


# INVESTIGATIVE SUMMARY AND FINDINGS

**Jaime Bermudez**

**POST ID C36-U28**

**Daly City Police Department**

**POST2313715**

**WRITTEN BY: Kevin P. Sherburne**

**August 7, 2024**

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## I. Executive Summary

On August 27, 2022, Walnut Creek Police Officers arrested then-Daly City Police Officer Jaime Bermudez (POST ID C36-U28) (hereafter "Respondent') for violation of the California Vehicle Code Section 23152(a) (driving under the influence ("DUI")). At the time of his arrest, Respondent was driving a government-owned vehicle and was on-call for his duties assigned to the San Mateo County Narcotics Task Force ("SMCNTF"). Respondent was convicted in 2015 for DUI, which made him eligible for enhanced sentencing if convicted in the 2022 incident. On December 5, 2023, Respondent was convicted of violating California Penal Code Section 23152(b) (DUI) and California Vehicle Code Section 23540 (second DUI within 10 years).

On June 30, 2023, Daly City Police Department submitted a report to the California Commission on Peace Officer Standards and Training ("POST") that Respondent may have committed serious misconduct. On July 29, 2023, I was charged to conduct an investigation of serious misconduct. I conducted an investigation and reviewed evidence of the following allegations. I make the following findings in this Investigative Summary and Findings:

**A. *Issue:*** Did Respondent's conduct that led to his convictions in 2015 and in 2023 for DUI constitute "[a]cts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public?" If so, did Respondent's actions constitute a violation of California Penal Code Section 13510.8(b)(6)?

1. ***Finding***: The clear and convincing evidence substantiated that Respondent's actions were "sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public." Respondent violated California Penal Code Section 13510.8(b)(6) when he drove vehicles in 2015 and 2022 in violation of California criminal law as a result of being under the influence of alcohol and drugs and was convicted twice for DUI, including a conviction with a sentencing enhancement for a second DUI conviction within ten years.

Based upon the evidence presented in the Daly City Police Department Internal Affairs investigation report and my investigation, I find that reasonable grounds exist for revocation of Respondent's peace officer certifications pursuant to California Penal Code Section 13510.85(a)(1), as set forth in more detail in the attached Executive Review and Peace Officer Standards Accountability Division Recommendation.[1]

[1] Attachment A (Executive Review and Peace Officer Standards Accountability Division Recommendation).

## II. Background

### A. Employment

According to his Electronic Data Interchange ("EDI") profile, Daly City Police Department hired Respondent on December 26, 2012, as a peace officer. Respondent worked for Daly City Police Department until July 11, 2023, when the department terminated him as a result of the second DUI.[2]

POST issued Respondent three peace officer certificates:

| Certificate Type | Certificate Number | Issuance Date |
|---|---|---|
| Basic | 178096 | 7/9/2014 |
| Intermediate | 126361 | 1/22/2015 |
| Advanced | 118972 | 12/27/2018 |

### B. 2015 DUI Incident and Internal Affairs Investigation

On June 19, 2015, Campbell Police Officers arrested Respondent for violation of the California Vehicle Code 23152(a) (DUI).[3] On July 24, 2015, the Santa Clara County District Attorney's Office filed a Misdemeanor Complaint against Respondent, charging two counts of violation of: (1) California Vehicle Code Section 23152(a); and (2) California Vehicle Code Section 23152(b). According to the Campbell Police Department report, Respondent's vehicle collided with a fire hydrant, resulting in major damage to the driver's side of the vehicle. Respondent was driving with a passenger at the time of the accident, and the accident resulted in the deployment of both the driver's and passenger's side air bags.[4] The complaint stated that Respondent's blood alcohol content ("BAC") measured 0.19% by volume. On September 3, 2015, Respondent pled nolo contendere to violation of California Vehicle Code Section 23152(b). The court sentenced him to volunteer work, counseling, and fines.[5]

Daly City Police Department initiated an internal affairs investigation relating to Respondent's DUI and conviction. Because, according to Daly City Police Department Policy Manual Section 1025.7.3 (Internal Affairs File (Management, Control, and Audit)) (in effect in 2016), the department purged the internal affairs investigative file after five and one-half years, it is unclear whether the investigation sustained findings,

[2] Attachment B (EDI Profile of Respondent).
[3] Attachment C (Affidavit re Probable Cause and Bail Setting).
[4] Attachment D (Campbell Police Department Narrative Report 20150619013 at 3-4 (6/19/2015)).
[5] Attachment E (Minute Order, *People v. Bermudez*, C1517080, Santa Clara County Superior Court (9/3/2015)).

