun in the trunk and called Dep. Twedt over. Dep. Twedt confirmed seeing the handle of the shotgun. Believing the driver to be a convicted felon whose rights to possess a firearm were limited, the officers immediately stopped their inventory, and arranged for an "evidence tow" of the vehicle (different from an impound, an evidence tow means steps are taken to preserve the vehicle and its contents as evidence, including storing it in a secured SCSO facility instead of a private impound lot). The intent was to seek a search warrant to seize the evidence in the vehicle, including the gun.

The Trainee wrote the application for the search warrant. In it, he noted that the officers had found drug paraphernalia in the car, located meth on the suspect himself, and that they had found ammunition in the driver's side door of the car. He sought a warrant for evidence related to the crimes of VUCSA, possession of drug paraphernalia, and unlawful possession of a firearm ("UPF"). However, the

Trainee's initial paperwork made no mention of the inventory search he and Dep. Twedt had conducted, including that he had already located a shotgun in the trunk. A prosecutor reviewing the application advised the Trainee to remove the reference to a UPF charge, believing there was insufficient evidence to support it. The Trainee thus submitted the affidavit with only the VUCSA and possession of drug paraphernalia charges. However, it still contained no reference whatsoever to the fact that an inventory had been conducted and a firearm had in fact already been found. Based on the application as submitted, a warrant was issued by the Court.

On June 16, 2017, the Trainee conducted the search of the vehicle as authorized by the warrant. When he found the gun he of course knew was there, he sought an additional warrant to seize the firearm based on his "discovery." The Court issued this warrant. The firearm was seized and the driver was charged with VUCSA, possession of drug paraphernalia and UPF. He later plead guilty to the VUCSA charge, with the other charges being dropped in plea deal.

In June 2019, an SCSO Lieutenant overheard a conversation in which a deputy told the story of how two years ago, the Trainee had vented about having to write a search warrant for a gun that, because "they" had already searched it, he already knew was in the trunk of a vehicle. The Lieutenant referred the matter up the chain of command. The previous administration conducted an investigation (OPA 19-042) based on allegations that Dep. Boice and Dep. Twedt worked with the Trainee to conceal the fact that an undisclosed inventory search had already been conducted on the suspect vehicle when a search warrant was obtained. Specifically, the prior administration believed the officers were attempting to keep from discovery the fact that they had conducted a search of the trunk of the vehicle as part of that inventory, an area that is barred from search in these circumstances by current SCSO policy, and case law, as well. The prior administration took issue with the search warrant application, which made no mention of the inventory search and finding of the shotgun, but also the fact that none of the officers' reports made mention of these facts. The administration's theory was that Dep. Boice and Dep. Twedt somehow directed the Trainee to keep this information concealed. The prior Sheriff thus terminated both Dep. Boice and Dep. Twedt (the Trainee had already been terminated previously for an unrelated matter, but one in which his honesty was likewise called into question).

The DSA timely grieved this discipline on November 9, 2019. At the time I took office, the Step 1 hearing on this grievance had not yet been held. I held such a hearing January 3, 2020. Present for the hearing were DSA 2nd VP Sgt. Marcus Dill, DSA representative Deputy Curt Carlson, DSA attorney Hillary McClure, DSA

attorney Erica Nelson, Grievant Matt Boice and Grievant Evan Twedt, Bureau Chief Ian Huri, and myself. The hearing took place from 1300 to 1500 hours.

II. My Decision

While there is a tremendous amount of information in the investigatory files concerning this matter, it seems to me that it all boils down to a few simple questions:

(1) What evidence is there that these officers (Dep. Boice and Dep. Twedt) believed they had something to hide in the first place?

(2) What evidence is there that these officers (Dep. Boice and Dep. Twedt) actually did anything to conceal their actions?

