



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): 2023-0063

Date of Panel Review: 21-Nov-2024 1:00 PM (EST)

Board Members Present: [REDACTED]

Case Findings:

Allegation 1 and 2: Not sustained

Disciplinary Recommendation: N/A.

Dissenting Opinion/Comment: N/A.



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City of Rochester
Police Accountability Board
Established 2019

245 E. Main Street
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DEFINITIONS

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

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

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

Closed: Vote to close the case.

Allegation # 1:

Officer 1 violated RPD Rules and Regulation 4.6 by providing false statements, lacking a legitimate basis for initiating the traffic stop on a black 2022 Mitsubishi.

- **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
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Allegation # 2:

Officer 1 violated General Order 502 § III A and § IV A & B as ■ had a pre-textual motive for initiating the traffic stop, suggesting that ■ may have unlawfully run the vehicle's license plate before the stop.

- **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
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CLOSING REPORT

STATEMENT OF AUTHORITY

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

EXECUTIVE SUMMARY

The following event took place on December 7, 2022 at or near 601 Woodbine Ave, Rochester NY 14619 at approximately 1:35AM.

On April 11, 2023, Complainant 1 submitted a report with the RPD Professional Standards Section (PSS) regarding an alleged improper procedure during a traffic stop that took place on or near 601 Woodbine Ave, Rochester NY 14619 on December 7, 2022. RPD notified the Police Accountability Board (PAB) on April 19, 2023.

On the date of the incident, at 1:25 AM, Officer 1 initiated a traffic stop of a black 2022 Mitsubishi, license plate [REDACTED], after allegedly observing the vehicle making a turn on Woodbine Ave without coming to a complete stop (Allegation 1). During the traffic stop, Officer 1 noted in the supporting deposition that a facemask that was hanging from the rearview mirror was obstructing the driver’s view.

During the encounter, the driver, Complainant 1, contested Officer 1’s allegation, asserting that [REDACTED] had come to a complete stop. However, Officer 1 maintained that the driver had violated the law by executing a "rolling stop," which [REDACTED] believed is a violation of New York Vehicle and Traffic Law. Officer 1 proceeded to conduct standard stop inquiries and questioned Complainant 1 about a potential alcohol smell, which Complainant 1 denied. Despite Complainant 1's objections, Officer 1 refrained from further debate, issued two traffic tickets and informed [REDACTED] of the appearance date before both parties parted ways. The entire interaction lasted approximately 30 minutes.

Additionally, Complainant 1 expressed concerns about a potential pre-textual motive for the traffic stop, suggesting that Officer 1 may have run the vehicle's license plate prior to initiating the stop (Allegation 2). Officers 2 and Officer 3 arrived at the scene, separately and assisted Officer 1; however, they did not witness the initial infraction or the stop itself.



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INVOLVED OFFICERS

Officer #	Officer Name	Officer Rank	IBM #	Date of Appointment	Sex	Race/Ethnicity
Officer 1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officer 2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Officer 3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

INVOLVED INDIVIDUALS

	Name	Age	Sex	Race/ Ethnicity
Complainant 1	[REDACTED]	25-30	Male	Black/African American
Witness 1	[REDACTED]	Unknown	Female	Unknown

ALLEGATIONS

1	Officer 1	Officer 1 violated RPD Rules and Regulation 4.6 by providing false statements, lacking a legitimate basis for initiating the traffic stop on a black 2022 Mitsubishi.
2	Officer 1	Officer 1 violated General Order 502 § III A and § IV A & B as [REDACTED] had a pre-textual motive for initiating the traffic stop, suggesting that [REDACTED] may have unlawfully run the vehicle's license plate before the stop.

INVESTIGATION

Complainant 1 filed a report with RPD Professional Standards Section (PSS) on April 11, 2023. RPD notified the Police Accountability Board (PAB) on April 19, 2023.

On April 19, 2023, the Police Accountability Board received notification of PSS Investigation along with case package. File case package Sent 4-19-23 includes; supporting deposition for tickets #1, and ticket #2, statement of correction, uniform traffic ticket, ECD job card, complaint form and audio, complainant advisement statements (stenograph), Body worn camera footage from three (3) different officers; Officer 1, Officer 2 and Officer 3 and external correspondence.

The PAB received additional evidence on June 28, 2023, from RPD, it includes; Inter-departmental correspondence request and response, ECD unit history per officer and event information, RPD Radio West dispatch audio mp3, witness stenographic statement, incident location photographs, reduced plea form and offer, trial notice letter, PSS letter to Complainant 1 notifying that additional time will be necessary to complete work on the complaint, and a .wav file phone recording of the complaint between the complainant and Officer [REDACTED]. On September 25, 2024, the PAB forensic analyst team transcoded this recording.