what the allegations were, and, if sustained, what discipline, if any, the department imposed.[6]

### C. 2022 DUI Incident and Internal Affairs Investigation

On August 27, 2022, Walnut Creek Police Officers arrested Respondent for violation of the California Vehicle Code Section 23152(a) (DUI).[7] Respondent was driving with a civilian passenger in the car.[8] Respondent's BAC measured 0.269% by volume. In addition to alcohol, Respondent's blood tested positive for Tetrahydrocannabinol ("THC") at the rate of 5.9 ng/ml.[9] On December 6, 2023, Respondent was convicted of DUI with a sentencing enhancement for having a previous DUI conviction within ten years. The sentencing enhancement in the Walnut Creek DUI stemmed from Respondent's conviction for DUI in Santa Clara County in 2015.[10]

On August 29, 2022, Daly City Police Department initiated an internal affairs investigation of Respondent's arrest by Walnut Creek Police Department for DUI. Sergeant Brandon Scholes conducted the internal affairs investigation. On December 12, 2022, Sergeant Scholes requested that a Disciplinary Review Panel ("DRP") be convened to make findings and recommendations based upon the evidence he collected in the investigation pursuant to Daly City Police Department policy.

During his internal affairs interview, Respondent stated that he had put himself through a 30-day in-patient rehabilitation program, was undergoing outpatient treatment, was attending Alcoholics Anonymous meetings, and was (at the time of the interview) 80 days sober.[11]

On March 8, 2023, the DRP issued a Memorandum with its Findings and Recommendations.[12] The DRP examined six policy violation allegations and sustained four of those allegations. I have summarized the portions of the Memorandum's findings and analysis that are relevant to the issue in this Investigative Summary and Findings below.

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[6] Attachment F (Daly City Police Department Policy Section 1025.7.3). The five and one-half years also tracked California Government Code Section 34090.
[7] Attachment G (Walnut Creek Police Department General Offense Report 2022-25731 at 6 (8/27/2022)).
[8] Attachment G (Walnut Creek Police Department General Offense Report 2022-25731 at 10 (8/27/2022)).
[9] Attachment H (Report of Laboratory Examination, Toxicology Analysis (10/14/2022).
[10] Attachment I (Misdemeanor Complaint, *People v. Bermudez*, C1517080, Santa Clara County Superior Court (7/24/2015); Attachment E (Minute Order, *People v. Bermudez*, C1517080, Santa Clara County Superior Court (9/3/2015).
[11] Attachment J (IA Interview of Respondent at 21-22 (11/15/2022).
[12] Attachment K (Memorandum from Lieutenant Harold Rolfes to Acting Chief of Police Cameron Christensen (3/8/2023)).

The DRP found that a preponderance of the evidence substantiated that Respondent conducted himself in a manner that reflected unfavorably upon the department; that Respondent operated a motor vehicle while intoxicated; and that Respondent was dishonest when questioned by Walnut Creek police officers who asked him how much he had to drink. The DRP noted the following factors in reaching these conclusions:

- Respondent performed the field sobriety tests poorly
- After initially agreeing to provide a breath test, Respondent retracted his consent and requested a warrant, which Walnut Creek police officers obtained
- Respondent had a blood alcohol content of 0.269%
- Respondent had 5.9 ng/ml of cannabinoids in his system at the time of his arrest
- The 2022 incident in Walnut Creek was Respondent's second DUI arrest
- Respondent was not truthful when he answered officers' questions how much he had to drink because he sought to avoid arrest

The DRP also concluded that the preponderance of the evidence did not establish that Respondent failed to respond to a lawful order when he refused a breath test or was not considered to be on-duty while on-call while intoxicated. The DRP noted the following factors in reaching these conclusions:

- Respondent had the same rights as other people to refuse a breath test
- Respondent would not have been paid unless there was an actual call-out or operation
- Respondent did not place himself in an on-duty capacity nor was he responding to any work-related business
- Respondent's on-call status was not scheduled to commence until about eight hours after his DUI arrest

## III. Methodology/Investigative Process

### A. Methodology and Standard of Proof

This report summarizes the findings related to allegations of serious misconduct. I conducted this investigation in accordance with the regulations and policies of POST. During my investigation, I reviewed the Internal Affairs investigation. I also conducted an independent investigation, which included reviewing court records and the 2022 internal affairs investigative file.

