

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): 2023-0040

Date of Panel Review: 25-Sep-2024 5:30 PM (EDT)

Board Members Present: , ,

Case Findings:

Allegations 2, 6, 9: Sustained

Allegations 3, 4, 7, 8, 10: Not sustained

Allegations 1, 5, 11: Exonerated

Disciplinary Recommendation:

: 10-day suspension and retraining

Officer 10-day suspension and retraining

Officer 3- day suspension and retraining

Dissenting Opinion/Comment: Board member votes to sustain allegation 1, 5 and 11. believes the officers did not have a reason to stop the civilians and that the civilians were profiled.

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.

PTN: 2023-0040

Allegation #1:

: Violation of General Order 502: did not have a legitimate reason for temporarily detaining and searching

- 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:

: Violation of TB-L-05-97/4th Amendment prohibition on unlawful search and seizure: without legal basis.

- 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 #3:

was not truthful in speech as it pertains to the reason for stopping, questioning and frisking

- 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 # 4:

: Violation of General Order 337: used an unnecessary amount of force when securing in handcuffs.

- 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

PTN: 2023-0040

Allegation # 5:

Officer Violation of General Order 502: Officer did not have a legitimate reason for temporarily detaining and searching legitimate reason for temporarily detaining and searching

- 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:

Officer Violation of TB-L-05-97/4th Amendment prohibition on unlawful search and seizure: Off. forcibly detained without legal basis

- 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 #7:

Officer Violation of RPD Rule & Regulation 4.6 (Truthfulness): Office was not truthful in speech as it pertains to the reason for stopping, questioning and frisking

- 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 Violation of General Order 502: Officer Violation of General Order 502: Officer did not have a legitimate reason for temporarily detaining and searching and searching did not have a legitimate reason for temporarily detaining and searching and searching detaining and searching and search

- 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 #9:

Officer Violation of General Order 337: Officer used an unnecessary amount of force when positioning in patrol car.

- 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 # 10:

Officer Violation of TB-L-05-97/4th Amendment prohibition on unlawful search and seizure: Off. forcibly detained the without legal basis.

- 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? No

Allegation # 11:

Officer Violation of RPD Rule & Regulation 4.6 (Truthfulness): Officer was not truthful in speech as it pertains to the reason for stopping, questioning and frisking and

- 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

PTN: 2023-0040

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 following event occurred on February 3rd, 2023 at or around 5:15 am, at or near the corner of North Goodman Street and Webster Avenue in Rochester, New York. A complaint was filed with the Police Accountability Board on February 21, 2023.

According to the complaint, four to five patrol cars stopped two individuals while they were walking. Upon stopping, the officers approached both individuals and put them in handcuffs. When the individuals asked why they were being detained, officers told them "if they hadn't done anything, don't worry about it." It is alleged, an unidentified officer told the individuals they were detained due to a robbery on Atlantic Avenue but they did not have a description at the time. Another unidentified allegedly told the individuals they matched a description of suspects having dreadlocks. The individuals were both wearing winter hats and coats, obscuring their hair. (Allegation No. 1,2,3,5,6,7,8,10,11)

The complainant also alleged the sustained injuries to his shoulder and backside while being placed in handcuffs and forced into the patrol car. (Allegation No. 4 and 9) The
complainant also voices concern regarding the health and safety of the due to the
detainment being unwarranted and tense. is epileptic and was placed in a
separate patrol vehicle. Although did not have a seizure as a result of the interaction, the
complainant voices concern that he was out of sight and hearing range from his father, in the
event he was to have a seizure.
The PAB requested and reviewed all available documents and video footage. Per review, at
approximately 4:30 am, several City of Rochester Police Officers responded to a call for a
burglary at a restaurant located at Rochester, NY 14607. Officers
and did not respond to that location, but canvassed for suspects after
descriptions were provided over the radio.



At approximately 5:18 am, and his son, were walking to their residence when they were stopped by Officers and The Rochester Police Department's Field Information Form notes the location of the street stop occurred at Rochester NY 14609, which is approximately one mile from the site of the alleged burglary.
At approximately 5:19 am, approached walked toward and commanded that show hands. Instructed to turn around, and grabbed both of his arms to place them behind back to secure them in handcuffs (Allegation No. 4). asked where is coming from and where lives. Explained to the officer that was walking home from Plymouth Avenue with his son, and provided his address to the officer. asked why was being stopped and handcuffed, to which denied asked why was being stopped and handcuffed, to which denied asked why was being stopped and handcuffed, to which denied asked why was something and would tell what was going on in a minute. Told they were investigating something and would tell what was playing cards and decided to leave with another individual who offered to drive them as far as Plymouth Avenue. Offered to show the officer identification and identified as when asked by asked if can look in his pocket for wallet and was given consent to search his clothing. searched the back, side, and front pockets of the coat and jeans was wearing before finding the wallet. The told to sit in patrol car before running a search on the i.d sent to Officer walked to the vehicle, stating the back of that patrol car has more space. As Officer walked to the vehicle, stating the back of that patrol car temain in handcuffs throughout this process.
Officer had placed apprehension of Officer asked where had been coming from, to which called out the question to father. Officer told that once they had figured things out, they would let know, and asked if there were any weapons on his person. alerted the officer to a pocket knife in jeans, which Officer located and removed. Officer was asked by Officer to search the front pocket as was wearing gloves, and a cell phone, wallet, and tissues were found. Officer walked back to patrol vehicle, advising him that they would search identification and name to gather more information before explaining in more detail what was happening. Once seated in the patrol car, Officer used flashlight to check the outer pockets of coat, name, and relation to the other individual.
Officer had told to have a seat and had placed him in the back of his patrol vehicle, while Officer had assisted by using flashlight to shine light on the patrol car's door. Officer had walked over to as he searched clothing, found wallet, and had then walked to the patrol car. While walking, had asked, "Do



officers handcuff people for walking?" Officer had answered by saying "no" and that if
had truly done nothing wrong, was in the wrong place at the wrong time, as they were
investigating a burglary (Allegation No. 9). Officer had instructed to enter with
back first, as was tall and would be more comfortable with legs up on the seat. As
entered the car, had made a noise indicating discomfort, to which Officer had asked if
was alright. had responded to the officer, "Yes sir," and Officer
and then entered the car, sitting in the driver's seat.
At approximately 5:30 a.m., and son, son, had been let out of the patrol vehicles, and their handcuffs had been removed. The officers had returned to their patrol cars and had released the solution.

INVOLVED OFFICERS

Officer Name	Officer Rank	Badge/Employee #	Date of Appointment	Sex	Race/Ethnicity

INVOLVED INDIVIDUALS

Name	Age	Sex	Race/ Ethnicity
	65 or older	Male	Black
	25-34	Male	Black

ALLEGATIONS

1	Violation of General Order 502: did not have a legitimate reason for temporarily detaining and searching
	Violation of TB-L-05-97/4 th Amendment prohibition on unlawful search and seizure: Lt. forcibly detained without legal basis
3	Violation of RPD Rule & Regulation 4.6 (Truthfulness): was not truthful in speech as it pertains to the reason for stopping, questioning and frisking
4	Violation of General Order 337: used an unnecessary amount of force when securing in handcuffs
5 Officer	Violation of General Order 502: Officer did not have a legitimate reason for temporarily detaining and searching legitimate reason for temporarily detaining and searching
6 Officer	Violation of TB-L-05-97/4 th Amendment prohibition on unlawful search and seizure: Off. forcibly detained without legal basis
7 Officer	Violation of RPD Rule & Regulation 4.6 (Truthfulness): Office was not truthful in speech as it pertains to the reason for stopping, questioning and frisking
8 Officer	Violation of General Order 502: Officer did not have a legitimate reason for temporarily detaining and searching legitimate reason for temporarily detaining and searching and

9 Officer	Violation of General Order 337: Officer used an unnecessary amount of force when positioning in patrol car. Violation of TB-L-05-97/4 th Amendment
Officer 10	Violation of TB-L-05-97/4 th Amendment prohibition on unlawful search and seizure: Off. forcibly detained the without legal basis
11 Officer	Violation of RPD Rule & Regulation 4.6 (Truthfulness): Officer was not truthful in speech as it pertains to the reason for stopping, questioning and frisking and

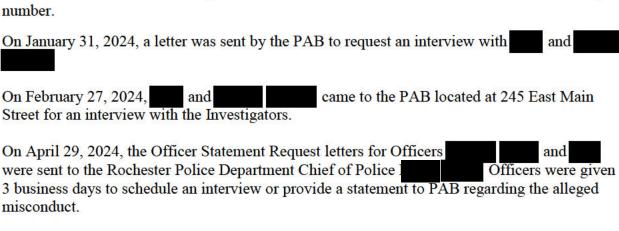
INVESTIGATION

The Police Accountability Board received the filed complaint on February 21, 2023.

The Police Accountability Board notified the Rochester Police Department of its investigation and requested corresponding documents on July 6, 2023 by sending an Initial Notification Package which contained a Source of Information request.

On July 6, 2023, the Rochester Police Department responded provided the PAB with one police report, two Investigative action case update reports, one technician, and evidence report, bodyworn camera footage from and (additional body worn camera footage was provided for 5 police officers, this footage showed the officers responding to the burglaries in the area. However, the 5 other officers have no interaction with the two individuals that were stopped or the three officers that conducted the stop), and ECD Job Card information.

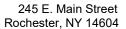
On July 7, 2023, the Rochester Police Department provided a Field Information Form and ECD Job Card information that belonged to the incident but was filed under a different criminal report number.



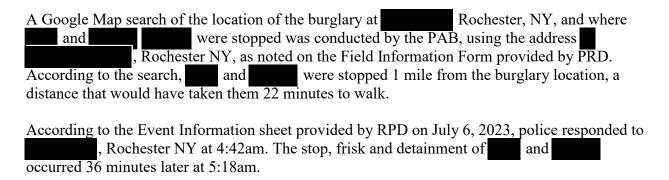
On May 8, 2024, a request was sent to the Emergency Call Department, to obtain the audio recording of the stop conducted on February 3, 2023.

On May 13, 2024, the audio recording was provided to the PAB. The CD was given to PAB's Digital Forensic Analyst, and transferred into a MP3 audio file for review.

On July 8, 2024, an updated Officer Statement Request for Officers and were sent to the Rochester Police Department. As of the writing of this report, none of the involved officers have responded to interview/statement requests.







The ECD audio recording provided by the Emergency Call Department on May 13, 2024 captures the radio events between officers and dispatch from the burglary incident occurring on February 3, 2023. A review of the recording provided the PAB with information relevant to RPD's the perimeter search for any suspects in the burglaries: At 5:14 A.M.an unknown officer called over the radio stating words to the effect of, "it's probably going to be those two kids that were walking eastbound on Main." At 5:14 A.M. another unknown officers calls over the radio stating words to the effect of, "yea I figured, I don't see them at this moment. I'm in that area again" At 5:14:56 A.M. an unknown officer calls over the radio requesting a description of the kids. At 5:15 A.M. an unknown officer calls over the radio providing the description of the kids, stating words to the effect of, "what I can remember, one had really light jeans on and I think one had camo on, both were skinny."

Evidence	Description	Provided by	Filename
Intake Report	The initial complaint filed with the PAB	The reporter	Original Intake Report
Initial Notification and Source of Information Request Packet	Document notifying RPD of the investigation into allegations of misconduct.	PAB	Initial Notification Package for PTN 2023-0040
SOI Response	RPD Response to initial SOI sent by PAB on July 6, 2023	RPD	RPD Response- InitialNotification 2023-0040
CAD- Event Information	Event information log for the responding officers investigating the nearby burglaries	RPD	I_NetViewer _ Event Information 44 Elton
CAD Event Unit		RPD	I_NetViewer _ Event Unit 44 Elton
Incident Report	Report narrating the details of a burglary in the area, completed by Officer	RPD	Incident Report.pdf
Technician Evidence Report	Report detailing what was photographed, collected and witnessed at the scene of the burglary, completed by Technician A.	RPD	Tech report.pdf
Investigative Action Report Case Update	Update to the Incident Report narrating details relevant to the burglary in the area, completed by Officer		IAR Case Update



245 E. Main Street Rochester, NY 14604

Investigative Action Report Case Update- Officer	Update to the Incident Report narrating details relevant to the burglary in the area, completed by Officer		IAR Case Update
Field Interview Form	Report narrating the details of the stop and frisk of and completed by	RPD	FIF 23-024785
BWC Footage	BWC Footage captured by	RPD	BWC
BWC Footage	BWC Footage captured by Officer	RPD	BWC-
BWC Footage	BWC Footage captured by Officer	RPD	BWC-
Event Unit (Under a Different CR Number)	Event Unit history of stop and frisk of and	RPD	I NetViewer Event Information
Event Unit Information (Under a Different CR Number)	Event Unit history for the stop and frisk of and	RPD	I NetViewer Event Unit
Interview	Audio recording of subject interview describing incident	n/a	<u>Interview 2023-0040</u>
Interview Transcript	Written transcription of the audio recorded interview with and		

ECD Data	Folder containing	ECD	ECD Data
	evidence provided by		
	the Emergency		
	Communications		
	Department including		
	audio recordings. The		
	audio recordings		
	contain a description of		
	suspects involved in		
	burglaries that		
	occurred in the area.		



APPLICABLE RULES & LAWS

Rochester Police Department General Orders

General Order 502: Equitable Policing

III. POLICY

- A. The Rochester Police Department (RPD) neither condones nor permits the use of any bias-based profiling in arrests, traffic contacts, field contacts, investigations, or asset seizure and forfeiture efforts, and is committed to equitable policing and equal rights for all.
- B. In all activities members are subject to and will comply with the Constitutions of the United States and the State of New York, and all applicable Federal, New York State, and local laws. Members shall not perform the functions of a federal immigration officer or otherwise engage in the enforcement of federal immigration law under 8 U.S.C. § 1357(g) or any other law, regulation, or policy. Members will not be assigned to a CBP or ICE task force.
- C. Persons in RPD custody will be subject to the standard policies and procedures regarding the issuance of appearance tickets and prearrangement bail regardless of actual or suspected citizenship or immigration status. See G.O.s 520, Prisoner Transporting & Processing, and 532, Appearance Tickets.

IV. CRIMINAL PROFILING PROCEDURES

- A. Members may use criminal profiling as an investigative method.
- B. All vehicle and individual stops, investigative detentions, arrests, search and seizures (to include asset forfeiture procedures) by members of the RPD will be based on a standard of reasonable suspicion, probable cause, or as otherwise required by the U.S. Constitution and the New York State Constitution. Members must be able to articulate specific facts, circumstances, and conclusions which provide objective, credible evidence to support probable cause or reasonable suspicion for a stop, investigative detention, or arrest.



General Order 337: Use of Force

III. POLICY

- A. RPD recognizes and respects the value and sanctity of all human life. Members are expected to carry out their duties and act with the highest regard for the preservation of human life and the safety of all persons involved.
- B. RPD's goal is to gain voluntary compliance of persons without resorting to the use of force. Though Members are authorized to use reasonable force when necessary, Members should attempt to resolve situations without using force whenever possible.
- C. Members are only authorized to use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to effect a lawful purpose, including to ensure the safety of a Member or third person, stop an attack, make an arrest, control a person evading a Member's lawful commands, or prevent escape.
- D. Members shall use the least amount of force necessary based on the totality of circumstances and shall cease using any force once a person becomes compliant.

IV. PROHIBITED USES OF FORCE

C. Members will not use force in any of the following situations: As punishment or retaliation (e.g., force used to punish or retaliate against an individual for fleeing, resisting arrest or insulting a Member).

Rochester Police Department Rules and Regulations:

4.6: TRUTHFULNESS

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

Rochester Police Department Training Bulletin:

L-05-97: Police Initiated Encounters with Citizens

The United States Constitution and specifically the Bill of Rights, grants certain rights and protections to individuals. These protections place restrictions on how, when, where and why agents of the government may interact with citizens. In particular, the Fourth Amendment protects against "unreasonable searches and seizures." The New York State Constitution and judicial opinions afford increased rights to individuals in New York



State against government intrusion. The New York State Court of Appeals has provided direction for police initiated interaction with individuals by dividing such encounters into four categories or levels:

- 1. The first level can be called a **REQUEST FOR INFORMATION**. This type of citizen contact is one step above a casual conversation and is further described by the following factors.
 - There is an objective, credible reason for the request.
 - There need not be an indication of a crime.
 - Request may be for identity, destination, purpose for presence and if the individual is carrying something that would appear to be unusual to a trained police officer, the police officer may ask about the object.
 - The individual may refuse to answer and leave.

Information obtained at this level may authorize actions at a higher level if appropriate factors are established. (This may include the development of probable cause.)

- 2. The second level is referred to as A COMMON LAW RIGHT OF INQUIRY. The many factors are the same as in level 1 (above), the most significant difference is in the reason for the inquiry.
 - There must be a founded **SUSPICION** that criminal activity is a foot.
 - Questions focusing on the individual that are more accusatory and/or incriminating, than in level one, may be asked.
 - Questions relating to ownership of an item may be asked. You may request permission to search.
 - The individual may refuse the search.
 - The individual may refuse to answer.
 - The individual may leave.

Information obtained at this level may authorize actions at a higher level. (This may include establishing probable cause.)

- 3. The third level is that of **REASONABLE SUSPICION**. At this level your suspicion must focus on the person. You must have reasonable suspicion that the person has been, is now, or is about to be involved in the commission of an offense. The following facts are examples which may be used to develop reasonable suspicion and must be articulable:
 - the time of the incident
 - the location of the incident



- actions which a police officer knows from experience to be consistent with criminal activity.
- flight by the individual (Caution: **flight <u>alone</u>** is NOT ENOUGH to justify a stop or pursuit and does NOT constitute reasonable suspicion.)
- The person may be pursued, forcibly stopped, and detained for a short time until probable cause is established. (The detainment may be for the purpose of briefly transporting the individual for a show-up).
- A pat-down FOR WEAPONS is permissible at this level for your safety. Reasonable suspicion DOES NOT justify a full search for contraband or evidence even if it is felt during the pat-down. <u>ONLY ITEMS THAT COULD BE USED TO HARM YOU ARE CONSIDERED WEAPONS</u>. (This does not include soft, spongy bags, vials, etc.)

NOTE: New York State has taken a more restrictive view than the United States Supreme Court in this area and has held that "plain touch" does NOT apply here. Therefore, the "plain touch" doctrine, announced by the United States Supreme Court in Minnesota v. Dickerson, does not apply in New York State. <u>Information obtained at this level may establish probable cause.</u>

4. The fourth level involves the arrest and search of an individual for contraband or evidence of criminal activity. A police officer needs PROBABLE CAUSE to take such action. Probable cause requires information sufficient to support a reasonable belief that an offense has been or is being committed by the suspect. Under these circumstances, the search of the suspect should be conducted after the suspect is arrested.

Legal Standards

The Fourth Amendment Violation

An officer that observes unusual conduct which leads him to reasonably conclude criminal activity may be afoot, may briefly stop the suspicious person and make reasonable inquiries aimed at confirming or dispelling the officer's suspicions. <u>Terry v. Ohio</u>, 392 U.S. 1 (1968) <u>Minnesota v. Dickerson</u>, 508 U.S. 366 (1993)

ANALYSIS	ANALYSIS

STANDARD OF PROOF

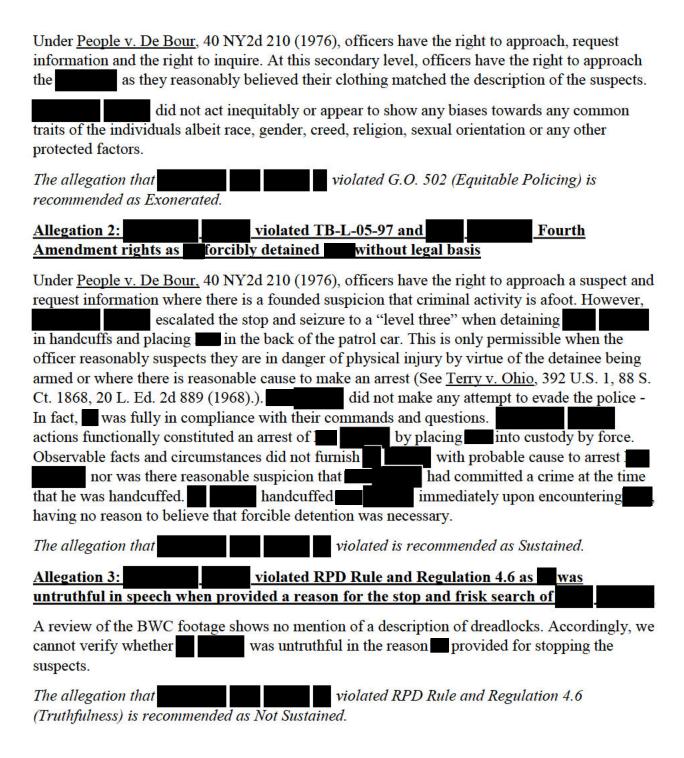
For the purpose of PAB's investigations, findings must be made pursuant to a "substantial evidence" standard of proof. City Charter 18-5(I)(10). This standard is met when there is enough relevant and credible evidence in the record as a whole that a reasonable person could support the conclusion made. (See 4 CFR §28.61(d)).

Allegation 1: violated General Order 502: Equitable Policing as not have a legitimate reason for temporarily detaining and searching

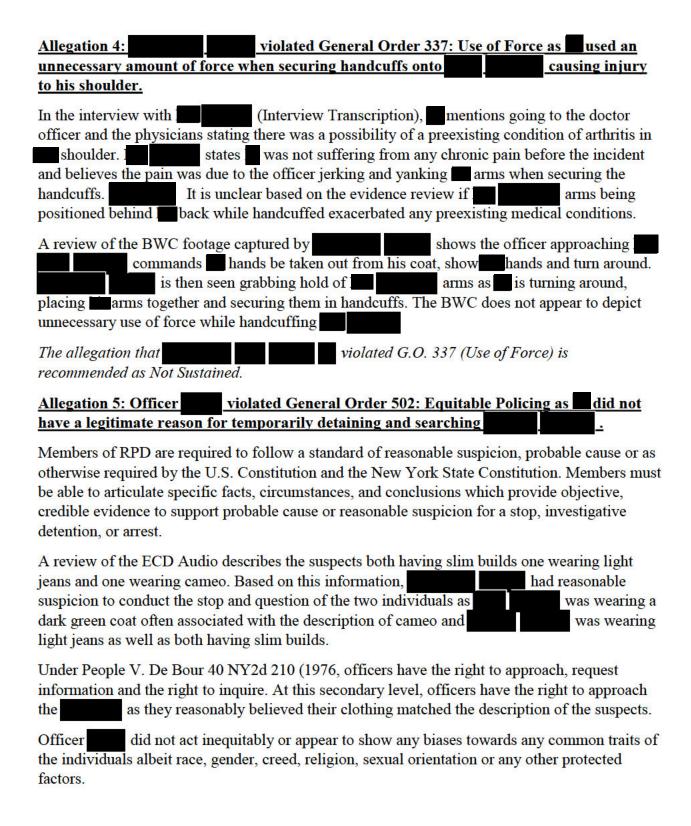
Members of RPD are required to follow a standard of reasonable suspicion, probable cause or as otherwise required by the U.S. Constitution and the New York State Constitution. Members must be able to articulate specific facts, circumstances, and conclusions which provide objective, credible evidence to support probable cause or reasonable suspicion for a stop, investigative detention, or arrest.

A review of the ECD Audio describes the suspects both having slim builds one wearing light jeans and one wearing cameo. Based on this information, had reasonable suspicion to conduct the stop and question of the two individuals as dark green coat often associated with the description of camouflage, and was wearing light jeans. Both have slim builds.







