



INTRODUCTION

Pursuant to § 18-11 of the Charter of the City of Rochester, and in the interest of public accountability, the Police Accountability Board has made the following investigative report public. It has been redacted so as not to disclose the identities of the officers and civilians involved.

Pursuant to *Rochester Police Locust Club, Inc. v. City of Rochester*, 41 N.Y.3d 156 (2023), Rochester Police Officers can only be disciplined by the Rochester Police Department. Accordingly, where a finding of police misconduct has been sustained by the Board, the PAB issues disciplinary recommendations to the Chief based on our Disciplinary Matrix.

The final Board decision as to the PAB determination of misconduct and recommended discipline are followed by the investigatory report prepared by PAB staff.

BOARD DECISION

Public Tracking Number (PTN): 2023-0005

Date of Panel Review: 24-Oct-2024 5:30 PM (EDT)

Board Members Present: [REDACTED], [REDACTED], [REDACTED]

Case Findings:

Sustained: Allegations 3, 4, 8

Not sustained: Allegations 1, 2, 5,6,7,9

Disciplinary Recommendation:

Officer [REDACTED] [REDACTED] (Officer 1) - Termination.

Officer [REDACTED] [REDACTED] (Officer 3) - 10-day suspension.

Dissenting Opinion/Comment: N/A.



DEFINITIONS

Exonerated: A finding at the conclusion of an investigation that either the alleged act did not occur, or that although the act at issue occurred, the subject officer's actions were lawful and proper and within the scope of the subject officer's authority under police department guidelines.

Not Sustained: A finding at the conclusion of an investigation that there is insufficient evidence to establish whether an act of misconduct occurred.

Sustained: A finding at the conclusion of an investigation by a preponderance of the evidence that the subject officer committed the act charged in the allegation and that it amounted to misconduct.

Closed: Vote to close the case.



Allegation # 1:

Officer 1 failed to be truthful in accordance with RPD Rule 4.6 by stopping Complainant 1 on 11.12.22 for an alleged failure to signal.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
 - **Does the Board Agree with the Proposed Disciplinary Action? N/A**
-

Allegation # 2:

Officer 2 failed to be truthful in accordance with RPD Rule 4.6 by stopping Complainant 1 on 11.12.22 for an alleged failure to signal.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
 - **Does the Board Agree with the Proposed Disciplinary Action? N/A**
-

Allegation # 3:

Officer 1 detained Complainant 1 on 11.12.22 without probable cause, or reasonable suspicion that Complainant 1 posed a safety risk, which violates U.S. Constitution Amendment 4, RPD Rule 2.15, RPD General Order 585, RPD Training Bulletin L-26-98 and RPD Training Bulletin L-32-99. This is also malfeasance as defined by the RPD Rules and Regulations.

- **Does the Board Agree with the Findings of Fact? Yes**
 - **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
 - **Does the Board Agree with the Proposed Disciplinary Action? Yes**
-

Allegation # 4:

Officer 3 detained Complainant 1 on 11.12.22 without probable cause, or reasonable suspicion that Complainant 1 posed a safety risk, which violates U.S. Constitution Amendment 4, RPD Rule 2.15, RPD General Order 585, RPD Training Bulletin L-26-98 and RPD Training Bulletin L-32-99. This is also malfeasance as defined by the RPD Rules and Regulations.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
- **Does the Board Agree with the Proposed Disciplinary Action? Yes**



Allegation # 5:

On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 2 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
- **Does the Board Agree with the Proposed Disciplinary Action? N/A**

Allegation # 6:

On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 4 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
- **Does the Board Agree with the Proposed Disciplinary Action? N/A**

Allegation # 7:

On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 5 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
- **Does the Board Agree with the Proposed Disciplinary Action? N/A**

Allegation # 8:

Officer 1 made and submitted an official report, which inaccurately described [REDACTED] search and seizure of Complainant 1 on 11.12.22. This act is a violation of RPD Rule 4.6 and RPD Rule 5.1(c). This act is also Misfeasance as defined by the RPD Rules and Regulations.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? Yes**
- **Does the Board Agree with the Proposed Disciplinary Action? Yes**



Allegation # 9:

Officer 6 failed to take action regarding the misconduct on the part of [REDACTED] subordinates during the incident, or after the incident, which is a violation of RPD Rule 6.2 and considered neglect of duty.

- **Does the Board Agree with the Findings of Fact? Yes**
- **Does the Board Agree with the Substantiated Evidence of Misconduct? N/A**
- **Does the Board Agree with the Proposed Disciplinary Action? N/A**



PAB

City of Rochester
Police Accountability Board
Established 2019

245 E. Main Street
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CLOSING REPORT

STATEMENT OF AUTHORITY

Article XVIII of the Rochester City Charter defines the authority and duties of the Police Accountability Board. Pursuant to § 18-1, "The Police Accountability Board shall be the mechanism to investigate such complaints of police misconduct and to review and assess Rochester Police Department patterns, practices, policies, and procedure...The Police Accountability Board shall provide a nonexclusive alternative to civil litigation."

EXECUTIVE SUMMARY

The incident occurred on November 12, 2022 on Thomas Street between Wilkins Street and Bernard Street, 14621 in Clinton section during a traffic stop. Mr. [REDACTED] is the owner and operator of the vehicle at the time, with [REDACTED] as a passenger. Rochester Police Department's Officer [REDACTED] and [REDACTED] partner on duty, Officer [REDACTED] initiated the traffic stop for a reported failure to signal when Complainant 1 made a right turn onto Thomas Street at approximately 9:24pm. During the traffic stop, Officer 1 discovered that Complainant 1's vehicle registration expired 13 days prior on October 30, 2022. During the stop, additional RPD Officers [REDACTED] and later [REDACTED] arrived on scene. The initial report to PAB alleges that the RPD officers removed Complainant 1 from [REDACTED] vehicle to conduct a warrantless search. During that vehicle search, RPD officers discovered an unregistered firearm prompting Complainant 1's subsequent arrest. This investigation seeks to determine if the aforementioned RPD officers properly executed the search and seizure in accordance with the United States Constitution, New York State Law, RPD Rules, General Orders and Training.

INVOLVED OFFICERS

Identifier	Officer Name	Badge / Employee #	Date of Appointment	Sex	Race / Ethnicity
Officer 1	Officer [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officer 2	Officer [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officer 3	Officer [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officer 4	Officer [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officer 5	Officer [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officer 6	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

INVOLVED INDIVIDUALS

Identifier	Name	Age	Sex	Race / Ethnicity
Complainant 1	[REDACTED]	33	M	-
Witness 1	[REDACTED]	32	M	Black / Non-Hispanic



ALLEGATIONS

1. Untruthfulness	Officer 1 failed to be truthful in accordance with RPD Rule 4.6 by stopping Complainant 1 on 11.12.22 for an alleged failure to signal.
2. Untruthfulness	Officer 2 failed to be truthful in accordance with RPD Rule 4.6 by stopping Complainant 1 on 11.12.22 for an alleged failure to signal.
3. Unlawful Detention	Officer 1 detained Complainant 1 on 11.12.22 without probable cause, or reasonable suspicion that Complainant 1 posed a safety risk, which violates U.S. Constitution Amendment 4, RPD Rule 2.15, RPD General Order 585, RPD Training Bulletin L-26-98 and RPD Training Bulletin L-32-99. This is also malfeasance as defined by the RPD Rules and Regulations.
4. Unlawful Detention	Officer 3 detained Complainant 1 on 11.12.22 without probable cause, or reasonable suspicion that Complainant 1 posed a safety risk, which violates U.S. Constitution Amendment 4, RPD Rule 2.15, RPD General Order 585, RPD Training Bulletin L-26-98 and RPD Training Bulletin L-32-99. This is also malfeasance as defined by the RPD Rules and Regulations.
5. Failure to Intervene	On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 2 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.
6. Failure to Intervene	On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 4 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.
7. Failure to Intervene	On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 5 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.
8. Falsifying Reports	Officer 1 made and submitted an official report, which inaccurately described [REDACTED] search and seizure of Complainant 1 on 11.12.22. This act is a violation of RPD Rule 4.6 and RPD Rule 5.1(c). This act is also Misfeasance as defined by the RPD Rules and Regulations.
9. Neglect of Duty	Officer 6 failed to take action regarding the misconduct on the part of [REDACTED] subordinates during the incident, or after the incident, which is a violation of RPD Rule 6.2 and considered neglect of duty.

INVESTIGATION

The Police Accountability Board notified the Rochester Police Department of this investigation, and requested all relevant evidence via a Source of Information request form, on January 31, 2023. RPD Liaison to the PAB, Captain Steven D. Swetman responded via the Shared File Transfer folder on February 8, 2023 by stating, “RPD received your request on 1-31-23. I have attached the CAD job cards, reports, and BWC for this arrest. There were no IAPRO files. Thanks Captain Swetman 2-8-23”. PAB reviewed the evidence provided by RPD while gathering additional evidence. PAB conducted a search of the City of Rochester Police Department Discipline Database for each involved officer in efforts to obtain disciplinary records not provided by RPD. One document P.S.S #21-1323 reveals that Officer 1 received discipline for [REDACTED] involvement in an incident, which occurred on September 13, 2021. On April 10, 2024 during Complainant 1 provided a DVD to PAB, which contained BWC footage captured the night of the incident by Officers 1, 2, 4 and 5. The BWC footage provided by the complainant is identical to the BWC footage provided by RPD on February 8, 2023. PAB sent a second Source of Information request to RPD on May 20, 2024 requesting the following evidence: 1. Officer [REDACTED] [REDACTED] training and disciplinary records



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(excluding P.S.S. #21-1323, which is available via City of Rochester Public Records). 2. Officer [REDACTED] training and disciplinary records. 3. Officer [REDACTED] training and disciplinary records. 4. [REDACTED] training and disciplinary records. 5. Officer [REDACTED] training and disciplinary records. 6. Officer [REDACTED] training and disciplinary records. 7. Any and all reports of traffic stops or RPD interactions with [REDACTED] between 10/01/2022-11/12/2022. 8. All BWC footage of previous traffic stops and RPD interactions with [REDACTED] between 10/01/2022-11/12/2022. 9. All interdepartmental correspondence mentioning [REDACTED]. Captain Steven D. Swetman responded to this second SOI request via the Shared File Transfer folder on May 27, 2024 by stating, "RPD received your request on 5-20-24 at 1027hrs. I was out with a medical issue at this time. All discipline records are on the 50A portal. All officers attend a 6.5 month DCJS approved academy for training. This is part of a large conversation for what training records you are looking for. I am only able to find the one incident that I provided all documents to the PAB about February 8, 2023. This included BWC, grand jury documents, reports, UTT's etc. I do not see a record of anything other than 11-12-22. I do not see any IDC's regarding [REDACTED]. Thanks Captain Swetman 5-27-24."

EVIDENCE SUMMARY

Evidence	Description
Officer 1 BWC Video 1 Recorded Saturday, November 12, 2022 9:23:48p-9:25:47p, provided by RPD.	The video begins at 9:23pm with Officer 1 driving. Officer 1 exits the vehicle and approaches the driver side of Complainant 1's pick-up truck. Complainant 1's window is open substantially but not completely. The window also does not appear to have a tint. Officer 1 asks Complainant 1 and the passenger (Witness 1) how they are doing, to which Complainant 1 responds "alright, yourself?" Officer 1 replies "good" and asks Complainant 1 if [REDACTED] knows why [REDACTED] is being stopped. Complainant 1 responds that [REDACTED] does not know, and Officer 1 informs Complainant 1 that [REDACTED] stopped [REDACTED] for failing to signal before turning on [REDACTED] St. Officer 1 notices tears on Complainant 1's face asks Complainant 1 if [REDACTED] is ok. Complainant 1 looks over at [REDACTED] passenger and states, "I just flicked the signal". Complainant 1 turns back to Officer 1 and explains that [REDACTED] was crying because it is [REDACTED] daughter's birthday, and she had an anxiety attack while out with [REDACTED]. [REDACTED] mentioned something about the daughter wanting her mother and this ultimately being a bad day for [REDACTED] which [REDACTED] was discussing with [REDACTED] friend and passenger prior to the stop. Despite crying, the footage reveals that Complainant 1's demeanor is objectively calm and cooperative. Throughout the interaction, Complainant 1 gesticulates often and rests [REDACTED] left arm on the upper frame of the door making [REDACTED] hands visible. Additionally, both Officer 1 and Officer 2 are using their flashlights from either side of the vehicle to illuminate the front seat making more visible the hands of Complainant 1 and Witness 1 respectively. Upon Officer 1's request, Complainant 1 reaches into [REDACTED] pocket to retrieve [REDACTED] wallet and provide [REDACTED] driver's license. While Complainant 1 is reaching for [REDACTED] wallet, [REDACTED] passenger and friend begins to speak stating, "Y'all gotta come up with better tactics, there's nothing in here. I promise you. Y'all gotta come up with better tactics." Officer 1 questioned Witness 1 by stating "better tactics? What do you know about tactics my man?" Complainant 1 provides Officer 1 with the license. Officer 1 inquires about the status of Complainant 1's license and Complainant 1 responds, "It is perfectly fine". Officer 1 then examines the registration sticker of the vehicle with [REDACTED] flashlight and discovers that the registration expired. Officer 1 announces this to Officer 3 as [REDACTED] approached by stating, "regis (registration) expired" before walking back to [REDACTED] car to check the license. Officer 1 gets into the vehicle, once again announcing "regis (registration) expired" before the video ends at 9:25pm.



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Evidence	Description
<p>Officer [REDACTED] 2 BWC Video 1</p> <p>Recorded Saturday, November 12, 2022 9:24:36p-9:25:41p, provided by RPD.</p>	<p>This video begins at 9:24pm from the perspective of Officer [REDACTED] 2 who approaches the passenger side of Complainant 1's vehicle with [REDACTED] flashlight on illuminating the front of the vehicle. The passenger side window is completely down and both Complainant 1 and Witness 1's hands are respectively visible. As Officer 1 is speaking with Complainant 1, the passenger, Witness 1 smiles upon hearing Officer 1 assert the reason for the traffic stop as a failure to signal. Witness 1 then states, "[REDACTED] just signaled" which was immediately repeated by Complainant 1 who turned to [REDACTED] briefly to verify by stating, "I just turned the signal". Witness 1 agrees and chuckles while shaking [REDACTED] head. While still smiling, Witness 1 then states, "Come on man, y'all gotta use better tactics than that to try to pull people over just to fuck with them. We go thru this shit too much. Y'all really gotta come up with better tactics bruh, for real." Witness 1 then looks toward Officer 1 as Complainant 1 is getting [REDACTED] wallet out of [REDACTED] pocket, and shrugs with both of [REDACTED] hands raised while stating, "Ain't nothin' in here. Ain't nothing in here. I promise you. Y'all gotta come up with better tactics." As Officer 1 accepts the license from Complainant 1, [REDACTED] responds to Witness 1 stating, "better tactics? What do you know about tactics my man?" Witness 1 repeats that "this is getting old" asserts that it happens "every other day". Officer 2 then heads back to the RPD vehicle with Officer 1 to run the license as Officer 4 replaces [REDACTED] at the passenger side window of Complainant 1's vehicle and begins to engage with Witness 1 by stating, "then get the car fixed huh? Get the registration fixed." The video ends at 9:25pm.</p>
<p>Officer 4 BWC Video 1</p> <p>Recorded Saturday, November 12, 2022 9:25:45p-9:30:29p, provided by RPD.</p>	<p>The video begins at 9:25pm with Witness 1 explaining [REDACTED] confusion regarding why they were stopped. Witness 1 asserts that [REDACTED] is not being hostile but pointed out that the first officer (1) stated they were stopped for a failure to signal, however the other Officer (3) is claiming this was related to an expired registration. Officer 3 responded that [REDACTED] and Officer 4 did not make the stop, but Officer 1 informed them that the registration had expired. Officer 4 added, "You gotta understand there can be two things going on, [REDACTED] can see that you didn't signal, and the registration can be (expired), regardless of anything the registration is expired". Complainant 1 stated that [REDACTED] did signal, although it might have been late, [REDACTED] assured the officers that [REDACTED] used a signal. At 9:27pm (1:17 of the video), Officer 1 instructs Complainant 1 to exit the vehicle, which [REDACTED] does while stating, "I don't know what's going on." Officer 2 states, "we'll explain it to you man". Complainant 1 is handcuffed immediately once [REDACTED] exits the vehicle. While this is happening, Witness 1 expresses disbelief at the current predicament by stating, "This is crazy man. I'm on my way to the house, going to get my food then going home." Complainant 1 echoes these words and jokingly says to Witness 1 "do you see why I wanted to stay home?" to which Witness 1 replies "yea man, this shit is crazy." Complainant 1 is asked if [REDACTED] has a weapon on [REDACTED] and responds in the affirmative while explaining that [REDACTED] had been shot before and was in fear for [REDACTED] life. Witness 1 is then instructed to exit the vehicle, which [REDACTED] does and is immediately handcuffed, searched and placed in the back of an RPD vehicle by Officer 4 pending the search of Complainant 1's truck. Once Witness 1 is securely in the back of the vehicle, Officer 4 puts on [REDACTED] gloves and returns to Complainant 1's truck to begin the search. Video concludes at 9:30pm.</p>



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Evidence	Description
Officer 4 BWC Photo . Provided by RPD.	This photo shows a loaded 18-round capacity magazine discovered in some part of the vehicle during the search.
Officer 3 BWC Video 1 Recorded Saturday, November 12, 2022 9:25:49p-9:31:35, provided by RPD.	<p>The video starts at 9:25pm with Complainant 1 and Witness 1 expressing their confusion regarding why they were stopped. Specifically citing that they did not do anything wrong. Officer 4 speaks to Witness 1 on the passenger side stating there is an issue with the registration. Witness 1 responded to this stating that the Officer who stopped them (1) said it was a failure to signal. Officer 3 reminded Complainant 1 and Witness 1 that ■■■self and Officer 4 did not make the stop but are with Officer 1 and Officer 2 who informed them that they observed a failure to signal, and then discovered an expired registration. Witness 1 assures Officer 4 that ■■■ is not trying to be hostile but shares in Complainant 1's confusion because Officer 1 said one thing, and now they're are saying another. Officer 3 shines ■■■ flashlight on the Registration sticker to confirm its expiration and stands by. Complainant 1 once again states that ■■■ might have signaled later before turning but ■■■ did use ■■■ signal. At 9:27pm (01:12 of this video), Officer 3 turns to look at Officer 1 briefly, and is instructed by Officer 1, to have Complainant 1 take the keys out of the ignition. Officer 3 obliges this request, prompting Complainant 1 to turn off the vehicle. Complainant 1 can be heard stating, "sure, but I don't know what's going on" as Officer 1 moves closer to the driver side front door and grabs the door handle. At 00:55 of the video, Officer 1 requests that Complainant 1 step out of the vehicle. Complainant 1 asks Officer 1 "For what sir?" but is given no answer. Officer 1 then instructs Complainant 1 to "take a step out of the car". Complainant 1 complies while stating, "Ok, but I don't know what's going on". Immediately upon exiting the vehicle, Officer 1 grabs Complainant 1's arm and begins to handcuff ■■■. While handcuffing Complainant 1 with officer 3's assistance, Officer 1 states only "do me a favor and put your hands behind your back, you're just detained for now alright?" There is communication between Officer 1 and Officer 3 about the need to "double cuff ■■■" as Complainant 1 jokingly states to Witness 1 "do you see why I wanted to stay home?" Officer 1 secures Complainant 1's hands in the handcuffs and states, "dude you're detained alright?" Officer 1 initiates a pat down of Complainant 1 while asking ■■■ if ■■■ has any weapons on ■■■. Complainant 1 answers in the affirmative. Officer 1 asks Complainant 1 about the weapon to which Complainant 1 explains that ■■■ was previously the victim of a shooting, of which the shooter is unknown causing ■■■ to carry a gun for protection in fear of ■■■ life. Complainant 1 went on to inform Officer 1 that the gun was in the bandaging wrapped around ■■■ stomach, which covered ■■■ gunshot wound. Officer 1 then instructs another officer to go to the other side of the vehicle and grab Witness 1 because ■■■ is not free to leave. Officer 3 takes possession of the firearm recovered by Officer 1 and walks to the trunk of one of the RPD vehicle parked behind the truck. Officer 3 removes the magazine from the firearm then pulls back the slide several times to ensure that the chamber is empty. Once ■■■ confirms that the chamber is empty and the gun is safely disarmed, ■■■ notices Officer 1 approaching the vehicle from the passenger side with Complainant 1 in custody. Officer 3 asks Officer 1 to open the trunk of the vehicle. The camera also captures Officer 4 escorting a handcuffed Witness 1 to a separate RPD vehicle. The video concludes at 9:31pm with Officer 3 securing the weapon in the back trunk of the vehicle.</p>



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Evidence	Description
<p>Officer 1 BWC Video 2</p> <p>Recorded Saturday, November 12, 2022 9:26:16p-9:30:31p, provided by RPD.</p>	<p>At 9:26pm, this video shows Officer 1 sitting in the driver seat of [REDACTED] RPD vehicle typing the information from Complainant 1's license into the PC monitor. Officer 1 then exits the vehicle and approaches the pick-up truck again while putting [REDACTED] gloves on. At 9:27pm (00:47 of the video), Officer 3 turns to look at Officer 1 briefly, and is instructed by Officer 1, to have Complainant 1 take the keys out of the ignition. Officer 3 obliges this request, prompting Complainant 1 to turn off the vehicle. Complainant 1 can be heard stating, "sure, but I don't know what's going on" as Officer 1 moves closer to the driver side front door and grabs the door handle. At 00:55 of the video, Officer 1 requests that Complainant 1 step out of the vehicle. Complainant 1 asks Officer 1 "For what sir?" but is given no answer. Officer 1 then instructs Complainant 1 to "take a step out of the car". Complainant 1 complies while stating, "Ok, but I don't know what's going on". Immediately upon exiting the vehicle, Officer 1 grabs Complainant 1's arm and begins to handcuff [REDACTED]. While handcuffing Complainant 1 with officer 3's assistance, Officer 1 states only "do me a favor and put your hands behind your back, you're just detained for now alright?" There is communication between Officer 1 and Officer 3 about the need to "double cuff [REDACTED]" as Complainant 1 jokingly states to Witness 1 "do you see why I wanted to stay home?" Officer 1 secures Complainant 1's hands in the handcuffs and states, "dude you're detained alright?" Officer 1 initiates a pat down of Complainant 1 while asking [REDACTED] if [REDACTED] has any weapons on [REDACTED]. Complainant 1 answers in the affirmative. Officer 1 asks Complainant 1 about the weapon to which Complainant 1 explains that [REDACTED] was previously the victim of a shooting, of which the shooter is unknown causing [REDACTED] to carry a gun for protection in fear of [REDACTED] life. Complainant 1 went on to inform Officer 1 that the gun was in the bandaging wrapped around [REDACTED] stomach, which covered [REDACTED] gunshot wound. Officer 1 then instructs another officer to go to the other side of the vehicle and grab Witness 1 because [REDACTED] is not free to leave. Officer 1 speaks into [REDACTED] two-way radio, "257". A man responds, "go ahead". Officer 1 states "Go ahead and mark one under recovery handgun". The voice then responds inaudibly. Officer 1 asks [REDACTED] fellow officers if the passenger has a gun, and they respond no. Officer 1 continues to pat down and search Complainant 1 as [REDACTED] inquires about the possibility of a ticket instead of an arrest. Officer 1 tells [REDACTED] no and then asks Complainant 1 if [REDACTED] has a pistol permit. Complainant 1 confirms that [REDACTED] does not have a pistol permit, but reiterates that [REDACTED] has only has the gun for protection because fears a potential threat to [REDACTED] life after being shot by an unidentified person. Officer 1 states that [REDACTED] understands. Officer 1 announces to [REDACTED] fellow officers that the Witness 1, the passenger will be free to go once a search of the vehicle is complete. Officer 1 escorts Complainant 1 to the passenger back door of [REDACTED] vehicle and asks [REDACTED] to sit in the car. At 9:29p (3:30 of the video), Complainant 1 is having some issues getting into the vehicle but reassures the officers that [REDACTED] is not being argumentative. Officer 1 acknowledges that Complainant 1 has been cooperative by stating "Dude! Dude, you've been cool with me, I'll be cool with you man." Officer 1 then goes to the back of the vehicle where another Officer 3 is examining the confiscated firearm. Officer 1 asks Officer 3 if they need a "tech", and Officer 3 says no then reveals that the gun had no round in the chamber but 18 rounds in the magazine. Officer 1 further physically inspects the firearm confirming that it is not loaded. Officer 1 then acknowledged the make of the firearm by saying "Canik? Never heard of that." This video concludes with Officer 1 placing the firearm on the trunk of</p>



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Evidence	Description
	<p>■ RPD vehicle then walking up to the driver side of Complainant 1's truck which is still being searched by the other officers. Officer 1 states: "Yea, we're going to toss it. Just do a really good look over of it please." It is unclear what Officer 1 is referring to when ■ states, "we're going to toss it". The video ends at 9:30pm.</p>
<p>Officer ■ 2 BWC Video 2</p> <p>Recorded Saturday, November 12, 2022 9:26:24p-9:38:43p, provided by RPD.</p>	<p>This video begins with Officer ■ 2 exiting the passenger seat of the RPD vehicle and approaching the passenger side of Complainant 1's truck where Officer 4 is standing. Officer 4 is explaining to Complainant 1 that Officer 1 said ■ did not see ■ signal properly, to which Complainant 1 replies that ■ may have signaled late but ■ did indeed signal. Officer 4 says, "regardless of that your registration is expired." At 9:27pm (1:02 of the video), Officer 1 instructs Complainant 1 to exit the vehicle, which ■ does while stating, "I don't know what's going on." Officer 2 states, "we'll explain it to you man". Complainant 1 is immediately handcuffed upon exiting the vehicle. While this is happening, Witness 1 expresses disbelief at the current predicament by stating, "This is crazy man. I'm on my way to the house, going to get my food then going home." Complainant 1 echoes these words and jokingly says to Witness 1 "do you see why I wanted to stay home?" to which Witness 1 replies "yea man, this shit is crazy." Complainant 1 is asked if ■ has a weapon on ■ and responds in the affirmative while explaining that ■ had been shot before and was in fear for ■ life. Officer 2 then walks from the passenger side of the truck, around the rear to the driver side where ■ is redirected by Officer 1 to return to the passenger side and "grab" the passenger. Officer 2 returns to the passenger side as Witness 1 is exits the vehicle with ■ hands up. Officer 4 immediately handcuffs Witness 1 then begins to search Witness 1 with the assistance of two other RPD Officers as Officer 2 stands by. Witness 1 is asked about possession of weapons, which ■ denies having and states there are no other weapons in the vehicle. Officer 1 asks if Witness 1 has a gun and the other Officers said no. When the search is complete, Officer 4 walks Witness 1 to one of the RPD vehicles. As they walk by Officer 1 who is instructing Complainant 1 on the best way to get into the RPD vehicle, Officer 1 informs Officer 4 that Witness 1 will be free to leave as soon as they confirm there are no other weapons in the vehicle. Complainant 1 is standing in the door of the car having some issues getting into the vehicle but reassures the officers that ■ is not being argumentative. Officer 1 acknowledges that Complainant 1 has been cooperative by stating "Dude! Dude, you've been cool with me, I'll be cool with you man." Officer 1 then goes to the back of the vehicle. Complainant 1 reiterates that ■ only had the gun for protection, and ■ is not going to argue about anything because ■ does security so ■ is not against them. Complainant 1 attempts to get into the vehicle and is unsuccessful. Complainant 1 explains to Officer 2 that ■ has had many medical complications which is ■ is still dealing with in the aftermath of being shot the year prior. Complainant 1 goes onto say that ■ lack of mobility because of the shooting and ■ current body build makes it difficult and painful to get into the RPD vehicle while handcuffed behind ■ back. Officer 2 acknowledges what Complainant 1 is saying but retorts that ■ has to get in the vehicle and though it may be difficult, there are no other vehicles available. Complainant 1 states that ■ is not going anywhere to which Officer 2 responds, "The faster you get in the car, the faster we can get this done". Complainant 1 expresses a need for help because ■ fears that ■ will fall backward and tells Officer 2 that ■ does not understand. At Officer 2's encouragement, Complainant 1 once again attempts to sit in</p>



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	<p>the vehicle and sits partially onto the seat. Officer 1 returns to engage with Officer 2 and another officer about the issue of transporting Complainant 1. Officer 1 recommends taking the SUV, which may have a bigger “cage”. The other officers convene near the trunk of the vehicle leaving Officer 2 alone with Complainant 1. Complainant 1 asks if ■ can get an appearance ticket instead of being taken to jail and is told that it is not an option but ■ can see the judge on Monday. Complainant 1 asks to contact ■ father and the officer stated “not right now”. Officer 1 returns to address Complainant 1 not being able to get into the vehicle. Complainant 1 states that ■ can fit if they will help ■. At 9:35pm (8:40 of this video), Officer 6 approaches Complainant 1, activates ■ BWC device and asks ■ “what’s up?” Complainant 1 admits that ■ was pulled over with an illegal firearm and explains only having it for protection because ■ was the victim of a shooting. Complainant 1 explains to Officer 6 that ■ still has medical issues from the shooting and wants to know if there is any way to get an appearance ticket for court instead of having to go to jail. Officer 6 explains to Complainant 1 that after something like this, the officers have to take ■ to a police station, to sit in a room and speak to an investigator about ■ options, but assures Complainant 1 that this cannot be done on the side of the road. Complainant 1 expresses ■ difficulty with getting into the vehicle and Officer 6 states “We’ll take care of it ok? Just give me a few minutes, I’ll figure it out.” There is further discussion between Officer 1 and Officer 2 about the size of the SUV cage and if it would make a difference. Complainant 1 states that ■ fingers are hurting. Officer 6 returns to inform Complainant 1 that it will take a few minutes to arrive but they have a van showing up which will be more comfortable. Complainant 1 asks if ■ can stand because ■ is in pain and ■ 6 permits ■ to do so if ■ leans against the vehicle. Complainant 1 begins to exit the vehicle while grimacing and stating, “I can barely move”. Video ends at 9:38pm.</p>
<p>Officer 5 BWC Video 1</p> <p>Recorded Saturday, November 12, 2022 9:27:24p-9:30:39p, provided by RPD.</p>	<p>Officer 5 exits ■ vehicle then walks by RPD vehicle 297 and approaches the pick-up truck. Footage reveals at least one officer standing outside of the driver door with a handcuffed Complainant 1. Video also shows two ■ officers standing at the passenger door of the vehicle. One of the officers at the passenger door walks away as Officer 5 approaches the passenger side of the vehicle. The officer closest to the vehicle is speaking with the ■ passenger seated in the passenger seat of the vehicle. The officer closest opens the door of the vehicle and the passenger whose arms are raised upward with palms opened informs the officer that ■ is wearing a seatbelt. The officer instructs the passenger to unbuckle the seatbelt then step out of the vehicle. The passenger complies. The officer asks the passenger if ■ has any weapons on ■ to which the passenger replies, “no sir”. The passenger exits the vehicle and faces the vehicle while the officer handcuffs ■. Once the passenger is in handcuffs, the officer asks ■ “do you have any firearms on you?” to which the passenger replied, “No sir”. The officer then asks, “Are there any firearms in the vehicle?” to which the passenger replied, “No sir”. The officer begins to search the passenger’s pants and jacket pockets. Another officer asks if the passenger has a gun on ■ and the officer searching the passenger says no. The passenger is the officer then walks away with the passenger. That officer comes back and begins to search the vehicle from the passenger side while Officer 5 begins searching from the driver side. Video ends at 9:30pm with Officer grabbing an unknown item. (Possibly a canister of mace/pepper spray).</p>



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<p>Officer 6 BWC Video 1</p> <p>Recorded Saturday, November 12, 2022 9:35:12-9:36:26p, provided by RPD.</p>	<p>This video inexplicably begins with immediate audio and video at 9:35pm. Officer 6 is speaking to Complainant 1 as ■ sits partially into the RPD vehicle. Officer 6 asks Complainant 1 “what’s up?” Complainant 1 admits to being pulled over with an illegal firearm, and then explains that ■ has it for protection because ■ was the victim of a shooting. Complainant 1 explains to Officer 6 that ■ still has medical issues from the shooting and wants to know if there is any way to get an appearance ticket for court instead of having to go to jail. Officer 6 explains to Complainant 1 that after something like this, the officers have to take ■ to a police station, to sit in a room and speak to an investigator about ■ options, but assures Complainant 1 that this cannot be done on the side of the road. Complainant 1 expresses ■ difficulty with getting into the vehicle and Officer 6 states “We’ll take care of it ok? Just give me a few minutes, I’ll figure it out.” At 9:26pm, the video concludes with Officer 6 walking away.</p>
<p>Officer 5 BWC Video 2</p> <p>Recorded Saturday, November 12, 2022 9:38:09p-10:04:39p, provided by RPD.</p>	<p>This video begins at 9:38pm and shows Officer 5 approaching RPD vehicle #297 from the rear as other Officers speak to a handcuffed Complainant 1 who is standing outside of the vehicle, leaning against the vehicle. Complainant 1 is explaining to the officers how ■ life has changed since ■ was shot. Complainant 1 tells the officers that ■ died and was brought back on ■ way to the hospital. Complainant 1 further states, ■ was kept in an induced coma for two and a half months at the hospital. Complainant 1 expressed concern n about being in jail given ■ medical issues, which make it difficult to sleep in ■ own personal bed at home. RPD reassures ■ Complainant 1 ■ will have access to a nurse and medical accommodations while in custody, and if ■ needs to transport to the hospital for additional care, it will be arranged. Complainant 1 inquires about ■ vehicle and is informed that it will be towed, but can be recovered Monday. At 9:49pm, Complainant 1’s passenger and friend Witness 1 has been released and walks by. Complainant 1 asks Witness 1 to contact ■ father and let ■ know what happened, which Witness 1 agrees to do. Complainant 1 and the officers continue to wait for the RPD van. Complainant 1 expresses that the handcuffs were hurting ■ and one of the officer’s attempts to adjust them on ■ hands somewhat, which provided some relief according to Complainant 1. The officers talk more about the vehicle and the size of the “cage”. Complainant 1 suggests that ■ can sit with ■ hands to ■ side and assures the officers ■ intends to be cooperative and will not try to escape. The officers inform Complainant 1 that this is not possible. At 9:53pm, The officers discuss if the Impala would better accommodate Complainant 1’s medical needs and Complainant 1 agrees to try and does but is unsuccessful and expresses a great deal of pain during and after the attempt. Complainant 1 makes another attempt soon after and painfully enters the back of Officer 5 vehicle at 9:56pm. Officer 5 immediately gets into the vehicle and begins driving. Officer 5 announces to the dispatch that ■ is transporting a ■ to the RPD East facility. Officer 5 asks Complainant 1 if ■ would like some air, to which Complainant 1 replies yes. Officer 5 then let down the window. Complainant 1 expresses more pain and discomfort as Officer 5 assures ■ that they have done everything they can to make ■ comfortable and they will be arriving at the facility soon. They arrive at the facility at 10pm. Officer 5 exits the vehicle and is greeted by Officer 1 who commends ■ by stating, “yo you’re the man dude, thank you”. Officer 5 responds “of course” then requests assistance to help Complainant 1 exit the back of the vehicle. Complainant 1 expresses pain and discomfort related to the tightness of the handcuffs on</p>



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	<p>■ wrist. The officer encourage ■ to try to get a foot out of the car, at which point they will help ■ exit without falling, and fix the cuffs. Complainant 1 successfully exits the vehicle with the help of the officers and again mentions the tightness of the cuffs. The officers respond by assuring Complainant 1 that they will remove the cuffs as soon as they enter the building. They enter the building and the officers remove the cuff from one hand then cuff Complainant 1 to the table as ■ has a seat. The video ends with Officer 5 loosening the handcuff on Complainant 1's left wrist as much as ■ could according to ■. The officers offer Complainant 1 water and the video ends at 10:04pm.</p>
Officer ■ 2 BWC Video 3 , provided by RPD.	Recorded Saturday, November 12, 2022 9:44:20p-9:46:48p. This video shows Officer 2 confirming the make, caliber and serial number of the recovered firearm for another officer that appears to be Officer 6. Officer 2 also confirms that there were two magazines recovered. One of them with 18 rounds, and the other with 16 rounds.
Officer ■ 2 BWC Video 4 Recorded Saturday, November 12, 2022 9:46:51p-9:50:06p, provided by RPD.	This video starts at 9:46pm and shows Officer 2 having a conversation with two officers in their RPD vehicle before leaving the scene. Officer 2 then joins the other officers waiting with Complainant 1 who is standing and leaning beside the RPD vehicle they originally tried to put ■ in. Complainant 1 is explaining to the officers how ■ life has changed since ■ was shot. Complainant 1 tells the officers that ■ died and was brought back on ■ way to the hospital. Complainant 1 further states, ■ was kept in an induced coma for two and a half months at the hospital. Complainant 1 expressed concern about being in jail given ■ medical issues, which make it difficult to sleep in ■ own personal bed at home. RPD reassures ■ Complainant 1 ■ will have access to a nurse and medical accommodations while in custody, and if ■ needs to transport to the hospital for additional care, it will be arranged. Complainant 1 inquires about what will happen to ■ vehicle and ■ is informed that it will be towed and can be recovered Monday. The video concludes at 9:50pm with Witness 1 walking away once released. Complainant 1 asked Witness 1 to contact ■ father and let ■ know what happened.
Officer 4 BWC Video 2 Recorded Saturday, November 12, 2022 9:49:06p-9:53:47p, provided by RPD.	This video begins at 9:49pm with Witness 1 standing outside of the RPD vehicle while Officer 4 unlocks ■ handcuffs. An officer asks Witness 1 if there is anything they can get ■ and ■ responds that ■ lives around the corner. Officer 4 then says, "here's you ID, I'll walk you to the car so you can get your stuff." Officer 4 and Witness 1 walk to the car while other Officers on scene are interacting with Complainant 1. Complainant 1 asks Witness 1 to let ■ dad know what happened, and Witness 1 assures ■ that ■ will. Witness 1 stops at the vehicle to gather ■ things. While Witness 1 is gathering ■ things ■ engages in sporadic dialogue with Officer 4 about Complainant 1 being a good and honest person who is only carrying the weapon for ■ protection because ■ was shot, and the experience traumatized ■. The video ends at 9:53pm.
Officer 5 BWC Video 3 Recorded Saturday, November 12, 2022 10:46:37p-10:48:53p, provided by RPD.	This video inexplicably begins with immediate audio and video at 10:46pm. Officer 5 is holding a small note pad and ink pen as ■ enters the room where Complainant 1 is held. Officer 5 asks Complainant 1 about ■ education level, relationship status, if ■ has children, if ■ goes by another name, ■ employment status and the contact information for ■ mother. At 10:47pm (1:10 of the video) Complainant 1 asks, "Is there any way I can get that cup of water or something?" Officer 5 responds, "I'll work on it as soon as I'm done with these questions alright?" Officer 5 continues to question Complainant 1 about tattoos, and ■ parents contact info. Complainant 1 answers all the questions asked of ■ and Officer 5 writes the answers down then put s the notepad away while assuring



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	Complainant 1 that ■ will get ■ a drink of water. Complainant 1, who is smoking a cigarette, says, “■ told me twice already and ■ gave me this (cigarette) which is making me more thirsty.” Officer 5 again states, “I’ll work on it as ■ exits the room”. The video ends at 10:48pm.
Officer 5 BWC Video 4 Recorded Saturday, November 12, 2022 10:54:14p-10:55:08p, provided by RPD.	This video inexplicably begins with immediate audio and video at 10:54pm. Officer 5 is holding a small note pad and ink pen as ■ enters the room where Complainant 1 is held. Complainant 1 is noticeably in emotional distress and Officer 5 states, “we got water coming, somebody’s grabbing it right now alright?”. Complainant 1 states, “I feel like the room is closing in”. Officer 5 once again tells Complainant 1 that they have water on the way. Officer 5 with pen and pad in hand then asks Complainant 1 for ■ father’s contact information. Complainant 1 provides a phone number and then states that ■ is claustrophobic and feels like the walls are closing. Officer 5 assures Complainant 1 that ■ will not be here much longer. Complainant 1 says “I can’t do this” and then requests to be taken to the hospital as Officer 5 exits the room. This video ends at 10:55pm.
Officer 5 BWC Video 5 Recorded Saturday, November 12, 2022 11:01:57p-11:14:33p, provided by RPD.	This video inexplicably begins with immediate audio and video at 11:01pm. Officer 5 is in the room watching another officer remove the handcuff from the table and re-handcuff Complainant 1’s other hand. Complainant 1 is inquiring about why ■ was not informed of ■ expired registration previously from other officers that recently stopped ■ while driving. The officers do not provide an answer to this. Complainant 1 is then escorted from the room back outside the building. Complainant 1 asks, “I thought ■ was getting some water for me?” to which Officer 5 again states, “■ is, we’ll grab it. It’s on its way.” Officer 5 tells Complainant 1 “we’ve gotta do the same thing as before man” referring to how Complainant 1 would enter the vehicle. Complainant 1 became distraught and stated, “I’m not alright”. An unknown officer is standing aside the RPD vehicle. Officer 1 is present and can be heard speaking. Complainant 1 restates that ■ was in the hospital and asks why ■ cannot be taken to the hospital. Complainant 1 says ■ does not mind waiting longer to go to court. The unidentified officer says, “we can’t do that”. Complainant 1 then begins to enter the vehicle with assistance from Officer 5, Officer 1 and the unknown officer. Complainant 1 is showed a water bottle and told “we’ll give it to you when you get downtown”. Complainant 1 is taking ■ time getting into the vehicle and requesting that the officers allow ■ to pace ■ self. As Complainant 1 attempts to enter the vehicle, Officer 1 states “I’ll let you guys handle this and begins to walk away. Complainant 1 gets into the car and Officer 5 immediately gets into the drive seat and asks Complainant 1 if ■ wants the windows open. Complainant 1 answers in the affirmative and Officer 5 lets the window down. Officer 5 informs dispatch that ■ is transporting a ■ to booking. Officer 5 informs Complainant 1 that ■ will try to drive gently again. As the car moves, Complainant 1 is groaning and grunting and expressing that ■ is in pain. At 11:08 (6:44 of the video), Complainant 1 says, “I just don’t understand how I got stopped last week.... And they said it was because they got a stolen black dodge ram. They followed us from Clifford, and I was going to my house and they didn’t say nothing about the registration. Why didn’t they say anything about the registration that day?” Officer 5 responded by stating, “I’m not familiar with that.” Complainant 1 then asked, “would that stop be in the record?” to which Officer 5 replied “no”. Officer 5 then went on to say “All I know is you got pulled over and it came up expired alright? I wasn’t even the one that did the traffic stop.”



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	<p>Complainant 1 again inquires about the previous stop by stating, “I’m just wondering like so if you don’t issue a ticket or citation, or anything, it doesn’t go into your record for (getting) pulled over?” Officer 5 responds that ■ does not understand what Complainant 1 is asking but states that the officers may not have ran the registration because they were focused on the stolen vehicle issue. Complainant 1 states that this is mindboggling to ■ because ■ believes that the expired registration would have come up when they checked the plates, and if they had told ■ ■ would have fixed it. Complainant 1 says ■ will ask the lawyer and the judge about this because ■ does not understand why ■ did not get a ticket when ■ was stopped the week prior. Officer 5 again stated that ■ is not familiar but asserts that it is the officer’s discretion to write tickets or not write tickets. Officer 5 further states, the previous officers may or may not have known the registration was expired but “at the end of the day they’re not required to write tickets on anything”. Complainant 1 then asks if legally the officers are supposed to tell ■ to fix something wrong with the vehicle during the stop. Officer 5 states that ■ does not know and is not very familiar with the vehicle registration process as far as how Complainant 1 would be notified. Complainant 1 then explicitly asks Officer 5 if ■ pulled someone over, and checked the vehicle on the computer, if it would show an expired registration. Officer 5 responds in the affirmative, but adds, “if I looked into it”. Complainant 1 repeats that the officer who stopped ■ the week prior looked ■ up and told ■ everything was fine. Officer 5 says because they were looking to see if the vehicle was stolen and probably were not worried about anything else. The vehicle arrives at the facility and Officer 5 alerts dispatch that ■ has one ■. As Officer 5 enters the garage, Complainant 1 speaks to Officer 1 who is already in the garage and says, “I’ve got a couple questions for you”. Officer 1 says ok. Officer 5 parks, then ■ and Officer 1 assist Complainant 1 with exiting the vehicle as an unidentified officer stands by. The video ends at 11:14pm with Complainant 1 sharing more about ■ medical condition.</p>
Officer 1 BWC Video 3 Recorded Saturday, November 12, 2022 11:05:49p-11:06:45p, provided by RPD.	This video begins at 11:05pm and shows Complainant 1 standing outside of a RPD vehicle beside two RPD officers. Officer 1 approaches Complainant 1 and the audio begins at 00:30. The Officers are transporting Complainant 1 from one RPD facility to another requiring ■ to get back in an RPD vehicle while handcuffed. Complainant 1 is having difficulty entering the RPD vehicle, and Officer 1 began to instruct Complainant 1 on the best way to enter the vehicle along with the other officers. The video concludes at 11:06pm with Complainant 1 sitting down in the vehicle while Officer 1 walks away.
I/NetViewer Event Unit Form E2231602454 , provided by RPD.	This event form generated from the street for a traffic stop (TSTOB) at ■ St/Bernard St. Officers 2 and 1 are listed as the unit dispatched at 9:24pm. Officers 4, 3, 5, and Officer 6 are listed as involved in the event.
I/NetViewer Event Information Form E2231602454 , provided by RPD.	This event form generated from the street for a traffic stop (TSTOB) at ■ St/Bernard St on November 12, 2022 at 9:24pm. The form documents the recovery of a handgun and request to tow the vehicle.
RPD Incident Report (CR#: 2022-238566) , provided by RPD.	This incident report was created on November 12, 2022 at 9:28pm for Criminal Possession of a Weapon, which violates NYS Penal Law 265.02 at the incident address of 119 ■ Street. The report was completed by Officer 1 and reviewed by Officer 6



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	<p>on November 13, 2022. The report reveals Complainant 1's name, address and physical build. The report also reveals the make and model of the handgun with the amount of ammunition discovered. This report also reveals the make, model and other corresponding info of the vehicle driven by Complainant 1.</p> <p>Officer 1 details the event as follows: "On 11/12/2022, I was operating in the capacity as a fully uniformed Rochester operating a marked police vehicle with Officer 2. While in the area of Wilkins St and [REDACTED] St, I watched a 2004 Dodge Ram 1500 pickup truck bearing NYS reg HLH1156 fail to signal in a southbound direction down [REDACTED] St. I activated my emergency lights to initiate a traffic stop on the above vehicle. Upon making contact with the driver (A) Complainant 1 [REDACTED] I notified [REDACTED] why the stop was being conducted and [REDACTED] provided me with [REDACTED] NYS driver's license. I went back to my patrol vehicle and saw that (A) had a valid NYS driver's license but the registration on the vehicle had been expired. I asked (A) to step outside the vehicle so that I could conduct a search of the vehicle incident to tow. When (A) stepped out of the vehicle I asked [REDACTED] if [REDACTED] had any weapons on [REDACTED] (A) answered yes and told me that [REDACTED] was armed with a handgun in [REDACTED] waist band that was wrapped around [REDACTED] stomach. I asked (A) if [REDACTED] possessed a valid NYS pistol permit to which [REDACTED] does not have. (A) was then placed under arrest and transported back to the East Side office. Once inside interview room 123, I went into speak with (A) about the above incident and [REDACTED] requested a lawyer before speaking to me. (A) was later transported without incident to MCJ. [REDACTED] (sic) responded to the scene as the commanding officer. (A)'s vehicle was towed due to the expired registration after being searched by officers. Firearm information is as follows (1) Canik Arms model TP9 loaded with no rounds in the chamber and (18) in the magazine, serial:AP10987 which was negative 29 per records check. Another magazine was located inside the center consol (sic) of the vehicle which contained (16) 9mm rounds. I turned all property pertaining to the case to the property at the public safety building."</p>
RPD Discovery Checklist (CR#: 2022-238566) , provided by RPD.	<p>This document reveals completion of the following documents were completed as part of Complainant 1's arrest: Accusatory Instrument, Criminal History (File 15, Driver's License, etc.), Incident Report, Interview Form, Miranda Warnings / Rights Card, Officer Notes (a copy), Prisoner Data Report, Property Custody Reports, Towed Vehicle Report, Uniform Traffic Tickets. This document also reveals that the following documents were "Sent to DA": Accusatory Instrument, Incident Report, Interview Form, Miranda Warnings / Rights Card, Officer Notes (a copy), Prisoner Data Report, Property Custody Reports, Supporting Depositions, Technician Report, Uniform Traffic Tickets. Officer 6 is the reviewing supervisor who signed this document on 11/13/2022.</p>
RPD Grand Jury Referral, RPD 1186 (CR#: 2022-238566) , provided by RPD.	<p>This document lists the charges as Criminal Possession of a Weapon in the second and third degree. This document identifies Complainant 1 as the defendant, and Officer 1 as lead investigator and complainant. This document reveals that Officer 3 collected photographs. Officers 1, 2, 4, 3 and 5 collected body Worn Camera. Tow Report/Inventory completed by Officer 4.</p>
Felony Complaint CPW 2nd (CR#: 2022-238566) , provided by RPD.	<p>This document reads, "Your complainant, Officer 1, being duly sworn, deposes and states that I work at the premises known as 185 Exchange Blvd in the City of Rochester, States of New York. That on the 12 day of November, 2022, at approximately 9:28 PM at the premises known as 119 [REDACTED] St. in the City of Rochester, States of New York, I</p>



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	accuse said defendant Complainant 1 ■■■ unlawfully committing the class D Felony of Criminal Possession of a Weapon in the second degree, in violation of Section 265.02, subdivision 1 of the Penal Law of the State of New York. The factual basis for the above being upon personal knowledge, as follows: possesses any loaded firearm. Such possession shall not, except as provided in subdivision one or seven of section 265.02 of this article, constitute a violation of this subdivision if such possession takes place in such person's home or place of business. To wit the defendant, possess a loaded Century Arms Canik semiauto pistol, with 18 rounds. The firearm appeared to be operable and in good working condition. The defendant does not possess a pistol permit.
Felony Complaint CPW 3rd (CR#: 2022-238566) , provided by RPD.	This document reads, "Your complainant, Officer 1, being duly sworn, deposes and states that I work at the premises known as 185 Exchange Blvd in the City of Rochester, States of New York. That on the 12 day of November, 2022, at approximately 9:28 PM at the premises known as 119 ■■■ St. in the City of Rochester, States of New York, I accuse said defendant Complainant 1 ■■■ unlawfully committing the class D Felony of Criminal Possession of a Weapon in the third degree, in violation of Section 265.02, subdivision 1 of the Penal Law of the State of New York. The factual basis for the above being upon personal knowledge, as follows: complainant states that on or about the above listed date, time and place the defendant did commit the crime of Criminal Possession of a Weapon in the fourth degree as defined in Section 265.01, subdivision 1, 2, 3 or 5 of section 265.01, and having a previous conviction of any crime on 1/10/2012. To wit the defendant possessed a loaded Century Arms Canik semiauto pistol, with 18 rounds. The firearm appeared to be operable and in good working condition. The defendant does not possess a pistol permit. The defendant was previously convicted of Endangering the welfare of a Child, NYS PL 260.20(1), on 1/10/2012. That by the above actions, the defendant did knowingly and unlawfully possess the above mentioned weapon."
RPD Property Custody Report , provided by RPD.	This document describes the firearm taken into custody by make, model, serial number and ammunition.
RPD Tow Report, RPD 1212 (CR#: 2022-238566) , provided by RPD.	This document describes the make, model and other details related to the towing of Complainant 1's vehicle on the night of ■■■ arrest.
RPD Interview Form , provided by RPD.	This form reveals that at 10:00pm, RPD Officers began transporting Complainant 1 from the location of the traffic stop to the RPD office at 630 North Clinton where they arrived at 10:05pm. Officers 2 and 5 were present for the interview, which began at 10:08pm and ended at 10:12pm. RPD officers again began transporting Complainant 1 at 11:00pm to the Monroe County Jail located at 130 South Plymouth where they arrive and began the booking process at 11:10pm.
Rochester Police Department Notification and Waiver RPD 1185 , provided by RPD.	This document confirms that Complainant 1 was told of ■■■ Miranda rights, affirmed ■■■ understand and expressed that ■■■ did not want to talk with the officers without a lawyer. Officers 2 and 1 are listed as the interviewing members.



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Uniform Traffic Ticket / Supporting Deposition 1 , provided by RPD.	This is a uniform traffic ticket and supporting deposition charging Complainant 1 for an improper/no signal on 11/12/22. Officer 1 is the complainant and writes, "On the above date and time, I observed the defendant failure to signal south bound on [REDACTED] St. at Wilkins St. Upon making the traffic stop I learned that the vehicle registration was expired."
Uniform Traffic Ticket / Supporting Deposition 2 , provided by RPD.	This is a uniform traffic ticket and supporting deposition charging Complainant 1 for an unregistered motor vehicle on 11/12/22. Officer 1 is the complainant and writes, "On the above date and time, I observed the defendant failure to signal south bound on [REDACTED] St. at Wilkins St. Upon making the traffic stop I learned that the vehicle registration was expired."
Officer 5 incident notes , provided by RPD.	This note lists Complainant 1's personal information collected by Officer 5.
Officer 1 incident notes , provided by RPD.	This note lists Complainant 1's personal information collected by Officer 1.
RPD Prisoner Data Report (MoRIS #304069) , provided by RPD.	This document details the arrest and related charges.
Monroe County Crime Laboratory Firearms Report , provided by RPD.	This report details the lab assessment of the confiscated firearm by Forensic Firearms Examiner [REDACTED].
NYS VAT Law CHAPTER 71, TITLE 7, ARTICLE 28(b)	A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.
NYS VAT CHAPTER 71, TITLE 4, ARTICLE 14(a)	No motor vehicle shall be operated or driven upon the public highways of this state without first being registered in accordance with the provisions of this article, except as otherwise expressly provided in this chapter.
07/10/2024 Officer Statement Request for Officer 1	A notice sent to RPD Officer 1 from [REDACTED] PAB Investigator on July 10, 2024. The notice requests an interview or written statement from Officer 1 regarding allegations of police misconduct, which occurred on or about November 12, 2022.
07/10/2024 Officer Statement Request for Officer 2	A notice sent to RPD Officer 2 from [REDACTED], PAB Investigator on July 10, 2024. The notice requests an interview or written statement from Officer 2 regarding allegations of police misconduct, which occurred on or about November 12, 2022.
07/10/2024 Officer Statement Request for Officer 3	A notice sent to RPD Officer 3 from [REDACTED], PAB Investigator on July 10, 2024. The notice requests an interview or written statement from Officer 3 regarding allegations of police misconduct, which occurred on or about November 12, 2022.
07/10/2024 Officer Statement Request for Officer 4	A notice sent to RPD Officer 4 from [REDACTED], PAB Investigator on July 10, 2024. The notice requests an interview or written statement from Officer 4 regarding allegations of police misconduct, which occurred on or about November 12, 2022.



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07/10/2024 Officer Statement Request for Officer 5	A notice sent to RPD Officer 5 from [REDACTED], PAB Investigator on July 10, 2024. The notice requests an interview or written statement from Officer 5 regarding allegations of police misconduct, which occurred on or about November 12, 2022.
07/10/2024 Officer Statement Request for Officer 6	A notice sent to RPD Officer 6 from [REDACTED], PAB Investigator on July 10, 2024. The notice requests an interview or written statement from Officer 6 regarding allegations of police misconduct, which occurred on or about November 12, 2022.
P.S.S. case No. 21-1323 re: 1, Officer [REDACTED] [Redacted]	This is a redacted copy of the Professional Standards Service investigation into Officer 1, signed by Interim Chief David M. Smith on November 10, 2021. Officer 1's involvement in an RPD fleet vehicle accident on or about September 13, 2021 prompted investigation. Officer 1 is considered guilty of conduct, which violated RPD General Order 345 and RPD Rule 4.18 according to this report. As a result, a letter of reprimand issued to Officer 1 on December 8, 2021 from [REDACTED], Assistant Chief of Police. PAB obtained a copy of this report from the Police Department Discipline Database , which is available to the public in response to the June 2020 repeal of Section 50a of NYS Civil Service Law. The details of the report are not relevant to this PAB investigation and have not been considered during the course of the investigation with the exception of disciplinary action. In accordance with the disciplinary matrix, the disciplinary history of an officer will be considered when assessing an appropriate penalty resulting from the current investigation.
PAB Investigative Case Note - 2023-0005-01.	This note documents a phone call between the investigator and Complainant 1, which took place on January 25, 2024 to provide a status update of the case, gather additional information and schedule an in-person interview at the PAB office. Complainant 1 acknowledged the information [REDACTED] received and begun to offer additional info regarding this incident. Complainant 1 informed the Investigator that [REDACTED] does not believe signaling late was the real reason [REDACTED] was pulled over on 11/12/22. Complainant 1 states that [REDACTED] was pulled over multiple times previously, including on the Saturday prior to the incident by "Officer [REDACTED] cousin". Complainant 1 went on to say that during this stop; no mention was made of the expired vehicle registration. Complainant 1 asserted that [REDACTED] was targeted by the police and according to [REDACTED] friend Witness 1 (the passenger [REDACTED] was pulled over with), while detained [REDACTED] overheard an officer stating that Complainant 1 was pulled over based on "suspicion". According to Complainant 1, [REDACTED] was encouraged to plead out for the weapon but [REDACTED] wanted to take it to trial, believing that there was no reason to pull [REDACTED] over.
PAB Investigative Case Note - 2023-0005-02.	This note documents that Complainant 1 requested to postpone the in-person interview at the PAB office originally scheduled for February 22, 2024 due to health reasons. A phone call took place on April 3, 2024 between the investigator and Complainant 1. During this phone call, Complainant 1 stated that [REDACTED] was ready and able to reschedule the in-person interview. The interview was scheduled for April 10, 2024. Before the phone call ended, Complainant 1 expressed concerns that [REDACTED] had not heard anything about [REDACTED] criminal case or subsequent trial from [REDACTED] attorney since March of 2023. Complainant 1 also asked what the timeframe is related to criminal case and trial dates. Investigator informed Complainant 1 that PAB is not involved in the criminal case but seeks to determine if the officer involved adhered to the law, RPD rules and general orders the night [REDACTED] was charged. Investigator asked if Complainant 1 had reached out to [REDACTED] attorney to get an update, to which Complainant 1 replied that [REDACTED] had not. Investigator



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	reiterated that the Attorney's responsibility is to represent ■ in the criminal case or answer questions for ■ related to the trial but PAB is not at all involved in that process. Investigator also informed Complainant 1 that if ■ wanted PAB to communicate with ■ attorney and share information, ■ would first have to permit ■ attorney to speak to PAB. Complainant 1 stated that ■ would reach out to ■ attorney for updates regarding ■ criminal case. Complainant 1 also expressed that ■ would permit ■ attorney to communicate with PAB.
Complainant 1 04.10.2024 Interview	This voluntary interview was held at the PAB office interview room on April 10, 2024. PAB Investigators ■ and ■ conducted the interview with Complainant 1 ■. Complainant 1 consented to audio and video recording of the interview before it began. Complainant 1's father was present at the time of the interview, which concluded after 49 minutes.
Complainant 1 map, created at PAB 04.10.2024	A Google Maps image of the area where the traffic stop and subsequent arrest took place. During the interview, Complainant 1 used a marker to illustrate the path of ■ vehicle, the point at which ■ executed the right turn, and where exactly ■ was pulled over.
Witness 1 04.30.2024 Interview	This voluntary interview was held at the PAB office interview room on April 30, 2024. PAB Investigators ■ and ■ conducted the interview with Witness 1. Before the interview began, Witness 1 consented to audio and video recording of the interview, which concluded after minutes.
Witness 1 map, created at PAB 04.30.2024	A Google Maps image of the area where the traffic stop and subsequent arrest took place. During the interview, Witness 1 used a marker to illustrate the path of the vehicle, the point at which the driver executed the right turn, when ■ noticed the officers, and where exactly they were pulled over.

APPLICABLE RULES & LAWS

RPD Rule 4.6 Truthfulness

Employees are required to be truthful in speech and writing, whether or not under oath.

The Fourth Amendment of the U.S. Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

NYS Criminal Procedure Law § 70.10 Standards of Proof; definition of terms

1. "Legally sufficient evidence" means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof; except that such evidence is not legally sufficient when corroboration required by law is absent.

2. "Reasonable cause to believe that a person has committed an offense" exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. Except as otherwise provided in this chapter, such



apparently reliable evidence may include or consist of hearsay. Except as otherwise provided in this chapter, such apparently reliable evidence may include or consist of hearsay.

RPD Rule 2.15 Arrest

Members shall make arrests in full compliance and conformity with all laws and department procedures.

RPD General Order No. 585 Arrest

DEFINITION

Reasonable Cause: “Reasonable cause to believe that a person has committed an offense” exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it. NY Criminal Procedure Law (CPL), § 70.10-2. NOTE: This term may be used interchangeably with the term “probable cause.”

II. POLICY

A. The authority to arrest, granted by the people of the State of New York to a police officer, carries with it the responsibility to exercise discretion, but that discretion is necessarily limited. A variety of circumstances (e.g., seriousness of conduct, willingness of the victim to prosecute with exception of domestic violence mandatory arrests, age of the suspect, recidivism), as well as various options (e.g., resolution, warning, referral, summons, appearance ticket, physical arrest), warrant due consideration prior to any action.

B. It is the policy of the Rochester Police Department (RPD) that no person will be arrested without reasonable cause to believe that an offense has been committed. Authority to arrest is strictly limited to those situations where the Criminal Procedure Law (CPL) of the State of New York authorizes an arrest.

RPD General Order No. 415 Searches

C. Pretext Stop: A pretext stop is a traffic stop where an officer relies on the fact that a vehicle operator has violated the vehicle and traffic law to justify the stop of the vehicle, but the actual motivation of the officer is to investigate some other matter for which there is no probable cause. In a pretext stop, the officer is essentially utilizing the vehicle and traffic law as a means to further an unrelated investigation. (People v. Robinson)

D. Probable Cause (“Reasonable Cause”): Probable cause to search exists when facts and circumstances known to the officer provide the basis for a reasonable person to believe that a crime was committed at the place to be searched, or that evidence of a crime exists at the location. Probable cause to seize property exists when facts and circumstances known to the officer would lead a reasonable person to believe that the item is contraband, is stolen, or constitutes evidence of a crime. When probable cause is based on information from an informant, there must be sufficient grounds to conclude both that: (1) the informant was reliable; and, (2) the information was credible.

Note: under the New York law, the term, “reasonable cause” is equivalent to the term “probable cause.”

E. Reasonable Suspicion: Is that suspicion based upon facts and any reasonable inferences that can be drawn in light of experience that lead one, as an ordinary and cautious person, to believe that some specific crime(s) or some specific criminal activity is being committed, was committed, or is about to be committed.

SEARCH INCIDENT TO ARREST EXCEPTION - The most often used exception is the search incidental to a physical arrest when the defendant is taken into custody. Upon making a valid arrest, an officer may conduct a full and complete search of the defendant. This is a much broader search and not limited to only weapons. Any



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weapons or contraband discovered will be seized and appropriate charges considered. It must also be conducted incident to the arrest and not delayed. This also allows for a search of the area within the reach of the defendant (Chimel v. Cal).

RPD Training Bulletin L-26-98: Arrests for Violations

Criminal Procedure Law (CPL) Section 140.10 (1,2) states a police officer may arrest an individual for Harassment, Disorderly Conduct, simple Trespass or other petty offenses, when: “The Officer has reasonable cause to believe that such person has committed such offense in the Officer’s presence.” Officers are limited to making arrests for violations only when the offense is committed in the officer’s presence. District Attorney Howard Relin stated there may be problems if this provision isn’t followed. The “fruit of the poison tree doctrine” may also be invoked if the arrest is unlawful and/or unauthorized. Any evidence flowing from it would most likely be declared inadmissible. The officers and City Hall could also be subject to a civil suit.

RPD Training Bulletin L-32-99: Arrests for Traffic Violations

A recent decision by Justice Lunn of the Supreme Court, Monroe County, involved the ability of a police officer to make an arrest for a traffic infraction. In Musso v. Town of Greece, the driver of a motor vehicle sued the town and the arresting officer for False Arrest, deprivation of civil rights, and other causes of action. The driver had been stopped at a traffic checkpoint for “Failure to Wear a Seatbelt.” The driver did not have [REDACTED] driver’s license with [REDACTED] [REDACTED] was able to produce some identification to the police officer: a photo employee ID, valid insurance card, valid registration (driver did not own vehicle) The driver also phoned [REDACTED] sister-in-law to bring [REDACTED] driver’s license to [REDACTED] The sister-in-law would be there in 20 minutes. The officer did a license check misspelling the driver’s name. A dispatcher who entered the wrong DOB ran a group check of the name. Therefore, “no hit” on the person’s license. The driver was handcuffed and taken to the police station and [REDACTED] 10yr. old daughter was placed into another police vehicle where a relative interceded and picked up the child. The Court ruled that: An arrest for a traffic violation is only proper when the driver does not have identification sufficient to prepare a traffic summons. Summary judgment was therefore denied, as a factual question was raised as to whether the identification provided was sufficient. The Judge also questioned whether (using a reasonableness standard to evaluate the police conduct) it may have been more prudent for the officer to wait at the scene for the sister-in-law to arrive with the driver’s license. In this case there was not an emergency situation and officer safety was not an issue. This ruling shows that full custodial arrest for minor violations should be made only in exceptional circumstances and that the Police Department will have the burden of justifying exceptions. The Judge comments that the more prudent course of action may have been to wait at the scene for the relative to bring the driver’s license. In this case, a small amount of courtesy will go a long way in maintaining community relations and avoiding litigation. (Based on information from Jeff Eichner-Law Dept)

RPD General Order No. 336 Duty to Intervene

I. PURPOSE

It is the policy of the Rochester Police Department that all Members shall intervene and prevent or stop other Members from using unreasonable force or otherwise acting contrary to law or RPD policy.

II. POLICY

- A. All Members have an affirmative duty to intervene to prevent or stop any member from using unreasonable force or otherwise acting contrary to law or RPD policy.
- B. When Members observe such conduct, they shall intervene when it is safe and feasible to do so.
- C. All Members are expected to accept an intervention from another member when it occurs.



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D. All Members are prohibited from retaliating, interfering, or using intimidation or coercion against any other member who has performed ■ or her affirmative duty to intervene and report misconduct.

E. A Member's failure to intervene to prevent unreasonable force may result in departmental discipline or other remedial measures in accordance with RPD policy.

III. PROCEDURES

A. Interventions may be verbal and/or physical depending on the situation and the level of misconduct. Any use of physical force to intervene must be objectively reasonable, necessary, and proportional under the totality of the circumstances.

B. A Member must as soon as practical, report the offending Member's unreasonable use of force or other misconduct to a supervisor.

RPD Rule 5.1 Altering, Delaying or Falsifying Reports

c) Employees shall not falsely make or submit any type of official report or knowingly enter or cause to be entered any inaccurate, false, or improper information on the records of the Department.

RPD Rule 6.2 Subordinate Incompetency or Misconduct

Supervisors who overlook, condone or fail to take action on incompetence or misconduct on the part of their subordinates shall be guilty of neglect of duty.

ANALYSIS

Allegation 1 - Untruthfulness: On November 12, 2022, Officer 1 dishonestly accused Complainant 1 of failing to signal before executing a turn to justify the traffic stop. If sustained, this violates RPD Rule 4.6.

Excluding testimony and RPD documents completed by the accused, there is no conclusive evidence available to determine whether Complainant 1 failed to signal prior to making the right turn from Wilkins Street onto ■ Street. A review of Officer 1 BWC Video 1, Officer ■ 2 BWC Video 1, RPD Incident Report (CR#: 2022-238566) and Traffic Ticket / Supporting Deposition 1 shows that Officer 1 is consistent in ■ assertion that Complainant 1 "failed to signal". Contrary to Officer 1's assertion, Complainant 1 is consistent in ■ refutation as evidenced in Officer 1 BWC Video 1, Officer ■ 2 BWC Video 1, and in testimony provided to PAB on April 10, 2024. Officer ■ 2 BWC Video 1 shows that immediately upon hearing the reason for the stop, the passenger and witness, Witness 1 expressed stated "■ just signaled". Witness 1 later repeats that Complainant 1 did in fact signal before making the turn. While it remains unknown if the signal was used at all, Officer 3 BWC Video 1 and Officer ■ 2 BWC Video 2 revealed that Complainant 1 might have signaled late by ■ own admission. A review of New York State Vehicle & Traffic Law Chapter 71, Title 7, and Article 28(b) describes proper signaling as: "A signal of intention to turn right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning." Based on Complainant 1's admission of possibly signaling late, if the officers did observe the late signal, a stop and subsequent traffic ticket for Improper Signal use was warranted. Investigator sought to collect additional testimony from Officer 1 and Officer 2 respectively to ascertain which of the two officers, or if both officers observed the failure to signal. Additionally, the officer's testimonial cooperation with PAB could determine if Complainant 1 completely failed to signal, signaled less than 100 feet from the turn, or if this was a pretext stop as defined in RPD General Order 415(C). Respective notices were sent to Officers 1 and 2 on July 10, 2024 requesting participation in an interview, or a



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written statement narrowly tailored to respond to the allegations on or before 07/18/2024. As of October 18, 2024, The PAB has not received a response.

Based on the preponderance of available evidence, the allegation that Officer 1 was untruthful during the traffic stop is *not sustained*.

Allegation 2 - Untruthfulness: On November 12, 2022, Officer 2 dishonestly accused Complainant 1 of failing to signal before executing a turn to justify the traffic stop. If sustained, this violates RPD Rule 4.6.

For the same reasons explained in Allegation 1 regarding [REDACTED] fellow Officer 1, based on the preponderance of available evidence, the allegation that Officer 2 was untruthful during the traffic stop is *not sustained*.

Allegation 3 - Unlawful Search and Seizure: On November 12, 2022, Officer 1 conducted an unlawful search of Complainant 1.

The Body Worn Camera footage of the six involved officers was critical in determining validity of this allegation. The BWC footage revealed falsities regarding the sequence of events as described in the intake report received by PAB, and the official RPD report created by Officer 1.

The PAB intake report states that Complainant 1 was pulled over on [REDACTED] St. near Wilkins St. for having a “signal out”. RPD officers ran up to the car yelling and screaming about the vehicle registration, which unbeknownst to the driver had expired roughly 10 days prior. The Officers then removed the driver and the passenger from the vehicle to search them and the vehicle. During the search, officers discovered an illegal firearm and arrested the driver. This description of the incident is not completely accurate.

Officer 1’s incident report states, “On 11/12/2022, I was operating in the capacity as a fully uniformed Rochester operating a marked police vehicle with Officer 2. While in the area of Wilkins St and [REDACTED] St, I watched a 2004 Dodge Ram 1500 pickup truck bearing NYS reg HLH1156 fail to signal in a southbound direction down [REDACTED] St. I activated my emergency lights to initiate a traffic stop on the above vehicle. Upon making contact with the driver (A) Complainant 1 [REDACTED] I notified [REDACTED] why the stop was being conducted and [REDACTED] provided me with [REDACTED] NYS driver’s license. I went back to my patrol vehicle and saw that (A) had a valid NYS driver’s license but the registration on the vehicle had been expired. I asked (A) to step outside the vehicle so that I could conduct a search of the vehicle incident to tow. When (A) stepped out of the vehicle I asked [REDACTED] if [REDACTED] had any weapons on [REDACTED] (A) answered yes and told me that [REDACTED] was armed with a handgun in [REDACTED] waist band that was wrapped around [REDACTED] stomach. I asked (A) if [REDACTED] possessed a valid NYS pistol permit to which [REDACTED] does not have. (A) was then placed under arrest and transported back to the East Side office.” This description of the incident is not completely accurate.

The actual sequence of events recorded by multiple Body Worn Cameras on scene is as follows: At approximately 9:23pm, Officer 1 pulls over Complainant 1. Officer 1 approaches the driver side door while Officer 2 approaches the passenger side. Officer 1 informs Complainant 1 that [REDACTED] stopped [REDACTED] for not signaling, which Complainant 1 and the passenger, Witness 1 immediately refute. Officer 1 requests that Complainant 1 provide [REDACTED] license. While waiting for Complainant 1 to furnish the license, Officer 1 checks the vehicle registration sticker and learns of its expiration. Upon receiving the license, Officer 1 returns to [REDACTED] RPD vehicle along with Officer 2 to check the license. Officer 3 replaces Officer 1 at the driver side and Officer 4 replaces Officer 2 at the passenger side. During this time, Complainant 1, Witness 1, Officer 3, and Officer 4 began discussing confusion regarding if a failure to signal or the expired expiration was the initial reason for the stop. There was no yelling, screaming or



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hostility at any point on the part of the vehicle occupant's or the officers throughout this conversation. All parties involved maintained an objectively mild demeanor. At 9:27pm, Officer 3 turns to look at Officer 1 who has returned from checking the license. Officer 1 instructs Officer 3, to have Complainant 1 take the keys out of the ignition. Officer 3 obliges this request, prompting Complainant 1 to turn off the vehicle. Complainant 1 can be heard stating, "sure, but I don't know what's going on" as Officer 1 moves closer to the driver side front door and grabs the door handle. Officer 1 requests that Complainant 1 step out of the vehicle. Complainant 1 asks Officer 1 "For what sir?" but receives no answer. Officer 1 then instructs Complainant 1 to "take a step out of the car". Complainant 1 complies while stating, "Ok, but I don't know what's going on". Immediately upon exiting the vehicle, Officer 1 grabs Complainant 1's arm and begins to handcuff [REDACTED]. While handcuffing Complainant 1 with officer 3's assistance, Officer 1 states only "do me a favor and put your hands behind your back, you're just detained for now alright?" There is communication between Officer 1 and Officer 3 about the need to "double cuff [REDACTED]" as Complainant 1 jokingly states to Witness 1 "do you see why I wanted to stay home?" Officer 1 secures Complainant 1's hands behind [REDACTED] back with two sets of handcuffs and states, "dude you're detained alright?" It is noteworthy that while Complainant 1 was instructed out of the vehicle and inexplicably detained, [REDACTED] passenger Witness 1 was not asked to exit the vehicle by Officers 2 and 4 on the passenger side until Officer 1 discovered the illegal firearm on Complainant 1's person. This is an accurate description of the incident demonstrated by several BWC recordings captured by the RPD officers on scene. As such, the BWC evidence outweighs the documentary and testimonial evidence collected, and is the principal point of analysis for this allegation.

Based on the actual sequence of events, corroborated by multiple issues of BWC footage, Officer 1's decision to detain Complainant 1, temporarily or otherwise, is unlawful. Before instructing Complainant 1 to exit the vehicle, the facts and circumstances known to Officer 1 are two violations of NYS Vehicle & Traffic law, Chapter 71. The improper signal violates Title 7, Article 28(b), and operating an unregistered vehicle violates Title 4, Article 14(a). However, neither VAT violation, committed separately or concurrently, violates NYS Penal Law and therefore does not warrant arrest. Upon learning that the vehicle was not registered, the vehicle could be towed at Officer 1's discretion, which would require an inventory search of the vehicle in accordance with RPD General Order 511 General Towing Procedures (III, A, 4). This permits the instruction of all occupants to exit the vehicle in order for officers to search the vehicle. However, RPD officers have no authority to detain or search vehicle occupants without knowledge of criminal behavior, an arrest warrant, probable cause or reasonable suspicion of a safety threat. The officer's testimonial cooperation with PAB could reveal the specific and articulable facts, or unknown circumstances, if any, which influenced the decision to temporarily detain and search Complainant 1. PAB sent respective notices to Officers 1 and 3 on July 10, 2024 requesting participation in an interview, or a written statement narrowly tailored to respond to the allegations on or before 07/18/2024. As of October 18, 2024, the PAB has not received a response. Nevertheless, RPD did not provide a warrant for Complainant 1's arrest at the time of the incident; also, the BWC footage provided by RPD did not reveal observable criminal behavior on Complainant 1's part. In the absence of testimony or additional evidence from Officers [REDACTED] 1 and [REDACTED] 3 to justify the seizure and search of Complainant 1, this investigation found no reasonable cause as defined by NYS Criminal Procedure Law § 70.10, reiterated by RPD General Order No. 585, and referenced by RPD Training Bulletin L-26-98. Additionally, this investigation found no reasonable suspicion as defined by [REDACTED] *W. Terry, et al. v. State of Ohio, People V. Debour* 40 N.Y. 2d 210, and RPD General Order No. 415. Based on the preponderance of available evidence, the allegation that Officer 1 unlawfully seized and searched Complainant 1 on November 12, 2022 is *sustained*. Officer 1 violated the Fourth Amendment of the U.S. Constitution, NYS Criminal Procedure Law, RPD Rule 2.15, RPD General Order No. 585, RPD General Order No. 415, RPD Training Bulletin L-26-98 and RPD Training Bulletin L-32-99.



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Allegation 4 - Unlawful Search and Seizure: On November 12, 2022, Officer 3 conducted an unlawful search, which revealed Complainant 1' possession of an illegal firearm. Complainant 1 was then arrested.

Based on the preponderance of available evidence and the reasons explained in Allegation 3 regarding ■ fellow Officer 1, the allegation that Officer 3 unlawfully seized and searched Complainant 1 on November 12, 2022 is *sustained*. Officer 3 directly assisted in the detention of Complainant 1, and stood by for the subsequent search with no knowledge of facts or circumstances to justify such action. In this instance, Officer 3 violated the Fourth Amendment of the U.S. Constitution, NYS Criminal Procedure Law, RPD Rule 2.15, RPD General Order No. 585, RPD General Order No. 415, RPD Training Bulletin L-26-98 and RPD Training Bulletin L-32-99, and acknowledging ■ direct assistance

Allegation 5 - On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 2 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.

Officer 2 was Officer 1's partner on November 12, 2022 present on scene for the entire incident. Officer 2 had a conversation with Officer 1 in the squad car while checking Complainant 1's license. The details of that conversation are unknown. When Officer 1 and Officer 2 returned to Complainant 1's vehicle, Officer 1 joined Officer 3 on the driver side, while Officer 2 approached the passenger side. Officers 1 and 3 initiated the unlawful detention and search of Complainant 1. Officer 2's Body Worn Camera captured a limited vantage point of the unlawful detention and search from the other side of the vehicle. However, there is no evidence available to PAB that shows Officer 2 had direct knowledge or understanding that Officer 1 was unlawfully detaining Complainant 1. Officer 2 was maintaining view of the passenger, Witness 1. At one point, Officer 2 did walk around to the driver side but Officers 1 and 3 had already handcuffed Complainant 1, and learned of the firearm. As soon as Officer 2 approached Officers 1, 3 and Complainant 1, ■ was told by Officer 1 to return to the passenger side of the vehicle and assist Officer 4 in detaining Witness 1. Accordingly, this allegation is *not sustained*.

Allegation 6 - On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 4 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.

Officer 4 was Officer 3's partner on November 12, 2022 and both were present on scene once Officers 1 and 2 went to their vehicle to check Complainant 1's license. Officer 4 remained on the passenger side of the vehicle for most of the incident and interacted with Witness 1. Officer 4's Body Worn Camera captured a limited vantage point of the unlawful detention and search from the other side of the vehicle. However, there is no evidence available to PAB that shows Officer 4 had direct knowledge or understanding that Officer 1 was unlawfully detaining Complainant 1. Officer 4 was maintaining view of the passenger, Witness 1. Officers 2 and 4 detained Witness 1 after Officers 1 and 3 handcuffed Complainant 1, and learned of the firearm. Accordingly, this allegation is *not sustained*.

Allegation 7 - On 11.12.22, Officer 1 unlawfully detained Complainant 1, which is an act contrary to the law and RPD policy. As an observer, Officer 5 failed to intervene, prevent or stop the unlawful detention as mandated by RPD General Order No. 336.

In review of ■ BWC footage, Officer 5 did not arrive on scene until Officer 1 had already handcuffed Complainant 1. It is unclear why Officer 5 arrived on scene acknowledging that there were two squad cars, and



four officers already present objectively in control of the situation. It is also unclear what communication, if any, transpired between Officer 1 and Officer 5 prior to the unlawful detention. Regardless, there is no evidence available to PAB that shows Officer 5 had direct knowledge or understanding that Officer 1 was unlawfully detaining Complainant 1.

As an investigative best practice, PAB sought to collect testimonial evidence from Officers 2, 4 and 5. That evidence would determine what Officer 1's fellow officers knew about [REDACTED] course of action before, during and after the unlawful detention and search. Respective notices were sent to Officers 2, 4 and 5 on July 10, 2024 requesting participation in an interview, or a written statement narrowly tailored to respond to the allegations on or before 07/18/2024. As of October 18, 2024, the PAB has not received a response. Based on the preponderance of available evidence, Officers 2, 4 and 5 were unaware, and/or could not feasibly intervene, prevent or stop Officer 1's unlawful detention of Complainant 1. Accordingly, this allegation is *not sustained*.

Allegation 8 - Officer 1 made and submitted an official report, which inaccurately described [REDACTED] search and seizure of Complainant 1 on 11.12.22.

Officer 1 completed and submitted the official RPD incident report, which misrepresents [REDACTED] actions taken sequentially to discover the illegal firearm. As established in Allegation 2, Officer 1 reported [REDACTED] intention to tow the vehicle for an expired registration prompting an inventory search of the vehicle, which automatically requires occupants to exit the vehicle. Officer 1's report states that [REDACTED] asked [REDACTED] to step outside the vehicle, and Complainant 1 complied. This is true. Officer 1's report then states that [REDACTED] asked Complainant 1 if [REDACTED] had any weapons on [REDACTED]. A review of Officer 3 BWC video 1 and Officer 1 BWC video 2 proves this statement is false omission. The statement omits an action captured by the aforementioned BWC videos. Officer 1 immediately started to handcuff Complainant 1 as [REDACTED] exited the vehicle and verbalized confusion. Officer 3 assisted Officer 1 in securing Complainant 1's hands behind [REDACTED] back with two sets of handcuffs. On two occasions, during and immediately after handcuffing Complainant 1, Officer 1 verbally informed Complainant 1 of [REDACTED] temporary detention, but failed to state cause. Officer 1 did not ask Complainant 1 if [REDACTED] had a weapon on [REDACTED] until after the handcuffs were secure and a physical search of Complainant 1 began. It is true that Complainant 1 answered in the affirmative when asked if [REDACTED] had a weapon, then confirmed that [REDACTED] did not have a permit for it. Officer 1's report omits the acts of unlawful detention and search without reasonable suspicion, which is misconduct as described in Allegation 3. Furthermore, these acts, which preceded discovery of the illegal firearm invokes the fruit of the poisonous tree doctrine. As stated earlier, PAB sent notice to Officer 1 on July 10, 2024 requesting participation in an interview, or a written statement narrowly tailored to respond to the allegations on or before 07/18/2024. As of October 18, 2024, the PAB has not received a response. Because of Officer 1's failure to offer testimony, the investigation could not determine the reason [REDACTED] completed and submitted an official report, which omitted an unlawful act. Despite the absence of [REDACTED] testimony, the available evidence preponderantly shows that Officer 1 submitted an official RPD report, which falsely described the incident. The submission of a false report is an act of misfeasance, which violates RPD Rule 4.6 and RPD Rule 5.1(c). This allegation is therefore *sustained*.

Allegation 9 - Officer 6 failed to take action regarding the misconduct on the part of [REDACTED] subordinates during the incident, or after the incident, which is a violation of RPD Rule 6.2 and considered neglect of duty.

All Body Worn Camera footage, including [REDACTED] own shows that Officer 6 did not arrive on scene until approximately 9:35pm after Complainant 1 and Witness 1 were already taken into custody. Acknowledging this, there is no evidence to show that Officer 6 was aware of the unlawful detention and search conducted by Officers



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1 and 3. Officer 6 did review and sign-off on the incident report completed by Officer 1, however without witnessing the incident of misconduct, in person or in review of BWC, Officer 6 had no way of knowing that the description provided on the official RPD report differed from the actual events which transpired. According to Appendix A of the current RPD BWC manual, Officer 6 was not required to review any of the BWC footage from the scene before reviewing and signing the incident report completed by Officer 1. There is also no evidence available to PAB which shows that Officer 6 reviewed any of the BWC from the incident. Testimonial evidence from Officer 6 would have been helpful in determining [REDACTED] knowledge of the incident outside of what was reported to [REDACTED] which is why PAB sent notice to Officer 6 on July 10, 2024 requesting participation in an interview, or a written statement narrowly tailored to respond to the allegations on or before 07/18/2024. As of October 18, 2024, the PAB has not received a response. Based on the preponderance of currently available evidence, the allegation that Officer 6 failed to take action regarding the misconduct on the part of [REDACTED] subordinates is *not sustained*.

STANDARD OF PROOF

For the purpose of PAB's investigations, findings must be made pursuant to a "substantial evidence" standard of proof. City Charter 18-5(I) (10). This standard is met when there is enough relevant and credible evidence in the record as a whole that a reasonable person could support the conclusion made. (See 4 CFR §28.61(d)). Substantial evidence means more than a mere scintilla but less than a preponderance; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. See *NLRB v. Int'l Bhd. of Elec. Workers, Local 48*, 345 F.3d 1049, 1054 (9th Cir. 2003); *De la Fuente II v. FDIC*, 332 F.3d 1208, 1220 (9th Cir. 2003). However, for the purposes of this case, the higher standard of by a preponderance of evidence is applied. Merriam Webster defines preponderance of evidences as, "The standard of proof in most civil cases in which the party bearing the burden of proof must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not."

(<https://www.merriam-webster.com/legal/preponderance%20of%20the%20evidence>). This is understood to be a greater than 50% chance that the claim is true.

RECCOMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer 1	Untruthfulness	Not Sustained
2	Officer 2	Untruthfulness	Not Sustained
3	Officer 1	Unlawful Detention	Sustained
4	Officer 3	Unlawful Detention	Sustained
5	Officer 2	Failure to Intervene	Not Sustained
6	Officer 4	Failure to Intervene	Not Sustained
7	Officer 5	Failure to Intervene	Not Sustained
8	Officer 1	Falsifying Reports	Sustained
9	Officer 6	Neglect of Duty	Not Sustained



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RECOMMENDED DISCIPLINARY ACTION

AUTHORITY

Article XVIII of the Rochester City Charter further requires that the Police Accountability Board create a “written, consistent, progressive and transparent tool or rubric” that “shall include clearly delineated penalty levels with ranges of sanctions which progressively increase based on the gravity of the misconduct and the number of prior sustained complaints.” This disciplinary matrix is a non-binding set of guidelines for the Police Accountability Board’s own recommendations regarding officer misconduct.

According to the matrix, the disciplinary history of an officer will be considered when assessing an appropriate penalty resulting from the current investigation. Prior discipline changes the presumptive penalties according to the matrix. Mitigating and aggravating factors related to the misconduct may be considered when determining the level of discipline, so long as an explanation is provided.

The Recommended Disciplinary Action based on the above Recommended Findings is as follows:

Officer [REDACTED] [REDACTED] (Officer 1)

Officer [REDACTED] [REDACTED] has three prior sustained findings of officer misconduct relating to PTN 2023-0108 for knowingly entering false information on an incident report, failing to complete an incident report by the end of [REDACTED] tour, and failing to report a stolen motor vehicle as having been recovered.

Officer [REDACTED] [REDACTED] has five prior sustained findings of officer misconduct relating to PTN 2024-0005 for violating the Americans with Disabilities Act, Equitable Policing, failing to fully investigate a motor vehicle accident, discourtesy, and ignoring the need for an interpreter. The PAB recommended termination for this officer relative to that incident.

Additionally, Officer [REDACTED] [REDACTED] received a letter of reprimand on December 8, 2021 as discipline for [REDACTED] involvement in a fleet vehicle accident, which occurred on September 13, 2021, according to Professional Standards Section case #21-1323. P.S.S. deemed this incident a violation of Rochester Police Department Rules and Regulations, Section 4.18; Departmental Property and Equipment and Rochester Police Department General Orders, Section 345.II.A; Police Vehicle Accidents.

Sustained Allegation #3 against Officer [REDACTED] [REDACTED] (Officer 1)

Disciplinary Matrix Appendix

Misconduct	Level
Unlawful Seizure and Search, which violates the Fourth Amendment of the U.S. Constitution, NYS Criminal Procedure Law, RPD Rule 2.15, RPD General Order No. 585, RPD General Order No. 415, RPD Training Bulletin L-26-98 and RPD Training Bulletin L-32-99.	#5

- Recommended Level 5: (“Major negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies, or; demonstrates serious lack of



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integrity, ethics, or character and includes conduct that could effectively disqualify an officer from continued employment as a law enforcement officer.”)

- Recommended Discipline (based on three prior sustained violations): Termination. PAB notes that this is the second time we have recommended termination for this officer.

Sustained Allegation #9 against Officer [REDACTED] (Officer 1)

Disciplinary Matrix Appendix

Misconduct	Level
Making and submitting an official report, which inaccurately described the search and seizure of Complainant 1 on 11.12.22. This act is a violation of RPD Rule 4.6 and RPD Rule 5.1(c). This act is also Misfeasance as defined by the RPD Rules and Regulations.	#4

- Recommended Level #4: (“Significant negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline (based on three prior sustained violations): Termination. PAB notes that this is the second time we have recommended termination for this officer.

Officer [REDACTED] (Officer 3)

This is the first time Officer [REDACTED] has been the subject of an investigation closed by the PAB. A review of the Rochester Police Department Discipline Database located on the City of Rochester’s website suggests that Officer [REDACTED] has not been the subject of a previous investigation by the RPD Professional Standards Section (PSS). However, the PAB understands that the database is incomplete. RPD declined to provide disciplinary records for Officer [REDACTED]

Sustained Allegation 4 against Officer [REDACTED] (Officer 3)

Disciplinary Matrix Appendix

Misconduct	Level
Unlawful Seizure and Search, which violates the Fourth Amendment of the U.S. Constitution, NYS Criminal Procedure Law, RPD Rule 2.15, RPD General Order No. 585, RPD General Order No. 415, RPD Training Bulletin L-26-98 and RPD Training Bulletin L-32-99.	#5

- Recommended Level #3: (“Pronounced negative impact to individuals, community, public perception of the agency or relationships with other officers, or agencies.”)
- Recommended Discipline: 10-day suspension.
- Explanation for Deviation of Level: This is Officer [REDACTED] first sustained PAB finding. Though Officer [REDACTED] chose to assist with the unlawful seizure and search seizure, [REDACTED] was acting to support Officer [REDACTED]