DALY CITY POLICE DEPARTMENT

TO: Chief of Police DATE: 28-Feb-23

SUBJECT: Findings and Recommendations 22-08 (Officer Bermudez)

INSTRUCTIONS	Department members submitting any written requests for consideration or action by the Office of the Chief of Police will attach this form and route the material through the chain of command. Immediate supervisors, intermediate supervisors and bureau commanders are required to individually make recommendations for appropriate action on each transmittal and cite reasons. Regardless of the recommendation at any level, transmittal to the Office of the Chief of Police will be completed.
☐ Information Only ☐ Approved ☐ Disapproved	COMMENTS: OFFICER DATE:
☐ Information Only ☐ Approved ☐ Disapproved	COMMENTS: FISCAL DATE:
☐ Information Only ☐ Approved ☐ Disapproved	COMMENTS: TRAINING SERGEANT DATE:
☐ Information Only ☐ Approved ☐ Disapproved	COMMENTS: SERGEANT DATE:
☒ Information Only ☐ Approved ☐ Disapproved	COMMENTS: DRP request LIEUTENANT Relfes #101 DATE: 2/28/2023
☒ Information Only ☐ Approved ☐ Disapproved	COMMENTS: Agree with Lt. Relfes findings and recommendation. Sgt Schales to schedule DRP. CAPTAIN Barton #98 DATE: 3-6-23
☐ Information Only ☐ Approved ☐ Disapproved	COMMENTS: CHIEF OF POLICE DATE:

(Please use reverse side for additional comments.)

DCPD-245

DALY CITY POLICE DEPARTMENT MEMORANDUM

TO Cameron Christensen
Acting Chief of Police

March 8,2023

FROM Lieutenant Harold Rolfes #101

SUBJECT Findings & Recommendations **22-08 (Officer Bermudez)**

BACKGROUND

On 02/20/2023 I was requested to review, evaluate and analyze this investigation with the purpose of providing Findings & Recommendations.

The scope of this investigation is:

Issue #1: Did Officer Bermudez conduct himself in a manner that tends to reflect unfavorably upon this department or its members (Lexipol Policy 340.5.10 Conduct)?

Issue #2: Did Officer Bermudez violate the law, and therefore Department policy, by operating a motor vehicle while intoxicated (Lexipol Policy 340.04 General Standards and Manual of Rules 3.65 Obedience to Laws and Regulations)?

Issue #3: Was Officer Bermudez dishonest during pre-FST questioning, therefore violating Lexipol Policy 340.5.10 Conduct and Manual of Rules 4.96 Truthfulness?

Issue #4: Did Officer Bermudez fail to respond to a lawful order of "other proper authorities," in violation of Manual of Rules 3.30 General Responsibilities, when he refused to submit to a chemical test?

Issue #5: Was Officer Bermudez considered to be on-duty while on-call and therefore in violation of Lexipol Policy 340.5.12 Intoxicants and Manual of Rules 4.64 Consumption of Intoxicants?

Issue #6: Did Officer Bermudez fail to comply with a lawful directive while assigned to the San Mateo County Narcotics Task Force when he violated SMCNTF Policy 4.6 Personal Conduct-Grounds for Disciplinary Action (A,B,M and P) – Misuse of SMCNTF property or funds (Lexipol Policy 340.3 Directives and Orders)?

INVESTIGATION

- Conducted a thorough review of the complaint and associated documents.
- Conducted a thorough review of Sergeant Scholes investigation.

APPLICABLE AUTHORITIES

Lexipol Policy

340.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification

340.4 General Standards

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

340.5.10 Conduct

h. Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department

m. Any other on or off duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

340.5.12 Intoxicants

a. *Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.*

b. *Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.*

c. *Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.*

Daly City Manual Rules

3.30 General Responsibilities

Sworn members shall at all times respond to lawful orders of superior officers, other proper authorities, as well as to calls for police assistance from citizens. Proper police action shall be taken whenever it is required.

3.65 Obedience to Laws and Regulations

All members shall observe and obey all Federal, State, and municipal laws and ordinances, all rules and regulations of the Department, and all General Orders or Special Orders of the Department.

4.64 Consumption of Intoxicants

Members shall not consume any alcoholic beverage or intoxicating substance while off duty to the extent that evidence of such consumption is apparent when reporting for duty, or to the extent that ability to perform duty is impaired. Members shall not consume any alcoholic beverage or intoxicating substance, including prescribed drugs that can impaired their ability to perform their duties while on duty unless necessary in the performance of a police task and only with the specific permission of a superior officer. ***Member shall not at any time be under the influence of alcohol or intoxicating substances while on duty.*** *Members shall not consume illegal drugs at any time.*

4.96 Truthfulness

Members are required to be truthful at all times whether under oath or not.