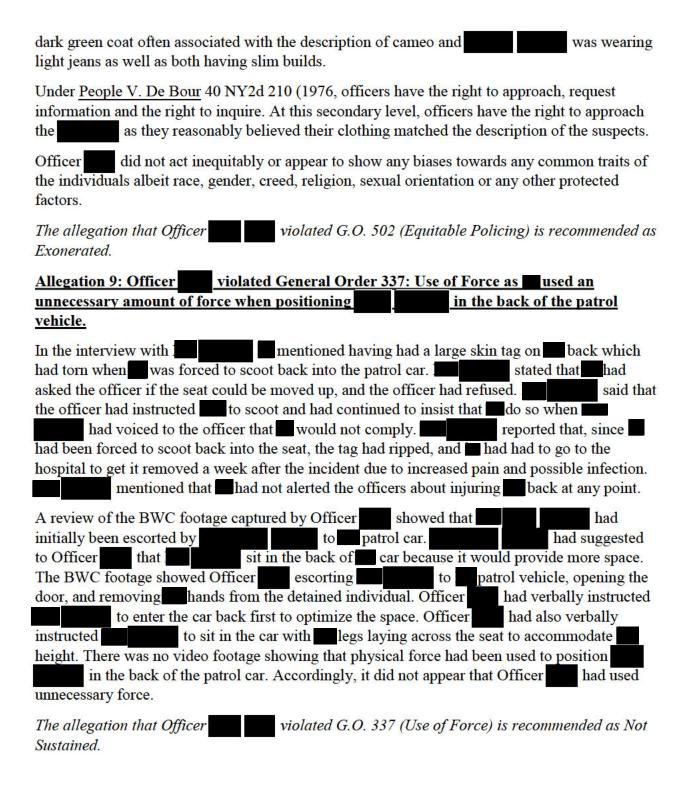


245 E. Main Street Rochester, NY 14604



The allegation that Officer violated G.O. 502 (Equitable Policing) is recommended as Exonerated. Allegation 6: Officer violated TB-L-05-97 and **Fourth Amendment** forcibly detained him without legal basis Under People v. De Bour, 40 NY2d 210 (1976), officers have the right to approach a suspect and request information where there is a founded suspicion that criminal activity is afoot. However, escalated the stop and seizure to a "level three" when detaining handcuffs and placing in the back of the patrol car. This is only permissible when the officer reasonably suspects they are in danger of physical injury by virtue of the detainee being armed. or has reasonable suspicion that the person committed a crime (See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).). did not make any attempt to evade the police - In fact, he was fully in compliance with their commands and questions. Officer functionally constituted an arrest of by placing him into custody by force. Observable facts and circumstances did not furnish Officer with probable cause to arrest nor was there reasonable suspicion that had committed a crime at the handcuffed I time that was handcuffed. Officer immediately upon encountering having no reason to believe that forcible detention was necessary. The allegation that Officer violated is recommended as Sustained. Allegation 7: Officer violated RPD Rule and Regulation 4.6 as was untruthful in speech when provided a reason for the stop and frisk search of A review of the BWC footage shows no mention of a description of dreadlocks. Accordingly, we cannot verify whether Officer was untruthful in the reason he provided for stopping the suspects. The allegation that Officer violated RPD Rule and Regulation 4.6 (Truthfulness) is recommended as Not Sustained. Allegation 8: Officer violated General Order 502: Equitable Policing as have a legitimate reason for temporarily detaining and searching Members of RPD are required to follow a standard of reasonable suspicion, probable cause or as otherwise required by the U.S. Constitution and the New York State Constitution. Members must be able to articulate specific facts, circumstances, and conclusions which provide objective, credible evidence to support probable cause or reasonable suspicion for a stop, investigative detention, or arrest. A review of the ECD Audio describes the suspects both having slim builds one wearing light jeans and one wearing cameo. Based on this information, had reasonable suspicion to conduct the stop and question of the two individuals as was wearing a





Allegation 10: Officer violated TB-L-05-97 and the Fourth Amendment rights of the forcibly detained them without legal basis Under People v. De Bour, 40 NY2d 210 (1976), officers have the right to approach a suspect and request information where there is a founded suspicion that criminal activity is afoot. However, Officer escalated the stop and seizure to a "level three" when assisted in detaining in handcuffs and placed in the back of the patrol car. This is only permissible when the officer reasonably suspects they are in danger of physical injury by virtue of the detainee being armed, or where there is reasonable suspicion that they have committed a crime (See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).). did not make any attempt to evade the police - In fact, they were fully in compliance with police commands and questions. Officer actions functionally constituted by placing them into custody by force. Observable facts and an arrest of with probable cause to arrest and circumstances did not furnish Officer nor was there reasonable suspicion that either individuals had committed a crime at the time that they were handcuffed. The allegation that Officer violated is recommended as Sustained. Allegation 11: Officer violated RPD Rule and Regulation 4.6 as was untruthful in speech when provided a reason for the stop and frisk search of and A review of the BWC footage shows no mention of a description of dreadlocks. Accordingly, we cannot verify whether Officer was untruthful in the reason provided for stopping the suspects. The allegation that Officer violated RPD Rule and Regulation 4.6 (Truthfulness) is recommended as Not Sustained.

Officer Allegation Finding/Recommendation did not have a legitimate reason for temporarily detaining and searching allegedly stating his dreadlocks matched the description of a suspect therefore violating G.O 502. violated TB-L-05-97 Sustained

RECOMMENDED FINDINGS

4th Amendment rights

#	Officer	Allegation	Finding/Recommendation
		by forcibly detaining without legal basis.	
3		was not truthful in speech as it pertains to the reason for stopping, questioning and frisking	Not Sustained
4		amount of force when securing in handcuffs	Not Sustained
5	Officer	Officer did not have a legitimate reason for temporarily detaining and searching legitimate reason for temporarily detaining and searching therefore violating G.O 502	Exonerated
6	Officer	Officer violated TB-L-05-97 and 4th Amendment rights by forcibly detaining without legal basis.	Sustained
7	Officer	Officer was not truthful in speech as it pertains to the reason for stopping, questioning and frisking	Not Sustained
8	Officer	Officer used an unnecessary amount of force when positioning in patrol car.	Not Sustained
9	Officer	Officer violated TB-L-05-97 and the 4 th Amendment rights by forcibly detaining them without legal basis.	Sustained
10	Officer	Officer was not truthful in speech as it pertains to the reason for stopping, questioning and frisking and	Not Sustained

#	Officer	Allegation	Finding/Recommendation
11	Officer	did not have a legitimate reason for temporarily detaining and searching legitimate reason for temporarily detaining and searching therefore violating G.O 502	

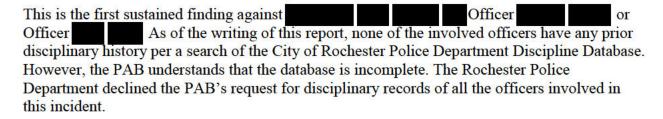
RECOMMENDED DISCIPLINARY ACTION

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:



Sustained Allegation #2 against

Disciplinary Matrix Appendix

Misconduct	Level
detaining without reasonable suspicion that had committed a crime or objective credible reasons to believe was armed or would flee.	5

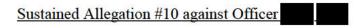
- <u>Recommended Level:</u> 3 ("Pronounced negative impact on the community or department image or operations, or relationships with other officers, or agencies")
- Recommended Discipline: 10-day suspension
- Explanation of deviation from presumptive level: Lack of prior misconduct and relatively brief nature of the stop. It is not alleged that the officer was discourteous to either suspect.

Sustained Allegation #6 against Officer

Disciplinary Matrix Appendix

Misconduct	Level
Officer violated the 4 th Amendment and TB-L-07-97 by forcibly detaining without reasonable suspicion that had committed a crime or objective credible reasons to believe was armed or would flee	5

- <u>Recommended Level:</u> 3 ("Pronounced negative impact on the community or department image or operations, or relationships with other officers, or agencies")
- Recommended Discipline: 10-day suspension
- <u>Explanation of deviation from presumptive level</u>: Lack of prior misconduct and relatively brief nature of the stop. It is not alleged that the officer was discourteous to either suspect.



Disciplinary Matrix Appendix

Misconduct	Level
Officer violated the 4 th Amendment and TB-L-07-97 by forcibly detaining and without reasonable suspicion that they had committed a crime or objective credible reasons to believe they were armed or would flee	5

- <u>Recommended Level:</u> 3 ("Pronounced negative impact on the community or department image or operations, or relationships with other officers, or agencies.")
- Recommended Discipline: 10-day suspension
- <u>Explanation of deviation from presumptive level</u>: Lack of prior misconduct and relatively brief nature of the stop. It is not alleged that the officer was discourteous to either suspect.