Based on my review of the entire record of the administrative investigation, including the statements of the witnesses, evidence collected during the administrative investigation, the written investigative report, and my own independent investigation, the administrative investigation findings were supported by reasonable grounds.

I analyzed the information in this case under the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt." Based on the statements of the witnesses, as well as the documentary evidence available, there was sufficient information to reach a fair and reasoned conclusion using the clear and convincing evidence standard.

### B. Other Allegations of Serious Misconduct

As of the date of this Investigative Summary and Findings, POST is not aware of any other allegations of serious misconduct against Respondent.

## IV. Findings of Fact and Analysis

### A. Did Respondent's conduct that led to his convictions in 2015 and 2023 for DUI constitute "[a]cts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public?" If so, did Respondent's actions constitute a violation of California Penal Code Section 13510.8(b)(6)?

The clear and convincing evidence substantiated that Respondent engaged in conduct in 2015 and 2022 that led to his arrests and convictions for DUI, which included a sentencing enhancement for having a second DUI conviction within ten years. The clear and convincing evidence also substantiated that, at the time of Respondent's second DUI, in addition to being impaired by alcohol, a toxicology report showed that he had a THC blood level of 5.9 ng/ml.[13]

Impaired driving – whether under the influence of alcohol or THC – is illegal because of the inherent dangers to the drivers themselves and to others. According to the National Highway Traffic Safety Administration ("NHTSA"), nearly 30% of all traffic-related deaths in the United States resulted from alcohol-impaired drivers in 2020.[14] Of those who died in crashes involving alcohol-impaired drivers, the NHTSA reported that 62% were the drivers themselves and 38% were passengers of the alcohol-impaired

[13] Although the State of California does not have *per* se blood levels to establish impaired driving while under the influence of THC, by comparison, the State of Washington has set a *per se* level of 5 ng/mL of THC to establish impaired driving. Revised Code of Washington 46.61.502(1)(b).

[14] National Highway Traffic Safety Administration (NHTSA). Traffic Safety Facts 2020 Data: Alcohol-Impaired Driving (Report No DOT HS 813 294). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis; April 2022.

driver, driver or passenger of another vehicle, or nonoccupants.[15] Stated another way, the NHTSA reported that 32 people in the United States are killed every day in crashes involving an alcohol-impaired driver, which amounts to one death every 45 minutes.[16]

Although there is less data involving drivers impaired by both alcohol and drugs, one study at seven trauma centers found that 22% of drivers tested positive for alcohol and 25% tested positive for marijuana.[17] The State of Colorado reported that drivers impaired by THC at a rate of greater than 5 ng/ml resulted in 101 fatalities in 2022.[18]

Under Penal Code Section 13510.8(b)(6) and POST Regulation 1205(a)(6), acts that violate the law constitute serious misconduct when they are "sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public." Impaired driving and repeated acts of impaired driving are acts that violate the law that are both sufficiently egregious and also sufficiently repeated as to be inconsistent with Respondent's obligation to uphold the law or respect the rights of members of the public. As an officer charged to enforce DUI laws, Respondent's actions in driving impaired on two occasions establish that he committed serious misconduct.

The clear and convincing evidence substantiated that Respondent violated California Penal Code Section 13510.8(b)(6) when:

- he drove a vehicle on June 19, 2015, while under the influence of alcohol at a rate approximately double the legal limit, causing significant property damage

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[15] National Highway Traffic Safety Administration (NHTSA). Traffic Safety Facts 2020 Data: Alcohol-Impaired Driving (Report No DOT HS 813 294). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis; April 2022.

[16] National Highway Traffic Safety Administration (NHTSA). Traffic Safety Facts 2020 Data: Alcohol-Impaired Driving (Report No DOT HS 813 294). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration, National Center for Statistics and Analysis; April 2022.

[17] Thomas FD, Darrah J, Graham L, Berning A, Blomberg R, Finstad K, Griggs C, Crandall M, Schulman C, Kozar R, Lai J, Mohr N, Chenoweth J, Cunningham K, Babu K, Dorfman J, Van Heukelom J, Ehsani J, Fell J, Whitehill J, Brown T, Moore C. Alcohol and Drug Prevalence Among Seriously or Fatally Injured Road Users (Report No. DOT HS 813 399). Washington, DC: U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA), Office of Behavioral Safety Research. December 2022.