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On September 27, 2024, additional information was requested from the Emergency Communication Department (ECD). They responded on October 1, 2024 providing event chronology for December 7, 2022 and radio dispatch audio of license plate query.

On October 04, 2024, an Officer Statement request letter for Officers 1 was sent to RPD Chief of Police David Smith, as well as the respective officer. The PAB did not receive a response; however, the City of Rochester Deputy Corporation Counsel previously provided a blanket denial of officer statement requests.

A notice of investigation (NOI) was sent to RPD on October 10, 2024, requesting additional information on RPD'S policy surrounding license plate scanning practice. A response was provided October 11, 2024, stating that Officers manually run license plates though the CAD system known as Netviewer or Intergraph and it can be typed in while patrolling.

Throughout the investigation, there were several attempts to contact the reporter for a statement with the PAB. On October 3, 2024, a phone call was made, but there was no answer, and a voicemail was left with a request for a callback. This was followed by an email request. Finally, on October 10, 2024, a letter was mailed via USPS to the address on file as a last attempt to reach the reporter.

Complainant 1 attended [REDACTED] scheduled court date on February 9, 2023, but Officer 1 failed to appear. Court was rescheduled for the following week, Complainant 1 appeared, but was subsequently informed by court security that [REDACTED] case was not on the schedule, and [REDACTED] was unable to enter the premises. [REDACTED] later learned from security that the case had been dismissed; a letter for the records was provided which Complainant 1 forwarded to PSS, Officer [REDACTED]. To verify the status of the case, Officer [REDACTED] corresponded with a motor vehicle representative on April 4, 2023. The representative indicated that the "motorist paid fines and the case was disposed of on 02/29/2023." However, it is important to note that this was not a leap year, so that date does not exist. This discrepancy may potentially be a typographical error. Complainant 1 disputes this claim, asserting that [REDACTED] did not make any monetary payments.

Evidence	Description	Provided by	Filename
NOI	PSS Notice of Investigation	Rochester Police Department	2023-0246 Complainant 1
Ticket 1: Driver's view obstructed	Supporting deposition, Motor Vehicle report, Statement of correction for equipment defects, Statement of correction for safety violation, UTT	Rochester Police Department	Ticket 1 Documents
Ticket 2: Failed to stop at stop sign	Supporting deposition, motor vehicle report, statement of correction for equipment defects, Statement of correction for safety violation, UTT	Rochester Police Department	Ticket 2 Documents



EDC Job cards	EDC Unit and Event information	Rochester Police Department	EDC job card(s)
Complainant Document	RPD PSS Complainant advisement form & Stenographic Statement.	Rochester Police Department	Complainant Advisement & Steno
Complainant Audio complaint	Audio recording of conversation between Complainant 1 and Officer [REDACTED] transcoded.	Rochester Police Department	Complainant audio
BWC	BWC Footage captured by Officer 1 (2 files)	Rochester Police Department	Officer1_817953
BWC	BWC Footage captured by Officer 2 (2 files)	Rochester Police Department	Officer2_818762
BWC	BWC Footage captured by Officer 3 (4 files)	Rochester Police Department	Officer3_818761
External Correspondence	Dispositions for two traffic tickets correspondence	Rochester Police Department	External Correspondence
EDC Job Card(s)	Unit History per officer	Rochester Police Department	Officers Unit History
Radio dispatch Audio	Officer 1 Radio west dispatch audio	Rochester Police Department	RPD Radio West Dispatch
Witness documents	RPD PSS Witness advisement form & Stenographic Statement	Rochester Police Department	Witness stenographic statement
Intersection photographs	Photographs of intersection Woodbine St & Sawyer St	Rochester Police Department	Photo
Court Paperwork	Adjournment letter from Traffic Violations Agency, plea offer, trial form and notice	Rochester Police Department	Court paperwork
Event Chronology	ECD Event chronology	Emergency Communication Department	E2234100133_Chronology
Radio dispatch audio	Radio dispatch audio of running license query	Emergency Communication Department	Radio dispatch 12-7-2022 1_16_38



APPLICABLE RULES & LAWS

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 General Orders

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.

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.

New York Vehicle and Traffic Law

Chapter 71, Title 7, Article 29, Section 1172(a)

§ 1172. Stop signs and yield signs.

(a) Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, then shall stop before entering the crosswalk on the near side of the intersection, or in the event there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of the approaching traffic on the intersecting roadway before entering the intersection and the right to proceed shall be subject to the provisions of section eleven hundred forty-two.