After reviewing the evidence, I cannot find anything that suggests that Dep. Boice and Dep. Twedt actually believed there was anything wrong with conducting the inventory search of the vehicle in the manner it was conducted. Nor do I find any evidence that I believe indicates they *should* have known there was something wrong with what they were doing. Thus, lacking any motive to hide what had occurred, I fail to see how they could be part of some broader conspiracy to cover it up. On top of that (and in answer to the second question posed above), I find absolutely no evidence Dep. Boice or Dep. Twedt did anything to keep their actions undiscovered. The Trainee was the one that submitted a knowingly incomplete affidavit, not Dep. Boice or Dep. Twedt. The evidence that they knew in advance what he was doing, or somehow directed him in this regard, is to me wholly inadequate. The most that can be said is that Dep. Boice and Dep. Twedt wrote less complete reports than they should have. This allowed the prior administration to jump to conclusions, attempting to lay the blame for one deputy's unethical actions (the Trainee's) on all of the officers effecting the arrest that night. It is a leap that is unsupported by the evidence. I will discuss each of these points in greater detail, below.

Knowledge of the Policy/Law re: Trunk Searches as Part of a Vehicle Inventory. The previous administration discounted both Dep. Boice's and Dep. Twedt's assertions that they believed it was legal and proper to search a vehicle trunk (accessible via a latch in the passenger area) as part of an inventory of an impounded vehicle. The former Sheriff cited to Policy 510.5, which does specifically forbid searching this area. However, the prior administration ignored that this policy had actually been changed a few years ago to include the more explicit prohibition on searching the trunk. The prior policy was not this specific and allowed a vehicle inventory of the all of the vehicle contents. However, there

is no evidence Dep. Boice or Dep. Twedt were made specifically aware of this policy change, or even of any of any updates on case law on the topic of vehicle inventories. While the former administration wants to impute perfect knowledge of its vehicle inventory policy on the deputies here, I do not believe it did its part to make them aware of it.

In fact, I believe there is evidence that Dep. Boice and Dep. Twedt were not the only ones that were unaware of this new policy on inventory searches. I myself wrote to the administration as a Sergeant that searches of unlocked trunks (including those accessible via interior latches), in my experience, were common as part of vehicle inventories, and that I never understood this to be against the law or policy until Dep. Boice and Dep. Twedt were investigated. Investigations done by both the OPA and by an independent investigator assigned to look into Whistleblower claims I had made against the former administration found there were a vast array of other officers that lacked this knowledge too. The fact that training on this topic has since been ordered by the SCSO is further indication that the actions at issue here were not so obviously prohibited.

Lastly, in the discipline letter, the former administration relied on the fact that Dep. Boice answered a question on a Master Patrol Deputy oral examination that they believed indicated he understood trunk searches were not proper as part of a vehicle inventory. I disagree with this conclusion. The question at issue in that examination was not focused on the search of the trunk as part of an inventory, but was instead addressing whether a vehicle itself (including the trunk) could be searched "incident to arrest" of its driver. It of course cannot. Dep. Boice's answer did not reveal anything with regard to his understanding of the scope of vehicle inventories.

For all of these reasons, I cannot support the notion that Dep. Boice and Dep. Twedt knew or should have known they could not do an inventory search of the suspect's vehicle on June 10, 2017. This is very important to my decision. If neither Dep. Boice nor Dep. Twedt believed such a search to be unauthorized by law or policy, they would have had no reason to conceal it.

The Absence of Any Reference to the Inventory Search in the Incident Reports. To imply the deputies here had knowledge there was something improper with the vehicle inventory, the former administration put great weight on the fact that neither Dep. Boice's, nor Dep. Twedt's incident reports mention the fact that the officers on scene had conducted a vehicle inventory, and that in the process the Trainee had found a shotgun in the trunk. What they fail to answer, however, is why this information would appear in their own reports, as opposed to the Trainee's. In my experience, deputies generally document the things that they

do in the course of an arrest, not those of their partners. While there are always exceptions, I have never seen an officer disciplined or taken to task for not reporting what another officer did. The assumption (a reasonable one, in my opinion) is that the other officers will report truthfully and faithfully as to all the critical things that they did during the incident. By compiling all these reports, the complete picture of what occurred is made apparent.

Here, it is uncontested that the Trainee should have recorded that he went in to the trunk of the vehicle as part of an inventory search, and ultimately that he then found a shotgun. I find it entirely reasonable that both Dep. Boice and Dep. Twedt would assume the Trainee had included this in his report. This again is evidence in my mind that they had nothing to hide, and believed the vehicle inventory was within the law and SCSO policy.