ANALYSIS

This investigation stems from an incident Officer Jaime Bermudez was involved in off-duty where he was arrested for driving under the influence (DUI) by the Walnut Creek Police Department on Saturday, August 27, 2022. From the investigation it revealed at the time of the arrest Officer Bermudez, who was assigned to the San Mateo County Narcotics Task Force (SMCNTF), was driving his assigned SMCNTF vehicle, was on-call, and had his girlfriend in the vehicle. The DUI investigation conducted by Walnut Creek PD revealed Officer Bermudez lied about his alcohol consumption during preliminary field sobriety tests and after his refusal of providing a chemical test, a search warrant was written for a blood draw. The result of the blood draw on Officer Bermudez revealed a blood alcohol content of 0.269% and 5.9 ng/ml (nanograms per milliliter) of cannabinoids in his system.

Issue #1: Did Officer Bermudez conduct himself in a manner that tends to reflect unfavorably upon this department or its members (Lexipol Policy 340.5.10 Conduct)?

Officer Bermudez was pulled over on 08-27-2022 by the Walnut Creek Police Department while off-duty and driving his SMCNTF issued vehicle. The reason he was pulled over was for swerving and cutting off a Walnut Creek Police Officer. When the officer contacted Officer Bermudez, Officer Bermudez handed him his driver's license and Daly City Police Department ID card. Officer Bermudez verbally identified himself as a police officer and that he had firearms inside the vehicle. The officer noticed Officer Bermudez had slurred speech, the odor of an alcoholic beverage and watery red eyes. Based on this the officer began conducting a DUI investigation on Officer Bermudez.

Officer Bermudez was given field sobriety tests and from watching the body worn camera interview done, I noticed Officer Bermudez's demeanor change from cooperative to defensive. Officer Bermudez can be seen on the body worn camera rolling his eyes, questioning the reason for the traffic stop in a negative tone and at one point declaring it was "bullshit" what was happening. Ultimately Officer Bermudez performed the field sobriety tests but did very poorly and he was placed under arrest. Officer Bermudez refused the Preliminary Alcohol Screening device during the field sobriety tests and initially agreed to provide a breath test required by law per DL 367 when read the chemical test admonishment after his arrest. However, shortly after agreeing to provide this breath test, Officer Bermudez changed his mind and told the officer, "fuck it, go get a warrant." A warrant was then authored to draw Officer Bermudez's blood and a toxicology report of his blood showed he had 0.269% blood alcohol and 5.9 ng/ml of cannabinoids in his system at the time of his arrest.

Officer Bermudez was assigned to the SMCNTF and he was given a SMCNTF vehicle to drive as part of this position. Officer Bermudez was driving this vehicle at the time of arrest and had his assigned firearms locked in the vehicle. Due to his level of intoxication and arrest, a Daly City officer was called to the scene in order to take control of the NTF vehicle and the weapons inside. Further, Officer Bermudez was the on-call NTF agent for the entire county that night, and although he scheduled with another agent to takeover this duty, the start time for that was to be on Saturday, 08-27-2022, at 0900 hours, which was after his arrest. This would indicate Officer Bermudez was on-call and intoxicated at the time he was arrested.

During Officer Bermudez's administrative interview, Sergeant Scholes asked him why he provided the Walnut Creek Police Officer with his work ID card. Officer Bermudez said it was because he was driving a county vehicle, had guns in the car and was hoping the officer would help him out by either getting him a ride home or letting him go.

Issue #2: Did Officer Bermudez violate the law, and therefore Department policy, by operating a motor vehicle while intoxicated (Lexipol Policy 340.04 General Standards and Manual of Rules 3.65 Obedience to Laws and Regulations)?

Officer Bermudez was driving his assigned SMCNTF vehicle during the early morning hours on Saturday, 08-27-2022. He was pulled over by the Walnut Creek Police Department for swerving in the lanes of traffic and cutting off the Walnut Creek Police Officer who pulled him over. Officer Bermudez had the odor of an alcoholic beverage, slurred speech and watery red eyes. He was given field sobriety tests and the officer giving those tests noticed Officer Bermudez had an unsteady gait, horizontal gaze nystagmus and lack of smooth pursuit in his eyes. Officer Bermudez performed poorly on the other field sobriety tests given, which included the walk and turn and the one leg stand, where he lost his balance several times. He was placed under arrest for driving under the influence and provided the chemical test admonition per DL 367. He refused to provide a chemical test and a warrant was authored to collect his blood. A toxicology report provided by the Contra Costa County Forensic Laboratory showed Officer Bermudez had a blood alcohol content of 0.269% and 5.9 ng/ml of cannabinoids in his system at the time of his arrest.