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.cornell.edu/wex/preponderance_of_the_evidence#:~:text=Preponderance%20of%20the%20evidence%20is,that%20the%20claim%20is%20true).

ANALYSIS

Allegation 1: Officer 1 violated RPD Rules and Regulation 4.6 by providing false statements, lacking a legitimate basis for initiating the traffic stop on a black 2022 Mitsubishi.

The Body-Worn Camera (BWC) footage captured by Officer 1 begins with ■ exiting ■ patrol vehicle and approaching the driver's side of the suspect vehicle. At this point, the driver's window was only slightly open, creating a small gap that made it difficult to assess the interior of the vehicle. Officer 1 requested that the driver roll down ■ window for everyone's safety, as the dusty condition of the windows lacked visibility; however, the driver refused to comply.

During the encounter, Officer 1 engaged with the driver, Complainant 1, who disputed the officer's allegation, asserting that ■ had come to a complete stop. Despite Complainant 1's disagreement, Officer 1 maintained that the driver committed a traffic violation by executing a "rolling stop," which ■ considered a violation of the New York Vehicle and Traffic Law.

According to New York Vehicle and Traffic Law § 1172, which addresses stop signs and yield signs, "every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line." The only exception is if a law enforcement officer directs the driver otherwise. In the absence of a marked line, the law mandates that drivers must stop before entering the intersection.



It is important to note that the BWC footage does not begin until after the initiation of the stop and no dash cam footage is available. The available evidence is inconclusive to confirm whether Officer 1 was truthful in [REDACTED] allegations regarding the nature of the stop.

Given the conflicting narratives between Officer 1 and Complainant 1, as well as the insufficient supporting evidence from the BWC footage, it is challenging to determine the validity of the allegations made against Officer 1.

The allegation that Officer 1 violated RPD Rules and Regulation 4.6 is recommended as Not Sustained.

Allegation 2: Officer 1 violated General Order 502 § III A and § IV A & B as [REDACTED] had a pre-textual motive for initiating the traffic stop, suggesting that [REDACTED] may have unlawfully run the vehicle's license plate before the stop.

In this incident, Officer 1 initiated the traffic stop based on the direct observation of an alleged traffic violation, specifically, that Complainant 1 failed to make a complete stop at a stop sign, executing a "rolling stop". According to General Order 502 III A, officers must be able to articulate specific facts and circumstances that provide objective, credible evidence justifying their actions.

Complainant 1 alleges that Officer 1 might have checked the license plate before stopping the vehicle and claims Officer 1 had been following [REDACTED] for a few minutes. According to the CAD job cards provided by ECD, the event was created on or near 604 Woodbine St, with cross streets Sawyer St & Ellicott St, on 12/07/2023 at 01:17:20 AM as a traffic stop, and the license plate query was run on 12/07/2023 at 01:18:33 AM. However, a dispatch voice recording copy received from ECD did not have a time stamp for when the query was initiated.

General Order 502 IV A states "Members may use criminal profiling as an investigative method"; however, it must comply with legal standards. Any profiling should be supported by specific, clearly defined facts that can be objectively verified. In this case, the officer's documentation of the facemask obstructing the driver's view, the time and location of the incident, and Officer 1's direct observation of failure to stop at a stop sign are considered within the broader context of the traffic violation. Officer 1's direct observation is the only form of evidence provided to support the notion of a traffic violation or the need for further inquiry. In this instance, the lack of a field sobriety test and the absence of any search or seizure raises questions about the basis of the stop. It could be viewed as a failure to follow established guidelines regarding reasonable suspicion.

Additionally, Officer 1 failed to appear at the court hearing, leading to the dismissal of Complainant 1's case. The dismissal raises concerns about the officer's commitment to accountability and procedural integrity, as well as the implications for Complainant 1, who alleges that [REDACTED] never made any monetary payments despite official documentation stating otherwise.



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While Complainant 1's concern regarding the possibility that the incident was pre-textual is reasonable, there is not enough evidence to establish this claim.

The allegation that Officer 1 violated General Order 502 § III A and § IV A & B is recommended as Not Sustained.

RECOMMENDED FINDINGS

#	Officer	Allegation	Finding/Recommendation
1	Officer 1	Officer 1 violated RPD Rules and Regulation 4.6 by providing false statements, lacking a legitimate basis for initiating the traffic stop on a black 2022 Mitsubishi.	Not Sustained
2	Officer 1	Officer 1 violated General Order 502 § III A and § IV A & B as ■ had a pre-textual motive for initiating the traffic stop, suggesting that ■ may have unlawfully run the vehicle's license plate before the stop.	Not Sustained