[18] https://www.codot.gov/safety/impaired-driving/druggeddriving/data. The year-over-year statistics show a marked increase in fatalities in crashes involved THC-impaired drivers: 42 (2018); 56 (2019); 52 (2020); 92 (2021).

- he was convicted on September 3, 2015, of violating California Penal Code Section 23152(b)
- he drove a vehicle on August 27, 2022, while under the influence of alcohol at a rate approximately three times in excess of the legal limit[19]
- he transported a civilian passenger in his vehicle while he drove intoxicated, jeopardizing the passenger's safety
- he ingested cannabis as a peace officer
- he ingested cannabis while serving as a member of a Task Force dedicated to illegal drug interdiction[20]
- the vehicle he was driving while under the influence of alcohol was a government-owned vehicle[21]
- he knew that driving a government-owned vehicle while under the influence of alcohol was against department policy
- he knew in August 2022 that he had already been convicted of DUI in 2015 and should have known better than to drink alcohol and drive a vehicle
- he was convicted on December 5, 2023, of violating California Penal Code Section 23152(b) (DUI) and California Vehicle Code Section 23540 (second DUI within 10 years)

his December 2023 conviction included a sentencing enhancement because the offense was Respondent's second DUI in ten years, which resulted in a sentence of 20 days in jail.[22]

## V. Supporting Evidence and Documentation

| **Evidence** | **Attachment** |
|---|---|
| Executive Review and Peace Officer Standards Accountability Division Recommendation | A |

[19] Attachment L (Report of Laboratory Examination, Alcohol Analysis (9/9/2022)).
[20] Attachment M (Memorandum from City Manager Thomas J. Piccolotti to Respondent at 6 "Notice of Intent to Terminate" (6/2/2023)).
[21] Attachment M, (Memorandum from City Manager Thomas J. Piccolotti to Respondent at 4 "Notice of Intent to Terminate" (6/2/2023)). In addition to his signed acknowledgement that he knew driving a government-owned vehicle while under the influence of alcohol was wrong, Respondent's experience stemming from his 2015 DUI conviction provides additional evidence of his knowledge of the dangers of driving under the influence. In 2015, with just eleven months of service as a peace officer, Respondent drove a vehicle on June 19, 2015, while under the influence of alcohol at a rate of approximately twice the legal limit. Attachment J (IA Interview of Respondent at 20-21 (11/15/2022); Attachment I (Misdemeanor Complaint, C1517080, *People v. Bermudez,* Superior Court of Santa Clara County (7/24/2015). As summarized above, he collided with a fire hydrant, causing significant damage to his vehicle and the hydrant because of his drunk driving.
[22] Attachment N (Misdemeanor Advisement of Rights, Waiver and Plea Form and Misdemeanor Order of Probation, *People v. Bermudez*, Contra Costa County Superior Court, Case 01-23-01334 (12/5/2023).

| **Evidence** | **Attachment** |
|---|---|
| EDI Profile of Jaime Francisco Bermudez | B |
| Affidavit re Probable Cause and Bail Setting | C |
| Campbell Police Department Police Report 20150619013 (6/19/2015) | D |
| Minute Order, *People v. Bermudez*, Santa Clara County Superior Court , Case C1517080 (9/3/2015) | E |
| Daly City Police Department Policy Section 1025.7.3 | F |
| Walnut Creek Police Department General Offense Report 2022-25731 (8/27/2022) | G |
| Report of Laboratory Examination, Toxicology Analysis (10/14/2022) | H |
| Misdemeanor Complaint, *People v. Bermudez,* Santa Clara County Superior Court, Case C1517080 (7/24/2015) | I |
| IA Interview of Respondent at 20-21 (11/15/2022) | J |
| Memorandum from Lieutenant Harold Rolfes to Acting Chief of Police Cameron Christensen (3/8/2023) | K |
| Report of Laboratory Examination, Alcohol Analysis (9/9/2022) | L |
| Memorandum from City Manager Thomas J. Piccolotti to Respondent, “Notice of Intent to Terminate” (6/2/2023) | M |
| Misdemeanor Advisement of Rights, Waiver and Plea Form and Misdemeanor Order of Probation, *People v. Bermudez*, Contra Costa County Superior Court, Case 01-23-01334 (12/5/2023) | N |

## VI. Conclusion

Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation of Respondent's peace officer certificates pursuant to Penal Code Section 13510.8 in accordance with the Executive Review and Peace Officer Standards Accountability Division Recommendation.[23]

[23] Attachment A (Executive Review and Peace Officer Standards Accountability Division Recommendation).