This most recent DUI arrest of Officer Bermudez is his second arrest for driving under the influence of alcohol. On September 3rd,2015 the Campbell Police Department arrested Officer Bermudez for driving under the influence of alcohol.

Currently the Contra Costa County District Attorney's Office has the case for Officer Bermudez's DUI arrest. As of now the case is being reviewed and filing charges are pending.

Issue #3: Was Officer Bermudez dishonest during pre-FST questioning, therefore violating Lexipol Policy 340.5.10 Conduct and Manual of Rules 4.96 Truthfulness?

During the field sobriety tests of Officer Bermudez on Saturday, 08-27-2022, the Walnut Creek Police Officer asked him a series of questions. One of the questions was, "what and how much did you drink tonight." Officer Bermudez answered he did not have anything to drink. The officer asked Officer Bermudez this question again, and Officer Bermudez responded that he had, "zero," to drink. I watched the body worn camera footage of the field sobriety tests given to Officer Bermudez and confirmed this was the response he gave to the officer on both occasions. It also appears in the body worn camera footage that Officer Bermudez clearly understood all the questions and instructions provided to him by the officer. Given the circumstances that a DUI investigation was being conducted and Officer Bermudez was well aware of this and that it could lead to an arrest, it appears Officer Bermudez was not truthful with the officer about how many drinks he had in order to avoid getting arrested.

During Officer Bermudez' administrative interview he was asked about being questioned by the Walnut Creek Police Officer on how much he had to drink. Officer Bermudez

said initially he did not remember responding to the officer that he had nothing to drink, however; he said it would not surprise him if he did say that. Officer Bermudez also said if he told the officer he had "zero" to drink then he was not being truthful at the time.

Issue #4: Did Officer Bermudez fail to respond to a lawful order of "other proper authorities," in violation of Manual of Rules 3.30 General Responsibilities, when he refused to submit to a chemical test?

When Officer Bermudez was placed under arrest for DUI by the Walnut Creek Police Department, he was read the DL 367 chemical test admonishment which is a Department of Motor Vehicles requirement that he must submit to a chemical test in these circumstances and a refusal is subject to penalties. Initially, Officer Bermudez agreed to submit to a breath test when he was read this admonition, however; after the 15-minute observation period prior to providing the breath sample, Officer Bermudez refused the test. Ultimately a warrant was obtained and Officer Bermudez's blood was drawn. Since this order to provide the chemical test was given by the Walnut Creek Police Department and Officer Bermudez was facing criminal charges of DUI, I believe Officer Bermudez is entitled to the same rights of refusal for any citizen under the same circumstances. I do not find that the Walnut Creek Police Department are "other proper authorities," in this situation based on the Manual of Rules 3.30. I believe "other proper authorities" under the Manual of Rules 3.30 would be for superior officers at the Daly City Police Department or superior officers at his assigned San Mateo County Narcotics Task Force.

Issue #5: Was Officer Bermudez considered to be on-duty while on-call and therefore in violation of Lexipol Policy 340.5.12 Intoxicants and Manual of Rules 4.64 Consumption of Intoxicants?

At the time of Officer Bermudez's arrest, he was the on-call agent for the San Mateo County Narcotics Task Force. Although he had made arrangements with another agent at the Task Force to take over this on-call assignment, that responsibility did not begin until 0900 hours, which was approximately 8 hours after his arrest. However, during the interviews with his supervisors, Lt. Leishman and Sgt. Kennan, they said the on-call assignment does not include any extra pay unless there is an actual call-out or operation. Lt. Leishman also said Officer Bermudez should not have been driving the county vehicle, even though he was on-call, as he was not conducting, responding or being called-out to any operation. Based on this I believe Officer Bermudez was off duty at the time he was pulled over by the Walnut Creek Police Department and arrested, and at no time during this incident did he ever place himself in an on-duty capacity nor was he responding to any work related business.

While conducting the findings and recommendations for this case, I saw there was another issue which needed to be addressed. This issue is stated below and pertains to Officer Bermudez's role at the San Mateo County Narcotics Task Force and the policies that pertain to him.