But going further, why would Dep. Boice, who had not even been near the vehicle inventory, be under suspicion because he did not include such details in his own report? While he certainly could have noted that a vehicle inventory was conducted, during which evidence was found meriting the need for a search warrant and an evidence tow, the details of what was done were not his to record. Again, such specifics should have been reported by the Trainee, and I believe Dep. Boice was reasonable in assuming he had done so. In hindsight, would it have been better for everyone if he had noted the vehicle inventory in some way in his report? Absolutely. But it is one thing to say he could have done better, and another thing entirely to attribute a conspiratorial motive to a factual omission that wasn't really his to report in the first place. It is a tremendous leap, and one that I do not believe would hold muster under the standard of proof required in a termination arbitration.

As for Dep. Twedt, while it is true he clearly failed to include in his incident report that he had actually participated in a vehicle inventory (he admitted to looking in the passenger area and then observing the gun in the trunk), I believe the full context of what happened makes this more understandable. First, the evidence shows the Trainee was actually the one holding the vehicle inventory sheet, and was accordingly the one primarily responsible for recording the facts of the vehicle inventory. Again, it would not be unreasonable for Dep. Twedt to assume this information was going to be detailed in the Trainee's report. Second, it seems apparent that the Trainee's discovery of the shotgun happened very quickly, meaning Dep. Twedt did not have time to do much of a search of the passenger area at all. I can see why Dep. Twedt would have discounted the importance of detailing his actions, if in fact his part in the inventory had not gotten far at all at the time it was called off due to the discovery of the gun. Again, as with Dep. Boice, I wish that he had documented his actions. It would have been better had

he done so, and would have put an end to the conspiracy theories that were levied against him in this discipline. However, I do not believe this omission evidences an attempt to conceal his actions, and certainly not to a level that would be required to support his termination.

No Proof of Direction to the Trainee. As noted elsewhere, it seems beyond contest that the submission of an affidavit to a judge, seeking a warrant to search an area that has already been searched, without also informing the judge of the prior search and what was found, is dishonest, unethical and abhorrent. But neither Dep. Boice, nor Dep. Twedt submitted that affidavit. To hold them accountable to the actions of another deputy, I would expect concrete evidence that they directed the deputy to submit the affidavit as written. I find none of that in the investigation materials.

Instead, I see an email string from Dep. Twedt to Dep. Sweeney that seems to actually lead to the opposite inference. Specifically, Dep. Twedt emailed back and forth to Dep. Sweeney before the submission of the warrant application. In one of these emails, Dep. Twedt reviewed the Trainee's application, then actually advised him to include the "UPF" charge (and ostensibly the information about the gun) in the affidavit. In other words, it looks to me like Dep. Twedt told him to inform the judge about finding the gun. Although the prior administration relied on this evidence to support the idea that Dep. Twedt knew the Trainee was intending to submit an application that concealed the vehicle inventory, I believe they misread the intent of Dep. Twedt's email.

All told, the evidence of this being a multi-party conspiracy to keep the vehicle (and trunk) search obfuscated from discovery, is simply not there.

III. Conclusion

For all of these reasons, I have decided to grant the SCDSA's grievances here, in part. As noted above, I do not believe there is sufficient evidence to find Dep. Boice and Dep. Twedt engaged in dishonesty, or otherwise conspired to keep an illegal search hidden from discovery. I do find, however, that they each wrote incident reports that were less than complete. Unfortunately, it was this mistake that opened themselves up to the other unfounded allegations in this grievance. A mistake as to the adequacy of a deputy's documentation, however, is a far cry from conspiring to violate a suspect's civil rights, or from actively deceiving the Court.

Accordingly, I am rescinding the findings and discipline against Dep. Boice and Dep. Twedt for violation of Policy 341.2.3 (Observance of Criminal and Civil Laws) and Policy 341.2.4 (Dishonesty or Untruthfulness). I am, however, sustaining

findings as to violation of Policy 341.2.2 (Knowing, Observing, and Obeying All Written Directives, Policies, Procedures), as they relate to the deputies' failure to adequately document the vehicle inventory here (in accord with Policy 322.4). By this grievance response, I am proposing to reinstate Dep. Boice and Dep. Twedt to their former positions, but will leave in place a 3-year letter of reprimand in the files solely for failure to adequately document their actions. Please advise at your earliest convenience if this is an acceptable resolution of this grievance.

cc: