



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: [REDACTED], [REDACTED], [REDACTED]

Case Findings:

Allegations 2, 6, 9: Sustained

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

Allegations 1, 5, 11: Exonerated

Disciplinary Recommendation:

[REDACTED] [REDACTED] [REDACTED]: 10-day suspension and retraining

Officer [REDACTED] [REDACTED] 10-day suspension and retraining

Officer [REDACTED] [REDACTED] 3- day suspension and retraining

Dissenting Opinion/Comment: Board member [REDACTED] votes to sustain allegation 1, 5 and 11. [REDACTED] 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.



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: ██████████ ██████████ 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 # 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 ██████████ ██████████

- 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



Allegation # 5:

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

- **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 [REDACTED] [REDACTED] Violation of TB-L-05-97/4th Amendment prohibition on unlawful search and seizure: Off. [REDACTED] forcibly detained [REDACTED] [REDACTED] 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 [REDACTED] [REDACTED] Violation of RPD Rule & Regulation 4.6 (Truthfulness): Officer [REDACTED] was not truthful in [REDACTED] speech as it pertains to the reason for stopping, questioning and frisking [REDACTED] [REDACTED]

- **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 [REDACTED] [REDACTED] Violation of General Order 502: Officer [REDACTED] Violation of General Order 502: Officer [REDACTED] did not have a legitimate reason for temporarily detaining and searching legitimate reason for temporarily detaining and searching [REDACTED] and [REDACTED] [REDACTED] did not have a legitimate reason for temporarily detaining and searching legitimate reason for temporarily detaining and searching [REDACTED] and [REDACTED] [REDACTED]

- **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 [REDACTED] [REDACTED] Violation of General Order 337: Officer [REDACTED] used an unnecessary amount of force when positioning [REDACTED] [REDACTED] in [REDACTED] 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 [REDACTED] [REDACTED] Violation of TB-L-05-97/4th Amendment prohibition on unlawful search and seizure: Off. [REDACTED] forcibly detained the [REDACTED] 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 [REDACTED] [REDACTED] Violation of RPD Rule & Regulation 4.6 (Truthfulness): Officer [REDACTED] was not truthful in [REDACTED] speech as it pertains to the reason for stopping, questioning and frisking [REDACTED] and [REDACTED] [REDACTED]

- **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
Rochester, NY 14604

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 that [REDACTED] 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 [REDACTED] due to the detainment being unwarranted and tense. [REDACTED] is epileptic and was placed in a separate patrol vehicle. Although [REDACTED] 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 [REDACTED] Rochester, NY 14607. Officers [REDACTED], [REDACTED] and [REDACTED] did not respond to that location, but canvassed for suspects after descriptions were provided over the radio.



At approximately 5:18 am, [REDACTED] and his son, [REDACTED], were walking to their residence when they were stopped by Officers [REDACTED] and [REDACTED]. The Rochester Police Department's Field Information Form notes the location of the street stop occurred at [REDACTED] [REDACTED], Rochester NY 14609, which is approximately one mile from the site of the alleged burglary.

At approximately 5:19 am, [REDACTED] brought his patrol vehicle to a stop, exited, and approached [REDACTED]. [REDACTED] walked toward [REDACTED] and commanded that [REDACTED] show [REDACTED] hands. [REDACTED] instructed [REDACTED] to turn around, and grabbed both of his arms to place them behind [REDACTED] back to secure them in handcuffs (Allegation No. 4). [REDACTED] asked where [REDACTED] is coming from and where [REDACTED] lives. [REDACTED] explained to the officer that [REDACTED] was walking home from Plymouth Avenue with his son, and provided his address to the officer. [REDACTED] asked [REDACTED] if there are any weapons or sharp objects on his person which [REDACTED] denied. [REDACTED] asked [REDACTED] why [REDACTED] was being stopped and handcuffed, to which [REDACTED] told [REDACTED] they were investigating something and would tell [REDACTED] what was going on in a minute. [REDACTED] told [REDACTED] [REDACTED] and [REDACTED] were at a friend's house playing cards and decided to leave with another individual who offered to drive them as far as Plymouth Avenue. [REDACTED] offered to show the officer [REDACTED] identification and identified [REDACTED] as [REDACTED] when asked by [REDACTED]. [REDACTED] asked [REDACTED] if [REDACTED] can look in his pocket for [REDACTED] wallet and was given consent to search his clothing. [REDACTED] searched the back, side, and front pockets of the coat and jeans [REDACTED] was wearing before finding the wallet. [REDACTED] then told [REDACTED] to sit in [REDACTED] patrol car before running a search on the i.d. [REDACTED] sent [REDACTED] to Officer [REDACTED] vehicle, stating the back of that patrol car has more space. As Officer [REDACTED] walked [REDACTED] to the vehicle, [REDACTED] called out stating [REDACTED] will run the I.D. and if everything checked out they will be good. Both [REDACTED] and [REDACTED] remain in handcuffs throughout this process.

Officer [REDACTED] had placed [REDACTED] arms behind [REDACTED] back and handcuffed [REDACTED] simultaneously with [REDACTED] apprehension of [REDACTED]. Officer [REDACTED] asked [REDACTED] where [REDACTED] had been coming from, to which [REDACTED] called out the question to [REDACTED] father. Officer [REDACTED] told [REDACTED] that once they had figured things out, they would let [REDACTED] know, and asked if there were any weapons on his person. [REDACTED] alerted the officer to a pocket knife in [REDACTED] jeans, which Officer [REDACTED] located and removed. Officer [REDACTED] was asked by Officer [REDACTED] to search the front pocket as [REDACTED] was wearing gloves, and a cell phone, wallet, and tissues were found. Officer [REDACTED] walked [REDACTED] back to [REDACTED] patrol vehicle, advising him that they would search [REDACTED] identification and name to gather more information before explaining in more detail what was happening. Once seated in the patrol car, Officer [REDACTED] used [REDACTED] flashlight to check the outer pockets of [REDACTED] coat, [REDACTED] name, and [REDACTED] relation to the other individual.

Officer [REDACTED] had told [REDACTED] to have a seat and had placed him in the back of his patrol vehicle, while Officer [REDACTED] had assisted by using [REDACTED] flashlight to shine light on the patrol car's door. Officer [REDACTED] had walked over to [REDACTED] [REDACTED] as he searched [REDACTED] clothing, found [REDACTED] wallet, and had then walked [REDACTED] to the patrol car. While walking, [REDACTED] had asked, "Do



officers handcuff people for walking?” Officer [REDACTED] had answered by saying “no” and that if [REDACTED] had truly done nothing wrong, [REDACTED] was in the wrong place at the wrong time, as they were investigating a burglary (Allegation No. 9). Officer [REDACTED] had instructed [REDACTED] to enter with [REDACTED] back first, as [REDACTED] was tall and would be more comfortable with [REDACTED] legs up on the seat. As [REDACTED] entered the car, [REDACTED] had made a noise indicating discomfort, to which Officer [REDACTED] had asked if [REDACTED] was alright. [REDACTED] had responded to the officer, “Yes sir,” and Officer [REDACTED] had closed the door and then entered the car, sitting in the driver’s seat.

At approximately 5:30 a.m., [REDACTED] and [REDACTED] son, [REDACTED] had been let out of the patrol vehicles, and their handcuffs had been removed. [REDACTED] [REDACTED] had used [REDACTED] Body Worn Camera to take pictures of [REDACTED] and [REDACTED]. The officers had returned to their patrol cars and had released the [REDACTED].

INVOLVED OFFICERS

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

INVOLVED INDIVIDUALS

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

ALLEGATIONS



1	██████████ ██████████ ██████████ ██████████	Violation of General Order 502: ██████████ ██████████ did not have a legitimate reason for temporarily detaining and searching ██████████ ██████████
2	██████████ ██████████ ██████████ ██████████	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 [REDACTED]	Violation of General Order 337: Officer [REDACTED] used an unnecessary amount of force when positioning [REDACTED] in [REDACTED] patrol car.
10	Officer [REDACTED]	Violation of TB-L-05-97/4 th Amendment prohibition on unlawful search and seizure: Off. [REDACTED] forcibly detained the [REDACTED] without legal basis
11	Officer [REDACTED]	Violation of RPD Rule & Regulation 4.6 (Truthfulness): Officer [REDACTED] was not truthful in [REDACTED] speech as it pertains to the reason for stopping, questioning and frisking [REDACTED] and [REDACTED].



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, body-worn camera footage from [REDACTED] [REDACTED] [REDACTED] and [REDACTED] (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 January 31, 2024, a letter was sent by the PAB to request an interview with [REDACTED] and [REDACTED] [REDACTED]

On February 27, 2024, [REDACTED] and [REDACTED] [REDACTED] came to the PAB located at 245 East Main Street for an interview with the Investigators.

On April 29, 2024, the Officer Statement Request letters for Officers [REDACTED] [REDACTED] and [REDACTED] were sent to the Rochester Police Department Chief of Police [REDACTED] [REDACTED] Officers were given 3 business days to schedule an interview or provide a statement to PAB regarding the alleged misconduct.

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, [REDACTED] and transferred into a MP3 audio file for review.

On July 8, 2024, an updated Officer Statement Request for Officers [REDACTED] [REDACTED] and [REDACTED] 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.



A Google Map search of the location of the burglary at [REDACTED] Rochester, NY, and where [REDACTED] and [REDACTED] were stopped was conducted by the PAB, using the address [REDACTED], Rochester NY, as noted on the Field Information Form provided by PRD. According to the search, [REDACTED] and [REDACTED] were stopped 1 mile from the burglary location, a distance that would have taken them 22 minutes to walk.

According to the Event Information sheet provided by RPD on July 6, 2023, police responded to [REDACTED], Rochester NY at 4:42am. The stop, frisk and detainment of [REDACTED] and [REDACTED] occurred 36 minutes later at 5:18am.

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."



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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	Event Unit history of officers responding to a burglary alarm in the area	RPD	I_NetViewer_Event Unit 44 Elton
Incident Report	Report narrating the details of a burglary in the area, completed by Officer [REDACTED]	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. [REDACTED]	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 [REDACTED]	RPD	IAR Case Update



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



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ECD Data	Folder containing 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.	ECD	ECD Data
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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.



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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 alone** 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. **ONLY ITEMS THAT COULD BE USED TO HARM YOU ARE CONSIDERED WEAPONS.** (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. **Information obtained at this level may establish probable cause.**

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. *Terry v. Ohio*, 392 U.S. 1 (1968) *Minnesota v. Dickerson*, 508 U.S. 366 (1993)



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)).

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 (https://www.law.com/nylawyer/entry/preponderance_of_the_evidence#:~:text=Preponderance%20of%20the%20evidence%20is,that%20the%20claim%20is%20true).

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

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, [REDACTED] had reasonable suspicion to conduct the stop and question of the two individuals as [REDACTED] was wearing a dark green coat often associated with the description of camouflage, and [REDACTED] was wearing light jeans. Both [REDACTED] have slim builds.



Under People v. De Bour, 40 NY2d 210 (1976), officers have the right to approach, request information and the right to inquire. At this secondary level, officers have the right to approach the [REDACTED] as they reasonably believed their clothing matched the description of the suspects.

[REDACTED] did not act inequitably or appear to show any biases towards any common traits of the individuals albeit race, gender, creed, religion, sexual orientation or any other protected factors.

The allegation that [REDACTED] violated G.O. 502 (Equitable Policing) is recommended as Exonerated.

Allegation 2: [REDACTED] violated TB-L-05-97 and [REDACTED] Fourth Amendment rights as [REDACTED] forcibly detained [REDACTED] 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, [REDACTED] escalated the stop and seizure to a “level three” when detaining [REDACTED] in handcuffs and placing [REDACTED] 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 cause to make an arrest (See Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). [REDACTED] did not make any attempt to evade the police - In fact, [REDACTED] was fully in compliance with their commands and questions. [REDACTED] actions functionally constituted an arrest of [REDACTED] by placing [REDACTED] into custody by force. Observable facts and circumstances did not furnish [REDACTED] with probable cause to arrest [REDACTED] nor was there reasonable suspicion that [REDACTED] had committed a crime at the time that he was handcuffed. [REDACTED] handcuffed [REDACTED] immediately upon encountering [REDACTED] having no reason to believe that forcible detention was necessary.

The allegation that [REDACTED] violated is recommended as Sustained.

Allegation 3: [REDACTED] violated RPD Rule and Regulation 4.6 as [REDACTED] was untruthful in speech when provided a reason for the stop and frisk search of [REDACTED]

A review of the BWC footage shows no mention of a description of dreadlocks. Accordingly, we cannot verify whether [REDACTED] was untruthful in the reason [REDACTED] provided for stopping the suspects.

The allegation that [REDACTED] violated RPD Rule and Regulation 4.6 (Truthfulness) is recommended as Not Sustained.



Allegation 4: [REDACTED] violated General Order 337: Use of Force as [REDACTED] used an unnecessary amount of force when securing handcuffs onto [REDACTED] causing injury to his shoulder.

In the interview with [REDACTED] (Interview Transcription), [REDACTED] mentions going to the doctor officer and the physicians stating there was a possibility of a preexisting condition of arthritis in [REDACTED] shoulder. [REDACTED] states [REDACTED] was not suffering from any chronic pain before the incident and believes the pain was due to the officer jerking and yanking [REDACTED] arms when securing the handcuffs. [REDACTED] It is unclear based on the evidence review if [REDACTED] arms being positioned behind [REDACTED] back while handcuffed exacerbated any preexisting medical conditions.

A review of the BWC footage captured by [REDACTED] [REDACTED] shows the officer approaching [REDACTED] [REDACTED] commands [REDACTED] hands be taken out from his coat, show [REDACTED] hands and turn around. [REDACTED] is then seen grabbing hold of [REDACTED] arms as [REDACTED] is turning around, placing [REDACTED] arms together and securing them in handcuffs. The BWC does not appear to depict unnecessary use of force while handcuffing [REDACTED] [REDACTED]

The allegation that [REDACTED] [REDACTED] [REDACTED] violated G.O. 337 (Use of Force) is recommended as Not Sustained.

Allegation 5: Officer [REDACTED] violated General Order 502: Equitable Policing as [REDACTED] did not have a legitimate reason for temporarily detaining and searching [REDACTED] [REDACTED].

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, [REDACTED] [REDACTED] had reasonable suspicion to conduct the stop and question of the two individuals as [REDACTED] [REDACTED] was wearing a dark green coat often associated with the description of cameo and [REDACTED] [REDACTED] was wearing light jeans as well as both having slim builds.

Under People V. De Bour 40 NY2d 210 (1976), officers have the right to approach, request information and the right to inquire. At this secondary level, officers have the right to approach the [REDACTED] as they reasonably believed their clothing matched the description of the suspects.

Officer [REDACTED] did not act inequitably or appear to show any biases towards any common traits of the individuals albeit race, gender, creed, religion, sexual orientation or any other protected factors.



The allegation that Officer [REDACTED] violated G.O. 502 (Equitable Policing) is recommended as Exonerated.

Allegation 6: Officer [REDACTED] violated TB-L-05-97 and [REDACTED] Fourth Amendment rights as [REDACTED] 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, Officer [REDACTED] escalated the stop and seizure to a “level three” when detaining [REDACTED] in handcuffs and placing [REDACTED] 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)). [REDACTED] did not make any attempt to evade the police - In fact, he was fully in compliance with their commands and questions. Officer [REDACTED] actions functionally constituted an arrest of [REDACTED] by placing him into custody by force. Observable facts and circumstances did not furnish Officer [REDACTED] with probable cause to arrest Mr. [REDACTED] nor was there reasonable suspicion that [REDACTED] had committed a crime at the time that [REDACTED] was handcuffed. Officer [REDACTED] handcuffed [REDACTED] immediately upon encountering [REDACTED] having no reason to believe that forcible detention was necessary.

The allegation that Officer [REDACTED] violated is recommended as Sustained.

Allegation 7: Officer [REDACTED] violated RPD Rule and Regulation 4.6 as [REDACTED] was untruthful in speech when provided a reason for the stop and frisk search of [REDACTED] and [REDACTED]

A review of the BWC footage shows no mention of a description of dreadlocks. Accordingly, we cannot verify whether Officer [REDACTED] was untruthful in the reason he provided for stopping the suspects. *The allegation that Officer [REDACTED] violated RPD Rule and Regulation 4.6 (Truthfulness) is recommended as Not Sustained.*

Allegation 8: Officer [REDACTED] violated General Order 502: Equitable Policing as [REDACTED] did not have a legitimate reason for temporarily detaining and searching [REDACTED] and [REDACTED]

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, [REDACTED] had reasonable suspicion to conduct the stop and question of the two individuals as [REDACTED] was wearing a



dark green coat often associated with the description of cameo and [REDACTED] [REDACTED] was wearing light jeans as well as both having slim builds.

Under People V. De Bour 40 NY2d 210 (1976), officers have the right to approach, request information and the right to inquire. At this secondary level, officers have the right to approach the [REDACTED] as they reasonably believed their clothing matched the description of the suspects.

Officer [REDACTED] did not act inequitably or appear to show any biases towards any common traits of the individuals albeit race, gender, creed, religion, sexual orientation or any other protected factors.

The allegation that Officer [REDACTED] [REDACTED] violated G.O. 502 (Equitable Policing) is recommended as Exonerated.

Allegation 9: Officer [REDACTED] violated General Order 337: Use of Force as [REDACTED] used an unnecessary amount of force when positioning [REDACTED] [REDACTED] in the back of the patrol vehicle.