Issue #6: Did Officer Bermudez fail to comply with a lawful directive while assigned to the San Mateo County Narcotics Task Force when he violated SMCNTF Policy 4.6 Personal Conduct-Grounds for Disciplinary Action (A,B,M and P) – Misuse of SMCNTF property or funds (Lexipol Policy 340.3 Directives and Orders)?

At the time of Officer Bermudez's arrest, he was assigned to the SMCNTF, driving his work provided vehicle and was the on-call agent for the county. Officer Bermudez is directly supervised by Sergeant Kennan and Lieutenant Leishman and when he was assigned to this unit he was briefed by his supervisors as to the policies and expectations of the SMCNTF. When Lieutenant Leishman was interviewed, he said his understanding was Officer Bermudez was on-call Friday, 08-26-2022, and had made arrangement for another task force agent to pick up the on-call duty Saturday, 08-27-2022, at 0900 hours. He said at the time Officer Bermudez was pulled over he did not have permission to be driving the SMCNTF vehicle as there was no call-out or operation being conducted. He also said Officer Bermudez should not have had any civilian in the car at the time he was stopped. During Sergeant Kennan's interview he said he was Officer Bermudez's direct supervisor when he joined the task force. He said the SMCNTF has policies related to being on-call, vehicle use for county assigned vehicles and alcohol use. Sergeant Kennan said when Officer Bermudez was hired with the task force, he had a one-on-one conversation with him about his expectations and specifically remembers talking to him about not drinking and driving. Sergeant Kennan also said there is an unofficial policy that agents could use county vehicles for personal use and have civilians in the car if there was a potential need to respond to any type of call-out.

Officer Bermudez's position at the SMCNTF was terminated by Lieutenant Leishman for his recent arrest and multiple violations of SMCNTF policy and procedures. Cited in Lieutenant Leishman's letter of termination was:

SMCNTF Policy 4.6 Personal Conduct-Grounds for Disciplinary Action

A.) Violation of any SMCNTF policy, procedure, rule, order, directive or requirement.

B.) Violation of any general order, policy, or procedure of the member's employing agency that is not inconsistent with the orders, policies, and procedures of the SMCNTF.

M.) Misuse of SMCNTF property or funds.

P.) Any other failure of good behavior, either during or outside of duty hours, which is of such a nature that causes discredit to the SMCNTF or the agency in which the member is employed.

FINDINGS

Issue #1: Did Officer Bermudez conduct himself in a manner that tends to reflect unfavorably upon this department or its members (Lexipol Policy 340.5.10 Conduct)?

SUSTAINED - This investigation disclosed evidence to clearly prove the allegation made in the complaint did occur.

Issue #2: Did Officer Bermudez violate the law, and therefore Department policy, by operating a motor vehicle while (Lexipol Policy 340.04 General Standards and Manual of Rules 3.65 Obedience to Laws and Regulations)?

SUSTAINED - This investigation disclosed evidence to clearly prove the allegation made in the complaint did occur.

Issue #3: Was Officer Bermudez dishonest during pre-FST questioning, therefore violating Lexipol Policy 340.5.10 Conduct and Manual of Rules 4.96 Truthfulness?

SUSTAINED - This investigation disclosed evidence to clearly prove the allegation made in the complaint did occur.

Issue #4: Did Officer Bermudez fail to respond to a lawful order of "other proper authorities," in violation of Manual of Rules 3.30 General Responsibilities, when he refused to submit to a chemical test?

NOT SUSTAINED - The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint. The finding of Not Sustained will not relieve Department supervisors or commanders from the responsibility for counseling or training subordinate personnel.

Issue #5: Was Officer Bermudez considered to be on-duty while on-call and therefore in violation of Lexipol Policy 340.5.12 Intoxicants and Manual of Rules 4.64 Consumption of Intoxicants?

NOT SUSTAINED - The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation made in the complaint. The finding of Not Sustained will not relieve Department supervisors or commanders from the responsibility for counseling or training subordinate personnel.

Issue #6: Did Officer Bermudez fail to comply with a lawful directive while assigned to the San Mateo County Narcotics Task Force when he violated SMCNTF Policy

4.6 Personal Conduct-Grounds for Disciplinary Action (A,B,M and P) – Misuse of SMCNTF property or funds (Lexipol Policy 340.3 Directives and Orders)?

SUSTAINED - This investigation disclosed evidence to clearly prove the allegation made in the complaint did occur.

RECOMMENDATIONS

Disciplinary Review Panel.

ATTACHMENTS

Refer to Sergeant Scholes original investigation and documentation provided in this investigation.

Campbell Police Department report #2015-2530

H. Rolfes #101

Harold Rolfes
Police Lieutenant #101
Investigations Division