In the interview with [REDACTED] [REDACTED] mentioned having had a large skin tag on [REDACTED] back which had torn when [REDACTED] was forced to scoot back into the patrol car. [REDACTED] [REDACTED] stated that [REDACTED] had asked the officer if the seat could be moved up, and the officer had refused. [REDACTED] [REDACTED] said that the officer had instructed [REDACTED] to scoot and had continued to insist that [REDACTED] do so when [REDACTED] [REDACTED] had voiced to the officer that [REDACTED] would not comply. [REDACTED] [REDACTED] reported that, since [REDACTED] had been forced to scoot back into the seat, the tag had ripped, and [REDACTED] had had to go to the hospital to get it removed a week after the incident due to increased pain and possible infection. [REDACTED] [REDACTED] mentioned that [REDACTED] had not alerted the officers about injuring [REDACTED] back at any point.

A review of the BWC footage captured by Officer [REDACTED] showed that [REDACTED] [REDACTED] [REDACTED] had initially been escorted by [REDACTED] [REDACTED] to [REDACTED] patrol car. [REDACTED] [REDACTED] had suggested to Officer [REDACTED] that [REDACTED] [REDACTED] sit in the back of [REDACTED] car because it would provide more space. The BWC footage showed Officer [REDACTED] escorting [REDACTED] [REDACTED] to [REDACTED] patrol vehicle, opening the door, and removing [REDACTED] hands from the detained individual. Officer [REDACTED] had verbally instructed [REDACTED] [REDACTED] to enter the car back first to optimize the space. Officer [REDACTED] had also verbally instructed [REDACTED] [REDACTED] to sit in the car with [REDACTED] legs laying across the seat to accommodate [REDACTED] height. There was no video footage showing that physical force had been used to position [REDACTED] [REDACTED] in the back of the patrol car. Accordingly, it did not appear that Officer [REDACTED] had used unnecessary force.

The allegation that Officer [REDACTED] [REDACTED] violated G.O. 337 (Use of Force) is recommended as Not Sustained.



Allegation 10: Officer [REDACTED] violated TB-L-05-97 and the Fourth Amendment rights of the [REDACTED] as [REDACTED] 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 [REDACTED] escalated the stop and seizure to a “level three” when [REDACTED] assisted in detaining [REDACTED] [REDACTED] in handcuffs and placed [REDACTED] [REDACTED] 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)). [REDACTED] and [REDACTED] [REDACTED] did not make any attempt to evade the police - In fact, they were fully in compliance with police commands and questions. Officer [REDACTED] actions functionally constituted an arrest of [REDACTED] and [REDACTED] [REDACTED] by placing them into custody by force. Observable facts and circumstances did not furnish Officer [REDACTED] with probable cause to arrest [REDACTED] and [REDACTED] [REDACTED] nor was there reasonable suspicion that either individuals had committed a crime at the time that they were handcuffed.

The allegation that Officer [REDACTED] violated is recommended as Sustained.

Allegation 11: Officer [REDACTED] violated RPD Rule and Regulation 4.6 as [REDACTED] was untruthful in speech when provided a reason for the stop and frisk search of [REDACTED] and [REDACTED] [REDACTED]

A review of the BWC footage shows no mention of a description of dreadlocks. Accordingly, we cannot verify whether Officer [REDACTED] was untruthful in the reason [REDACTED] provided for stopping the suspects.

The allegation that Officer [REDACTED] violated RPD Rule and Regulation 4.6 (Truthfulness) is recommended as Not Sustained.

RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	[REDACTED]	[REDACTED] [REDACTED] did not have a legitimate reason for temporarily detaining and searching [REDACTED] [REDACTED] allegedly stating his dreadlocks matched the description of a suspect therefore violating G.O 502.	Exonerated
2	[REDACTED]	[REDACTED] [REDACTED] violated TB-L-05-97 and [REDACTED] [REDACTED] 4 th Amendment rights	Sustained

**PAB**

City of Rochester
Police Accountability Board
 Established 2019

245 E. Main Street
 Rochester, NY 14604

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

**PAB**

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

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:

This is the first sustained finding against [REDACTED] [REDACTED] [REDACTED] Officer [REDACTED] [REDACTED] or Officer [REDACTED] [REDACTED]. As of the writing of this report, none of the involved officers have any prior disciplinary history per a search of the City of Rochester Police Department Discipline Database. However, the PAB understands that the database is incomplete. The Rochester Police Department declined the PAB’s request for disciplinary records of all the officers involved in this incident.



PAB

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Sustained Allegation #2 against [REDACTED]

Disciplinary Matrix Appendix

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

- Recommended Level: 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 [REDACTED]

Disciplinary Matrix Appendix

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

- Recommended Level: 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.



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Sustained Allegation #10 against Officer [REDACTED]

Disciplinary Matrix Appendix

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

- Recommended Level: 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.